

Irregularities

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Budapest, Hungary

Summary of discussions

[Survey on irregularities and recoveries in the 2007 – 2013 period](#)

Interact presented the main findings of the survey conducted in 2011 regarding irregularities and recoveries.

Reporting to OLAF was discussed, particularly reporting of irregularities occurred in ENI and IPA programmes where countries outside the EC do not have access to SFC. Discussion concluded that this is always MA responsible for reporting irregularities, thus National Authorities should report them to the MA.

[Latest news on irregularities](#)

The definitions of irregularity and fraud, typology of errors and planned updates of Guidance on audit of accounts were presented by Interact.

The irregularity definition which is specified in Article 2(36) CPR has two elements which needs to be stressed. According to the definition irregularity results from an act or omission by an economic operator involved in the implementation of the ESI Funds, the economic operator is however perceived here not only as a beneficiary, but also supplier in the project, any 3rd party which is related to the project. The errors become irregularities only if they are detected in the payment applications sent to the EC.

The fraud is defined in the Article 1 of the Convention of 26 July 1995 on the protection of the European Communities' financial interests. This convention came into force only on 17.10.2002 when all the 15 Member States (at the moment) transposed the notion of fraud into criminal law at the national level. All the Member States which joined the EU later also transposed the it into their national law. Consequently, the definition of fraud is not present in the aquis communautaire as every Member State defines fraud in a bit different way, what is defined as fraud in Hungary is not necessarily defined as fraud in other Member States.

[Hungarian Audit Authority experience](#)

Fraud prevention and detection in ETC programme may be complicated issue and the fraud definition is not established on EU level and it differs a lot between Member States.

In order to improve the management of irregularities it is important to also include JS as they monitor and manage information about irregularities during daily work. Also introduction of common typology of errors to be used by AA and controllers is important step, the same categorisation of errors and irregularities allow to understand the findings well and to see the connections. For the post 2020 perspective however, it would be useful to define the categories of errors in advance.

Two programmes audited by Hungarian AA will submit the non-zero accounts in February 2019, hence the audit of operations was implemented this autumn and there are already first findings, public procurement errors mostly, but also others. It seems unfortunately, from errors detected, the programmes did not learn from experience and very similar mistakes are made again. The gold plating practices were also noticed, which increase the error rate.

The proposed changes to the Guidance note for AAs are, according to Hungarian AA significant.

Hungarian AA welcomes proposed for post 2020 single sample audit, as it implies decrease of the number of audited beneficiaries which is on one hand signification reduction of audit work, however on the other hand decreases immensely the assurance level.

There are also many questions related to this issue still opened, e.g. how to organise the process, is Hungarian AA allowed to audit partners in another Member State?

Interact informed about planned meeting to be held 10th December in Brussels dedicated to detailed discussion of proposed single sample audit, all ETS's AAs are welcome.

The Hungarian AA did not find any suspicion of fraud in audited ETCs.

The discussion also covered staff costs related irregularities, as staff costs build 50-60% of ETCs projects and in last period there were minor calculation errors. Now one can expect findings in the calculation method, the AA may want to correct it by changing the methods and this is more significant error. It would be great improvement for the next period if the calculation methods were clearer and more adjusted to the real cases (not like the weekly or daily calculations).

Also the role of GoA was discussed briefly, the Hungarian AA advice was the division of responsibilities, who delivers for instance checks of management verifications systems outside MA country, should be agreed in advance and described clearly.

Polish Audit Authority experience

The presentation gave an overview of irregularities in all Polish OPs over the last 3 programming perspective. The overlapping of OPs implementation resulted in the peak in reporting irregularities in Poland in 2016, now in 2018 the increase of cases in the current period is observed.

Only 39 cases reported to the COM for all ETC programmes in 2007-2013 period.

One case – based on one control of the value above 10.000 EUR.

Only 3 cases in ETC were classified as suspected fraud and the cases are still open.

Presentation of Arachne

Arachne is a software developed by the European Commission and given to all interested Member States for free to use as an anti-fraud measure. The tool and its use as a part of the fraud-prevention strategy was presented.

Groups' discussions

Participants were divided into 3 groups and each group had a chance to discuss different topics within three talking walls. Interact moderated the discussions and took notes. Every participant was given a chance to go to each of the talking walls. The key points of each wall are summarised below.

