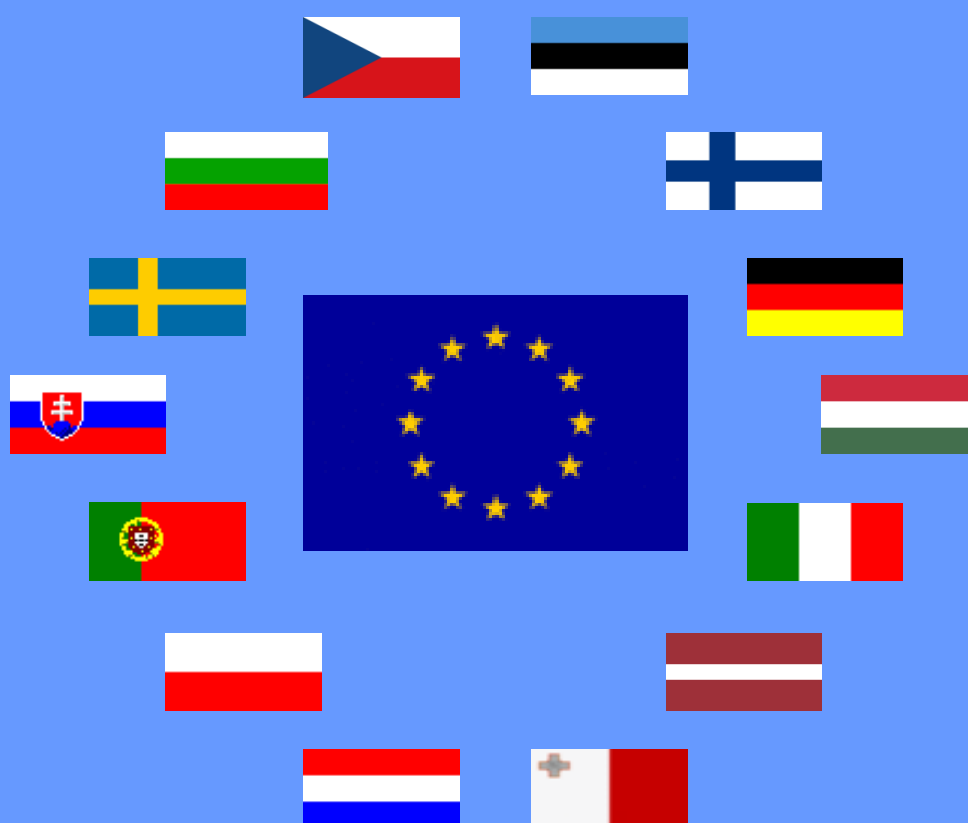


Report to the
Contact Committee
of the heads of the Supreme Audit Institutions
of the Member States of the European Union
and the European Court of Auditors



on the parallel audit of
Analysis of (types) of errors in EU and national public
procurement within the Structural Funds programmes

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Executive Summary

In 2013, the Contact Committee of the heads of Supreme Audit Institutions (SAIs) of the Member States of the European Union and the European Court of Auditors mandated the Working Group on Structural Funds to continue its review of issues relating to Structural Funds, more specifically, to carry out a parallel audit on the 'Analysis (of types) of errors in EU and national public procurement within the structural funds programmes'.

The Working Group consisted of nine SAIs, while a further five SAIs and the European Court of Auditors acted as observers. The parallel audit was carried out in order to understand the reasons why beneficiaries fail to comply with public procurement rules. The comparison of the national results was intended to reveal differences or similar causes in the Member States. Most SAIs based their audit on errors already detected by their national management and control system.

Although this parallel audit was not designed to provide a full and accurate picture of the situation, the findings suggest a rather large number of errors in public procurement under Structural Funds. The following are the main conclusions and recommendations:

- Most authorities of the management and control systems do not systematically record the types of errors in public procurement procedures. They place focus on individual errors only. It is not always assured that all authorities, especially intermediate bodies, report every error detected.

We recommend national authorities to systematically record the types of errors detected in public procurement procedures. This is the only way to obtain a full picture of these errors and address them.

- In 2007, the Coordination Committee of the Funds (COCOF) issued guidelines for determining financial corrections with regard to irregularities in the application of public procurement regulations to contracts co-financed by the Structural Funds. Although the description of the categories is rather ambiguous and vague, most Member States used the COCOF guidelines in their original version without further developing them.

We recommend that national authorities refine the description of the categories and when needed elaborate categories and rates of the COCOF guidelines further in order to ensure a uniform and just application at national level. In addition to that, it would be helpful if the European Commission distributed good practices on how the guidelines are applied in the Member States.

- The national management and control systems detected more public procurement errors in contracts with values below the EU thresholds than above the EU thresholds. However, the average financial impact of errors was higher in procedures above the EU thresholds than below the EU thresholds.

Although most authorities already strive to prevent errors in public procurement procedures, we recommend national authorities to take more targeted action in order to reduce the most common errors in public procurement procedures and those with the highest financial impact.

- According to the findings of the Working Group “lack of knowledge” is the most common reason for errors in public procurement, followed by ‘interpretation difficulties’.

We recommend the Member States to request the European Commission to further clarify the legal framework and reduce the administrative burden for the contracting authorities and the bidders, but without resulting in limitation of the equal access, fair competition and efficient use of public funds. Further to that, we recommend Member States to take the following steps in order to prevent or reduce errors in the area of public procurement:

- They should keep public procurement rules as simple as possible and not change them too radically or too frequently.
- Some Member States should improve the knowledge of the staff of the national authorities in the field of public procurement in order that they are equipped to support beneficiaries and prevent errors.
- Member States should improve their communication policy and provide better information to beneficiaries. They should try to ensure that beneficiaries exert due diligence at all stages of public procurement.

I. Introduction

1. Background and objective of the audit

One of the most frequent types of errors within the Structural Funds programmes occurs in the field of public procurement. As a result, financial corrections are made and project implementation is often seriously hampered. Improper application of EU public procurement rules can lead to financial corrections of even 100 per cent of the respective contract value.

In 2013, the Contact Committee of the Supreme Audit Institutions of the European Union (Contact Committee) mandated the Working Group on Structural Funds (Working Group) to continue its reviews of Structural Funds issues and to conduct the following audit: “Analysis (of types) of errors in EU and national public procurement within the Structural Funds programmes”.

The Supreme Audit Institutions (SAIs) of the following countries agreed to participate in the 2014-2015 programme period activities of the Working Group: Czech Republic, Germany, Italy, Latvia, Malta, the Netherlands, Poland, Portugal and Slovak Republic. The Core Group consists of the SAIs of Germany (Chair) and the Netherlands. The SAIs of Bulgaria, Estonia, Finland, Hungary and Sweden acted as observers, as well as the European Court of Auditors (ECA). Despite restricted resources some observers took an active role and made available national findings.

Within the limited timeframe, participating SAIs were free to base their audit on errors already detected by national authorities, in particular by managing authorities (MA), certifying authorities (CA), audit authorities (AA) and, if available, the relevant audit findings reported by the European Commission (EC) and/or the ECA. Depending on the national system errors discovered by other relevant authorities besides MA/CA and the AA were also taken into account.¹ The audit mission was neither designed to evaluate the work of the management and control systems nor to provide a full overview of errors in public procurement procedures. Nor did the SAIs verify data reliability.

The Working Group carried out the parallel audit in order to understand the reasons why beneficiaries fail to comply with public procurement rules. The comparison of the national results was intended to reveal differences or similar causes in the Member States.

2. Audit subject

The nine participants of the Working Group examined errors in public procurement procedures carried out by beneficiaries of Structural Funds programmes covering the European Regional

¹ In particular this was the case in Latvia. To improve the legibility, audit findings mainly refer to MA/CA or AA without also mentioning explicitly other relevant authorities.

Development Fund (ERDF) and the European Social Fund (ESF). The Cohesion Fund (CF) was included in exceptional cases only, particularly in those situations where it was impossible to distinguish between CF and Structural Funds. The audit covered the financial years 2010-2012. Some SAIs also covered financial year 2013.

The following table presents the operational programmes (OPs) audited in the participating Member States. Further information, such as the amount of national co-financing is included in the Annex.

Table 1: Structural Funds available and audited in the participating Member States

| | EU funds available 2007-2013 (in TEUR) | | EU funds of audited OPs 2007-2013 (in TEUR) ² | | Percentage of EU funds of OPs covered by the audit ³ | |
|------------------------------------|--|-------------|--|------------|---|--------------------|
| | ESF | ERDF (CF) | ESF | ERDF (CF) | ESF | ERDF (CF) |
| Bulgaria | 1,185,460 | 5,488,168 | 1,185,460 | 5,488,168 | 100.00% | 100.00% |
| Czech Republic | 2,011,600 | 24,116,800 | 0 | 2,070,700 | 0.00% | 8.59% |
| Germany³ | 9,380,655 | 16,100,402 | 3,487,788 | 1,520,320 | 37.18% | 9.44% |
| Italy | 6,960,542 | 20,992,071 | 0 | 18,416,286 | 0.00% | 87.73% |
| Latvia | 583,104 | 2,407,567 | 583,104 | 2,407,567 | 100.00% | 100.00% |
| Malta | 112,000 | 728,123 | 112,000 | 728,123 | 100.00% | 100.00% |
| The Netherlands | 830,000 | 830,003 | 830,000 | 830,003 | 100.00% | 100.00% |
| Poland | 10,007,398 | 57,178,151 | 0 | 5,267,780 | 0.00% | 9.21% |
| Portugal | 6,853,388 | 14,558,173 | 0 | 1,282,579 | 0.00% | 8.81% ⁴ |
| Slovak Republic³ | 1,484,030 | 9,998,729 | 1,484,030 | 9,998,729 | 100.00% | 100.00% |
| Total | 39,408,177 | 152,398,187 | 7,682,382 | 48,010,255 | 19.49% | 31.50% |

Source: Country reports

Six SAIs covered ERDF and ESF OPs, while four SAIs focused exclusively on ERDF OPs. In total, the audited EU funds accounted for €7.7 billion ESF funds and €48.0 billion ERDF (CF) funds, representing 19 per cent of the ESF funds and 32 per cent of the ERDF funds in the Member States concerned by this parallel audit.

Eight SAIs⁵ based their audit on errors in public procurement procedures already identified by national authorities. The SAIs of the Czech Republic and Poland based their audits on errors detected by national authorities and audited the compliance of procedures itself. The SAI of Portugal also reported public procurement errors discovered in the scope of their audits. The SAI of Bulgaria acted

² It has to be borne in mind that the audit covered financial years 2010 – 2012/2013 only.

³ As of 2013.

⁴ The main reason for the choice of OPs was that the selected OP was most significant for public procurement procedures.

⁵ SAIs of Germany, Italy, Latvia, Malta, the Netherlands, Portugal, Slovak Republic and the observing SAI of Bulgaria (the Bulgarian SAI provided the information based on questionnaires only, no fieldwork was performed).

as observer only. Nonetheless this SAI sent the questionnaires to the relevant authorities and summarised the available information for the parallel audit. The observing SAI of Finland summarised information available on that subject for the Working Group.

Table 2: Audited OPs

| Member State | ESF 2010-12 | ESF 2013 | ERDF 2010-12 | ERDF 2013 |
|-----------------|-------------|----------|--------------|-----------|
| Bulgaria | • | | • | |
| Czech Republic | | | • | • |
| Germany | • | | • | |
| Italy | | | • | • |
| Latvia | • | • | • | • |
| Malta | • | • | • | • |
| The Netherlands | • | • | • | • |
| Poland | | | • | • |
| Portugal | | | • | |
| Slovak Republic | • | | • | |

Source: Country reports

The audit scope covered the financial years 2010, 2011 and 2012. Furthermore, six SAIs reported ERDF findings corresponding to the financial year 2013, while three of these SAIs also reported ESF findings for the financial year 2013.

