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GUIDANCE ON THE TREATMENT OF IRREGULARITIES

Introduction

The following **revised** guidance sets out the action to be taken to identify, record, report, follow-up and clear irregularities involving EU Structural Funds and reflects changes introduced by Commission Regulation (EC) No 2035/2005. Please note that 1681/94 is only amended not replaced. Key changes in this amending Regulation include:

1. Increase in reporting threshold (€4k - €10k) – (paragraph 10).
2. Requirement to report in EUROS and the exchange calculation rate – (paragraph 11)
3. Requirement to report cases above the threshold even if payment was not made – (paragraph 14).
4. INTERREG cases to be reported through authorities in Member State where irregular expenditure occurred.

Definition

1. The definition of an ‘irregularity’ in Structural Funds terms is very wide and includes any administrative or financial mismanagement that comes about either by act or by omission whether or not there is an actual loss of funds.
2. For the purposes of identifying and reporting irregularities the following definitions (as detailed in Article 2 of Regulation 2035/05) will apply;

“Irregularity” means 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 Communities or budgets managed by them, by charging an unjustified item of expenditure to the Community Budget

“Suspected Fraud” means an irregularity giving rise to the initiation of administrative and/or judicial proceedings at notional level in order to establish the presence of intentional behaviour, in particular fraud, such as us referred to in Article 1(1), point (a), of the Convention on the protection of the European Communities’ financial interests.

Fraud can only be classed as suspected fraud at the outset of an enquiry. Cases should be indicated as suspected fraud if the details suggest intent to deceive or misappropriate funds. Poor management, financial control or record keeping is not suspected fraud.

“bankruptcy” means insolvency proceedings within the meaning of Article 2 point (a) of Council Regulation 1346/2000 Annex A: -

- *winding up by or subject to the supervision of the Court;*
- *Creditors’ voluntary winding up (with confirmation by the Court);*
- *Administration;*
- *Voluntary arrangements under insolvency legislation; and*
- *Bankruptcy or sequestration*

“economic operator” means any natural or legal person or other entity taking part in the administration of assistance from the Funds, with the exception of Member States exercising their prerogatives as a public authority.

“primary administrative or judicial findings” means 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.

3. The contents of EC Regulation 1260/99 and 438/2001 and other documents produced by the European Commission for the 2000-2006

round of Programmes make it clear that any failure to comply with the Regulations and or any breakdown of management and/or control systems should be treated as an irregularity whether or not the irregularity itself involves any loss or potential loss of funds.

4. In applying this to the management of projects part funded by Structural Funds, an irregularity should be taken as meaning *any breach of the conditions of grant set out in the terms of the Letter of Offer*. Such breaches will include action on the part of those receiving grant or failure by them to take action.

5. Examples of irregularity will therefore include:

- Evidence gathered at a monitoring visit indicating that items of ineligible expenditure have been included in the calculation of grant previously claimed and paid.
- Evidence that a project has failed to implement the European Commission's requirements on publicity or procurement.
- A qualified annual audit certificate received for a project – if appropriate.
- Evidence that an Implementing Body has not set up adequate systems to control and monitor the grant awarded to projects.
- See **Annex 4** for further examples

NB: Simple calculation errors by projects when preparing claims are now regarded by the Commission as 'Administrative Errors' – not an irregularity – and therefore do not need to be reported.

6. The extent of the definition of irregularity means that Implementing Bodies must have systems and resources in place to detect, record, report and follow-up cases. This must involve not only those responsible for monitoring/inspection and financial administration but also all those engaged in delivering Structural Funds Programmes.

Identification of Irregularities

7. Whilst not underestimating the difficulties inherent in tackling this work the normal conduct of business provides plenty of mechanisms for identifying irregularities including:

- monitoring visits;
- notification by grant recipients;
- detailed checking of grant claims and progress reports;
- Article 10 verification visits;
- local knowledge (press/members of the public)
- National and Commission audit reviews.

8. Implementing Bodies should ensure that irregularities identified are recorded in enough detail to allow them to check whether there is any evidence of a breakdown of systems or a need to take action to correct emerging systemic weaknesses in the programme management and control arrangements they have put in place.

