



DECISION ECSEL ED 2015.043 OF THE EXECUTIVE DIRECTOR

Relating to the implementation of Internal Control Standard 8 “Processes and procedures”

THE EXECUTIVE DIRECTOR OF THE ECSEL JOINT UNDERTAKING,

Having regard to Council Regulation (EU) No 561/2014 establishing the ECSEL Joint Undertaking (JU) and in particular Article 9 of the Statutes;

Having regard to the Staff Regulations of Officials and the Conditions of Employment of other Servants of the European Union (Regulation 1023/2013), and in particular Articles 11, 11a, 12.b, 13 and 16;

Having regard to the Governing Board Decision ECSEL-GB-2014.015 adopting the Internal Control Standards for effective management, and in particular to ICS 8 “Processes and procedures”,

Has decided as follows:

Article 1

The complementary guidance and the establishment of procedures which ensure tracking of control overrides and deviations for strengthening internal control effectiveness is hereby adopted, and consolidated in the annex which forms part of the present decision.

Article 2

This decision shall take effect on the date of its adoption.

Done in Brussels, on 20 January 2015,

A handwritten signature in blue ink, appearing to read "AW", is written over a faint, larger signature.

Andreas Wild
Executive Director

ANNEX

ICS 8: Processes and Procedures

Complementary Guidance

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INTRODUCTION

Background

The internal control framework is provided by the Governing Board Decision ECSEL-GB-2014.15 adopting the internal control standards for effective management:

Out of the 16 Internal Control Standards (ICS) provided by the framework, ICS 8 “Processes and Procedures” calls for the establishment of procedures which ensure tracking of control overrides and deviations.

ICS 8. Processes and Procedures: The JU’s processes and procedures used for the implementation and control of its activities are effective and efficient, adequately documented and compliant with applicable provisions. They include arrangements to ensure segregation of duties and to track and give prior approval to control overrides or deviations from policies and procedures.

REQUIREMENTS

- *The JU’s main operational and financial processes and procedures and IT systems are adequately documented.*
- *The JU’s processes and procedures ensure appropriate segregation of duties (including for non-financial activities).*
- *The JU’s processes and procedures comply with applicable provisions, in particular the Financial Regulations and rules (e.g. ex-ante and ex-post verifications) and the JU’s Rules of Procedure.*
- *A method is in place to ensure that all instances of overriding of controls or deviations from established processes and procedures are documented in exception reports, justified, duly approved before action is taken and logged centrally.*

Purpose

The purpose of this guidance is:

- to define the concepts to be used by the ECSEL JU within the area of **exception reporting**,
- to define the minimum **compulsory reporting requirements**,
- to propose **tools and templates** for use; and
- to ensure the **consistent application of ICS 8**.

Staff members shall implement this guidance from the date of signature of this Decision.

1. MANDATORY REQUIREMENTS

The requirement to approve, register and follow up exceptions directly results from the fourth requirement under ICS 8, on processes and procedures, which reads:

A method is in place to ensure that all instances of overriding of controls or deviations from established processes and procedures are documented in exception reports, justified, duly approved before action is taken and logged centrally.

This constitutes the practical implementation of wider regulatory requirements. Under article 25a of the Financial Regulation, the ECSEL JU is required to implement the budget in compliance with effective internal control.

2. OBJECTIVES

The purpose of the establishment of a formal process to approve and document exceptions goes beyond formal compliance with the requirements. The Internal Control Coordinator is required to monitor the functioning of the Internal Control System. Recording of exceptions constitutes a valuable tool to ensure this monitoring.

The objectives of the requirement which calls for an ex ante approval and documentation of the exceptions are as follows:

- a) Flexibility - the requirement provides for unexpected events and situations by offering the solutions in cases not foreseen by existing procedures;¹
- b) Transparency - information on decisions taken, circumstances confronted and other are available in the register of exceptions, which can be consulted at any time. This ensures consistency of treatment of equivalent events;
- c) Accountability - the fact that information on the situations confronted and decisions taken is available to third parties increases the awareness and responsibility of Management;
- d) Better control - documentation of exceptions ensures audit trail and overview of the functioning of Internal Control System. It allows for easier identification of internal control weaknesses;
- e) Enhancement of processes and procedures - availability of information on exceptions provides for easier identification of areas for improvement and re-design of processes and procedures where necessary. The register of exceptions should be used as a source of information on internal control weaknesses and trigger actions aiming at enhancement of procedures (if needed).