The Working Group based its audit on guidelines for determining financial corrections that the Coordination Committee of the Funds (COCOF) issued in 2007.⁶ The guidelines deal with irregularities in the application of public procurement regulations to contracts co-financed by the Structural Funds or the CF during the 2007-2013 programming period. The guidelines include twelve irregularities for contracts subject to the EU public procurement directives (Directives)⁷ and four irregularities for contracts not or not fully subject to the Directives. The EU applies the guidelines to ensure a common approach in dealing with irregularities. Authorities in the Member States are advised to apply the same criteria and rates when correcting irregularities, unless they apply yet stricter standards.⁸ The

⁶ COCOF 07/0037/03 Guidelines for determining financial corrections to be made to expenditure co-financed by Structural Funds or the Cohesion Fund for non-compliance with the public procurement rules, final version of 29 November 2007.

⁷ In particular:

- Directive 2004/17/EC (31 March 2004) – procurement in the water, energy, transport and postal services sectors (“utilities sector”);
- Directive 2004/18/EC (31 March 2004) - procurement - contracts for public works, public supply and public service (“classical sector”).

On 26 February 2014, new directives on public procurement were adopted by the European Parliament and the Council. The EU Member States have to transpose them into national law, regulations and/or administrative provisions by 18 April 2016.

⁸ COCOF 07/0037/03, p. 1.

types of errors and the recommended correction rates of the COCOF guidelines are set out in the Annex.

The Working Group used the COCOF guidelines for categorising errors in order to produce comparable results. Errors were either categorised by the national authorities or the SAIs.

On 19 December 2013, the EC adopted new guidelines for determining financial corrections.⁹ The purpose of these is specified in the introduction of the guidelines:

- Clarification on the level of corrections to be applied for some cases, clearer criteria;
- Inclusion of further irregularities/categories;
- Harmonisation of the level of corrections covering contracts subject to the Directives and to the Treaty principle.

The guidelines should be applied when making financial corrections relating to irregularities detected after the date of their adoption. As the Working Group limited its audit mission to public procurement errors subject to the former guidelines, it did not take the new guidelines into account.

3. Methodology

The Working Group developed questionnaires as a basis for the SAIs to carry out the parallel audit.

As a first step, SAIs sent questionnaires to the national authorities. They asked for an overview of both the Structural Funds programmes and the errors related to public procurement detected by the MA, CA and AA and/or other relevant institutions and – if available – the EC/ECA. The SAIs used different sources and data bases.

As a second step, the SAIs gathered general information about the system for detecting errors and subsequently analysed the errors reported by the authorities. For this purpose, the SAIs interviewed representatives of the MA/CA and AA and/or other relevant institutions and examined the supporting documents of public procurement procedures.

Errors subject to ongoing contradictory procedures between auditor and auditee (either at national level or among Member States and EC/ECA) did not fall within the audit scope.

Participating SAIs adapted the methodology as necessary.

As it was not the aim of this parallel audit to provide a complete overview of errors in public procurement procedures, the SAIs made different general assumptions. Various samples were used. Some SAIs did not include errors detected by EU institutions' audits. Several SAIs expressed doubts regarding the accuracy of the errors reported by the national authorities.

⁹ EC decision of 19 December 2013, C(2013) 9527 final.

II. Audit findings

In this part, the audit findings produced by the Working Group are presented. The first chapter highlights public procurement errors reported by national authorities and the SAIs and compares the results. Then national application of the COCOF guidelines is outlined and assessed. National particularities in the systems to detect and prevent errors in public procurement procedures are presented in the third chapter. The fourth chapter deals with the types of errors and identifies similarities and differences among the Member States. Finally, the reasons of detected errors are analysed.

When analysing the different amounts of detected errors and the corresponding irregular expenditure in the Member States, the Working Group had to take into account several conditions which had a significant impact on the findings. It was often challenging for national authorities to provide information on the number of projects under (partly) public procurement and on the types of errors detected by the authorities. Such data was often not available through the administrative systems used by the national authorities to support the management and control of their programmes. That is one of the reasons why several SAIs limited the audit scope to some OPs (SAIs of Italy, Germany, Poland and Portugal¹⁰) or took a sample within one OP (SAIs of the Netherlands (ESF) and Poland). The findings presented by the SAI of the Czech Republic are only one part of an investment audit and cover a sample within one OP. Another factor to be accounted for is the diversity of the audited OPs and the management and control systems in the Member States. For example in some OPs, many projects are funded – one German ESF OP funded 40 000 projects in the years 2010-2012 – while others funded a limited number of projects – the Maltese ESF OP funded 165 projects in the same period.

To help readers better understand the results presented below, the Working Group points out the following differences:

- Since the description of errors given in the COCOF guidelines is rather ambiguous and vague, uniform application of the categories cannot be ensured.
- Some detected errors fitted into more than one description of the types of errors and were classified accordingly. As a result, the total amount of errors was increased.
- ESF projects often include considerably less or more simplified public procurement procedures than ERDF projects.
- While some ERDF OPs are designed to support infrastructure projects with major projects and a lot of (mostly extensive) public procurement procedures, others promote micro, small and

¹⁰ The audited OP is the most significant OP with regard to public procurement.

medium-sized enterprises (SME) with smaller projects and small-scale public procurement procedures. Regarding the volume of infrastructure OPs, most of its public procurement procedures exceed EU thresholds.

- Sometimes staff of the management and control systems was well experienced in public procurement procedures, however, other staff was less experienced.
- The types of beneficiaries largely differ. They range from public bodies to SMEs, to small non-profit organisations and other different types of beneficiaries. Therefore, their knowledge of and experience with public procurement rules varies significantly.
- Not every error identified was reported by the authorities of the management and control systems and especially their Intermediate Bodies. Where the responsible authorities found minor (mostly formal) errors during their checks and the beneficiaries corrected these errors before the expenditure had been declared to the EC, they recorded it in the project files only. As a result, there may be a high number of detected but unreported errors that do not appear in the tables stated below.

Taking this into account, the tables below present the best possible comprehensive and accurate picture. Since the audit objective was not to evaluate whether the management and control systems were working adequately, no conclusion on the quality of these systems can be drawn from the amount of errors presented.

1. Number of errors

This chapter deals with the number of errors in public procurement procedures, the amount of irregular expenditure and the amount of financial corrections reported by the Working Group members. The results are presented separately by fund.

ESF 2010-2012 and 2013

Table 3: Number of errors and corresponding irregular expenditure and financial corrections identified by the MA, CA or AA and/or other relevant authorities

| ESF | Above the EU thresholds ¹¹ | | | Below the EU thresholds ¹² | | | Total | | | |
|--------------|---------------------------------------|-----------------------|-----------------------|---------------------------------------|-----------------------|-----------------------|-------------------|-----------------------|-----------------------|-------------------|
| Member State | Errors | Irregular expenditure | Financial corrections | Errors | Irregular expenditure | Financial corrections | Errors | Irregular expenditure | Financial corrections | |
| 2010-2012 | BG ¹³ | 2 | €36,314 | n/s | 3 | €9,640 | n/s | 5 | €45,954 | n/s |
| | DE ¹⁴ | 0 | €0 | €0 | 76 | €276,984 | €104,458 | 76 | €276,984 | €104,458 |
| | LV ^{15 16} | 114 | n/s | €279,296 | 102 | n/s | €145,464 | 216 | n/s | €424,760 |
| | MT | 3 | €778,980 | €69,113 | 7 | €178,990 | €22,062 | 10 | €957,970 | €91,175 |
| | NL ¹⁷ | 1 | €0 | €0 | 76 | €3,855,563 | €1,464,117 | 77 | €3,855,563 | €1,464,117 |
| | SK | 8 | €2,629,000 | €1,651,000 | 45 | €756,500 | €337,200 | 53 | €3,385,500 | €1,988,200 |
| | Total | 128 | €3,444,294 | €1,999,409 | 309 | €5,077,677 | €2,073,301 | 437 | €8,521,972 | €4,072,710 |
| 2013 | LV ^{15 16} | 24 | n/s | €142,904 | 99 | n/s | €176,537 | 123 | n/s | €319,441 |
| | MT | 2 | €680,001 | €68,000 | 0 | €0 | €0 | 0 | €680,001 | €68,000 |
| | NL ¹⁹ | 0 | €0 | €0 | 10 | €1,573,094 | €372,847 | 10 | €1,573,094 | €372,847 |
| | Total | 26 | €680,001 | €210,904 | 109 | €1,573,094 | €549,384 | 135 | €2,253,095 | €760,288 |

Source: Country reports

The table shows that the majority of errors concerned public procurement procedures below EU thresholds. Since ESF projects funding mainly involves small amounts, EU public procurement rules often do not apply. Therefore, the management and control systems are only confronted with a few or more simplified public procurement procedures.

¹¹ Contracts subject to the EU Public Procurement Procedures

¹² Contracts not or not fully subject to the EU Public Procurement Procedures

¹³ The Bulgarian SAI was not able to give data about the amount of financial corrections because the authorities did not provide the information.

¹⁴ The German SAI audited one of 17 ESF OPs. Furthermore it has to be noted that the managing authority could not provide an overview of public procurement errors detected and divided into different types.

¹⁵ The relatively high number of errors detected by the Latvian authorities is due to the fact that one error can be classified by more than one COCOF type. In that case the error is counted more than once.

¹⁶ The Latvian SAI was not able to give data about irregular expenditure because the national management and control system did not collect data about the contractual amount.

¹⁷ The ESF MA/CA detected 229 errors in total in the 2010-2013 period. The Algemene Rekenkamer took a sample of 60 (50 for 2010-12, 10 for 2013) errors and categorised these errors pursuant to the COCOF guidelines. The AA found 27 errors in the 2010–2012 period. So, the total amount of errors would be 256 (2010-2013). This table presents the errors categorised by the SAI only.

