Optimized Internal Control of EU Funds in Line Ministries

19-21 February 2019
Ljubljana
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• Concept of irregularity, fraud and corruption
• Roles and Responsibilities
• Stages of the Procedure: detection, checks, recording and reporting irregularities/fraud
• Country Experience
• Classification of Irregularities / Case Studies
IRREGULARITIES AND FRAUD

What is new in the period 2021 - 2027

EARLY-DETECTION AND EXCLUSION SYSTEM
• early detection of persons or entities referred, which pose a risk to the financial interests of the Union
• Exclusion
• Imposition of a financial penalty

EUROPEAN PUBLIC PROSECUTOR'S OFFICE
• investigate and prosecute fraud and other criminal offences affecting the financial interests of the Union

ANTI-FRAUD PROGRAMME FOR 2021-2027
• continue current Hercule III programme
• AFIS, IMS

• €180 million budget
PIF DIRECTIVE of 2017 on the fight against fraud to the Union's financial interests by means of criminal law
• harmonising the definition of offences affecting these interests - offences of fraud, corruption, money laundering and misappropriation
• harmonising sanctions and time limitations for such cases
• cross-border VAT fraud cases involving a total damage of at least EUR 10 Million
• replace the PIF Convention and its protocols
IRREGULARITIES AND FRAUD
EC Financial Regulation - 2018

**Article 36 - Internal control of budget implementation**

...2. For the purposes of budget implementation, internal control shall be applied at all levels of management and shall be designed to provide reasonable assurance of achieving the following objectives:

... (d) prevention, detection, correction and follow-up of fraud and irregularities.

**Article 154 – Indirect management**

4. The Commission shall, in accordance with the principle of proportionality and with due consideration for the nature of the action and the financial risks involved, assess that persons and entities implementing Union funds ... 

(a) set up and ensure the functioning of an effective and efficient **internal control system** based on international best practices and allowing in particular to prevent, detect and correct irregularities and fraud

...obligation for persons or entities implementing Union funds to notify the Commission without delay of cases of detected fraud and irregularities and their follow-up

**Article 129**

Cooperation for protection of the financial interests of the Union

1. Any person or **entity receiving Union funds shall fully cooperate** in the protection of the financial interests of the Union...

In the case of OLAF, such rights shall include the right to carry out investigations, including on-the-spot checks and inspections.

....Any person or entity receiving Union funds under direct and indirect management shall agree in writing to grant the necessary rights as referred to in paragraph 1 and shall ensure that any third parties involved in the implementation of Union funds grant equivalent rights.
IRREGULARITIES AND FRAUD

IPA III Regulation

The FINANCIAL INTERESTS OF THE UNION ARE TO BE PROTECTED through effective and proportionate measures, including the:

• prevention
• investigation of irregularities and fraud
• detection and correction
• recovery of funds lost, wrongly paid or incorrectly used
• where appropriate, the imposition of administrative sanctions.

OLAF

• administrative investigations
• on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting Union financial interests.

BENEFICIARIES LISTED IN ANNEX I SHALL:

report the irregularities including fraud which have been the subject of a primary administrative or judicial finding, without delay, to the Commission and keep the latter informed of the progress of administrative and legal proceeding. Reporting shall be done by electronic means, using the Irregularity Management System, established by the Commission.
IRREGULARITIES AND FRAUD
IPA III Regulation - Legislative financial statement

DG NEAR compliance framework is made up of the following significant components:

DG NEAR has developed and implemented its own ANTI-FRAUD STRATEGY - approved for the years 2016-2017.

The general objectives of this anti-fraud strategy are:

- Anti-fraud network, data collection and guidance: to establish a network of OLAF Focal Points within DG NEAR; data and statistics on the OLAF cases
- Management reporting and relations with EU stakeholders: regular reporting cycles on anti-fraud issues at senior management level

PREVENTIVE MEASURES

- Prevention, detection and correction controls Core training covering fraud issues for aid management staff
- Provision of guidance using the NEAR manual of procedures (MAP)
- Annual IMBC process including a verification of MCS, incl. appropriate anti-fraud measures
- Ex-ante screening of the anti-fraud mechanisms as part of assessment of eligibility criterion of public finance management for budget support
- Ex-ante controls of all nationally procured contracts; waived after national systems meet stringent management and control benchmarks
- Detective and corrective measures
- Ex-ante transaction checks by Commission staff
- Internal and external audits and verifications, including by the European Court of Auditors;
- Retrospective checks and recoveries