Details of identified systemic weaknesses should be reported to Internal Audit and the relevant Paying and Managing Authorities.

Reporting of Irregularities

9. The requirements for reporting irregularities stem from EC Regulation 1681/94 as amended by Regulation (2035/2005) which continues to apply to the 2000-2006 round of Programmes. To comply with this

Regulation Implementing Bodies must report on a regular basis those irregularities, which involve the overpayment or loss of EU grant equivalent to (from January 2006) €10,000 or more.

10. Irregularities involving loss or overpayment of grant of the equivalent of Euros 10,000 (E.U. Element) or more must be reported to DFP using the appropriate Structural Funds Irregularity Report Form for each individual case. This will be issued as an Excel Document with the commissioning e-mail every quarter (line by line guidance for completing this proforma can be found at **Annex 1**) of this note. With the potential for financial correction, which may have an impact of the budget of a Department, Irregularities documentation must be signed off at **Head of Branch** level and copied to the departmental Head of Audit for information.

11. All irregularity returns must now be reported in EUROS, not National Currency (i.e. Sterling) whether payment was made or not. The amount recorded under Section 5 – Financial Details, shall be converted into Euro as follows: -

Sections 5.1.1 - 5.1.4 (Project Financing) – Convert into Euro using the Commission monthly accounting rate in force for the month in which the irregularity return is completed for submission to DFP EUD.

Section 5.1.5 – Convert into Euro using the Commission monthly accounting rate in force for the month in which the irregularity was detected before any payment was made.

Sections 5.2.2 - 5.2.6 (Irregular Expenditure) – Where payment has been made convert into Euro using the Commission monthly accounting rate in force for the month in which the payment was made.

If more than one payment has been made use the rate for the month in which the last payment was made. *Section 3.4 of Structural Funds Irregularity Report Form refers for date(s). Details of monthly accounting rates can be found on the following Commission website -*

http://ec.europa.eu/budget/inforeuro/index.cfm?fuseaction=currency_historique¤cy=GBP&Language=en

Sections 5.3.1 - 5.3.8 (Recovery of irregularly paid monies) –

Convert into Euro using the same rate as for previous section 5.2.2 - 5.2.6 (to ensure consistency of Euro / Sterling value).

12. Member States are required to report each calendar quarter any new irregularities and the action taken to clear them. For the UK this report is collated by DTI. DFP is responsible for supplying DTI with the necessary information relating to Structural Funds in Northern Ireland.
13. If an Implementing Body has evidence that an irregularity involves fraud, theft or corruption or there is a suspicion of fraud, theft or corruption details should be reported in section 6.0 in the quarterly return to DFP. In such cases the Implementing Body must also take action in line with Departmental Fraud Policy and Chapter 5 of the Government Accounting Northern Ireland (GANI).
14. Cases where an irregularity with a value above the new threshold, has been identified before any funds have been paid **MUST** be reported to DFP quarterly. This is to allow the Commission (OLAF) to record prevented irregularities.
15. As part of the closure process all irregularities must be reported to the Commission therefore cases below de minimus level (€4,000 before January 2006, €10,000 after that date) must be recorded by each Department/Implementing Body. To facilitate this process DFP will request a copy of these records, from Implementing Bodies, at the end of each calendar year. While Implementing Bodies may devise their own local records for this purpose an example of the type of record, which is appropriate, can be found in **Annex 2**.
16. Exemption for bankruptcy – if the only cause of the irregularity is the bankruptcy of the project (i.e. unable to deliver requirements of the Letter of Offer) it is exempt from the reporting requirement. If, however,

there was an irregularity *before* the bankruptcy occurred it must be reported.