Although three SAIs extended their audit to the year 2013, the audit findings do not significantly differ from the 2010-2012 results. As in the preceding years, the majority of errors occurred in public procurement procedures below the EU thresholds.¹⁸

ERDF 2010-2012 and 2013

Table 4: Number of errors and corresponding irregular expenditure and financial corrections identified by the MA, CA or AA and/or other relevant authorities

| ERDF | | Above the EU thresholds ¹⁹ | | | Below the EU thresholds ²⁰ | | | Total | | |
|--------------|---------------------|---------------------------------------|-----------------------|-----------------------|---------------------------------------|-----------------------|-----------------------|--------------|-----------------------|-----------------------|
| Member State | | Errors | Irregular expenditure | Financial corrections | Errors | Irregular expenditure | Financial corrections | Errors | Irregular expenditure | Financial corrections |
| 2010-2012 | BG ²¹ | 52 | €5,129,533 | n/s | 83 | €353,546 | n/s | 135 | €5,483,079 | n/s |
| | CZ | 0 | €0 | €0 | 2 | €165,703 | €19,921 | 2 | €165,703 | €19,921 |
| | DE ²² | 46 | €504,273,712 | €1,052,557 | 4 | €258,693 | €255,458 | 50 | €504,532,406 | €1,308,016 |
| | ITA | 28 | €54,193,415 | €50,828,558 | 78 | €14,431,542 | €3,882,401 | 106 | €68,624,957 | €54,710,959 |
| | LV ^{23 24} | 186 | n/s | €5,758,402 | 359 | n/s | €3,878,028 | 545 | n/s | €9,636,430 |
| | MT | 7 | €989,613 | €125,725 | 2 | €58,231 | €4,328 | 9 | €1,047,844 | €130,053 |
| | NL | 84 | €18,306,435 | €14,006,561 | 140 | €17,454,501 | €6,444,760 | 224 | €35,760,936 | €20,451,321 |
| | PL ²⁵ | 159 | €157,803,000 | €8,759,000 | 130 | €24,349,000 | €1,068,000 | 289 | €182,152,000 | €9,827,000 |
| | PT ²⁶ | 40 | €215,152,600 | €46,484,612 | 50 | €17,591,381 | €2,387,177 | 90 | €232,743,981 | €48,871,789 |
| | SK | 92 | €35,397,000 | €13,472,000 | 72 | €8,804,000 | €8,297,300 | 164 | €44,201,000 | €21,769,300 |
| | Total | 694 | €991,245,308 | €140,487,415 | 920 | €83,466,597 | €26,237,373 | 1,614 | €1,074,711,906 | €166,724,789 |
| 2013 | CZ | 0 | €0 | €0 | 2 | €15,822 | €9,609 | 2 | €15,822 | €9,609 |
| | ITA | 80 | €12,335,627 | €10,685,738 | 151 | €14,247,175 | €4,866,963 | 231 | €26,582,802 | €15,552,701 |
| | LV ^{23 24} | 81 | n/s | €2,879,849 | 316 | n/s | €3,379,458 | 397 | n/s | €6,259,307 |
| | MT | 4 | €268,582 | €31,468 | 4 | €248,439 | €16,908 | 8 | €517,021 | €48,376 |
| | NL | 10 | €1,546,578 | €1,128,527 | 50 | €6,409,149 | €1,055,140 | 60 | €7,955,727 | €2,183,667 |
| | PL | 69 | €8,776,000 | €957,000 | 37 | €5,878,000 | €275,000 | 106 | €14,654,000 | €1,232,000 |
| | Total | 245 | €22,926,787 | €15,682,582 | 559 | €26,798,585 | €9,603,078 | 804 | €49,725,372 | €25,285,660 |

Source: Country reports

The above table illustrates that in ERDF public procurement more errors were detected in public procurement procedures below EU thresholds than in those above the EU thresholds. Compared to

¹⁸ Additional information on the data submitted for 2013 is presented in the Annex.

¹⁹ Contracts subject to the EU public procurement procedures

²⁰ Contracts not or not fully subject to the EU public procurement procedures

²¹ The Bulgarian SAI was not able to give data about the amount of financial corrections because the authorities did not provide the information.

²² The German SAI audited one ERDF OP of 17 ERDF OPs.

²³ The relatively high number of errors detected by the Latvian authorities results from the fact that one error can be classified by more than one COCOF type.

²⁴ The Latvian SAI was not able to give data about irregular expenditure because the national management and control system did not collect data about the contractual amount.

²⁵ The Polish SAI audited four regional OPs of 21 regional and national OPs (18 ERDF, one ERDF/CF, one ESF and one TA OP). Due to a large number of projects in each audited OP, the calculations were based on a representative sample of projects.

²⁶ The Portuguese SAI audited one out of 15 national OPs (nine ERDF, four ESF, one CF and one TA OP).

the ESF, national authorities discovered more errors. This finding was no surprise since ERDF projects often encompass a larger number and more costly public procurement procedures than ESF projects. Six SAIs included 2013 in their audit. The audit findings do not significantly differ from those produced for 2010-2012. As in the preceding years, more errors were found in public procurement procedures below EU thresholds than above the EU thresholds.²⁷

Conclusions and recommendations

Although this parallel audit was not designed to provide a full and accurate picture of the situation, the findings suggest a rather large number of errors in public procurement under Structural Funds. It has to be taken into account that presumably a high number of cases has not even been detected or recorded.

Most authorities of the management and control systems and especially their Intermediate Bodies do not register and report all and any error detected.

➡ We recommend that the responsible national authorities take steps to ensure that errors found are recorded and reported.

Most national authorities do not systematically record the types of errors in public procurement procedures. They place focus on individual errors only.

➡ We recommend that national authorities systematically record the types of errors detected in public procurement procedures. This is the only way to provide a full picture of these errors and tackle them effectively.

²⁷ Additional information on the data submitted for 2013 is presented in the Annex.

2. Findings on COCOF guidelines

All nine Member States covered by the audit use the COCOF guidelines at least to some extent to categorise errors and determine financial corrections.

The guidelines serve to provide a uniform minimum standard, even though they are not binding and the definitions of the categories are rather broad and general, especially with regard to those addressing amounts below the EU threshold. The guidelines are to help the EC services²⁸ to take a common approach in dealing with errors in public procurement procedures. In addition to that, the guidelines recommend that Member States authorities apply the same criteria and rates when correcting irregularities, unless they set even stricter standards.

However, the application of guidelines by the MA, CA and AA sometimes differed both within and among the Member States.

The description of the categories of the COCOF guidelines is rather ambiguous and vague for categories above and below the EU thresholds. Hence, it was difficult for (some) authorities to apply them properly and in an even and uniform way. In particular, the categories of the COCOF guidelines below the EU thresholds are not as differentiated as the categories above the EU thresholds. Some Member States converted the COCOF guidelines into national guidelines or categories (Latvia, the Netherlands, Poland and the Slovak Republic) or legislation (Bulgaria). In the Czech Republic, the COCOF guidelines are part of an agreement entered into with the beneficiaries. In the Netherlands and Poland, for instance, the vague and ambiguous categories prompted the development of more detailed and supplementary correction categories for the ERDF programmes below the EU thresholds (in the Netherlands) and for all EU funds programmes (in Poland). These national categories are modified periodically. Other authorities follow the principle of proportionality and apply the categories of the COCOF guidelines accordingly (Portugal). Most Member States (subject to this parallel audit) did not elaborate further on subcategories and correction rates.

Some Member States authorities were in agreement on a correction rate as proposed by the COCOF guidelines (Malta) whereas others did not visibly substantiate the rates (ESF, the Netherlands). Besides, some SAIs reported that the ECA and EC tended to correct the contract value by 100 per cent while national authorities applied much lower percentages in similar cases.


These differences in status (mandatory versus non-binding) and the application of the guidelines and the correction rates within and among Member States may result in differing treatment of similar cases.

²⁸ The EC services deal with general administrative issues or have a specific mandate, for example the European Anti-Fraud Office or the Internal Audit Service.

The most recent version of the COCOF guidelines applicable to the new 2014-2020 period leaves even more room for interpretation than before. For example, there are cases where the previous 100 per cent correction suggested has been replaced by a correction ranging from 50 to 100 per cent. As the legal status of the guidelines remains non-binding, the Member States have to take the necessary steps to ensure a clear and uniform approach at national level. Given the enlarged leeway the new guidelines provide, the issues raised may gain more weight in the current Structural Funds period. Further audit work should reveal this weakness.

Conclusions and recommendations

The criteria and rates for financial corrections are issued by the EC as guidelines only and thus leave ample room for discretion and interpretation. Therefore, national authorities may take into account national particularities. The EC recommends that national authorities apply the criteria and rates listed in the COCOF guidelines, unless they apply stricter standards. Most Member States used the COCOF guidelines in their original version without further developing the categories or the correction rates, while a few Member States modified them according to their specific needs. The differences in status (mandatory versus non-binding) and in the application of the guidelines within and among Member States may result in differing treatment of similar cases.

 We recommend that national authorities refine the description of the categories and, when needed, elaborate categories and rates of the COCOF guidelines further in order to ensure a uniform application at national level.

It would be helpful if the EC could distribute good practices on how to apply the guidelines in the Member States.

3. National systems for detecting and preventing errors

The SAIs gathered information on their national system for checking projects carried out by means of public procurement, especially with regard to how checks are conducted (e.g. if checklists were used) and which rules are applied. Furthermore, SAIs examined which measures were/are taken to prevent errors in public procurement procedures by the authorities now and in the future.

None of the SAIs reported that the national systems failed to comply with the European or national rules. However, it has to be borne in mind that it was not the aim of this audit to assess the systems. Some examples are presented in this part to highlight national particularities.

Checks:

- National authorities generally use checklists for detecting and documenting errors in public procurement procedures.
- When the CA finds identical irregularities in three projects of a sample, the MA is requested to check the remaining projects to prevent systematic errors (Bulgaria).
- The MA separately checks projects in which contracts are publicly procured (Portugal).

Additional checks:

- A public procurement supervision institution is involved in the EU fund control system by ensuring quality of detection and elimination of errors, for example, by providing a methodological administration of pre-checks carried out by the responsible and cooperation institutions (Latvia).
- Additional pre-checks are carried out on contracts with significant public procurement procedures (Latvia, Poland). For instance, in accordance with the Polish Public Procurement Law, the ex-ante audit of the public procurement awarding procedure by an independent body is mandatory for public contracts of high value co-financed with EU funds. The mechanism is used for contracts co-financed with EU funds above €20,000,000 for public works and €10,000,000 for public supplies and services.

Measures to prevent errors:

- Several MA advise and support beneficiaries from the very beginning up to the project closure.
- Several MA organise information events for the beneficiaries.
- Several MA publish guidelines on public procurement rules for all beneficiaries.
- The AA analyses the irregularities in the award of procurement contracts identified in the audits of operations in the preceding year (Bulgaria).
- Several MA/supervisory authorities publish information on the most common errors (Bulgaria, Latvia, Poland, the Slovak Republic).

- The responsible authorities share and discuss errors found (Bulgaria, Latvia, the Netherlands, Poland, the Slovak Republic).
- Several SAIs reported that staff working for the management and control system is trained in the field of public procurement.
- All contracts above the EU thresholds are published on a publicly accessible website: “central database of contracts” (the Slovak Republic).
- A public anti-corruption authority publishes templates to be used mandatorily in public procurement procedures. In addition, the SAI has its own data-base, currently linked to the IMS-OLAF system for monitoring frauds and irregularities; it can be a useful tool also for risk analysis relating to public procurement (Italy).

4. Types of errors

This chapter is dedicated to the different types of errors. The following charts illustrate the distribution of

- errors among the **three phases of public procurement procedures** (chart 1),
- errors among the **different categories of the COCOF guidelines** (charts 2 and 4),
- **average financial corrections per type of error** (charts 3 and 5).

