





# ■ EU programmes and project - Audits and Irregularities principles

## Irregularity management – experience from member state perspective



# Audit of EU funded operations

- Audit / control authorities on IPA funds
  - European Court of Auditors
  - European Commission
  - Audit Authority
  - Management Structure (National Authorising Officer)
  - Operational Structure (Implementing Agency)
  - Internal Audit Units
  - Project Auditors
  - national audit office
  - other national public inspections

# Audit of EU funded operations

- Audit purpose (Audit Authority)
  - to provide reasonable assurance that the EU financial interests are properly protected:
    - whether management and control systems of the EU programmes are adequate and function effectively - System audits
    - whether declared expenditure is legal and regular - Audits on operations
  - desk reviews and spot checks

# Audit of EU funded operations

- Audits on operations - scope
  - Audit trail and accurate supporting documentation at all levels
  - Eligibility rules
  - Real cost principle
  - Accounting
  - Physical implementation / Indicators
  - Publicity & information compliance
  - Compliance with procurement rules
  - Compliance with horizontal issues/policies - equal opportunities, environmental policy, state aid
  - Durability (sustainability)
  - Irregularities and frauds – compliance with the rules

# Audit of EU funded operations

- Audit evidence to support auditors' conclusions
  - Competent - reliable and the best obtainable evidence; the evidence for which there is no doubt to its validity or its completeness; reflects objective reality
  - Relevant - refers to the relationship or connection of the evidence to its use; information used to prove or to disprove something, must have a logical sensible relationship to that issue; closely connected or directly linked to the issue being audited
  - Sufficient (enough) - factual, adequate, convincing

# Audit of EU funded operations

- Audit procedures
  - Verification - reviewing the data or documents (internal / external), on paper / in electronic/other form, physical inspection of the object
  - Observation - monitoring of process or procedure being performed by others (limited to the point in time at which it is performed)
  - Recalculation - checking the mathematical accuracy of documents or records

# Audit of EU funded operations

- Audit procedures
  - External confirmation - obtained by the auditor as a direct written response by a third party (the confirming party) - the auditor may request confirmation of the terms of contracts or transactions by third parties.
  - Inquiries - seeking information from professionals within or outside the audited entity (formal written inquiries / informal oral inquiries)
  - Re-performance - independent performance by the auditor of procedures or controls that were originally performed as part of the entity's internal control



# Audit of EU funded operations

- Typical audit findings – institutions
  - Audit Trail - expenditure can not be reconciled with accounting records and supporting documentation
  - Eligibility of expenditure - expenditure not eligible in accordance with national eligibility rules
  - Horizontal policies not checked appropriately during verification
  - Information and publicity - publicity and information requirements not met
  - Management verifications - administrative / on-the-spot verifications are not adequate to verify the delivery of products or services (control procedures not adequately documented)

# Audit of EU funded operations

- Typical audit findings – projects
  - Significant delays in implementation (project preparation, contracting, payment, etc.)
  - Public procurement - public procurement rules not respected
  - Property changes and changing beneficiaries
  - Costs exceeding the previously planned
  - Incomplete accounting records
  - Project objectives/indicators not reached
  - Products/services not delivered / partially delivered / not in use
  - Expenditure not related to project
  - Information and communication requirements not fully complied

# Irregularity management of IPA II

- IPA II Framework Agreement
- IPA II beneficiary shall...
- prevent, detect and correct irregularities and fraud
- 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
- recover funds unduly paid and bring legal proceedings where necessary in this regard

# Irregularity management of IPA II

- *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



# Irregularity management of IPA II

- 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

# Irregularity management of 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

# Irregularity management of IPA II

- The responsibilities of the managers of all institutions should cover:
  - procedures related 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 of such sums to the NAO;
  - the necessary actions 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