The ex-ante approval and documentation of exceptions are NOT intended to:

- a) Transfer or otherwise avoid responsibility for any decisions taken; or
- b) Authorize or condone decisions taken or transactions performed in breach of applicable regulatory or contractual provisions.
- c) Nevertheless in exceptional circumstances respecting regulatory provisions which reflect general principles² may lead to decisions conflicting with other regulatory or contractual

² This may refer to the general principles of law such as transparency equal treatment or legitimate expectations or management related principles such as effectiveness, efficiency and proportionality.

³ For the definition of overruling and deviation please refer to Annex I

requirements, so that respecting one may require breaching another. In such cases the Managers or Authorising Officers by Delegation concerned are expected to ensure that their decisions are based on a legally sound and documented justification, on a case by case basis seeking adequate legal advice whenever necessary. They should also be aware that these decisions might still be questioned at a later stage as irregular, notably by the Court of Auditors.

3. EXCEPTION VS. NON-COMPLIANCE EVENT

Exception - to be defined as exception in the meaning of ICS 8, the event needs to fulfill the following conditions:

- a) It constitutes either an overruling³ or a deviation from established processes and procedures but does not constitute a breach of the regulatory and/or contractual provisions;
- b) It is not foreseen in already existing processes and procedures
- c) It is approved by the responsible person before (ex-ante) action is taken.

For the exception see **Example 1** in Annex VI.

Non-Compliance Event needs to fulfill the following conditions:

- a) It constitutes either an overruling or a deviation from established processes and procedures or is a gap in existing controls;
- b) It might constitute a breach of existing regulatory and/or contractual provisions
- c) It has been detected **after (ex post)** action was taken.

Many cases of exceptions are triggered by a previous **non-compliance event** (see **Example 2** in Annex VI). Although logically, these two events are inter-linked, for the sake of transparency it is proposed to treat them separately and follow the process as illustrated in Annex IV.

Whenever used in this guidance, the words **processes and procedures** should be understood as per Internal Control Standard 8. In particular it is assumed that all the processes and procedures in the ECSEL JU services are compliant with applicable provisions and regulations as per requirement No 3 to ICS 8. Non-compliance with internal processes and procedures may (but not always does) constitute a breach of the regulatory and/or contractual provisions.

Ex-ante - prior to action, which diverges from established processes and procedures (it might be prompted by a prior non-compliance event).

Scope - the present guidance applies to all the deviations from established processes and procedures, not just those involving financial transactions.

4. STEPS TO FOLLOW IN CASE OF EXCEPTION

Each event which fulfills the conditions governing exceptions mentioned in the preceding section should be approved before any action is taken at an appropriate management level i.e.:

- a) for financial exceptions by the function duly empowered by the Financial Regulations and Rules; and
- b) for non-financial exceptions by the function explicitly defined in the procedure or by the procedure owner (e.g. the procedures manual of DG BUDG and the SLA between ECSEL JU and DG BUDG define the function granting access to ABAC. Had access been given by

another function, the exception to this rule should be approved by the function explicitly defined in the procedures manual).

The approval should be documented using the form attached in Annex IIA and should be registered in the mail central register. It is also advised to create a specific file in the filing plan (i.e. common drive) to attach these notes, making them easy to retrieve.

All the exceptions must be communicated to the Internal Control Coordinator and kept centrally in the register of exceptions (see model in Annex III). The register of exceptions must be reviewed regularly and at least once a year in order to ensure that the information is up-to-date, reliable and complete and to determine whether the frequency or the nature of the exceptions registered prompt a revision of the internal control systems.

5. THE STEPS TO FOLLOW IN CASE OF NON-COMPLIANCE EVENT

Any event which fulfills the conditions governing non-compliance events should be reported to the appropriate management level i.e. procedure owner or line manager. Each non-compliance event is evidence of a weakness in internal control and as such should be communicated to the Internal Control Coordinator and kept centrally in the register. Requirement N° 4 of ICS 12 calls for all "potential internal control weaknesses, if judged significant or systemic" to be communicated to the appropriate management level. But to ensure completeness of information, it is recommended to record all instances of non-compliance regardless of their nature or significance.

Non-compliance events are, by definition, detected after they have occurred and, logically, they cannot be approved before they occur. In consequence, the use of the prior-approval form foreseen for exceptions is not required. The approval should be documented using the form attached in Annex IIB and should be registered in the mail central register. Yet, the non-compliance events should be recorded in the register of exceptions and non-compliance events, but distinguishing them clearly from exceptions. In case of non-compliance events the column 'approved by' remains empty. The register should allow for easy identification of exceptions triggered by a previous noncompliance event, so it is recommended that these cases are cross-referenced (e.g. by quoting the Mail Register reference number of the prior approval form for both entries).