In addition where irregularity is suspected to be intentional (fraud) DG NEAR HAS OTHER MEASURES AS ITS DISPOSAL INCLUDING:

- Suspension of time-limit for payments and notification to the entity
- Specific audits (ad hoc/forensic audit)
- EDES (Early Detection Exclusion System)
- Suspension/termination of contract
- Exclusion procedure
ECA 2017 qualified opinion on legality and regularity of the payments – second time since 1994 (ASA - EP)

- Qualified opinion – materially affected by error
- Overall level of error for EU spending in 2017 was estimated at 2.4% (reimbursement basis is 3.7 %, entitlement basis below 2%)
- Compared with 3.1% in 2016, 3.8% in 2015 and 4.4% in 2014. The estimated error rate (the level of irregularity in transactions) measures the level of irregularity
- Clean opinion on the 2016 EU accounts’ reliability

**Policy Area: Global Europe (External relations, aid and enlargement - 7% of budget)**

**2016**

- Affected by material error? **Yes**
- Estimated error rate: **2.1 %** (2.8 for 2015, 2.7% for 2014)

Examine control systems: Partially effective

- More errors in transactions relating to grants
- 32 non-quantifiable errors relating to non-compliance - legal or contractual obligations

DG NEAR’s 2017 - 0.67%
IRREGULARITIES AND FRAUD

Error Rate for EU reimbursable-based expenditure 2017

Source: ECA Annual Report 2017
IRREGULARITIES AND FRAUD

Breakdown of Errors - 2017
Economic, social and territorial cohesion - ESIF

Source: ECA Annual Report 2017
IRREGULARITIES AND FRAUD
Types of Errors within the Heading “Global Europe” 2016

- Missing documentation 37%
- Expenditure not incurred 28%
- Ineligible expenditure 26%
- Public Procurement - serious 8%
- Administrative mistakes/calculation 1%

Source: ECA Annual Report 2016
IRREGULARITIES AND FRAUD

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IRREGULARITIES AND FRAUD

Pre-Accession Assistance

Irregular Amounts as % of total payments

<table>
<thead>
<tr>
<th></th>
<th>Irregularities / payments</th>
<th>Fraud / payments</th>
<th>Total:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Neighborhood and Enlargement</td>
<td>0.40%</td>
<td>0.01%</td>
<td>0.41%</td>
</tr>
<tr>
<td>All EU Payments</td>
<td>0.49%</td>
<td>0.03%</td>
<td>0.52%</td>
</tr>
</tbody>
</table>

IRREGULARITIES AND FRAUD
Reported irregularities IPA, 2013-2017

<table>
<thead>
<tr>
<th>Irregularities</th>
<th>Number</th>
<th>Amount (million Euro)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-fraudulent</td>
<td>404</td>
<td>35</td>
</tr>
<tr>
<td>Fraudulent</td>
<td>72</td>
<td>7</td>
</tr>
<tr>
<td>Total:</td>
<td>476</td>
<td>42</td>
</tr>
</tbody>
</table>

Numbers of irregularities:
CBC - 38%
IPARD - 33%

Amounts of irregularities:
IPARD - 55%

IRREGULARITIES AND FRAUD

Reported Irregularities – IPA during 2017

<table>
<thead>
<tr>
<th>Irregularities</th>
<th>Number</th>
<th>Amount (million Euro)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-fraudulent</td>
<td>97</td>
<td>14</td>
</tr>
<tr>
<td>Fraudulent</td>
<td>17</td>
<td>3</td>
</tr>
<tr>
<td>Total:</td>
<td>114</td>
<td>17</td>
</tr>
</tbody>
</table>

- Irregularities in 2017: most frequent category is 'public procurement'
- Fraud in 2017: most frequent category is 'documentary proof': 'false and/or falsified documents'

IRREGULARITETS AND FRAUD

IPA – Irregularity Legal Framework

IPA FRAMEWORK AGREEMENT between beneficiary country and the EC:

Annex H Reporting on suspected fraud and other irregularities

Annex B Internal control framework – Risk Management

Art. 50 Protection Supervision, control and audit by the EC and ECA

Art. 51 Protection of the financial interests of the Union

(1) … shall prevent, detect and correct irregularities and fraud when executing those tasks…

(2) … shall ensure investigation and effective treatment of suspected cases of fraud, conflict of interest and irregularities …

(3) … prevent and counter any active or passive corruption practices at any stage of the procurement procedure or grant award procedure …

FINANCING AGREEMENTS

NATIONAL LEGISLATION
IRREGULARITETS AND FRAUD

IPA – DEFINITION: IRREGULARITY

IRREGULARITY means any infringement of a provision of applicable rules and contracts resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the EU by charging an unjustified item of expenditure to the general budget.