# Irregularity management of IPA II

- The responsibilities of the employees of all institutions:
  - All employees should be trained to understand the concept of irregularity and to apply the related procedures
  - As civil / public servants, they should be obliged to report to responsible authorities all suspected unlawful cases which they notice while executing their tasks
  - Failure to respect this requirement could be subjected to disciplinary actions
  - It is of the utmost importance that employees recognise the need for prompt action when dealing with irregularities



# Detecting irregularity

- 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
  - It is the responsibility of all institutions to send without delay information about the suspected irregularities to the Implementing Agency (IA) and provide any information on deviations noticed regarding the project

# Detecting irregularity

- Upon the received information about the suspicion on irregularity, IA should without delay, assess the information received
- If the result of the assessment creates sufficient basis for irregularity to be suspected, the IA should record the initiation of the irregularity procedure (examination of suspected irregularity) and may take the decision on temporary measures to ensure the recoveries (e.g. suspending the payments)
- 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;

# Detecting irregularity

- examination of relevant legal provisions, interpretation of requirements (EU and national law);
- examination of audit recommendations;
- searching for sector specific information/requirements;
- 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.

# From suspected irregularity to irregularity

- Subject to specific case and principle of proportionality, only relevant set of the aforementioned measures are performed
- 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
- 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



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

- Error means unintentional clerical and technical error 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 IA) 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
- 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

# Financial corrections – recovery of unduly paid amounts

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

# Financial corrections – recovery of unduly paid amounts

- If a contractor / Final Beneficiary was paid unjustified expenses, the IA shall request 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)
- In the request for the refund, the following should be stated:
  - 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 request to refund the amount outstanding is not fulfilled within the specified period

# Financial corrections – 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 IA should inform the NAO in writing and initiate a court proceeding against the Contractor
- If possible, the bank guarantee can be activated
- If the Contractor / Final Beneficiary refunded the amount outstanding within the period determined by the IA, the written information is submitted to the NAO
- The NAO shall recover any sum wrongly paid and transfer such sums to the EC

# Irregularity management – Preventive measures

- Irregularities can occur at any stage in the life cycle of a project or programme as well as in the day-to-day operation of any institution / organisation
- Systems set up for ensuring the detection and prevention of irregularities must therefore cover the whole project life cycle
- Written procedures: Based on the “four-eye” control principle over internal controls applied
- Separation of functions to separate responsibilities: Functions of basic financial management (i.e. pre-payment checks, approval of payment, operating bank accounts, accounting and reporting) shall be separated
- Job descriptions: Communicated to the respective staff

# Irregularity management – Preventive measures

- Controls: All transactions shall be subject to ex-ante controls [before approval and recording] and ex-post controls and have to be documented in the checklists. Ex-post controls would consist of: controls performed after the transactions have taken place (for example: reconciliation of bank accounts after the bank has executed the transactions), on-the-spot-controls and controls performed by the auditors
- Training: The staff shall be provided with training on irregularities as a minimum through:
  - Training for newly recruited staff:
  - Regular training courses on irregularities

# Challenges in implementation of waste and water infrastructure projects – experience from Croatia

- delay in the design period, including the obtaining building permits
- Example: the planned design period and obtaining the building permits should have last for 8 months but for the simplest phase of the landfill, 14 months have elapsed after the start of the contract, while for technologically more complex buildings such as MBO even more (17 months) and for the landfill infrastructure (19 months); long lasting period related to the needed for approval of the Agency for Explosive Atmosphere Hazardous Areas (Ex-Agency)
- corrective measures: intensive meetings on the highest level of Contractor's and Investor's representatives resulted with reaching the agreement;



# Challenges in implementation of waste and water infrastructure projects – experience from Croatia

- delays in project implementation caused by the administrative procedures related to timely response of the national authorities responsible for issuing permits / opinions / approvals
- corrective measure: amendments / changes to legal and subordinate legal acts that provide clear deadlines and enable faster procedures for projects of national importance (strategic investment projects)