Following up and Clearing Irregularities

17. Good working practice would dictate clearance of irregularities in a timely fashion. Based on previous guidance the European Commission has indicated that irregularities should in the main be cleared **within six months of being identified**. Responsibility for investigating and resolving irregularities rests with the Implementing Bodies. If irregularities are not cleared within 6 months a separate detailed report will be sought by European Division, DFP on likely timescales.
18. Implementing Bodies must take action to follow-up and correct all recorded irregularities, recover grant where appropriate and take steps to ensure the irregularity is not repeated. Details of follow-up and clearance action must also be included in quarterly reports to European Division, DFP using the form attached at **Annex 3**. Follow up reports must use the same project title as used in the original irregularity report and *only* the EU reference number provided by DFP must be used (i.e. not the project reference number). These reports must also be copied for information to your Head of Internal Audit.
19. Failure to recover the grant paid may result in a net loss to the Department and the general presumption is that recovery will be pursued in all cases. If recovery proves to be impossible, or the Implementing Body wishes to recover less than the full amount due the matter must be referred to DFP European Division, using the article 5.2 (now Article 1(5)[b] as amended by Regulation 2035/2005) processes at paragraph 22 below. DFP will forward documentation to OLAF via DTI.
20. Member States are required to provide a quarterly report on irregularities. At the end of each calendar quarter DFP, when asking

for details of new irregularities, will send Implementing Bodies a list of all the irregularities they have reported to date which remain uncleared. Implementing Bodies will be asked to update these records with details of follow-up and clearance action as appropriate. The updated details will be used by DFP to inform DTI who will make the necessary Member State reports to the Commission.

21. Updates on each case are mandatory and should be in proportion to the amount of grant involved and the seriousness of the irregularity. Systemic irregularities will clearly warrant more explanation than one-off individual errors in record keeping which may have led to a failure of systems within a single project. The update report should include the following information:

- Action taken since the last report including details of action taken to prevent recurrence;
- The amount of any funds recovered and separately, the amount expected to be recovered; and
- Details of any legal proceedings.

22. Please see below an extract from BERR's Guidance Note which details the information required in an Article (5)¹ Report (Quarterly Update) in order for OLAF to mark a case as closed:-

It is essential in follow-up reports that resolve an irregularity that you state what has been done to remedy the problem, to prevent recurrence and, when recovery has been made by whatever means, WHAT YOU HAVE DONE TO RE-USE THE RECOVERED FUNDS I.E. RE-ALLOCATED TO OTHER PROJECTS IN THE PROGRAMME AND STATE THAT THE AMOUNT RECOVERED HAS BEEN DEDUCTED FROM SUBSEQUENT PAYMENT REQUEST OR REQUESTS TO THE COMMISSION. Where possible, the date of the Payment Request should be included. Unless this information is included in reports OLAF will NOT close the case on their database.

23. Reduced or abandoned cases

If recovery of grant has been or is to be reduced or abandoned – a full explanation known as an Article 5.2 (now Article 1(5)[b] as amended by Regulation 2035/2005) report is required particularly if the EU budget is being asked to share any loss. The minimum information required for an Article 1(5)[b] report is as follows:

- a copy of the award decision;
- date last payment made to the beneficiary or recipient;
- a copy of the recovery order
- where applicable, a copy of the document attesting to the final beneficiary or final recipients insolvency;
- an outline description of the measures taken by the Member State, with and indication of their dates, to recover the relevant amounts.

24. In addition to the recording and reporting described above, Article 8 of Regulation 438/2001 requires a running record to be kept of the amounts of grant recovered and the amounts to be recovered, which have resulted from irregularities. The record should be maintained so as to show the year in which the irregularity, which has given rise to the recovery, was first identified. A summary of this record will be required by DFP as part of Implementing Bodies contributions to the fourth quarter report on irregularities described in paragraph 10 above.

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Guidance on the completion of the Pro-forma for Irregularities

1.0 Description of Operation

- 1.1** Indicate under which round of funding the irregularity occurred. (All N.I. Programmes are Objective 1). Provide the name of the Community Initiative if applicable.
- 1.2** Provide the name of the Programme / Community Initiative that the Irregularity refers to.
- 1.3** Provide the Priority and Measure details within the Programme / Community Initiative.
- 1.4** Enter the name or title that the project is known by.
- 1.5** Tick the box to indicate under which Fund the Project received assistance.

2.0 Information leading to Irregularity

- 2.1** Please tick any of the boxes with descriptions if they are relevant. If not, provide details under “Other” and refer to the list at Annex A on the proforma to indicate the detection method. If you use code 999 OTHER METHODS, please give a description. The Commission will then allocate a code.
- 2.2** Indicate the date on which the first information leading to a suspicion of an irregularity was received. For example in the case of a telephone call (denunciation code 302 – Annex A refers), the date of the telephone conversation.

