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Avrupa Birliđi Bakanlıđı
IPA II Teknik Destek Projesi

Ministry for EU Affairs
Technical Assistance for IPA II

“IPA II: Taking EU funding to the next level”

15.-16.5.2017 – Advanced training on
Irregularities

Ivana Varga



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Advanced training on Irregularities

Day 1
15.5.2017



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Training Agenda – Day 1



Sessions	Topic
9:00-9:30	Welcome Introduction to the training Training programme overview
9:30-10:30	Entry test Module overview Legal basis on irregularity management Definition of irregularity Roles and responsibilities in irregularity management in IPA II (national and EU institutions)
10:30-11:00	Break
11:00-12:30	Detecting irregularities: from suspected irregularity to irregularity, concept of minor (clerical) errors and “real” irregularities, documenting and reporting suspected irregularities, Irregularity Management Panels: features, composition and functioning
12:30-13:30	Lunch break
13:30-14:45	Reporting on irregularities: drafting irregularity reports, reporting lines
14:45-15:00	Coffee Break
15:00-16:15	Implementing corrective measures: financial corrections to restore legality and regularity of expenditure, principles for financial corrections application, overview of EU guidance and practice on calculation of financial corrections, systemic irregularity and flat-rate corrections, recovery of unduly paid amounts
16:15-16:30	Questions&Answers for Day 1



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Training Agenda – Day 2



Sessions	Topic
9:30-10:45	Welcome Review of Day 1 Implementing preventive measures: design of the preventive measures tools for preventing irregularities sharing experience – analysis of the available statistics, expert group network
10:45-11:00	Coffee Break
11:00-12:30	Anti-fraud policy: state of play on anti-fraud strategies, fraud risk assessment and management; identifying and monitoring risky projects and procedures anti-fraud strategy design, implementation and evaluation
12:30-13:30	Lunch
13:30-14:45	Detecting suspected fraud: definition and features of fraud. detecting suspected fraud. from suspected fraud to fraud. overview of EU practice
14:45-15:00	Coffee Break
15:00-16:00	Preventing fraud and corruption in public procurement: measures for identifying and reducing fraud risks in public procurement, corrective measures
16:00-16:15	Questions & Answers for Day 2
16:15-16:30	Exit test Evaluation of the training by participants Closure of the training



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Legal basis on irregularity management



- Article 51 of IPA II Framework Agreement:
 - IPA II beneficiary ... shall prevent, detect and correct irregularities and fraud
 - the IPA II beneficiary shall carry out, in accordance with the principle of proportionality, ex ante and ex post controls including, on-the-spot checks on representative and/or risk-based samples of transactions, to ensure that the actions financed from the budget are effectively carried out and are implemented correctly



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Legal basis on irregularity management



- The IPA II beneficiary shall also recover funds unduly paid and bring legal proceedings where necessary in this regard
- The IPA II beneficiary shall ensure investigation and effective treatment of suspected cases of fraud, conflict of interest and irregularities and shall ... ensure the functioning of a control and reporting mechanism



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Legal basis on irregularity management



- 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 EC 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. In addition to the reporting provisions set in Annex H to Framework Agreement



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Definition of irregularity



- *Irregularity* means any infringement of a provision of applicable rules and contracts resulting from an act or an omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the Union by charging an unjustified item of expenditure to the general budget
- *Economic operator* means any natural or legal person or other entity taking part in the implementation of IPA II assistance



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Definition of irregularity



- irregularity shall be understood as:
 - any “non-respect” of a provision of the EC and/or national regulation including:
 - IPA Framework Agreement;
 - IPA sectoral and financing agreements
 - procurement procedures (including the PRAG)
 - terms and provisions of Contracts funded under IPA,
 - respective management procedures
 - which is, or would lead to the payment of IPA funds of expenditures which are not properly justified



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Roles and responsibilities



In irregularity management in IPA II

- The following institutions (and their respective staff) should monitor and report irregularities and take, as appropriate, corrective measures:
 - National Authorising Officer,
 - Management Structure
 - National IPA Co-ordinator,
 - Operating Structures
 - Final Beneficiaries / Line Ministries,
 - Internal Auditors,
 - External Auditors,
 - Audit Authority



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The responsibilities of the NAO



- Article 9 of IPA II IR - Functions and Responsibilities of the NAO:
 - „1. The NAO shall bear the overall responsibility for the financial management of IPA II assistance in the IPA II beneficiary and for ensuring the legality and regularity of expenditure.
 - ...
 - 3. The NAO shall, in particular, be responsible for:
 - ...
 - (c) putting into place effective and proportionate anti-fraud measures taking into account the risks identified.”