6. REPORTING

6.1. Reporting on Compliance

Reporting on compliance with the requirements of Internal Control Standards is part of the assessment of the Internal Control System and should be reported in the Annual Activity Report (AAR).

In case of compliance with Requirement No 4 to ICS 8, no further details need to be given as to the nature or number of exceptions recorded.

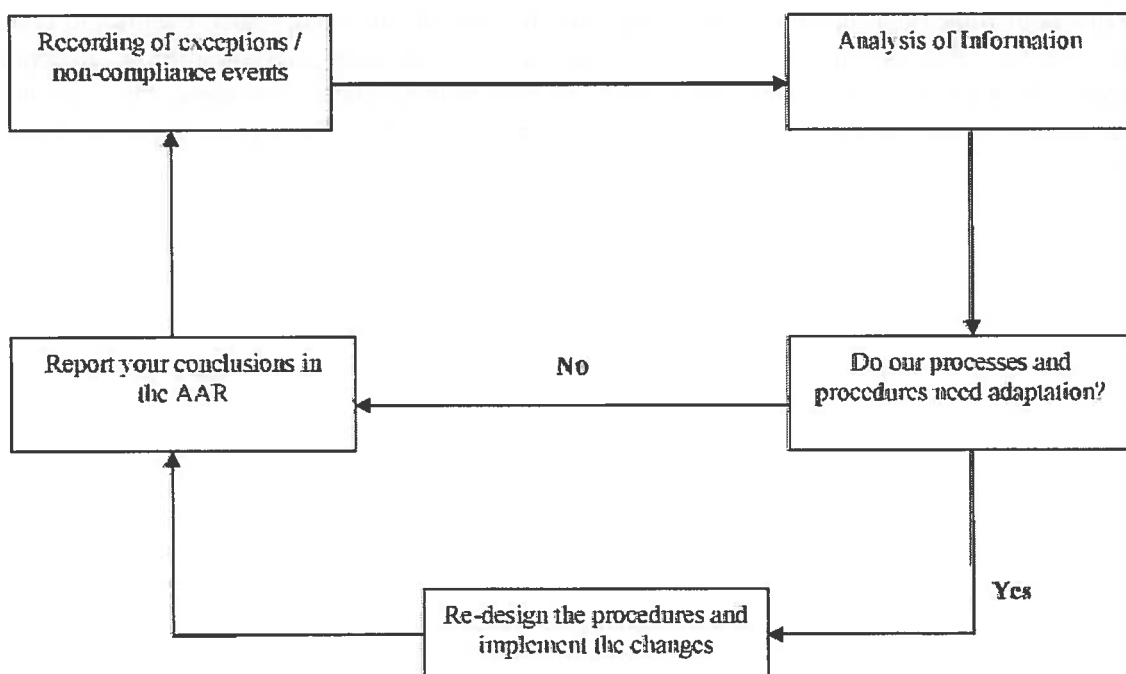
In case of non-compliance or partial compliance, the ECSEL JU services are required to mention the causes underlying the non-compliance and the action plan to address them.

6.2. Assessment by Management

Information gathered in the register of exceptions and non-compliance events can be used by Management to assess the effectiveness of the controls in place and monitor their implementation. This assessment forms part of the building blocks towards reasonable assurance in the Annual Activity Report. In case the regular analysis of the register by the Internal Control Coordinator yields information on the effectiveness and operation of the internal controls system which may be relevant to support the Executive Director's declaration of assurance, the conclusions of this analysis should be reported in the relevant section of the AAR (assessment by management).

By analysing the content of the register, Management can conclude on the materiality of exceptions noted and effectiveness of the procedures of the ECSEL JU (either positively or to identify weaknesses). They can also decide whether the processes and procedures need adaptations.

The process is simply illustrated below:



ANNEX I - DEFINITIONS AND CONCEPTS

Overruling of controls - action which goes against the results of previous controls. Overruling can be:

- a) already foreseen in existing processes and procedures - then it does not constitute an exception in the meaning of ICS 8 (-> *derogation*) e.g. derogation for sensitive functions allowing staff to exercise the same function for more than five years but less than seven;
- b) not foreseen in existing processes and procedures.

