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IRREGULARITIES and RESULTING OBLIGATIONS

Seminar organized in cooperation with ICPAC

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ΚΥΠΡΙΑΚΗ ΔΗΜΟΚΡΑΤΙΑ

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INTRODUCTION

The general budget of the European Union and the protection of its financial interests lies within the responsibilities of the European Commission (EC)

Irregularities, their prevention, detection and reporting is thus a major concern of the Commission

General and sectoral rules have been adopted by EC for dealing with the various concerns on Irregularities

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DEFINITIONS

IRREGULARITY is …

"Any infringement of a provision of Community law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the European Union by charging an unjustified item of expenditure to the general budget"

Council Reg. 2988/95

whereas an Economic Operator is …

"Any entity taking part in the implementation of assistance from the Funds, with the exception of the Member States acting within the prerogatives of a public authority"

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DEFINITIONS

FRAUD is …

"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 European Communities or budgets managed by, or on behalf of, the European Communities,

> 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"

It is the component of intentional deceit that distinguishes "fraud" from "irregularity"

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DEFINITIONS

SUSPECTED FRAUD is …

"An irregularity which has been subject of a primary administrative or judicial finding giving rise to the initiation of proceedings at national level in order to establish the presence of intentional behavior, in particular fraud…"

whereas Primary administrative or judicial finding is …

"a first written assessment by a competent authority, either administrative or judicial, concluding on the basis of specific facts that an irregularity has been committed, without prejudice to the possibility 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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LEGAL FRAMEWORK

IRREGULARITIES LEGAL FRAMEWORK

STRUCTURAL FUNDS		SOLIDARITY FUNDS				EEA & NORWEGIAN FINANCIAL MECHANISM	AGRI-CULTURAL FUNDS
ERDF / ESF / CF	EFF	RETURN FUND	EUROPEAN REFUGEE FUND	INTEGRATION FUND	EXTERNAL BORDERS FUND	REGULATION ON THE IMPLEMENTATION OF FMS	EAGF/EAFRD IMPLEMENTATION REGULATIONS
1083/2006 1828/2006 846/2009	1198/2006 498/2007	575/2007	573/2007	2007/435	574/2007		

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MS RESPONSIBILITIES

The Member State is responsible for ensuring sound financial management – specifically by:

- preventing, detecting and correcting irregularities
- recovering amounts unduly paid
- notifying these to the EC
- keeping EC informed of the progress of administrative and judicial proceedings

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On finding an Irregularity

The *Member State* shall:

- In the first instance bear the responsibility for investigating irregularities
- Make the financial corrections required
  - By cancelling all or part of the public contribution to the Operational Programme
  - Funds released may be reused until 31 December 2015 for the Operational Programme concerned but not for the operation(s) that were the subject of the correction

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On finding an Irregularity

The *Commission* itself may identify an irregularity – in that case:

- EC makes the financial corrections required
  - By cancelling all or part of the public contribution to the Operational Programme
  - By applying a flat rate or extrapolated correction depending on the nature (systemic or not)
- MS may re-use the funds concerned (subject to the limitations mentioned above)

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RECOVERING of amounts

When amounts unduly paid to a beneficiary cannot be recovered, the Member State is responsible for reimbursement of amounts lost when it is established that the loss has been incurred as a result of fault or negligence

Option of Recovery vs. Withdrawal Method

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RECOVERY vs. WITHDRAWAL

RECOVERY METHOD

MEMBER STATE MAY OPT TO LEAVE IRREGULAR AMOUNT IN PAYMENT CLAIM UNTIL RECOVERED BY BENEFICIARY

***RISK OF*: NOT BEING RECOVERED ON TIME AND NO TIME FOR INCLUSION OF NEW EXPENDITURE IN CLAIM**

WITHDRAWAL METHOD

MEMBER STATE MAY OPT TO WITHDRAW IMMEDIATELY THE IRREGULAR EXPENDITURE FROM PAYMENT CLAIM

***RISK OF*: BEAR COST OF NON-RECOVERY FROM BENEFIACIARY**

BUT: ENSURE INCLUSION OF NEW EXPENDITURE IN PMT CLAIM

IN CYPRUS THE "WITHDRAWAL METHOD" IS FOLLOWED

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REPORTING Requirements

- **INITIAL REPORTING of irregularity to OLAF**
  - **Mandatory information**
    - The fund, the programme, the project
    - The infringed provision
    - The first information
    - The practices employed
    - The manner
    - The amount concerned
  - **Within 2 months from the end of every quarter**
  - **Exceptions to reporting may apply**