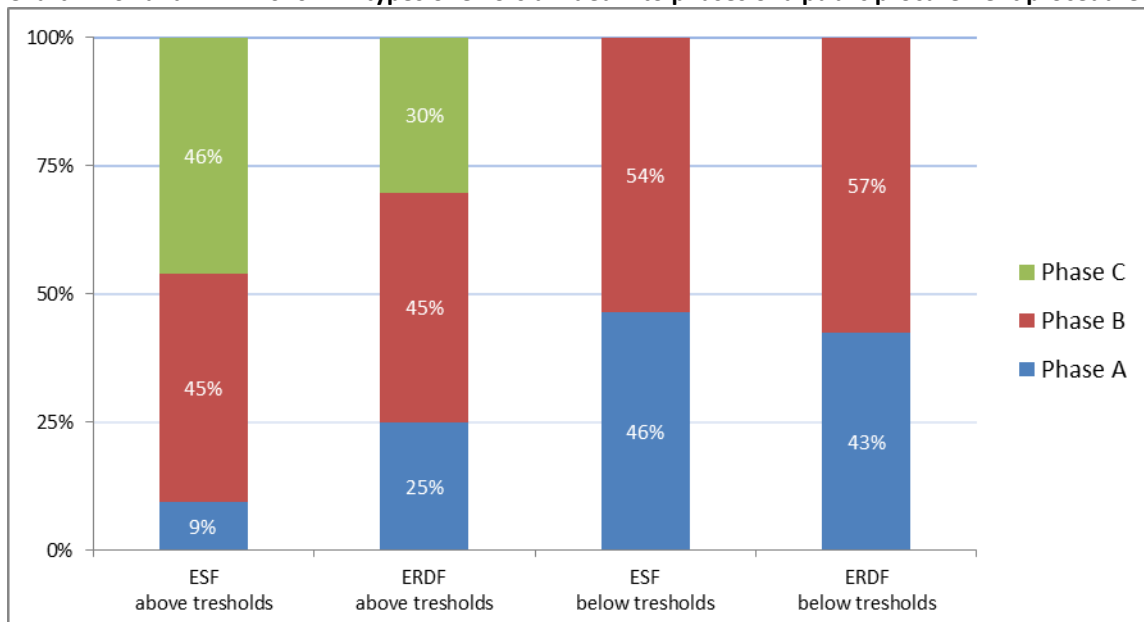
Distribution of errors across the public procurement phases (ESF and ERDF)

The Working Group divided the categories of the COCOF guidelines into the following phases of a public procurement procedure:

| | | |
|---------|------------------------------------|-----------------------------|
| Phase A | Selection of the type of procedure | Categories 1 - 4, 21 and 22 |
| Phase B | Tendering procedure | Categories 5 - 9, 23 and 24 |
| Phase C | Management of contracts | Categories 10 - 12 |

The following chart illustrates data submitted by all nine SAIs that participated as members of the Working Group and the active observing SAI of Bulgaria. It shows the distribution of the detected errors among the three phases of public procurement mentioned above.

Chart 1: ESF and ERDF 2010-12 - types of errors divided into phases of a public procurement procedure



Source: Country reports

Comparing ESF and ERDF results above the EU thresholds:

Errors were detected throughout all phases of public procurement procedures. The rate of errors detected in phase B (Tendering procedure) is the same for ESF and ERDF. In ERDF projects the

national authorities found relatively more errors in phase A (Selection of the type of procedure) than in ESF projects, whereas for errors detected in phase C (Management of contracts) the percentage is higher for the ESF than for the ERDF.

Comparing ESF and ERDF results below the EU thresholds:

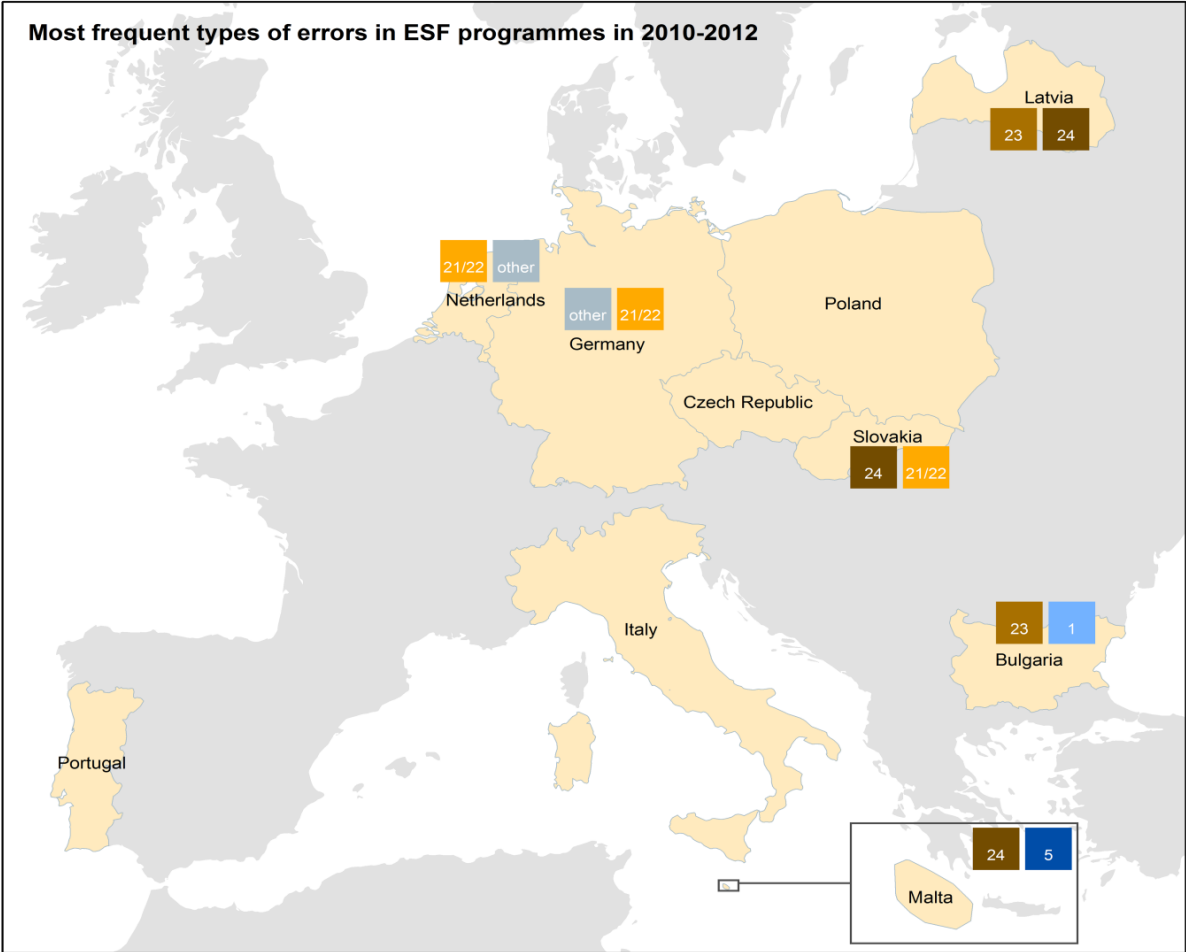
Since the COCOF guidelines do not provide for “phase C errors” (Management of contracts) for public procurement procedures below the EU thresholds, none of these errors are shown in the columns. The errors identified in ESF and ERDF procedures show a similar distribution of errors among the public procurement phases.

ESF 2010-2012

The diagrams in this section provide data submitted by the SAIs of Germany, Latvia, Malta, the Netherlands and the Slovak Republic.

Most frequent types of errors in the Member States

The following image shows the most frequent types of errors in ESF programmes.



Source: Country reports

The image shows that in the audited ESF programmes the most and second most frequent errors detected are often the same in the participating Member States. These are errors detected by both the MA/CA and the AA.

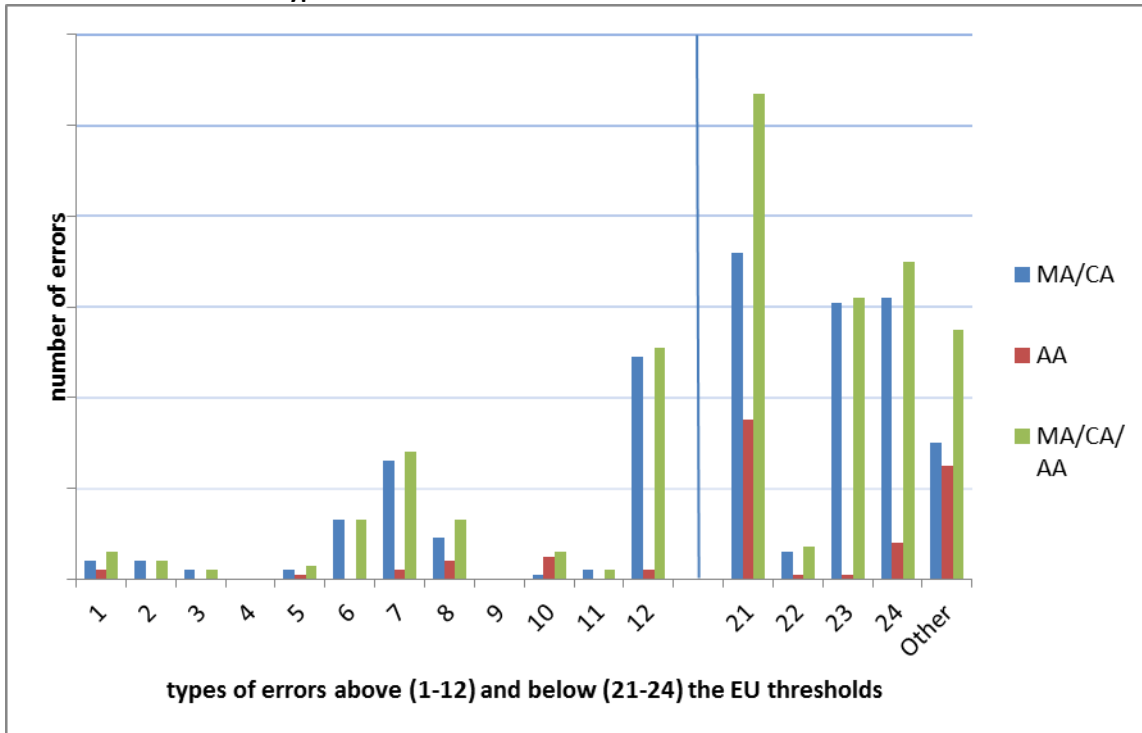
In the majority of the Member States, these errors were detected in contracts with a value below the EU thresholds: The most frequent types of errors fit in COCOF-categories 21/22, 23 and 24.²⁹ For example, beneficiaries awarded the main (or supplementary) contract without adequate competitive tendering (21/22), they applied unlawful criteria to select or award bidders (23) or they did not comply with the principle of equal treatment (24). The authorities in Germany and the Netherlands detected errors below the EU threshold that do not fit into the COCOF categories and listed these errors as “other” errors. For example, this concerns lack of documentation in public procurement procedures below the EU thresholds. In two countries (Bulgaria and Malta), most errors were (also) found in contracts above the EU threshold. Those errors belong to categories 1 or 5.

Distribution of types of errors and their financial impact

The following chart shows the distribution of types of errors according to the categories of the COCOF guidelines in ESF projects for expenditure declared in the years 2010-2012. It indicates the number of errors identified by the MA/CA and/or other relevant authorities and by the AA as well as the total of these. When comparing the amount of errors detected by the MA/CA and the AA, it has to be taken into account that numbers are presented in absolute terms. The findings of the AA – usually auditing a sample – have not been extrapolated to the population. In addition to this, some MA/CA could not provide a complete overview of errors and some SAIs based their findings on a sample.

²⁹ Beside the observation that most errors occur below the EU thresholds, they are also more concentrated in fewer categories than the errors above the EU thresholds. This can be explained by the fact that the COCOF guidelines contain only four categories of types of errors below the EU thresholds and twelve categories above.

Chart 2: ESF 2010-2012 - types of errors



Source: Country reports

The chart showing the ESF findings clearly illustrates that the vast majority of the errors discovered by the management and control systems concern public procurement procedures below the EU thresholds. Above the EU thresholds, the error rate was not very high. This might be due to the fact that often smaller projects are financed with the ESF. Above the EU thresholds, most of the errors reported by MA/CA belong to category 12 (incorrect application of certain ancillary elements). For instance, failing to meet the deadline of publishing the contract award notice was reported as error of category 12. The AA detected most of the errors in category 10 (reduction in scope of contract without proportional reduction in value of contract). For example, a beneficiary had entered into a contract which specified that a certain level of public relations activities was to be reached. However, no documentation in this regard was found in the relevant file. Errors of type 4 and 9 were neither detected by the MA/CA nor the AA.³⁰

It has to be borne in mind that most national authorities did not discover any or only a very small number of errors above the EU thresholds. The overall results were influenced by the national results of Latvia whose national authorities were the only ones that reported a comparatively high rate of errors above the EU thresholds.