3.0 Type of Irregularity

- 3.1** Please tick any of the boxes with descriptions if they are relevant. If not, provide details under “Other” and refer to the list at Annex B on the proforma to indicate the type of the irregularity. Again if you use code 999 OTHER METHODS, please give a description. The Commission will then allocate a code.
- 3.2** Describe the practices employed in as much detail as possible.
- 3.3** This applies to cross border/transnational operations (participation in the programme by more than one Member State) as well as cases where the project is an international firm participating in Social Fund actions such as investment projects or training courses in more than one Member State.

3.4 Date(s) on which, or dates between which irregularity took place. If this information is not known please indicate. (**EXCHANGE RATES APPLY ALSO**)

4.0 **Natural and Legal persons involved**

4.1 For reasons of confidentiality and data protection, care must be taken when naming individuals where an organisation is being investigated. Generally it will be the organisation not individuals being investigated although trustees may be pursued for recovery.

4.2 State the name and address of the Legal Person involved in the irregularity; this **MUST** be completed.

Note: In order to comply with rules guaranteeing the confidentiality of Personal Data – do not refer to the names of physical or legal persons other than under **4.1 & 4.2**

5.1 **Financial Details**

5.1.1 Indicate the total amount of funding to the project in question. The figure must equal the sum of point's **5.1.2, 5.1.3 & 5.1.4**

5.1.2 State the Community share (i.e. EU element) of the amount under **5.1.1**

5.1.3 State the National share (i.e. Member State – Public Sector element) of the amount under **5.1.1**

5.1.4 State the National share (i.e. Member State – Private Sector element) of the amount under **5.1.1**

5.1.5 Please indicate the amount in question. This is the amount that would have been at risk had the irregularity not been detected.

Please note: If the irregularity involved monies actually paid out, you should complete all the following sections, alternatively if the irregularity was discovered before any monies were paid out only complete section 5.1 and move to section 6.0.

5.2 **Irregular Expenditure**

The amounts detailed in this section should be the amount at risk i.e. the amount that is irregular.

5.2.1 Briefly state the nature of the irregular expenditure e.g. Salaries, consultancy, equipment etc.

5.2.2 Indicate the total amount of the expenditure considered to be irregular. The figure must equal the sum of points **5.2.3, 5.2.4 & 5.2.5**

- 5.2.3** State the Community share (i.e. EU element) of the amount under **5.2.2** (must be above the €10,000 (from January 2006) threshold).
- 5.2.4** State the National share (i.e. Member State – Public Sector element) of the amount under **5.2.2**
- 5.2.5** State the National share (i.e. Member State – Private Sector element) of the amount under **5.2.2**
- 5.2.6** Of the irregular expenditure detailed at **5.2.1** how much has not been paid.
- 5.2.7** If further expenditure has been suspended state YES and give the amount, or state NO and explain why not?

5.3 **Recovery of irregularly paid monies**

- 5.3.1** Indicate the total amount to be recovered. The figure must equal the sum of points **5.3.2, 5.3.3 & 5.3.4**
- 5.3.2** State the Community share (i.e. EU element) of the amount under **5.3.1** to be recovered.
- 5.3.3** State the National share (i.e. Member State – Public Sector element) of the amount under **5.3.1** to be recovered.
- 5.3.4** State the National share (i.e. Member State – Private Sector element) of the amount under **5.3.1** to be recovered.
- 5.3.5** Indicate the total amount recovered to date. The figure must equal the sum of points **5.3.6, 5.3.7 & 5.3.8**
- 5.3.6** State the Community share (i.e. EU element) of the amount under **5.3.5** recovered to date.
- 5.3.7** State the National share (i.e. Member State – Public Sector element) of the amount under **5.3.5** recovered to date.
- 5.3.8** State the National share (i.e. Member State – Private Sector element) of the amount under **5.3.5** recovered to date.
- 5.3.9** Provide an assessment of the likelihood of recovery and give as far possible the underlying reasons e.g. Unlikely due to bankruptcy.