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REPORTING Requirements

- **Reporting of FOLLOW - UP**
  - **On progress of administrative and judicial proceedings and amounts recovered**
    - The amounts recovered and to be recovered
    - Reasons for non-recovery may be requested
  - **Within 2 months from the end of every following quarter**

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Reporting *Exceptions*

Cases for which there is no obligation of being reported:

- Cases where the "EC amount" of the irregularity is less than 10.000
- Cases where the irregularity is solely due to the bankruptcy of the beneficiary
- Cases brought to the attention of the IB/MA/CA by the beneficiary voluntarily and before detection by themselves
- Cases detected and corrected by the IB/MA/CA before inclusion of expenditure in Payment Claim submitted to EC

HOWEVER, CASES OF SUSPECTED FRAUD MUST BE REPORTED!

Above exceptions relate specifically to Structural Funds & the Cohesion Fund. Similar provisions (with a few differences) apply for rest of Programmes.

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URGENT cases for Reporting

Cases for which immediate reporting is required:

Any irregularities discovered or supposed to have occurred, where it is feared that they may very quickly have repercussions outside its territory or they show that a new malpractice has been employed

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IN PRACTISE …

- **Irregularities may be detected**
  - **By any body involved in the**
    - **Implementation**
    - **Management**
    - **Audit of the co-financed projects**
  - **At any time during a project's lifecycle**
- **Time of detection is considered:**
  - **Point of primary administrative / judicial finding**

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IN PRACTISE …

- **Amount is not a criterion for defining an irregularity; it can be from cents to millions!**

- **Nature of irregularity:**
  - **One-off**
  - **Systemic**

The time of detection, the amount and the nature of the irregularity determine the treatment of each case

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The case of CYPRUS

Body responsible for the collection and submission of irregularities to OLAF is:

- **Certifying Authority for Structural Funds, Cohesion Fund and European Fisheries Fund**
- **Certifying Authority for Solidarity Funds**
- **Certifying Authority for the EEA & Norwegian Financial Mechanisms**
- **Payment Organisation for EAGF and EAFRD**

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The case of CYPRUS

Body responsible for the collection and submission of irregularities to OLAF – *tasks*:

- **Receives irregularity cases from all bodies involved**
- **Prepares Irregularity Reports for every case at end of every quarter**
- **Submits to AFCOS**
  - **Antifraud Co-ordination Structure**
  - **Contact point of MS and OLAF**
- **From AFCOS to OLAF within 2 months from quarter end**

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The case of CYPRUS

BODIES INVOLVED IN CO-FUNDED PROJECTS

CERTIFYING AUTHORITY
>> Structural Funds
>> Solidarity Funds
>> EEA & Norway FM
>> CAPO

AFCOS

OLAF
European Anti-fraud Office

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Examples of Irregularities

Irregularities to date

Structural / Cohesion Funds

- **Irregular amount: €690.000 (€538.000 EU part)**
- **Main reason: Ineligible expenditure (nature)**

Solidarity Funds

- **Irregular amount: €40.000 (€30.000 EU part)**
- **Main reason: Ineligible expenditure (nature)**

No irregularities for EEA / Norwegian FMs to date

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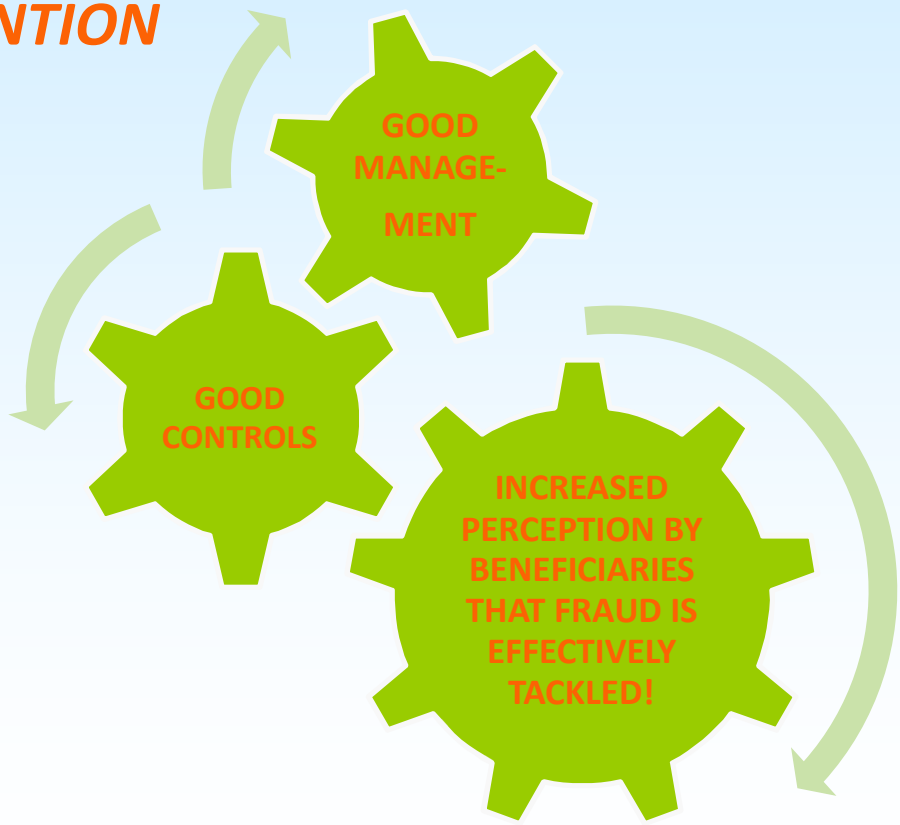
Lessons learnt