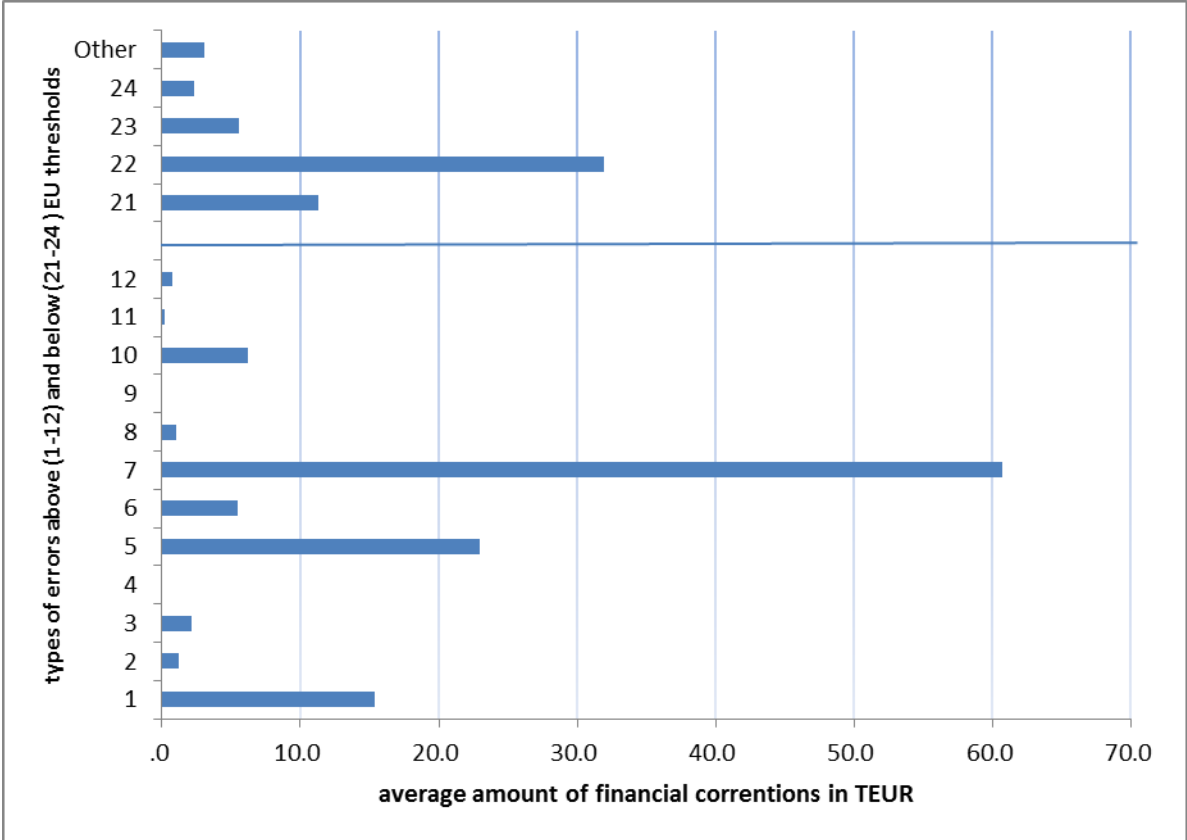
³⁰ Category 4: The main contract was awarded in accordance with the provisions of the Directives, but was followed by one or more supplementary contracts (due to unforeseen circumstances) exceeding the value of the original contract by more than 50 per cent.
 Category 9: The contract was awarded by open or restricted procedure but the parties negotiated during the award procedure.

Below the EU thresholds, most of the errors were reported in category 21 (no adequate competitive tendering). For example, it was reported that schools were not aware that they had the duty to tender under a covenant in which they were affiliated. Instead, they had put out their assignments in the market independently.

National authorities also found errors in contracts below the EU thresholds that did not fit properly in the COCOF categories. For the parallel audit, the national authorities or the SAIs categorised these errors under “other errors”. This seems to be due to the fact that no category of the COCOF guidelines covers errors in which the contract was awarded without complying with certain supplementary/nonessential elements and/or (other) irregularities of a formal nature. In these cases, the COCOF guidelines and its categories do not reflect the situation properly. For example, a lack of documentation was reported as “other error”.

While the chart only displays the number of errors stated, it does not take into account their financial significance. The following chart shows that the picture changes if the average amount of financial corrections by type of error is evaluated:

Chart 3: ESF 2010-12 - Distribution of average financial corrections per type of error



Source: Country reports

Chart 3 shows that the categories of errors with the highest financial impact differ from those with the highest frequency, as presented in Chart 2. Errors of category 7 (application of unlawful selection and/or contract award criteria) have the highest average financial correction amount. In these cases

certain operators had been deterred from bidding on account of unlawful restrictions laid down in the tender documents or tender notices. Although the number of errors of category 12 (incorrect application of certain ancillary elements) was high, the average financial impact is relatively low. This difference may be further explained by the fact that the recommended correction rates by the COCOF guidelines also differ. Errors of category 7 should be corrected by 25 per cent of the value of the contract or even 100 per cent in intentional cases while the recommended correction rate for errors of category 12 is only 2, 5 or 10 per cent of the contract. In this audit, the average financial impact of category 7 was mainly influenced by one SAI that reported cases with financial corrections of 50-100 per cent.

Apart from category 7, errors in public procurement procedures above the EU thresholds had no or rather a low financial impact only. Nonetheless, the average amount of financial corrections for errors in procedures above the EU thresholds is approximately twice as high as the average amount of financial amounts for errors below the EU thresholds (about €16,000 compared to €7,000).

For 2013, the SAIs of Latvia, Malta and the Netherlands also reported results. According to these, most of the errors belonged to category 12 (incorrect application of certain ancillary elements) above the EU thresholds. Below the EU thresholds, most of the errors referred to category 23 (application of unlawful selection and/or contract award criteria).³¹

Similarities and differences between the Member States concerning the errors reported

For ESF it is remarkable that below the EU thresholds, errors detected are about equally distributed among the categories across the Member States. National authorities of the Netherlands and Germany were the only ones that reported errors that did not fit into the COCOF categories. These errors were listed as “other errors”.

However, the picture is different with regard to public procurement procedures above the EU thresholds. The results differ among the Member States. For example, the German AA did not detect any errors in public procurement procedures above the EU thresholds, whereas the national authorities of Malta, the Netherlands and the Slovak Republic found only a very small number of errors. Some SAIs explained these results by referring to the small number of projects carrying out public procurement procedures above the EU thresholds. Only the SAI of Latvia reported different findings. The Latvian authorities identified many errors concerning public procurement procedures above the EU thresholds. On the other hand, matching the overall picture, they also found more errors in the scope of procurements below the EU thresholds than above the EU thresholds.

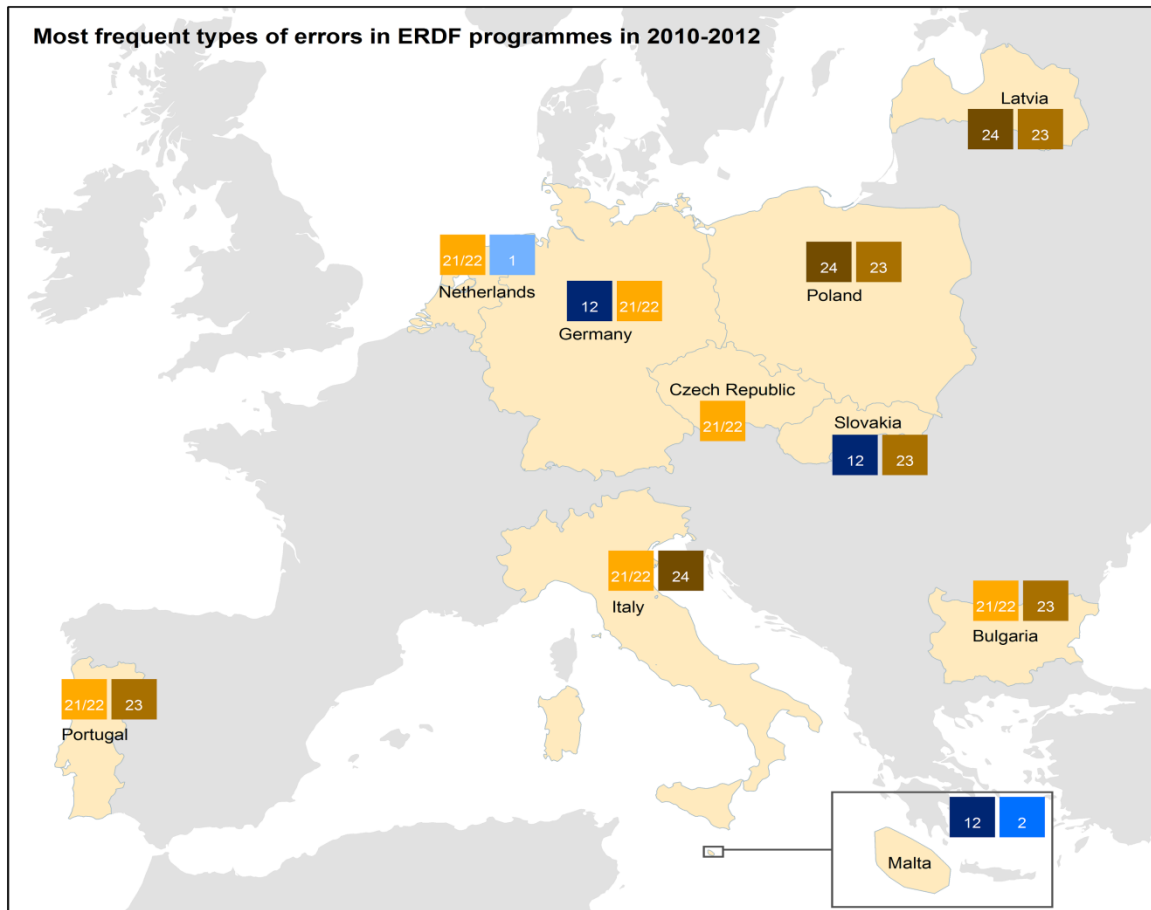
³¹ Additional information on the data submitted for 2013 is represented in the Annex.

ERDF 2010-2012

The diagrams in this section include the audit findings submitted by the SAIs of the Czech Republic, Germany, Italy, Latvia, Malta, the Netherlands, Poland, Portugal, the Slovak Republic and Bulgaria³².

Most frequent types of errors in the Member States

The following image shows the most frequent types of errors in ERDF programmes.



Source: Country reports

The image shows that in the audited ERDF programmes the most and second most frequent errors detected are often the same in the participating Member States.³³ These are errors detected by both the MA/CA and the AA.

In the majority of the Member States, these errors were detected in contracts with a value below the EU thresholds: The most frequent types of errors fit in COCOF-categories 21/22, 23 and 24.³⁴ For

³² Bulgaria submitted compiled information for the parallel audit although it only acted as an observer in the Working Group on Structural Funds VI.

³³ The information on errors in the Czech Republic is rather limited, since the sample was too small and not representative.