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The responsibilities of the NAO



- for all IPA sectors, the NAO shall ensure the identification and communication of irregularities, thus, the NAO has set up procedures applicable to all IPA Sectors
- irregularities and the related procedures and responsibilities must be understood not only in the context of each of the IPA Sectors and inside each institution but also at the overall levels of IPA since irregularities associated to a specific IPA sector might have an impact on the other sector



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The responsibilities of the managers of all institutions



- procedures relating to irregularities are properly defined and implemented in their respective institutions;
- cooperation of their institution with any investigation into the irregularity;
- the recovery of any sum wrongly paid by his/her institution and transfer such sums to the NAO;
- the necessary reviews and decisions in respect of the systems, procedures, recovery and financial adjustments are carried out;
- the communication (when relevant) of decisions in respect of sanctions or civil or criminal action



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The responsibilities of the employees of all institutions



- All employees shall sign a “Declaration of awareness of the definition of irregularity and fraud” to confirm understanding of the concepts of irregularity and related procedures
- As civil servants, they are obliged to report to the authorities all criminal cases which they notice while executing their tasks
- Failure to respect this requirement is subjected to disciplinary actions
- It is of the utmost importance that employees recognise the need for prompt action when dealing with irregularities



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The role of Irregularity Officers' network



- The Irregularity Officer of the MS, acting as Irregularity Coordinator for all IPA Sectors under the supervision of the NAO shall set up an Irregularity Officers' network
- The purpose of the Irregularity Officers' network is to meet regularly to discuss current problems and issues on irregularities, share experience, provide training to irregularity officers, provide guidance, share the information on any new requirements and provisions, etc. During Irregularity Officers' meetings statistical information on the irregularities may be presented and analyzed



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The role of Internal and External Auditors



- Any finding made by auditors in the area of EU funds management should be reviewed from the point of view of whether or not it constitutes an irregularity.
Correspondingly:
 - Auditors may report irregularities at their own initiatives and in accordance with their internal procedures ;
 - During the review of audit reports, the MS staff may be led to issue an “irregularity signal” and shall correspondingly apply the procedures for irregularity management



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The role of OLAF (European Anti-Fraud Office)



- acts as EC service in the context of irregularity reporting
- the role of OLAF is to battle corruption, fraud and other irregularities harmful to EU financial interests
- the MS shall report irregularities to OLAF based on the implementation of the prescribed procedures



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The role of OLAF



- Irregularities may be reported to OLAF through different channels:
 - Anonymously by email, fax or phone;
 - Formally: submission of irregularity reports by any individual or entities inside or outside Turkey
- Based on its own internal procedures, OLAF may contact the MS and/or the Turkish AFCOS in relation to irregularities which might have been directly detected by the EC and/or directly reported to OLAF



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The role of AFCOS (Anti-fraud coordinating structure)



- The Prime Ministry Inspection Board acts as the Turkish anti-fraud coordinating structure (AFCOS) operationally independent
- When receiving a written notification on suspicion related to an irregularity, if deemed necessary, the NAO may transmit the case to the AFCOS for further examination and investigation
- AFCOS may initiate an examination and/or investigation at its own initiative in accordance with its internal procedures on irregularities reported directly or via AFIS





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Detecting irregularities



- Irregularities might be detected through
 - the implementation of internal controls (routine controls) during desk-reviews or on-the-spot controls;
 - information from third parties (other implementing institutions, other countries, general public, whistle blowing, auditors),
 - suspicion or by accident



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Detecting irregularities



- There are number of control phases
 - application check,
 - possible on the spot before project starts,
 - documents submitted with the payment claims,
 - on the spots controls before payments
 - control over achievement of goals
- As the control process collects a number of documents for desk-based control, then it is possible to make choices – what can be controlled desk based and what has to be controlled on the spot



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Detecting irregularities



- The goal of the on the spot checks is clear – to verify the reality of the project activities on the spot
- There have been numerous examples where beneficiary has provided documents about works or services that have actually never taken place
- Audit performed by internal or external auditors could reveal irregularities in implementation of projects



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Detecting irregularities



- It is the responsibility of all bodies involved in the management and control systems to send without delay information about the suspected irregularities and/or fraud to the IA and provide with any information on deviations noticed regarding the project
- The IA is responsible for the assessment of any type of information containing elements of incompliances linked with the project through the prism of irregularities, irrespectively whether the information about the suspected irregularity is received from external sources or performing the day-to-day functions



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Detecting irregularities – how to deal with?



- Upon the received information about the suspicion on irregularity and/or fraud, IA should without delay assess the information received
- If the result of the assessment creates sufficient base for irregularity to be suspected, the IA should without delay create the Irregularity Alert which shall be validated by IO and data on the suspected irregularity recorded in the irregularity Register
- IA shall have the right to take decision on temporary measures to secure the recoveries (e.g. suspending the payments)



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Detecting irregularities – how to deal with?