ESSENTIAL COMPONENTS FOR IRREGULARITY AND FRAUD PREVENTION



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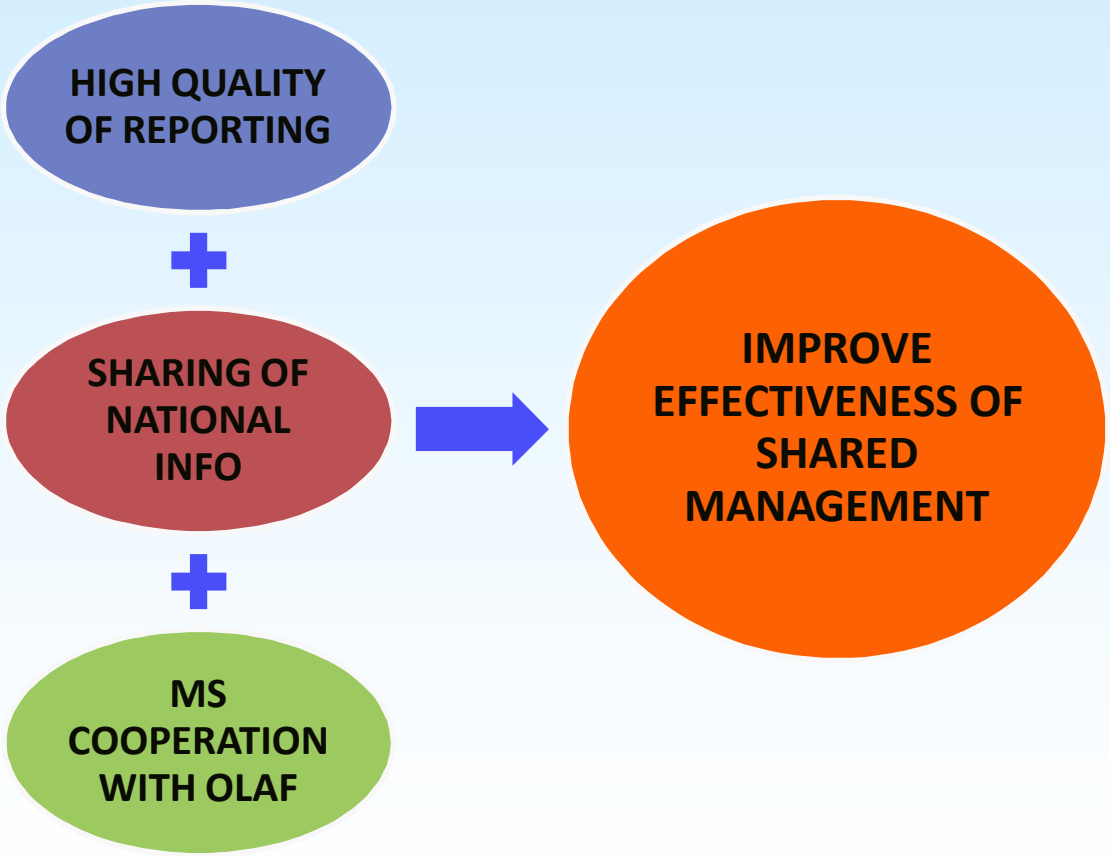

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