Challenges in reporting irregularities

The discussion led to the following conclusions:

- How to work most effectively with programme authorities. For example, the CA prepares the draft accounts including all the annexes on reporting on irregularities and submits it to the AA. Then turns out the AA interprets the rules differently and the draft must be re-done. From the group experience the discussions usually start based on draft accounts and this is where the reconciliation between MA/CA and AA takes place.
- A nice example of simplified cooperation and communication between authorities is to join the authorities under one roof. E.g. in case of one programme MA, JS and CA are one institution and work very smoothly together and they have a roadmap for working with AA.
- The definition of what is irregularity is still not clear for some programmes and therefore authorities (e.g. FLC) have doubts what should be reported to irregularity officer.
- 2nd level sampling can sometimes be problematic. When the AA selects a partner to be audited, the member of GoA can still sample the invoices to be checked. If there are some errors discovered, he/she can either extrapolate the error and include the projected value into the programme error rate or ask MA to finalise the checks on the rest of the invoices. This is a chance for programmes to decrease the error rate, if they can prove that the part of the expenditure not sampled is free from errors.
- In case of IPA and ENI programmes, there is no read-write access to the IMS system of the European Commission and they need to report all the irregularities by letter. They only have read access and can see the reports but not add/modify.
- It is unclear how the value of potential fraud should be calculated. Should it be the invoice/contract affected or the entire project. The conclusion was that it is a case-by-case decision and depends on the nature of the fraud and its value in relation to the entire project.

- Should the suspected fraud of any value be reported to OLAF or only if its value exceeds 10.000 EUR?

CHAPTER I
Management and control systems
Article 122
Responsibilities of Member States

1. Member States shall ensure that management and control systems for operational programmes are set up in accordance with Articles 72, 73 and 74.
2. Member States shall prevent, detect and correct irregularities and shall recover amounts unduly paid, together with any interest on late payments. They shall notify the Commission of irregularities that exceed EUR 10 000 in contribution from the Funds and shall keep it informed of significant progress in related administrative and legal proceedings.

The Member States shall not notify the Commission of irregularities in relation to the following:

- (a) cases where the irregularity consists solely of the failure to execute, in whole or in part, an operation included in the co-financed operational programme owing to the bankruptcy of the beneficiary;
- (b) cases brought to the attention of the managing authority or certifying authority by the beneficiary voluntarily and before detection by either authority, whether before or after the payment of the public contribution;
- (c) cases which are detected and corrected by the managing authority or certifying authority before inclusion of the expenditure concerned in a statement of expenditure submitted to the Commission.

In all other cases, in particular those preceding a bankruptcy or in cases of suspected fraud, the detected irregularities and the associated preventive and corrective measures shall be reported to the Commission.

- It is unclear who should report irregularities above 10.000 EUR to the Commission in case of non-member states. It is quite clear and widely practiced that in case of Member States, the country where the irregularity was discovered inform the Commission. In case of non-Member States this obligation might have to be taken over by the MA.

Anti-fraud strategy and risk management

The discussion led to the following conclusions:

- The majority of fraud discussed is at the moment suspected fraud and there is only one case of established fraud which was discussed. The suspected fraud was usually related to public procurement procedures (counterfeiting of documents allowing to participate in the bids, collusion etc.), there is also a case where time sheets were falsified.
- All the programmes represented performed anti-fraud assessment at the beginning of the programme, several programmes represented were using Arachne, but the usage varies from programme to programme, there are programmes which do assessments of applicants ex ante and report the results to the MC, there are

programmes which ex-post choose only those partners performing public procurements above the thresholds and check if there are red flags in Arachne.

- As other anti-fraud measures that can be named is the usage of internal joint excel file with the names and surnames of the stakeholders in the public procurements and checking if there are no collusions. The programmes (JSes) also perform on-the-spot-checks.
- Some programmes also mentioned the usage also called "black lists" of beneficiaries with previous frauds or irregularities and informing MC about them. While in some Member States it has a legal basis (eg. beneficiaries formally convicted for irregularities cannot apply for funds for 5 years), by others it was regarded as discriminatory practice.

Types of errors, recoveries, irregularities below the 250 EUR and who is responsible for detection and monitoring of irregularities

The most common types of errors are:

- Public procurement
- Staff costs and mistakes in calculations of SCO
- Travel costs and per diems calculations
- Audit trail
- Technical mistakes like attribution to the wrong budget line

Baltic Sea Region programme made an analysis of irregularities in perspective 2007-2013 and concluded that most common were staff costs errors, however the resulting irregular amounts were small, and the biggest irregular amounts were generated by public procurement irregularities, however there happened rarely.

Vast majority of programmes use the option of deduction of irregular amount from the next project report, the recovery is used in case of last project report. Channel programme also analyses situation case by case and when the deduction of the whole irregular amount may harm partners liquidity the deduction is done in tranches, from several, next projects reports.

Some programme use the option of irregularities below 250 EUR, e.g. Adrion, Danube, Channel, Polish and Hungarian ETC programmes, Central Europe and Slovenian ETCs use the option only during closure of the projects.

The amount is a bit too small to be used in bigger, transnational programmes and naturally requires more effort from a programme, but serves as useful simplification not only for beneficiary but also for a programme as recovery of small irregular amount may cost huge amount of time and effort, not mentioning administration burden.

The AA is the body mainly responsible for detection of irregularities, however sometimes controllers also spot something resulting in detection of irregular amounts already certified in previous reports. All programme bodies JS, MA, CA and AA have access to the system and can monitor the irregularities in case of Polish ETCs, in IPA programmes also NAs monitor irregularities and inform the MA as the main body responsible.