6.0 **Additional observations**

Provide a brief summary of the irregularity and any additional information you think is relevant (e.g. if suspected fraud please give details in this section). Finally, the completed form must be signed of at Head of Branch level (or equivalent).

IRREGULARITIES RECORD -**IMPLEMENTING BODY:****PROGRAMME/CI NAME:**

Project Name/ID	Total grant committed €	Priority/ Measure/ Fund	Irregularity type (1)	Grant at risk €	Date identified	Date cleared	Person handling

Notes:

(1) Use the following codes to indicate the type of irregularity:

- | | |
|--|---|
| 101 - Absence of account | 601 - Failure to respect deadlines |
| 102 - Incorrect forms | 602 - Operation prohibited during measure |
| 103 - Falsified accounts | 605 - Absence of declaration or late return |
| 104 - Accounts not present | 606 - Incompatible cumulation of aid |
| 199 - Other cases of irregular accounts | 607 - Absence of evidence required |
| 207 - Request for aid incorrect or incomplete | 608 - Refusal of control |
| 208 - Request for aid falsified | 609 - Refusal of payment |
| 209 - Request for aid false | 611 - Several requests for same subject |
| 210 - Supporting documents missing/incomplete | 612 - Failure to respect other regulations |
| 211 - Incorrect supporting documents | 614 - Infringement of rules concerning public works |
| 212 - False supporting documents | 699 - Other irregrs concerning right to aid |
| 213 - Falsified supporting documents | 810 - Action not carried out |
| 299 - Other cases of irregularity documents | 811 - Action not completed |
| 324 - Measure not eligible for aid | 812 - Action not carried out in accordance with rules |
| 325 - Non eligible expenditure | 822 - Expenditure not related to period in which action carried out |
| 401 - Incorrect identity | 823 - Expenditure not legitimate/cost benefit not credible |
| 402 - Non-existent operation | 831 - Overfinancing (inc. double counting) |
| 403 - Misdescription of use | 832 - Insufficient contribution from Member State/Private Sector |
| 404 - Irregular resumption of production | 840 - Revenue not declared |
| 405 - Irregular termination, sale or reduction | 998 - Not indicated |
| 406 - Non-termination, uprooting not carried out | 999 - Other irregularities (to be indicated on return) |
| 407 - Failure to respect quotas, thresholds | |
| 408 - Operator not having required quality | |
| 409 - Absence of identification, of marking | |
| 491 - Other irregularities by the beneficiary | |
| 499 - Other irregularities by the operator | |

UPDATE ON EXISTING CASE

Name of Project: _____

Ref No (UK Case No. or EUD Ref No.): _____

a) Total amount originally notified as Irregular on Irregularity Proforma: _____

b) EU element originally notified on Irregularity Proforma: _____

c) Total amount that has been recovered to date: _____

d) EU element that has been recovered to date: _____

e) Total amount that has still to be recovered (a less c): _____

f) EU element that has still to be recovered (b less d): _____

Has Assistance been cancelled? Yes/No

If yes outline the Proposed Reallocation of Assistance:

Comment on progress to date and estimated date of completion of case:

*** If there is an amount shown at point e) above, then it is a mandatory requirement that an update is completed for any ongoing cases. ***

Signed: _____ Date: _____

Organisation: _____

COMMON TYPES OF IRREGULARITY (this list is not exhaustive)

Ineligible costs

Use of ineligible costs to obtain grant
Inflated project costs
Activities already funded from other sources
Charging costs to a project already used in another Structural Funds project
Fees, overhead costs not allowed under the regulations
Incorrectly calculated overheads/staff salaries

False claim/false supporting documents – suspected fraud

Incorrectly completed supporting documents – often down to poor managements skills

Misleading description of project – project not proceeding as in the application

Non-existing or incorrect match funding

Administrative errors – other than simple calculation errors

Incorrectly completed claim form
Failure to advertise contracts in the Official Journal
Failure to maintain records – lack of clear audit trail
Awarding contracts/committing funds after programme closure date
Claiming for work done before start of programme

Breach of Terms and Conditions of Letter of Offer

Failure to respect deadlines
Lack of supporting documents to support expenditure
Claiming for expenditure not defrayed
Retention of documents