- Upon receiving the Irregularity Alert, the IA should start examination of suspected irregularity
- The irregularity can be examined through:
 - checking of relevant project documentation, requesting for beneficiary's explanations;
 - performance of on-the-spot check intended for verification of the specific suspicion;
 - examination of relevant legal provisions, interpretation of requirements (EU and national law);
 - examination of audit recommendations;
 - searching for sector specific information/requirements;



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Detecting irregularities – how to deal with?



- reconciliation of the case with established practice of the institution;
 - assessment of related court rulings and precedents, if any;
 - obtaining of specific advice from internal or external experts;
 - request for opinion/conclusion from other institutions by way of cooperation with AFCOS and any other institution possessing relevant information (state registers, inspections, etc.), etc.
- Subject to specific case and principle of proportionality, only relevant set of the aforementioned measures are performed



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From suspected irregularity to irregularity



- The examination of the suspected irregularity should be performed within the 30 calendar days from the approval of Irregularity alert
- Upon the finalisation of the examination procedure by the IA, it shall take one of the following decisions on irregularity:
 - decision on established irregularity or
 - no-irregularity decision



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From suspected irregularity to irregularity



- The IA decision shall describe findings and conclusions of the examination of suspicion of irregularity
- The decision on irregularity shall be laid down in the means of “Primary Administrative or Judicial Finding” - the first written assessment by a competent authority, either administrative or judicial, concluding on the basis of specific facts that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure



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Concept of minor (clerical) errors and “real” irregularities



- *Error* means non-deliberate clerical and technical errors committed by the IPA II beneficiary or a recipient of IPA II assistance
- Errors / mistakes detected while applying internal controls (for example when applying the ex-ante controls listed in the check-lists of the OS) and proper management procedures (for example when a supervisor corrects mistakes made by the staff prior to the finalisation of a transaction) would normally not have to be reported as irregularities



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Concept of minor (clerical) errors and “real” irregularities



- BUT, detecting this type of error / mistake may indicate a need for improving the procedures and systems of control and/or the awareness and understanding by the staff of the procedures and systems of ex-ante controls
- Overpayments are a typical type of mistakes: amounts inadvertently paid in excess of the sum due.



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Concept of minor (clerical) errors and “real” irregularities



- Example: a mistake is made on the bank account coordinates of a final beneficiary on a payment order. If the mistake is noticed before the execution of the payment order and is corrected, the error is not to be reported as an irregularity. If the mistake is not noticed before the execution of the payment order, the irregularity is to be reported and related funds to be recovered from whoever ultimately received the funds on his/her bank account.



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Documenting and reporting suspected irregularities



- Irregularity officer is responsible for
 - keeping the records of irregularities;
 - submission of the reports on irregularities;
 - filling the data in the AFIS;
 - cooperation with AFCOS / OLAF;
 - cooperation with OS / MS;
 - submission of the proposed decision to the head of the organization.



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Irregularity Management Panel



- Can have the form of the Irregularity Officers' Network
- The main aim is to share the experience in detecting irregular practices, managing, reporting and monitoring the irregularities with the purpose to act in preventive way
- Can be composed of MCSs institutions and other relevant representatives (such as AFCOS, investigating bodies...)
- Meetings can be organised quarterly or ad hoc, in specific cases



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Reporting on irregularities



- Any employee - at any level of seniority - is responsible for reporting any inconsistency or discrepancy which may fall within the scope of the definition of an irregularity or suspected fraud - this constitutes an “Irregularity signal”
- The contact person for reporting actual and/or suspected irregularities is the Irregularity Officer/Expert



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Reporting on irregularities



- The reporting of an irregularity may, in the first instance, be made orally
- The employee shall confirm the reporting with a written version of events in an Alert Form and keep, at a safe place, all relevant original documentation (or a certified copy if the original documentation must be released)
- No administrative penalty can be imposed on any employee for reporting - when deemed necessary - an irregularity to the Irregularity Officer/Expert or directly to the NAO. Employees reporting irregularities are protected from adverse consequences of “blowing the whistle” in accordance with the applicable regulations



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Reporting on irregularities



- The system of reporting of irregularities is based on several different layers of reporting and several types of reports with different timing and contents:

From the Final Beneficiary to the Operation Beneficiaries/Provincial Coordination Units

From the Operation Beneficiaries/Provincial Coordination Units to the OS

From the OS to the Management Structure

From the Management Structure to the EC



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Reporting on irregularities



- The NAO, who is responsible for the timely reporting of irregularities to the EC, must receive from the NIPAC, the OSs, the CFCU, the final beneficiaries and/or other stakeholders the reports on irregularities within prescribed deadlines and formats
- The recovered amounts shall be repaid to the Management Structure who shall ensure the repayment to the EC



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Reporting on irregularities



- There are no thresholds and exceptions for reporting irregularities to the EC: According to the relevant IPA II legislation, 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. Therefore, all cases must be reported.



