

# Day 1: Dermot Byrne, Head of ERDF AA, Ireland

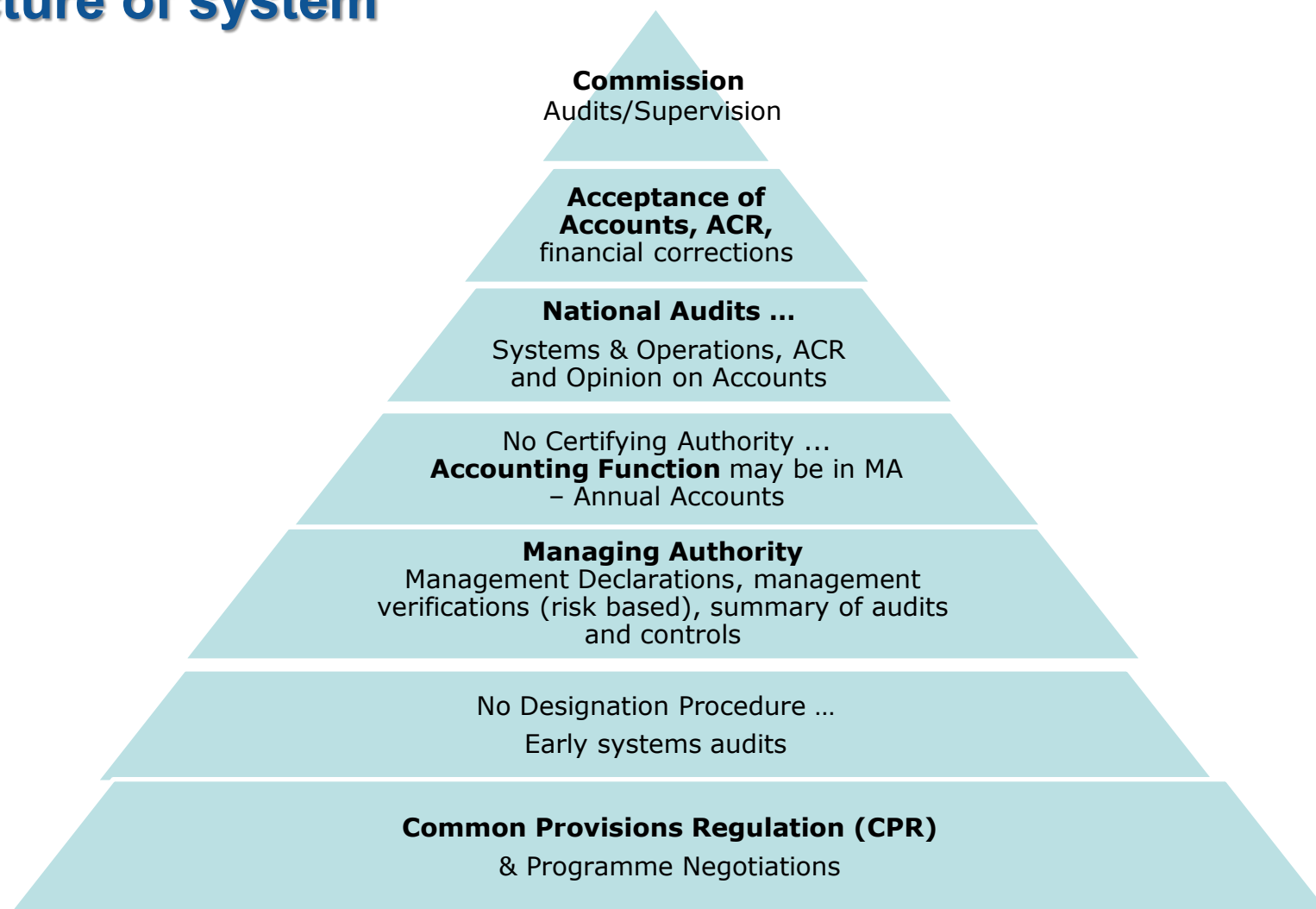
## *Introduction to Identifying and Preventing Fraud; Fraud Indicators*