Deviation from processes and/or procedures - action of replacing one or more established steps of a process or procedure with other actions or no actions.

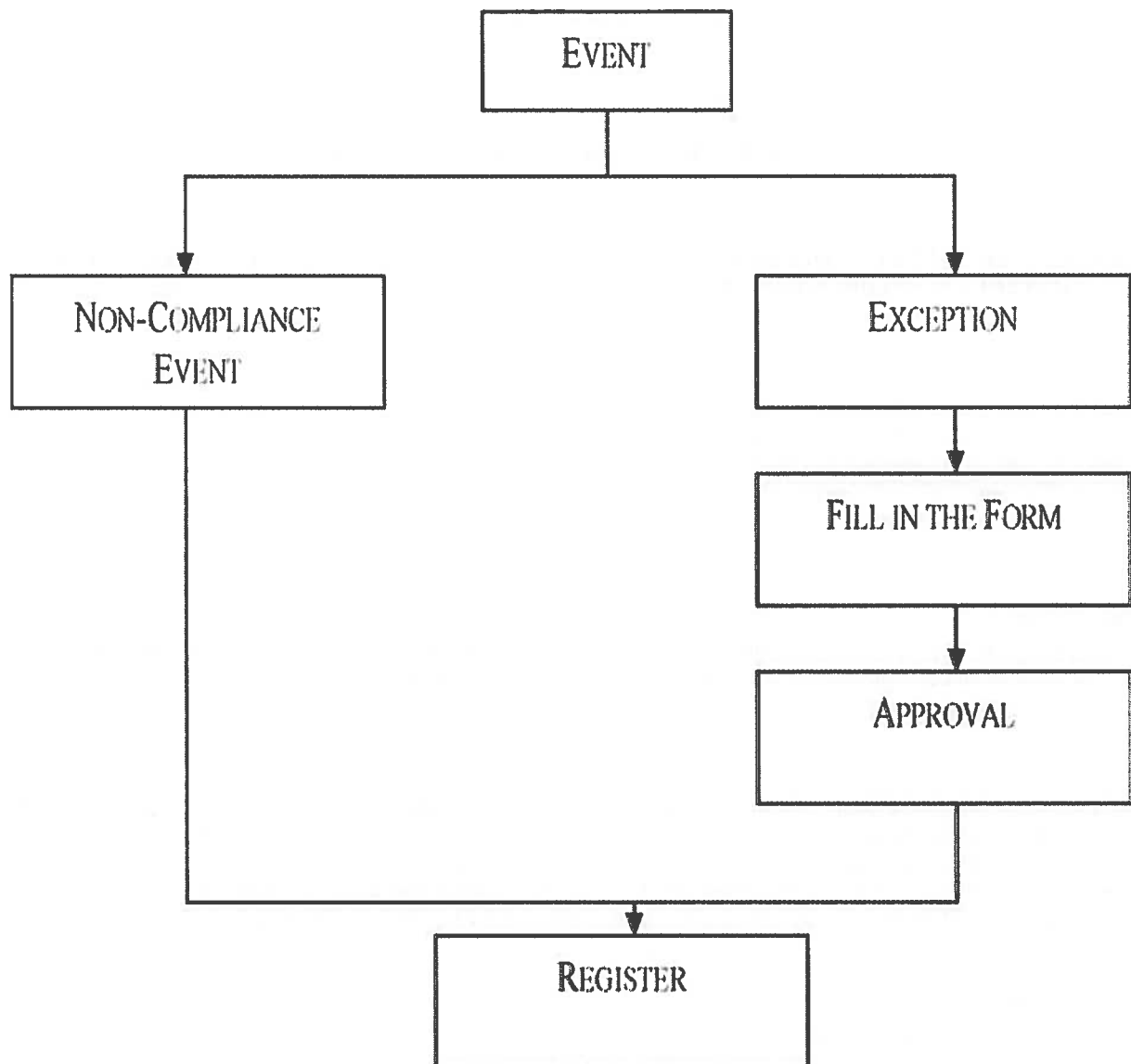
Derogation - approval (ex-ante) of an overruling or deviation already foreseen in the processes and procedures. It does not fall under the scope of ICS 8 and is not to be reported in the register of exceptions and non-compliance events.

ANNEX III – MODEL REGISTER OF EXCEPTIONS AND NON-COMPLIANCE EVENTS

The annex lists the minimum required information to be included in the register of exceptions and non-compliance events. Services are invited to adapt the template to their own needs.