³⁴ Beside the observation that most errors occur below the EU thresholds, they are also more concentrated in fewer categories than the errors above the EU thresholds. This can be explained by the fact that the COCOF

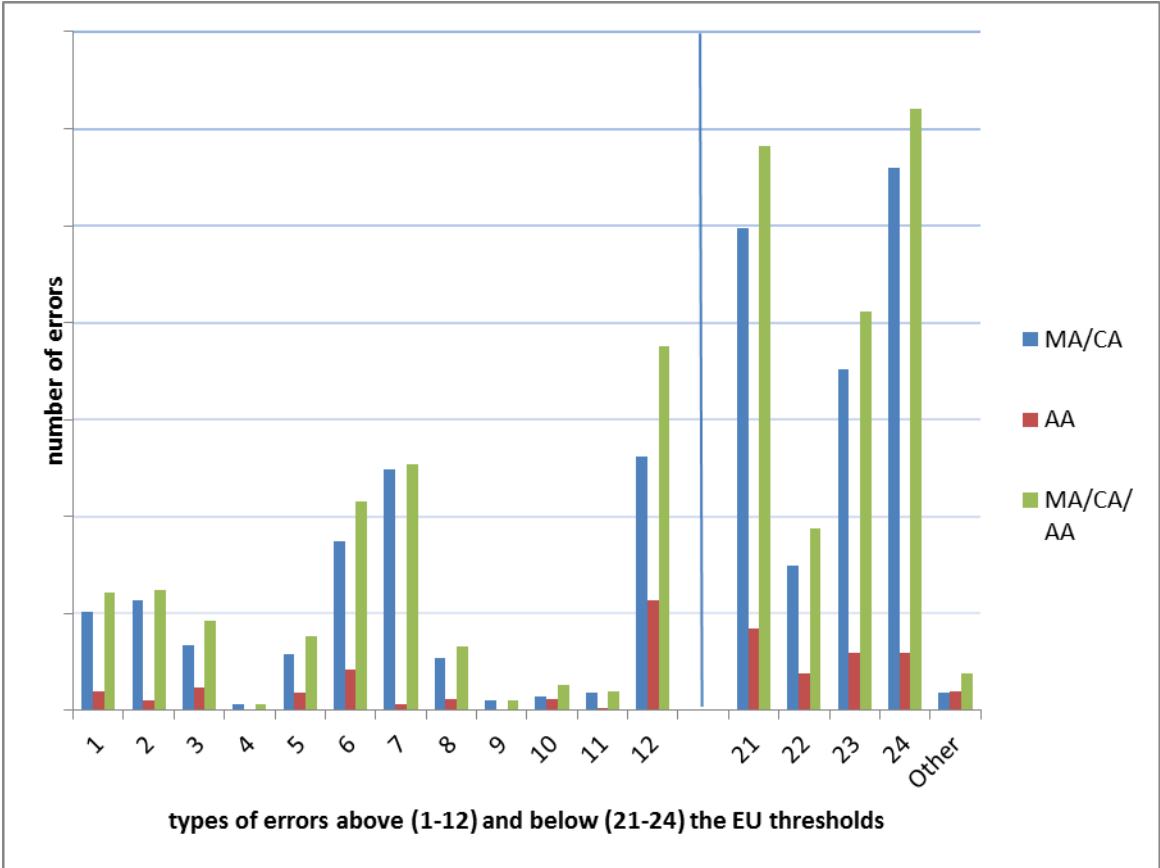
example, beneficiaries awarded the main (or supplementary) contract without adequate competitive tendering (21/22), they applied unlawful criteria to select or award bidders (23) or they did not comply with the principle of equal treatment (24).

Above the EU thresholds, the category 12 type of error was often found. In these cases, the beneficiaries awarded the contract in compliance with the public procurement directives but without complying with some ancillary elements, such as maintaining too short response deadlines.

Distribution of types of errors and their financial impact

The following chart shows the distribution of types of errors according to the categories of the COCOF guidelines in ERDF projects with expenditure declared in the years 2010-2012. It shows the number of errors found by the MA/CA and/or other relevant authorities and by the AA as well as the total of these. When comparing the amount of errors detected by the MA/CA and the AA, it has to be taken into account that numbers are presented in absolute terms. The findings of the AA – usually auditing a sample – have not been extrapolated to the population. In addition to this, some MA/CA could not provide a complete overview of errors and some SAIs based their findings on a sample.

Chart 4: ERDF 2010-2012 - types of errors



Source: Country reports

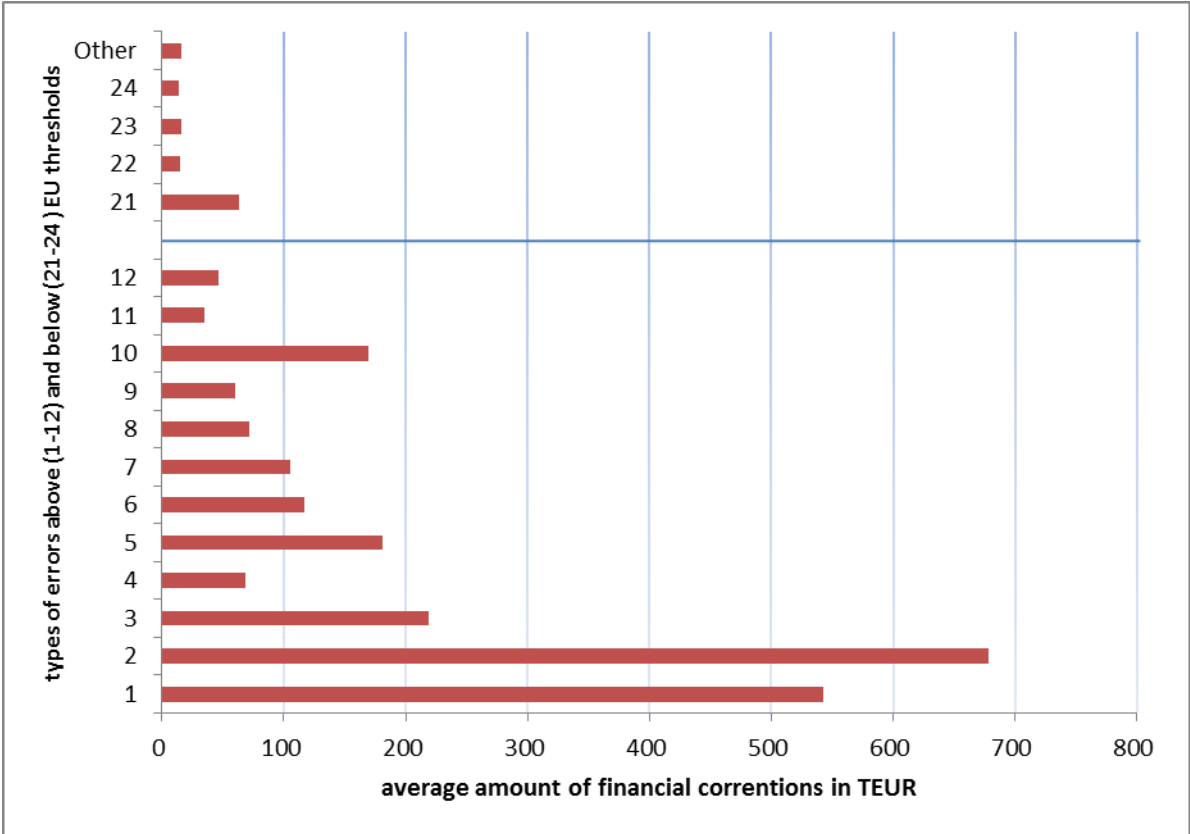
guidelines contain only four categories of types of errors below the EU thresholds and twelve categories above.

The chart shows that errors in ERDF projects were reported across all categories. A significant number of errors detected by the management and control systems concerned public procurement procedures below the EU thresholds.

Above the EU thresholds, both MA/CA and AA detected most of the errors in category 12 (incorrect application of certain ancillary elements). For example, it was reported that the date of implementation of the agreement with the contractor was changed. Below the EU thresholds, both MA/CA and AA reported most errors in category 24 (breach of principle of equal treatment). For example, one error reported in category 24 concerned a case in which a foreign contractor did not receive the same information as the other contractors.

The following chart shows that the picture changes if the average amount of financial corrections by type of error is evaluated:

Chart 5: ERDF 2010-12 - Distribution of average financial corrections per type of error



Source: Country reports

As the chart indicates, errors of category 2 (non-compliance with advertising procedures, but advertised to some extent) include the highest average financial impact. One reported case, for instance, concerned a procedure in which the estimated value of the contracts exceeded the EU threshold and the contracting authority did not publish the contract notice in the Official Journal of the EU. However, it published the call for tenders at national level as well as in two local newspapers.

The call for tenders was also accessible from a governmental website. In this case the MA applied a financial correction of 25 per cent.

The average financial impact of errors in categories 12 (incorrect application of certain ancillary elements), 23 (application of unlawful selection and/or contract award criteria) and 24 (breach of principle of equal treatment) is quite low whereas the number of errors found is high. An example relating to error 23 refers to the application of a set of criteria used during the evaluation stage that differed from the one stipulated in the tender document. More specifically, the Evaluation Committee³⁵ gave no weight to the financial aspect of the tender, whereas experience was taken into account when this should not have been so. For categories below the EU thresholds, the reason for the low average financial impact may be that contracts often have a lower value. Errors related to the rather “formal” category 12, although the contracts have a higher value, often have no or only little financial impact.

The average amount of financial corrections for errors above the EU thresholds is approximately seven times higher than the average amount of financial amounts for errors below the EU thresholds (about €192,000 compared to €29,000).

The SAIs of Latvia, Malta, the Netherlands and Poland also reported results for 2013. In that year, the MA/CA detected most of the errors in category 7 (application of unlawful selection and/or contract award criteria) and the AA in category 12 (incorrect application of certain ancillary elements) above the EU thresholds. Below the EU thresholds, most of the errors belonged to category 24 (breach of the principle of equal treatment). As in the years 2010-2012, this data also indicates that the management and control systems detected the highest error rate in public procurement procedures below the EU thresholds.³⁶

Similarities and differences between the Member States concerning errors reported

In contrast with the ESF, it is interesting to note that for ERDF the errors detected are about equally distributed among all categories. There is no significant difference between errors in public procurement procedures above and below the EU thresholds.

The Dutch authorities reported errors that did not fit into the COCOF categories. They listed these as “other errors”. Most national authorities detected more errors below than above the EU thresholds.

³⁵ The Evaluation Committee, which is set up during the publication stage of a tender, is tasked with establishing whether the bidders are technically and administratively compliant. The Committee is usually composed of a Chairman, a Secretary and three evaluators. The evaluators are the only ones to have voting/adjudicating rights, while the Chairman and Secretary guide and assist the members of the Evaluation Committee.

³⁶ Additional information relating to data submitted for 2013 is represented in the Annex.

In contrast, German authorities identified a very small number of errors in procedures below the EU thresholds. The cause may be that the audited OP promoted infrastructure projects that usually qualify for major projects and contain almost exclusively public procurement procedure above the EU thresholds.

Conclusions and recommendations

Errors in public procurement were more wide-spread in procedures below the EU thresholds than above the EU thresholds. However, average financial impact of errors was higher in procedures above the EU thresholds than below the EU thresholds.

Both in ESF projects and ERDF projects above the EU thresholds the highest error rates belonged to category 12 (incorrect application of certain ancillary elements). The category featured a broad array of irregularities and seemed to function as a “miscellaneous clause” for errors that do not fit properly into any of the other categories. Below the EU thresholds, the COCOF guidelines neither provide a similar category nor sufficiently suitable categories.



National authorities are advised to decide on the treatment of errors that do not fit into the categories of the COCOF guidelines.

Although most authorities already seek to prevent errors in public procurement procedures, we recommend that national authorities take more targeted action to reduce the most common errors in public procurement procedures and those with the highest financial impact.