- Architecture of systems
- Rules and definitions
- Fraud indicators and the Fraud triangle
- Overview of fraud schemes

# Responsibilities for Fraud Prevention and Detection



## Architecture of system



## Definition of Irregularity

*‘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 or budgets managed by them,*
- *either by reducing or losing revenue accruing from own resources collected on behalf of the Communities,*
- *or by an unjustified item of expenditure’*

## Article 69(2) of CPR 2021-2027 MS responsibilities for irregularities

- MS shall take all required actions to prevent, detect and correct and report on irregularities including fraud; and shall recover amounts unduly paid together with interest on late payments. (general principles)
- Those actions comprise the collection of information on the beneficial owners of the recipients of Union funding.
- Member States shall report on irregularities in accordance with the criteria for determining the cases of irregularity to be reported, the data to be provided and the format for reporting set out in Annex XII.

# Definitions: Fraud and Corruption



## Definition of Fraud

- ***The use or presentation of ...***
  - *false, incorrect or incomplete statements or documents,*
  - *which has as its effect the misappropriation or wrongful retention of funds*
  - *from the general budget of the European Communities or*
  - *budgets managed by, or on behalf of, the European Communities.*
- ***Non-disclosure of information in violation of a specific obligation, with same effect.***
- ***Misapplication of such funds for purposes other than those for which granted.***

## Definition of Corruption

***‘The abuse of (public) position for private gain’.***

*Note:*

- Corrupt payments facilitate other frauds e.g. false invoices, phantom expenditure, failure to meet contract specifications etc.
- The most common form of corruption is a receiver (passive corruption) accepting a bribe from a giver (active corruption).

**Note:**

It is the element of intention which distinguishes fraud/corruption from irregularity.

# Irregularities to be reported to the Commission?



## ANNEX XII

### *Detailed rules and template for the reporting of irregularities - Article 69(2) and (12)*

#### **Irregularities to be reported to the Commission in accordance with Article 69(2):**

- (a) irregularities that have been the subject of a first written assessment by a competent authority, either administrative or judicial, which has concluded on the basis of specific facts that an irregularity has been committed, regardless of the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure;
- (b) irregularities that give rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of fraud or other criminal offences, as referred to in points (a) and (b) of **Article 3(2) and Article 4(1), (2) and (3) of Directive (EU) 2017/1371** and point (a) of Article 1(1) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests or the Member States not bound by that Directive;
- (c) irregularities preceding a bankruptcy
- (d) specific irregularity or group of irregularities for which the Commission submits a written request for information to the Member State following the initial reporting from a Member State

# When is an Irregularity Exempted from reporting?



## ANNEX XII

### ***Detailed rules and template for the reporting of irregularities - Article 69(2) and (12)***

The following irregularities shall not be reported:

- (a) irregularities for an amount lower than EUR 10 000 in contribution from the Funds; this does not apply in the case of irregularities which are interlinked and the total amount of which exceeds EUR 10 000 in contribution from the Funds, even when none of them exceeds that ceiling on its own;
- (b) cases where the irregularity consists solely of the failure to execute, in whole or in part, an operation included in the co-financed programme owing to the non-fraudulent bankruptcy of the beneficiary;
- (c) \* cases brought to the attention of the managing authority or the authority in charge of the accounting function by the beneficiary voluntarily and before detection by either authority, whether before or after the payment of the public contribution;
- (d) \* cases which are detected and corrected by the managing authority before inclusion in a payment application submitted to the Commission.

**\* The exemptions in points (c) and (d) of the first subparagraph of this point shall not apply to irregularities referred to under point (b) in previous slide.**



## Fraud affecting the Union's financial interests

### *Article 3(2)(a), (b)*

#### **2. For the purposes of this Directive, the following shall be regarded as fraud affecting the Union's financial interests:**

##### **(a) in respect of non-procurement-related expenditure, any act or omission relating to:**

- (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf;
- (ii) non-disclosure of information in violation of a specific obligation, with the same effect; or
- (iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted;

##### **(b) in respect of procurement-related expenditure, at least when committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union's financial interests, any act or omission relating to:**