Date	Register Ref. of the reporting form or Non- Compliance Event	Description of the Exception	Significance (Amount Involved if applicable)	Exceptions		Non- compliance event	Resulting risks	Steps taken to mitigate the resulting risks
				Linked to a prior non-compliance event (y/n)	Approved by:			

ANNEX IV - MODEL REGISTER OF EXCEPTIONS AND NON-COMPLIANCE EVENT



ANNEX V - EXISTING LEGAL BASIS

ECSEL-GB-2014-015: DECISION OF THE GOVERNING BOARD ADOPTING THE INTERNAL CONTROL STANDARDS FOR EFFECTIVE MANAGEMENT

ICS 8. Processes and Procedures: The JU's processes and procedures used for the implementation and control of its activities are effective and efficient, adequately documented and compliant with applicable provisions. They include arrangements to ensure segregation of duties and to track and give prior approval to control overrides or deviations from policies and procedures.

REQUIREMENTS

- A method is in place to ensure that all instances of overriding of controls or deviations from established processes and procedures are documented in exception reports, justified, duly approved before action is taken and logged centrally.

ICS 12. Information and Communication: Internal communication enables management and staff to fulfill their responsibilities effectively and efficiently, including in the domain of internal control. Where appropriate, the JU has an external communication strategy to ensure that its external communication is effective, coherent and in line with the JU's key political messages. IT systems used and/or managed by the JU (where the JU is the system owner) are adequately protected against threats to their confidentiality and integrity.

REQUIREMENTS

- All personnel are encouraged to communicate potential internal control weaknesses, if judged significant or systemic, to the appropriate management level. Contact person(s) is/are assigned to facilitate and coordinate such reporting.

ANNEX VI – EXAMPLES OF EXCEPTIONS AND NON-COMPLIANCE EVENTS

EXAMPLE 1: EXCEPTION

Event: The internal procedure of ECSEL JU calls for all the newly appointed to participate in the internal presentation to newcomers within two months of joining to the JU. In view of a temporarily high workload in the unit and significant experience of the newcomer in the JU, the Head of Unit decides to postpone his (her) participation in the event. His approval is sent to HR unit **before** the date of the presentation.

The event classified as an exception for the following reasons:

- a) It is a deviation from established internal procedures of the JU but does not constitute a breach of the regulatory provisions;
- b) It is not foreseen in already existing procedures
- c) It has been approved ex ante

EXAMPLE 2: NON-COMPLIANCE EVENT & EXCEPTION

Event: Company X has just sent their first invoice under the Contract X0FGH signed in January 2012. When preparing the payment, the Desk Officer discovered that the signature of the contract was not preceded by the budgetary commitment. (S)he reports the fact to his (her) superior, who decides to proceed with the payment and to establish a budgetary commitment.

Signature of the Contract without a budgetary commitment is a non-compliance event for the following reasons:

- a) It constitutes either an overruling or a deviation from established processes and procedures or is a gap in existing controls;
- b) It is a breach of existing regulatory provisions (notably Art. 63 of the Financial Rules)
- c) It had been detected after (ex post) action was taken (i.e. contract signed)

Authorisation of payment is an exception due to the following reasons:

- a) It constitutes either an overruling or a deviation from established processes and procedures
- b) It is not foreseen in already existing procedures
- c) It has been approved ex ante (i.e. prior to payment of the invoice).

In this example ex ante approval was given prior to payment, but the latter results from a previous non compliance event (i.e. signature of the contract without a budgetary commitment).

STEPS TO FOLLOW:

- a) For the non-compliance event:
 - analyse the likely cause (inadequately trained staff, gap in financial circuit, communication channels etc.)
 - put the case to the register of exceptions and non-compliance events.
- b) For the exception:
 - fill in the approval form and get approval from the relevant function
 - register the approval form
 - put the case to the register of exceptions
 - cross-reference to the previous non-compliance event
- c) Regular analysis of the register should lead to:
 - identification of similar cases of exceptions and non-compliance
 - analysis of their causes
 - assessment of risks linked to non-compliance
 - Management decision on risk response
 - reduce - changes to the procedures?
 - accept

EXAMPLE 3: EXCEPTION

Event: In an urgent political situation, it is decided that a staff member shall go on a mission to a trade meeting on another continent the following day. The air ticket has to be ordered before the mission order can be approved. The official leaves for mission before his mission order is approved. Having returned from the mission, he submits the statement of expenditure for payment. At verification level, it is noticed the fact that the order has not been approved prior to the mission and asked for approval of an exception.