5. Reasons for errors

This section provides an overview of the reasons for errors in public procurement procedures as interpreted by/according to the MA, CA and/or AAs and/or the SAIs. The reasons have been categorised by the SAIs themselves. The results are presented in tables 5 (reasons for errors in ESF projects) and 6 (reasons for errors in ERDF projects). The bullet points in the tables represent the (categories of) reasons for errors that have occurred relatively often (●●) or less often (●) according to the authorities in the respective Member States.³⁷ The results are analysed below the tables 5 and 6.

Table 5: Reasons for errors - ESF

| Reasons for errors | Bulgaria | Germany | Malta | Latvia ³⁸ | Netherlands |
|---|----------|---------|-------|----------------------|-------------|
| Lack of knowledge | ●● | ●● | ●● | ●● | ●● |
| Difficulties in interpretation of rules | ●● | | ● | ●● | ●● |
| Error made intentionally (detection risk was considered low) | | | | | ● |
| Error made intentionally (financial corrections were considered low) | | | | ● | |
| Complexity of rules | ●● | | | ● | ●● |
| 'Human failures' | | ●● | ● | ●● | |
| Other: frequent changes in the law and rules in force (in area of pp) | ● | | | | |
| Other: many laws and rules in force | ● | | | | |
| Other: contradicting laws and rules in force (in area of pp) | ● | | | | |
| Other: lack of administrative capacity | ● | | | | |
| Other: not specified/unascertainable | | ●● | | ●● | ● |

Source: Country reports

Table 5 shows that lack of knowledge is the main reason given for public procurement errors in ESF projects. Difficulties in the interpretation of rules, complexity of rules and human failures are also often stated. Lack of knowledge fairly often occurs in combination with human failures (Germany) or in

³⁷ Absolute figures and comparisons cannot be provided (and similar conclusions cannot be drawn from these results), as the numbers of analysed OPs, the numbers of analysed errors and the numbers of reasons given for errors differ widely among Member States.

³⁸ The Latvian SAI has compared the answers provided by both the authorities and the beneficiaries regarding the reasons for errors in public procurement procedures.

combination with complexity of rules (the Netherlands): In some cases beneficiaries have not read the public procurement rules (as explained in the allocation decision) carefully, have little or no experience with public procurement, or the rules are not always operational. In other instances, beneficiaries were unaware of amended (legal) circumstances and consequently their duty to tender. Or they checked the specific ESF requirements too late, which entailed stricter public procurement rules than their own. Another human failure found referred to the beneficiary's acceptance of the most expensive tender by mistake.

According to the authorities, errors are not often committed intentionally. It was noted that, in a few cases, the most expensive (and presumably preferred) supplier was chosen although cost was one of the award criteria. Furthermore, the proposal of the preferred supplier was handed in early whereas only weeks afterwards - perhaps only after selection of the preferred party - other parties were asked to hand in a proposal as well. However, in most of the studied cases, it is difficult for authorities to determine whether or not beneficiaries have made mistakes intentionally. Other reasons frequently cited include interpretation differences. In such cases the rules are known, but authorities and beneficiaries have different opinions as to whether or not their conduct is in compliance with these rules. Such differences in interpretation often relate to the amount of evidence required to justify the award to a certain supplier.

Table 6: Reasons for errors - ERDF

| Reasons for errors | Bulgaria | Czech Republic | Germany | Italy | Latvia ³⁹ | Malta | Netherlands | Poland | Portugal | Slovak Republic |
|---|----------|----------------|---------|-------|----------------------|-------|-------------|--------|----------|-----------------|
| Lack of knowledge | •• | | •• | | •• | | •• | •• | •• | •• |
| Difficulties in interpretation of rules | •• | • | •• | •• | •• | • | • | •• | •• | •• |
| Error made intentionally (detection risk was considered low) | • | • | | | | | | | | |
| Error made intentionally (financial corrections were considered low) | • | | | | | | • | | | |
| Complexity of rules | •• | | | • | •• | | • | •• | •• | |
| 'Human failures' | •• | • | •• | | •• | •• | •• | •• | | |
| Other: interpretation differences | • | | | | | | | | | |
| Other: frequent changes in the law and rules in force (in area of pp) | | | | • | | | | | | |
| Other: many laws and rules in force | • | | | | | | | | | |
| Other: contradicting laws and rules in force (in area of pp) | • | | | •• | | | | | | |
| Other: lack of (appropriate) administrative capacity | • | | | | | | | | | |
| Other: clumsy control mechanisms, several bodies with control/sanction powers | • | | | | | | | | | |
| Other: weak verification of pp carried out by the MA | | | | | | | | | | •• |
| Other: errors caused by an improper implementation of an EU Directive | | | | | | | | • | | |
| Other: not specified/unascertainable | | | | | •• | | | | • | |

Source: Country reports

³⁹ The Latvian SAI has compared the answers provided by both the authorities and the beneficiaries regarding the reasons for errors in public procurement procedures.

Table 6 shows that as for ERDF projects, the key reason for errors is lack of knowledge, followed by interpretation difficulties. Like in ESF projects, human failure and complexity of rules also occur fairly often, followed by errors that are made on purpose and some unascertainable or unspecified reasons.


Lack of knowledge often occurs in combination with human failures (Germany) or in combination with complexity of rules (Poland) or interpretation difficulties (the Netherlands). In these cases, the beneficiary mistakenly assumed that no call for tenders was needed, or it concerned another matter of (culpable) negligence by the beneficiaries in accomplishing formal requirements. In the Netherlands, a lot of errors were made by foundations established by a group of individual private companies, which are normally not subject to or familiar with public procurement legislation. However, under the OP rules, these foundations are considered as public authorities when they are financed for more than 50 per cent with public money; consequently, errors are made. Another error often occurring in the Netherlands regarding the lack of knowledge is related to the fact that most public beneficiaries have a public procurement policy of their own which requires transparency and a certain level of competition for relatively low contract values, e.g. € 15,000. The authorities also control compliance with these rules, but not all beneficiaries are aware of these obligations. In Italy and the Netherlands intentional errors often occur in cases where the preferred (and more or most expensive) supplier is chosen intentionally. The Polish SAI analysed many errors in four regional ERDF OPs, and discovered that the most frequent causes for errors are interpretation difficulties and a lack of knowledge, followed by human failures, complex rules and other reasons. What often caused the error, according to the authorities, was that the value of the contract exceeded the EU threshold and was tendered incorrectly. In Poland and Italy, the complexity of EU, national and regional rules and their frequent changes at the national and regional level often caused errors in public procurement.⁴⁰ In Poland this was mostly the case at the beginning of the programming period. Furthermore, reasons for errors in Italy were mainly due to difficulties in interpretation of EU and national rules, and the non-coincidence between them. In Bulgaria, insufficient administrative capacity of the MA for exercising control over public procurement contracts tendered and carried out by beneficiaries as well as delayed explanation of the rules in force by the MA to the beneficiaries was a cause for many errors in the beginning of the programming period. As a result, expenditures were verified and certified in violation of the public procurement rules. In Slovakia, certain supplementary elements were applied incorrectly and advertising procedures were not complied with. According to the Slovakian SAI, these errors are due to interpretation difficulties, a lack of knowledge and weak verification of public procurement procedures

⁴⁰ The new EU directives on public procurement adopted on 26 February 2014 have to be transposed by the Member States into national law, regulations and/or administrative provisions by 18 April 2016.

carried out by the MA. Finally, in Portugal, sometimes tender documents included a map of quantities with detailed descriptions not allowing for competition, which is discriminatory and not permitted. According to the Portuguese SAI, this is due to interpretation difficulties or lack of knowledge. In addition, contracts sometimes were split in violation of applicable regulations. The complexity of rules is cited as the main reason for this error. Restrained public allocations may impede public procurement and postpone the necessary procedures.

Conclusions and recommendations

According to the audit findings “lack of knowledge” is the most common reason for errors in public procurement, followed by “interpretation difficulties”.

 We recommend that the Member States request the EC to further clarify the legal framework and reduce the administrative burden for the contracting authorities and the bidders, but this should not result in limitation of the equal access, fair competition and efficient use of public funds.

We recommend that Member States take the following steps in order to prevent or reduce errors in the area of public procurement:

- They should keep public procurement rules as simple as possible and should avoid major and frequent amendments. All necessary steps should be undertaken in order to fully and properly implement the new EU Directives on public procurement at a national level from the very beginning when they take effect on 18 April 2016. This should be supported by electronic tools to manage public procurement procedures. Furthermore, they should continue to clarify the legal framework and reduce the administrative burden for the contracting authorities and the bidders.
- With regard to the staff of the national authorities, some Member States should improve their knowledge in the field of public procurement in order to be able to advise beneficiaries better (make them aware of the rules in force) and prevent errors. The staff should be encouraged or obliged to participate in special training on public procurement.
- Although most authorities stated that they already sought to support beneficiaries, the Member States need to improve their communication policy and provide better information (see also Key Requirement 3 - being one of the key elements of the management and control system -

‘Adequate information and strategy to provide guidance to beneficiaries’)⁴¹. It might also be helpful to provide support to unexperienced beneficiaries from the application to the completion of the project. They should try to ensure that beneficiaries exert due diligence at all stages of public procurement, including in particular planning and preparation of the procurement, selection procedure as well as implementation of the contract.

Taking these steps to improve the “knowledge” may prevent other reasons for errors; such as “errors made intentionally” by pointing out the consequences for the breach of public procurement rules, “interpretation difficulties” and errors related to “human failure”.

⁴¹ COCOF 08/0019/00-EN Guidance on a common methodology for the assessment of management and control systems in the Member States (2007-2013 programming period), final version of 23 April 2008.

Annex

Table 1: Structural Funds available and audited in the participating Member States

| | Funds available 2007-2013 (in TEUR) | | | | Number of audited OPs | | Funds of audited OP 2007-2013 (in TEUR) | | | |
|-------------------------------------|-------------------------------------|--------------------|-------------------|-----------------------|-----------------------|-----------|---|-------------------------|------------------|-----------------------|
| | ESF | ERDF | CF | National co-financing | ESF | ERDF (CF) | ESF | ERDF | CF | National co-financing |
| Bulgaria | 1,185,460 | 3,205,132 | 2,283,036 | 1,345,569 | 2 | 5 | 1,185,460 | 3,205,132 | 2,283,036 | 1,345,569 |
| Czech Republic | 2,011,600 | 15,472,100 | 8,644,700 | 4,606,100 | 0 | 1 | 0 | 2,070,700 | 0 | 365,400 |
| Germany⁴² | 9,380,655 | 16,100,402 | 0 | 16,930,892 | 1 | 1 | 3,487,788 | 1,520,320 | 0 | 3,380,842 |
| Italy | 6,960,542 | 20,992,071 | 0 | 8,869,212 | 0 | 14 | 0 | 18,416,286 | 0 | 8,762,225 |
| Latvia | 583,104 | 2,407,567 | n/s | 738,521 | 1 | 2 | 583,104 | 2,407,567 | n/s | 738,521 |
| Malta | 112,000 | 443,978 | 284,145 | 148,257 | 1 | 1 | 112,000 | 443,978 | 284,145 | 148,257 |
| The Netherlands | 830,000 | 830,003 | 0 | 1,179,987 | 1 | 4 | 830,000 | 830,003 | 0 | 1,179,987 |
| Poland | 10,007,398 | 34,791,000 | 22,387,151 | 14,895,828 | 0 | 4 | 0 | 5,267,780 | 0 | 1,145,797 |
| Portugal | 6,853,388 | 11,498,207 | 3,059,966 | 7,318,358 | 0 | 1 | 0 | 1,282,579 ⁴³ | 0 | 226,337 |
| Slovak Republic⁴² | 1,484,030 | 6,099,990 | 3,898,739 | 1,938,397 | 2 | 9 | 1,484,030 | 6,099,990 | 3,898,739 | 1,938,397 |
| Total | 39,408,177 | 111,840,450 | 40,557,737 | 57,971,121 | 8 | 42 | 7,682,382 | 41,544,335 | 6,465,920 | 19,231,332 |

Source: Country reports

⁴² As of 2013

⁴³ The main reason for the choice of OPs was that the selected OP was most significant for public procurement procedures.