FRAUD means any intentional act or omission relating to:

- The use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the EU.
- Non-disclosure of information in violation of a specific obligation, with the same effect.
- The misapplication of such funds for purposes other than those for which they were originally granted.
IRREGULARITIES AND FRAUD

RED FLAGS

Red Flags:

OLAF “Red flags” - PP fraud or corruption risks:

BIDDERS - multiple undeclared connections between them or to evaluation team

PROCEDURES - very large tenders, too short timespan for the application process, changes in the project description after the award

• Offers – identical format, errors, pricing abnormalities

• General appearance of offers – simplicity

• Common address

• Same person manager of different companies
IRREGULARITIES AND FRAUD
RED FLAGS

indicative warning signs that may indicate that a fraud is taking place at an institution:

- Staff under stress without a high workload
- Always working late / Reluctance to take leave
- Unexplained wealth / Sudden change of lifestyle
- New staff resigning quickly
- Cosy relationship with the Recipients
- The employee refuses promotion to a non-authorisation position
IRREGULARITIES AND FRAUD
CLASSIFICATION OF IRREGULARITIES

102 Incorrect accounts
103 Falsified accounts
104 Accounts not presented
201 Missing /incorrect / incomplete documents
213 Falsified supporting documents
299 Other cases of irregular documents
325 Non-eligible expenditure
402 Non-existing operator
405 Irregular termination, sale or reduction
408 Operator / beneficiary not having the required quality
601 Failure to respect deadlines
608 Refusal of control
609 Refusal of payment
610 Absence or incompatibility of contract
611 Several requests for the same object
612 Failure to respect other regulations/contract conditions
614 Infringement of rules concerning public procurement
741 Failure to fulfil commitments entered into
810 Action not implemented
812 Action not carried out in accordance with rules
822 Expenditure incurred outside the contracting period
832 Infringement with regard to the co-financing system
840 Undeclared revenue
850 Corruption
860 Conflict of interest
999 Other irregularities (to be specified)
IRREGULARITIES AND FRAUD RESPONSIBILITIES - INSTITUTIONS

IPARD Agency/CFCU:
- Receiving and checking signals of irregularities
- Recording, Reporting and Recovery procedures
- Analyses and Corrective measures

The NAO:
- proper implementation of the irregularity procedure including:
  - System for immediate communication of irregularity signals
  - Performing control over the Irregularity Communications received
  - Reporting Irregularities to EC - Irregularity management System (IMS) module of AFCOS
  - Monitoring the work of the IPARD AGENCY/CFCU regarding irregularities
- Proposing financial adjustments
- IPA Irregularly Panel/Network

AFCOS
- co-ordination between the relevant national services
- co-operation with OLAF
- (investigative powers )

OLAF
- battle the corruption, fraud and other irregularities
- administrative anti-fraud investigations having special independent status.
- from 2013 – Directorate General
IRREGULARITIES AND FRAUD RESPONSIBILITIES

The PERSONNEL of the IPA bodies, including managers, employees (contracted or civil servants):

- Understand the irregularity concept and reporting lines
- Confirm their understanding of concepts and procedures related to irregularities (by signing a Statement of Awareness)
- Reflect in the working documents findings/assessment based on actual facts with existence of irregularities
- Report as signals of irregularities every case which they suspect to fall within the definition of irregularity.

IRREGULARITY OFFICERS/EXPERTS:

- Responsible to ensure proper implementation of the irregularities procedures
- Contact point re Whistle Blowing Procedures
- Performs checks of the received signals of irregularities

Irregularity Officers Pannel/Network
Main stages of Irregularity procedure:

- Detection
- Control
- Recording
- Reporting
- Corrective Actions
- Prevention

Irregularities DETECTION sources:

- Already established PACA - documents which already contain primary administrative or judicial finding of irregularity (as a result of the standard management verifications; Audit reports or Judiciary)

- Irregularity signals – information of discrepancy, inconsistency or infringement which may fall within the definition of irregularity or suspected fraud, which had not yet been subject to PACA
IRREGULARITIES AND FRAUD DETECTION