The departure for mission with no approval by AO is classified as a non-compliance event:

- a) It is a deviation from established procedures
- b) It has been detected ex post

Authorisation of payment is an exception due to the following reasons:

- a) It constitutes either an overruling or a deviation from established processes and procedures
- b) It is not foreseen in already existing procedures
- c) It has been approved ex ante (i.e. VO asks for approval of exception before payment).

STEPS TO FOLLOW:

- a) For the non-compliance event:
 - analyse the likely cause (urgent political situation, long workflow for authorisation)
 - put the case to the register of exceptions and non-compliance events.
- b) For the exception:
 - fill in the approval form and get approval from the relevant function (superior who delegated the official to the urgent mission)
 - register the approval form
 - put the case to the register of exceptions
 - cross-reference to the previous non-compliance event
- c) Regular analysis of the register should lead to:
 - identification of similar cases of exceptions and non-compliance
 - analysis of their causes
 - assessment of risks linked to non-compliance
 - Management decision on risk response
 - reduce - changes to the procedures?
 - accept

EXAMPLE 4: NEITHER EXCEPTION NOR NON-COMPLIANCE EVENT

Event: The Authorising Officer, on the basis of his prerogatives, is allowed to overrule the opinion of a person in the financial circuit's control chain e.g. (s)he approves an urgent payment him(her)self directly without consulting the two verifiers first.

The event cannot be classified as an exception for the following reason: It is foreseen in already existing procedures.

EXAMPLE 5: NON-COMPLIANCE EVENT

Event: It was discovered that one of the ex-members of the unit retained access to the website of one of the ECSEL JU working groups. The website contains potentially sensitive information which might create conflict of interest with the current job of that person. The procedures of the JU do not foresee the verification of access rights to the websites at the ECSEL JU level for people leaving the JU.

The event was classified as non-compliance event for the following reasons:

- a) It is a gap in existing controls (at the ECSEL JU level)
- b) It has been identified ex post.

EXAMPLE 6: CONFLICTING REGULATORY REQUIREMENTS

Article 53 of the Financial Rules requires the authorising officer to make an estimate of the amount receivable in respect of any situation which may give rise of an amount owing to the EU.

An authorising officer receives the final audit on a grant beneficiary. The auditors have found a systematic problem in the accounting practices by the beneficiary which results in an overestimation of the costs declared under the grant. The beneficiary participates to another five projects financed by the ECSEL JU under the same eligibility rules. It is therefore likely that the beneficiary has also over-declared its costs in the statements submitted under these other grant agreements. This is a situation which may give rise of an amount owing to the EU in the sense of Art. 57 of the Financial Rules.

The authorising officer examines the situation and concludes that the costs necessary to establish the amount receivable **exceed by far** the likely amount to be recovered.

APPROACH TO BE AVOIDED: The delegated authorising officer fills an exception form stating that he has decided not to apply Art. 53 of the Financial Rules. The justification contains a general allusion to "the proportionality principle" or to sound financial management. The form is then approved by the AO (the Executive Director) and entered in the register.

RECOMMENDED APPROACH: The delegated authorising officer documents its cost-effectiveness analysis which shows that the likely costs exceed by far the amount likely to be owned by the beneficiary. Furthermore, the analysis also looks at other risks, including reputational risks and the possible actions aimed to mitigate them. The AOD seeks the advice of the legal officer within the JU, which identifies the provisions likely to be breached if the AOD proceeds blindly to ensure compliance with Art. 57. The AOD takes a decision on the basis of these analyses.

EXAMPLE 7: NON-COMPLIANCE EVENT

There is a framework contract for office equipment signed for two years with possibility of one (explicit) renewal. Two years elapsed and the necessity of explicit renewal was overlooked but the contract was still used.

If the lack of explicit renewal of the contract (it was renewed de facto, as it was used, services/products were delivered and contractor has the right to (a) understand that the renewal took place, (b) be paid) was detected during the second part of the two-year period, the missing written renewal should be supplemented (de facto renewal should be confirmed in writing) and occurrence should be registered.

The above is an obvious case of wrong contract management but service responsible risks also accusation of illegality of all spending made after the first two years' time period elapsed.

The event was classified as non-compliance event for the following reasons:

- a) It is a gap in existing controls (at contracting unit level)
- b) b) It does constitute a breach of existing contractual provisions c) It has been detected ex post