- (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf;
- (ii) non-disclosure of information in violation of a specific obligation, with the same effect; or
- (iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the Union's financial interests;



## **Other criminal offences affecting the Union's financial interests**

### ***Article 4 (1), (2), (3)***

1. Member States shall take the necessary measures to ensure that money laundering as described in Article 1(3) of Directive (EU) 2015/849 involving property derived from the criminal offences covered by this Directive constitutes a criminal offence.
2. Member States shall take the necessary measures to ensure that passive and active corruption, when committed intentionally, constitute criminal offences.
  - (a) For the purposes of this Directive, 'passive corruption' means the action of a public official who, directly or through an intermediary, requests or receives advantages of any kind, for himself or for a third party, or accepts a promise of such an advantage, to act or to refrain from acting in accordance with his duty or in the exercise of his functions in a way which damages or is likely to damage the Union's financial interests.
  - (b) For the purposes of this Directive, 'active corruption' means the action of a person who promises, offers or gives, directly or through an intermediary, an advantage of any kind to a public official for himself or for a third party for him to act or to refrain from acting in accordance with his duty or in the exercise of his functions in a way which damages or is likely to damage the Union's financial interests.
3. Member States shall take the necessary measures to ensure that misappropriation, when committed intentionally, constitutes a criminal offence.

For the purposes of this Directive, 'misappropriation' means the action of a public official who is directly or indirectly entrusted with the management of funds or assets to commit or disburse funds or appropriate or use assets contrary to the purpose for which they were intended in any way which damages the Union's financial interests.





## Information Note on Fraud Indicators for ERDF, ESF and CF COCOF 09/0003/00 - EN

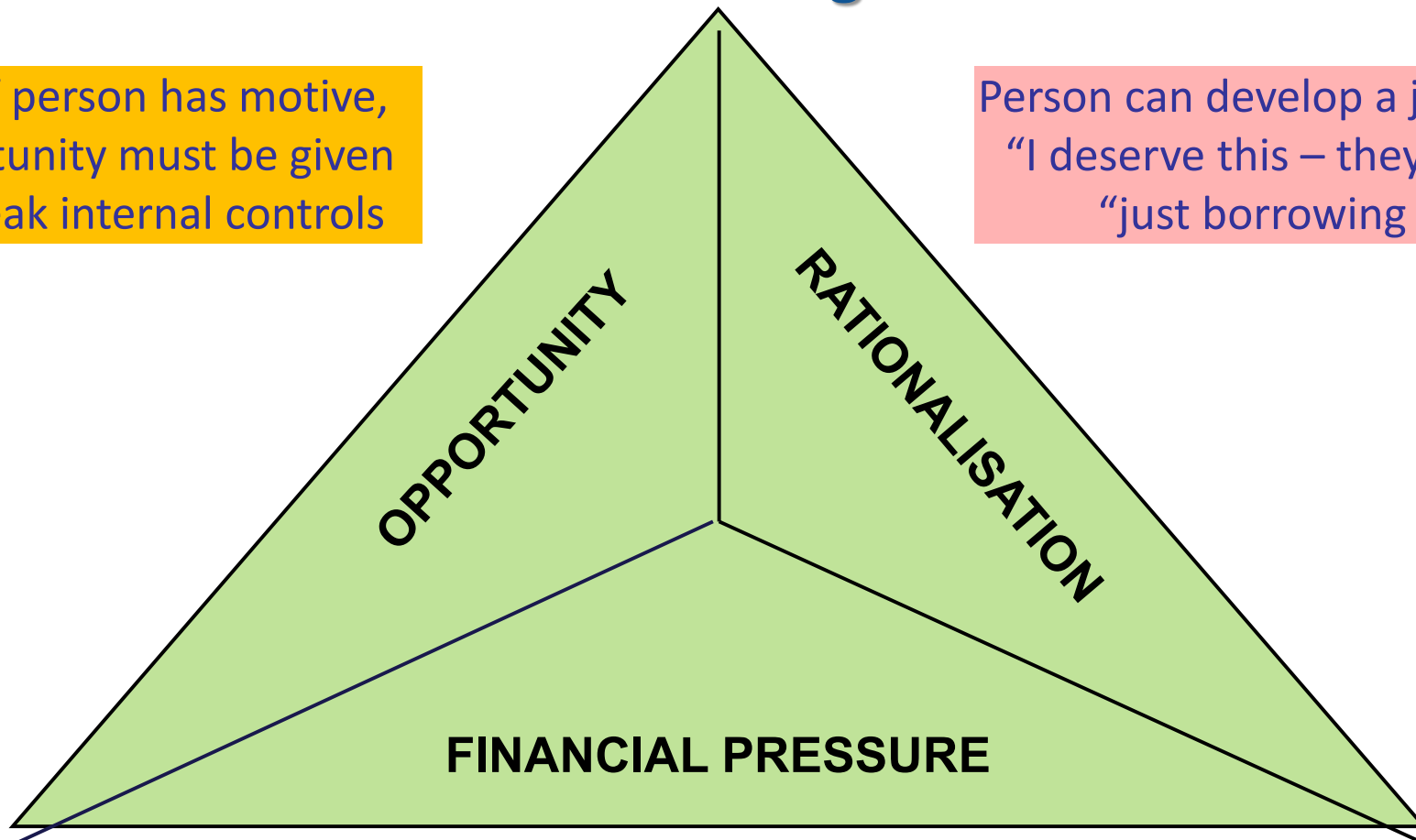
### 3 Fraud Types:

- **Intentional manipulation of financial statements**  
(e.g. inappropriately reported revenues)
- **Any type of misappropriation of tangible / intangible assets**  
(e.g. fraudulent expenses)
- **Corruption**  
(e.g. bribery, bid rigging, undisclosed conflict of interest, embezzlement)

## Fraud Triangle

Even if person has motive,  
Opportunity must be given  
eg, weak internal controls

Person can develop a justification  
“I deserve this – they owe me”  
“just borrowing money”



The “need or greed” factor  
Financial problems, gambling, addictions

# Overview of Fraud Schemes (i)



## Public Procurement

1. **Corruption – bribes and kickbacks:** Corrupt payments; corrupt influence.
2. **Undisclose conflict of interest:** Favouritism of supplier; side business of employee; declines promotion to non-procurement role.
3. **Collusive Bidding:** Complementary (shadow) bids; bid suppression; bid rotation; market division.
4. **Unbalanced bidding:** Inside information to favoured bidder.
5. **Rigged specifications:** Specs tailored to meet favoured bidder; Common in IT or technical contracts
6. **Leaking bid data:** Preferred solution; details of competing bids.
7. **Manipulation of bids:** Changing bids; losing bids; voiding bids for alleged errors.
8. **Unjustified single source awards:** Splitting purchases; drafting narrow specs; extending contracts.

# Overview of Fraud Schemes (ii)



## Public Procurement

9. **Split purchases:** Avoid exceeding competition threshold.
10. **Co-mingling of contracts:** Charging same costs to several orders/contracts.
11. **Cost mischarging:** Charging costs which are not allowable; manipulated labour costs.
12. **Defective Pricing :** Failure to disclose current/complete/accurate costs data in bid.
13. **Failure to meet contract specifications:** Misrepresent ability to meet specifications; sub-standard materials/parts etc
14. **False, inflated / duplicate invoices:** Contractor submits invoices; collusion with contracting personnel
15. **Phantom service providers:** Employee or contractor sets up fictitious company to generate invoices.
16. **Product substitution:** Inferior quality items to replace those specified in contract.

## Labour / Consultancy services Fraud (4 types)

### 1) Incurred labour cost

Claim false labour (direct or indirect).

### 2) Uncompensated overtime

Claiming false overtime; contracts worked on during overtime hours.

### 3) Consulting / professional service

No formal agreement; vague as to services rendered;  
no supporting documentation re hours/rates/expenses.

### 4) Labour categories

Qualifications of contractor staff does not match requirement;  
key employees not working on contract.



## Perspectives on fraud in Ireland



- Fraud awareness?
- Culture of corruption?
- Developed anti-fraud policies?
- Reported irregularities to OLAF?
- Culture / tone at the top?
- Challenges for the 2021-2027 Programmes?