

## **Irregularities (Internal regulations of partner country) February 2012**

### **Questions raised**

- Can the partner countries report and handle irregularities according to their existing regulations, which they use also for EU and EEA/Norwegian funds?
- Does Switzerland need to be consulted case by case regarding the measures to be taken?
- Are "EU-Guidelines for determining financial corrections to be made to expenditure co-financed by the structural funds or the cohesion fund for non-compliance with rules on public procurement" applicable for the Swiss Contribution?
- Can funds recovered due to irregularities be reallocated? What is the procedure?

### **Legal Basis**

#### *Framework Agreements*

- National Coordination Units<sup>1</sup> (NCU) ensure that any irregularities are immediately reported to Switzerland.
- The competent authorities in the partner countries shall investigate alleged causes of irregularity.
- Proven cases of fraud shall be prosecuted according to existing regulations.
- In case of irregularities caused in the framework of the tender process, Switzerland is entitled to stop reimbursements, to instruct the NCU to stop payments, to ask repayment of illegitimately paid reimbursements at any stage of the individual project/Block grant or Programme (all together hereinafter – Project). The reasons shall be communicated in writing.

#### *Project Agreements: Irregularities Clause*

- In case of irregularities, wilfully or negligently caused by the NCU or the Intermediate Body, regarding the execution of the Project Agreement and annexes thereto, Switzerland is entitled to stop reimbursements immediately, instruct the NCU to stop payments from the Swiss Contribution, ask repayment of illegitimately paid reimbursements at any stage of the Project. SDC or SECO shall immediately and in written form communicate the reasons for their respective instructions to the NCU, the Intermediate Body and the other actors involved.
- Irregularities are notably considered to be all actions or non-actions that are aimed at the illegitimate obtainment and/or usage of the Contribution - notably fraud, misappropriation, misrepresentation, breach of contractual duties, breach of duty of care and the like.
- In some Project Agreements: The NCU shall be responsible to Switzerland for the reporting on irregularities in accordance with the European Commission Regulations 1681/1994 (amended by 2035/2005) and the future amendments to the said legislation.

### **Switzerland's position**

#### **1. Reporting in case of Irregularities**

Irregularities within the Swiss Cooperation Programme are to be reported according to the bilateral Framework Agreement, the respective Project Agreements and the partner state's legislation.

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<sup>1</sup> In some cases: Financial Control Department of Ministry of Finance

## **1.1 Content and procedure of reporting**

There are **two options** for reporting on irregularities depending on the formulation in the Project Agreement:

- a. Irregularities are reported immediately and in accordance with the national law (corresponding to the regulations used for the EU / EEA / Norwegian Funds).  
Expected minimum content of the reports:
  - Description of the irregularity
  - Amount related to the irregularities
  - Financial consequences
  - Judicial and administrative procedures instituted
  - Measures taken to prevent recurrence
  - Additional information may be requested by Switzerland upon receipt of the report
  
- b. The NCU informs Switzerland in accordance with the European Commission Regulations 1681/1994 (amended by 2035/2005) and the future amendments to the said legislation. According to this Regulation, the partner state reports on a quarterly basis on:
  - Irregularities which have been the subject of a primary administrative and/or judicial finding (for details see Article 3 of Regulations 1681/1994 (amended by 2035/2005))
  - Procedures instituted following all irregularities previously notified, including the amounts which have been, or are expected to be, recovered; the judicial and administrative procedures instituted with a view to recovering sums wrongly paid and to imposing sanctions etc. (for details see Article 5 of Regulations 1681/1994 (amended by 2035/2005))
  - Additional information may be requested by Switzerland upon receipt of the report

## **1.2 Reporting only upon request**

According to the Framework Agreements, any irregularities shall be reported. However, unless otherwise requested by Switzerland, no report on irregularities is needed in the following two cases:

- Case 1: The irregularity relates to sums of less than 4'000 CHF;
- Case 2: The NCU or the Paying authority detects and corrects the irregularity before the payment to the Intermediate Body or Executing Agency is made and before the expenditure concerned is included as eligible costs in an interim or annual Project report.

The records on these irregularities are held by the partner state and their withdrawal from the reimbursement request or recovery through the Paying Authority is ensured. Upon request from Switzerland, information on such irregularities is provided within 15 working days.

If one of the following conditions applies, the irregularity must be reported immediately even if the irregularities are below 4000 CHF and/or detected before inclusion in an interim or annual report:

- The suspected or discovered irregularity involves allegations of an act or omission which constituted a criminal offence, such as corruption, fraud, bribery or embezzlement.
- The suspected or detected irregularity poses a threat to the successful completion of the Project, due to the amounts in proportion to the total eligible Project cost, their gravity or any other reason.
- The suspected or detected irregularity attracted the attention of the media.

- The suspected or detected irregularity relates to sums of more than 50'000 CHF
- The Intermediate body or Executing agency disagrees with decision of the NCU or the Paying authority on irregularity correction for suspected or detected irregularity related to sums of more than 4'000 CHF.

### **1.3 Exchange rate to be applied for reporting on irregularities**

The financial parts of the irregularity report are to be presented in local currency. If the expenditure related to the irregularity has been included in a reimbursement request, the local currency shall be converted into Swiss Francs at the exchange rate used for the reimbursement request in question.

### **2. Financial consequences**

- Regarding irregularities reported to Switzerland, the partner state suggests financial corrections according to its national legislation. In case of irregularities related to public procurement, the EU "Guidelines for determining financial corrections to be made to expenditure co-financed by the structural funds or the cohesion fund for non-compliance with rules on public procurement" (COCOF 07/0037/03-EN) are applicable.
- The decision regarding financial corrections suggested by the partner state is taken by Switzerland. Within 45 days Switzerland officially informs the NCU about decision on reported irregularity. If Switzerland disagrees with the suggested financial consequences, it contacts the partner state in order to consult about the financial consequences of a reported irregularity.
- As stated in the Standard Project Agreement, in case of irregularities Switzerland is entitled to: stop reimbursements immediately, instruct the NCU to stop payments from the Swiss Contribution, ask repayment of illegitimately paid reimbursements at any stage of the Project. This right exists independently from the partner state's internal regulations. As stated in the Standard Project Agreement, Switzerland shall immediately and in written form communicate the reasons for its respective instructions.
- The irregularity amount identified and reported during the implementation of the Project could be withdrawn from the next or current reimbursement request.
- As stated in the Standard Project Agreement, if the partner state and Switzerland disagree (f.ex. regarding the amount to be repaid by the partner state to Switzerland due to irregularities), the dispute shall be solved by diplomatic means.

### **3. Reallocation of funds due to detected irregularities**

- In principle, the grant amount as well as other sources of funding remains the same as specified in the Project Agreement.
- The amounts to be reallocated may not be used for the same operation(s) that were subject of correction.
- In case of systemic irregularities or irregularities related to management or control systems, the amounts reallocated may not be used for the same operation(s), Project subject to correction.
- There must be a reasonable justification for the need of such amounts within another operation, proved by the Executing Agency or Intermediate Body.
- For the reallocation of amounts, Swiss approval is obligatory and the decision to approve/allow the reallocation or not is taken on the Swiss side.
- If according to point 1.2 of this Guide no report of the irregularity was needed, the amendments to the Project budget (i.e. also the reallocation of amounts) can be made according to the procedures foreseen in the Project Agreement. After 14 June 2012, reallocation is only possible within the same Project.