Table 2: Categorisation of errors according to the COCOF guidelines

| | Types of errors/irregularity | Recommended correction |
|--|--|--|
| Contracts subject to the EU Public Procurement Directives | | |
| <i>A. Selection of the type of procedure</i> | | |
| 1 | Contract was awarded without complying with the advertising procedures laid down in the Directives | 100% of the contract value. |
| 2 | Contract was awarded without complying with the advertising procedures, but was advertised to some extent allowing operators located in another Member State to access to the contract. | 25% of the contract value. |
| 3 | The contract was awarded without competition in the absence of extreme urgency brought about by unforeseeable events. The main contract was awarded in accordance with the provisions of the Directives, but was followed by one or more supplementary contracts awarded in the absence of an unforeseen circumstance for complementary works and services or for supplies. | 100% of the contract value involved, exceptionally 25%. |
| 4 | The main contract was awarded in accordance with the provisions of the Directives, but was followed by one or more supplementary contracts (due to unforeseen circumstances) exceeding the value of the original contract by more than 50%. | 100% of the amount exceeding 50% of the value of the original contract. |
| <i>B. Tendering Procedure</i> | | |
| 5 | Failure to state all the selection and contract award criteria in the tender documents or tender notice or to describe them sufficiently. | 25% of the contract value may be reduced to 10%/5%. |
| 6 | The contract was awarded by applying unlawful contract award criteria (such as use of a selection criterion, incorrect and/or discriminatory application of contract award criteria). | 25% of the contract value involved, may be reduced to 10%/5%. |
| 7 | Certain operators have been deterred from bidding on account of unlawful selection and/or contract award criteria laid down in the tender procedure (for example the obligation to have an establishment in the country/region). | 25% of the contract value involved, 100% may be applied for intentional cases. |
| 8 | The description in the tender documents or tender notice is insufficient or discriminatory for bidders to determine the subject-matter of the contract or for the contracting authorities to award the contract. | 25% of the contract value involved, may be reduced to 10%/5%. |
| 9 | The contract was awarded by open or restricted procedure but the parties negotiated during the award procedure. | 25% of the contract value involved, may be reduced to 10%/5%. |
| <i>C. Management of contracts</i> | | |
| 10 | After the award the scope of the contract was reduced without proportional reduction in the value of the contract | Value of the reduction plus 25% of the contract value involved. |
| 11 | After the award the scope of the contract was reduced with a proportional reduction in the value of the contract already carried out. | 25% of the value of the final scope. |
| 12 | Incorrect application of certain ancillary elements such as publication of the notice of award the contract. | 2%, 5% or 10% of the contract value involved. |

| Contracts not or not fully subject to the EU Public Procurement Directives (below thresholds) | | |
|--|---|--|
| 21 | The contract was awarded without adequate competitive tendering, involving non-compliance with the principle of transparency. | 25% of the contract value. |
| 22 | The contract was awarded without competition in the absence of extreme urgency brought about by unforeseeable events. The main contract was awarded after adequate competitive tendering, but was followed by one or more supplementary contracts awarded in the absence of an unforeseen circumstance for complementary works and services or for supplies. | 25% of the contract value attributed without adequate competition. |
| 23 | Certain operators have been deterred from bidding on account of unlawful selection and/or contract award criteria laid down in the tender procedure (for example the obligation to have an establishment in the country/region). | 10% of the contract value may be reduced to 5%. |
| 24 | Contract awarded in accordance with rules of advertising, but contract award procedure breaches the principle of equal treatment | 10% of the contract value may be reduced to 5%. |

Source: COCOF guidelines

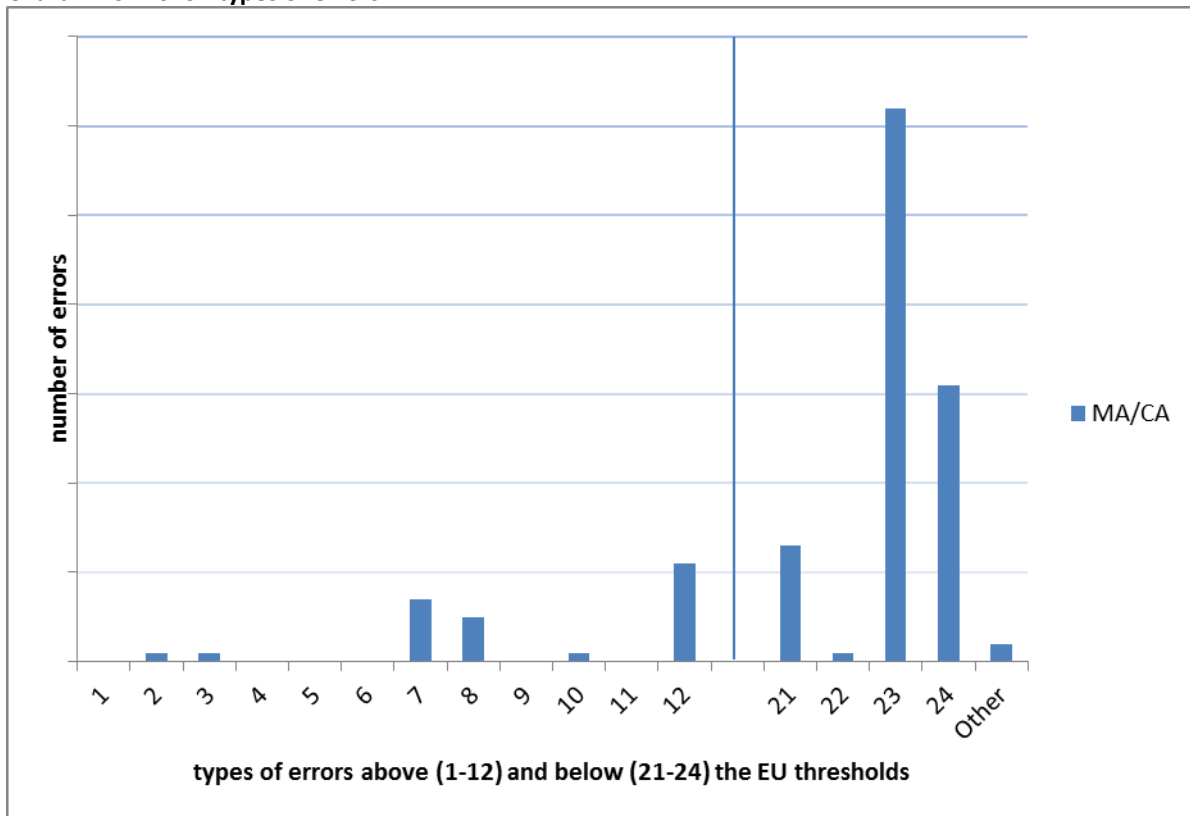
Audit findings in financial year 2013

The parallel audit mainly covered financial years 2010-2012. In addition to this, SAIs were free to also report on financial year 2013 in case relevant information was available. This option was used by some participants. Three SAIs reported relevant information for the ESF and five SAIs for the ERDF. As explained in chapter 4 the results do not differ significantly from the 2010-2012 results. The underlying data is presented below.

ESF

The following diagrams include data for the financial year 2013 submitted by the SAIs of Latvia, Malta and the Netherlands. The following chart shows the distribution of types of errors according to the categories of the COCOF guidelines in ESF projects with expenditure declared in 2013:

Chart 1: ESF 2013 - types of errors



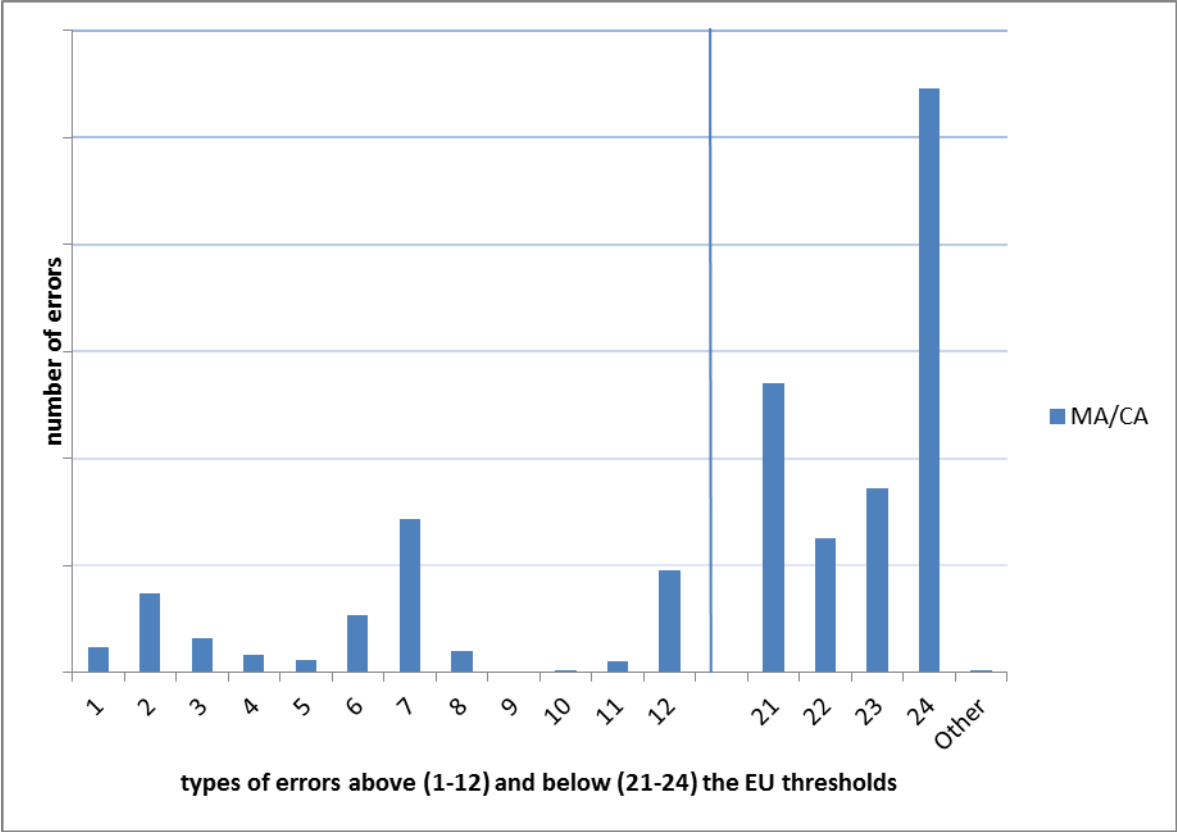
Source: Country reports

The chart shows that the majority of errors detected concerned public procurement procedures below EU thresholds – as in the financial years 2010-2012.

ERDF

The following diagrams include data for financial year 2013 submitted by the SAIs of the Czech Republic, Italy, Latvia, Malta, the Netherlands and Poland. The following chart shows the distribution of types of errors according to the categories of the COCOF guidelines in ERDF projects with expenditure declared in 2013:

Chart 2: ERDF 2013 - types of errors



Source: Country reports

The chart shows that the majority of errors detected concerned public procurement procedures below EU thresholds – as in the financial years 2010-2012. However, except for category 9 (negotiation during award procedure in spite of open/restricted procedure) the MA/CA detected errors in all categories above the EU thresholds.