Signal of irregularities within the IPA institutions are issued by the staff of:

- IPARD AGENCY/CFCU
- NIPAC
- NATIONAL FUND
- MANAGING AUTHORITY
- NAO Support Office
- RECEPIENTS CONTACTORS

Detection of irregularities – responsibility of all IPA players
IRREGULARITIES AND FRAUD DETECTION

Signals reported following the hierarchy

Signals direct reporting

Employee civil servant

Irregularity officer
Head of IPARD Agency/MA

NAO

OLAF
IRREGULARITIES AND FRAUD DETECTION

Whistle blowing is a mechanism set up to allow for receiving signals on irregularities and/or suspected fraud by any party – contractor, bidder, beneficiaries, general public, etc., as well as anonymously by the staff of the administration

FWA (Annex B (2) (c)):

- … ensuring that irregularities noted lower down in the organization are reported appropriately and followed-up, including protection for "whistle-blowers"

By means of:

- Internet-based notice-board
- Email address
- Fax of phone number
IRREGULARITIES AND FRAUD CONTROL

Contracting Authority

PERFORMS CHECKS OF THE SIGNALS OF IRREGULARITIES RECEIVED

NAO servics

PERFORMS CHECKS OF THOSE IRREGULARITIES’ SIGNALS RECEIVED

RECIPIENTS/ BENEFICIARIES

MANAGING AUTHORITY

AUDIT AND CONTROL AUTHORITIES

CONTRACTORS

NAO Support Office

NATIONAL FUND
IRREGULARITETS AND FRAUD RECORDING

PURPOSE – to provide an adequate Audit Trail

PRINCIPLES

• Irregularity File
• Irregularity Register
• Irregularities Identification
• Debtors Ledger

Recording in the Accounting System

• IPARD Agency/CFCU
• National Fund
IRREGULARITÉS AND FRAUD REPORTING

Article 16 of Regulation 447 of 2014:

“Reporting on suspected fraud and other irregularities The IPA II beneficiary shall report suspected fraud and other irregularities which have been the subject of a primary administrative or judicial finding, **without delay**, to the Commission and keep the latter informed of the progress of administrative and legal proceedings. Reporting shall be done by electronic means using the module provided by the Commission for this purpose.”

INITIAL COMMUNICATION

IMMEDIATE REPORTING:

Irregularities discovered or supposed to have occurred, where it is feared that they may very quickly have repercussions abroad

IRREGULARITY COMMUNICATION REPORT FOLLOW-UP

- Information which was not available in the initial reporting or needs to be modified
- Details concerning the initiation, conclusion or abandonment of any procedures for imposing administrative or criminal penalties related to the reported irregularities as well as of the outcome of such procedures
- If no new facts concerning an irregularity have occurred, there is no need to send an update!!!

INFORMING THE JUDICIARY
IRREGULARITIES AND FRAUD
CORRECTIVE ACTIONS / PREVENTION

**Financial** – suspending/interrupting payments to and/or recovering/offsetting funds from the contractor/grant beneficiary, establishment of debt - entering amounts in the debtors’ ledger

**Contractual** – e.g. cancelation of contract, activation of guaranties, etc.

**Disciplinary** – administrative sanctions for the staff, which in the context of the irregularity has breached professional conduct rules, etc.

**Related to suspected fraud** – for those cases, the corrective actions include providing information to prosecutor office for further investigation of suspected fraud and Penal proceedings.

- Written procedures (regularly improved)
- Separation of functions and responsibilities
- Controls, Job Description
- Simplified Costs
- Registration and filing documents
- Audit trail for all operations
- Training
- Sharing experience with other countries
GROUP SESSION – Case studies

1. Duration: Up to 30 minutes

2. Please make WORKING GROUPS
   You will receive print-out and task

3. Gather together and solve the task Time
   for discussion: 15 minutes.

4. One (or more) representatives of each
   group will present the outcome. Time for
   presentation of the answers – overall - up
   to 15 minutes
Country experience: Irregularities encountered in EU funds - lessons learned

Aleksandar Hinov & Larisa Vukoja
Irregularities encountered in the EU funded projects:

• Infringement of the rules of public procurement
• Conflict of interest
• Unallocated spending of funds
• Not respecting the deadlines

• Non-eligibillitiy of expenditure/project activities
• Accounts and records
• Lack of documentation, incomplete documentation, falsified documents
• Too many project partners