# Challenges in implementation of waste and water infrastructure projects – experience from Croatia

- delays in project implementation caused by inexperience of the beneficiaries
- corrective measures: support to the beneficiaries in project preparation, quality control of tender documentation before publication and suggestions for documentation improvements; organisation of workshops and trainings; issuing specific guidelines for the specific groups of beneficiaries and on specific topics; providing active support during project preparation and implementation

# Challenges in implementation of waste and water infrastructure projects – experience from Croatia

- delays in project implementation caused by the lack of a construction companies and facilities available on market, due to the parallel launch of large-scale infrastructure projects and significant number of small-scale projects implemented at the same period of time, limited with the tight deadlines for finalisation of the works
- corrective measures: more appropriate planning of programme implementation, timely performed market analysis related to the possible market response on demands for services required by the project beneficiaries, long perspective of strategic planning (avoid firefighting measures)

# Challenges in implementation of waste and water infrastructure projects – experience from Croatia

- delays in project implementation caused by the need to align the project documentation (in some cases location permits) with the actual situation in the field when performing the works, which required additional modifications and adjustments
- some of the reasons were related to the underground work, where not all circumstances were possible to foresee in advance (e.g. unexpected old, underground buildings or archaeological findings) and sometimes there was a lower-quality of prepared project documentation, which caused difficulties in the execution of works
- corrective measures: regular monitoring of project activities, timely response to the daily information from the construction site

# Challenges in implementation of waste and water infrastructure projects – experience from Croatia

- delays in start of project implementation caused by the long lasting contracting procedure for works caused by frequent appeals of the Bidders on the Award Decision, long lasting procedure for solving the appeals by the State Commission for Supervision of Public Procurement Procedures
- corrective measures: the amended to the Regulation on Internal Organization of the State Commission, obliged the State Commission to deal with the appeals in procurement procedures related to EU co-financed projects as the priority / urgent procedure

# Challenges in implementation of waste and water infrastructure projects – experience from Croatia

- challenge in project implementation verification caused by the appeals of the unsuccessful Bidders – except in the procurement phase, appeals and complaints can be imposed in later stages of the project implementation
- Example: after the completion of the works and the issuing of the use permit, the same unsuccessful Bidder issued a complaint to the Ministry of Construction and Physical Planning claiming that the issued permit was not issued in a prescribed way and that all works were not completed before the technical inspection (the claim was not accepted). Finally, the unsuccessful Bidder issued a complaint to the Managing Authority questioning the legality of the procurement procedure and quality of the works executed (no irregularity detected)

# Challenges in implementation of waste and water infrastructure projects – experience from Croatia

- negative publicity related to environment protection – public protest organised by NGOs / citizens against the implementation of the project related to construction of waste management centre
- corrective measures: timely proactive project information campaign during the project preparation phase, intensive communication campaign during the project implementation phase, investing efforts in providing answers to all interested citizens and NGOs



# Challenges in implementation of waste and water infrastructure projects – experience from Croatia

- prolongation of implementation period for works contracts and increase of the contract price caused by:
  - unexpected bad conditions of construction parts that had to be renovated / upgraded
  - subsequent need for additional works and changes in working methods
  - neighboring objects potentially endangered by the construction works
  - extremely bad weather conditions, floods
  - additional conditions by relevant authorities

# Challenges in implementation of waste and water infrastructure projects – experience from Croatia

- financial and operational problems of the contractor, inability to continue / finalise the works, bankruptcy
- corrective measure: react timely, explore the possibility of consortium partners / subcontractors to finalise the works; if not possible – prepare new procurement procedure to contract the finalisation of the remaining works

# EU PROJECT PREPARATION FACILITY PROJECT

All documents, information, materials and pictures from this EU PPF training are available for download @ [www.ppf.rs](http://www.ppf.rs) / webpage - DOCUMENTS

## Questions and assistance

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Thank you for your attention!