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Reporting on irregularities



- There are no thresholds and exceptions for reporting irregularities to the NAO: all cases must be reported
- The procedures for reporting irregularities are based on four types of reports:
 - Initial communication and follow-up report;
 - Quarterly communication;
 - Nil report



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Initial reporting



- To the MS / NAO: Without unreasonable delay [in principle 5 working days] after any irregularity is reported and/or confirmation of the existence of actual facts leading to suspect the irregularity
- To the EC: Without unreasonable delay [in principle 15 working days] after any irregularity is reported and/or confirmation of the existence of actual facts leading to suspicion of irregularity



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Quarterly reporting



- To the MS / NAO: Within 1 month after the cut-off reporting date
- To the EC: Within 2 months after the cut-off reporting date
- The same deadlines apply for the Nil reports



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Implementing corrective measures



- Suspension of payment:
 - If an irregularity imputable to a Contractor/Final Beneficiary is detected, the Contracting Authority and/or Operating Structure may decide to suspend payments for the contract(s) to which the irregularity is related
 - When an irregularity is confirmed, the NAO may make financial adjustment by cancelling all or part of the Union contributions to the action or programmes concerned until the CFCU/IPA OS has submitted an acceptable justification or until the corrective action to prevent similar irregularities in the future is implemented



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Suspension of payment by NAO



- Transfer of funds may continue when:
 - Adequate corrective measure(s) has/have been taken to prevent similar irregularities in the future;
 - Personal responsibility has been assigned for the irregularity.
- In the case of one-off irregularities with financial impact (loss already occurred), the NAO may suspend payments for the contract and/or the Final Beneficiary to which the irregularity is related



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Suspension of payment by EC



- In accordance with “Article 17 Financial corrections” of the IPA II IR, in order to ensure that the IPA II funds have been used in accordance with the applicable rules, the EC shall apply financial correction mechanisms on the basis of identification of amounts unduly spent and on the basis of financial implications for the budget
- Where such amounts cannot be identified precisely due in order to apply individual corrections, the EC may apply flat-rate corrections or corrections based on an extrapolation of findings



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Calculation of financial corrections



- The irregular amount can be calculated applying following methods:
 - Individual assesment of irregular amount
 - Application of flat rate
- The irregular amount must be assesed individually wherever possible on the basis of individual files and be equal to the amount of expenditure wrongly paid



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Calculation of financial corrections



- One of the methods is to assess the the precise amount of irregular expenditure
- The flat rate method is used when it is not possible or practical to calculate the amount on each individual operation (usually used for irregularities in procurement procedures)



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Systemic irregularity and flat-rate corrections



- *Systemic irregularity* means any irregularity that may be of a recurring nature, with a high probability of occurrence in similar types of operations, which result from a serious deficiency in the effective functioning of the management and control systems, including a failure to establish appropriate procedures in accordance with applicable rules



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Systemic irregularity and flat-rate corrections



- Systemic irregularities arise out of failings in a financial management and control system and may occur horizontally through all projects
- Generally, these are unintentional irregularities resulting from the deficiency in the system (i.e. insufficiently defined scope of control in the system)



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Recovery of unduly paid amounts



- The NAO shall recover – through the Contracting Authority and/or the beneficiary of the projects - any sum wrongly paid and transfer such sums to the EC [request for transferring the funds to the EC as well as related deadlines for execution are notified to the NAO by the EC]



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Recovery of unduly paid amounts



- If a contractor [or Final Beneficiary for grants] was paid unjustified expenses (disallowable or ineligible expenses), the Contracting Authority shall request the Contractor / Final Beneficiary to refund the amount outstanding in the relevant bank accounts (i.e. relevant bank account for the EU contribution and relevant bank account for co-financing resources)



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Recovery of unduly paid amounts



- In its application for the refund of the amount outstanding the Contracting Authority should inform the contractor on:
 - the amount outstanding,
 - the date of its refund (deadline),
 - the references of the bank accounts to which the amount should be refunded,
 - the possible sanctions and procedures in case the requirement to refund the amount outstanding is not fulfilled within the specified period



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Recovery of unduly paid amounts



- If the Contractor/Final Beneficiary does not refund the amount outstanding to the respective bank accounts within the specified timeframe, the Contracting Authority shall inform the NAO in writing and initiate a court proceeding against the Contractor.
- If the Contractor/Final Beneficiary refunded the amount outstanding within the period determined by the Contracting Authority after the first challenge of the Contracting Authority, the Contracting Authority is obliged to transmit to the NAO written information



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