

Irregularities (Internal regulations of partner country)

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Questions raised

- Can the partner countries report and handle irregularities according to their existing regulations, which they use also for EU and EEA 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

- NCUs¹ 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 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.

1.1 Content and procedure of reporting

There are **two options** for reporting on irregularities **depending on the formulation in the project agreement**:

¹ In some cases: Financial Control Department of Ministry of Finance

- 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 wrongfully paid
 - 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. Therefore, there is in general **no threshold** for reporting on irregularities. However, unless otherwise requested by Switzerland and if the following two cumulative conditions are fulfilled, no report on irregularities is needed:

- Condition 1: The irregularity relates to sums of less than 10'000 Euro;
- Condition 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 in an interim or annual project report.

In the following cases the project interim reports should provide information about these already solved irregularities (under "physical progress"):

- The detected irregularity resulted in administrative or judicial penalties.
- The detected irregularity results in the necessity to change the project agreement.
- The detected irregularity attracted the attention of the media.
- The detected irregularity could entail an important "lessons learnt" for Switzerland.

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.
- Switzerland has a right of non-objection. If Switzerland disagrees with the suggested financial consequences, it contacts the partner state within 45 days 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.
- 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 recovered due to irregularities

- In principle, the grant amount as well as other sources of funding remain 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 activity, project or even programme subject to correction.
- There must be a reasonable justification for the need of such amounts within another operation, proved by the project promoter.
- 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.
- After 14 June 2012, reallocation is only possible within the same project or programme.