

# **Reporting on irregularities and transfer of recoveries**

## **1. Reporting on irregularities**

### **Definition of an irregularity**

Irregularities are notably considered to be all actions or non-actions that are aimed at the illegitimate obtainment and/or usage of the Swiss contribution – notably fraud, misappropriation, misrepresentation, breach of contractual duties, breach of duty of care and the like.

Supplement: The afore-mentioned definition stems from the “Framework Agreement”, however the participants of the Mid-term Review meeting held on November 16, 2011, mutually agreed that the “... usage of the Swiss contribution...” shall be read as “... usage of the funds of the Swiss-Czech Cooperation Programme...”.

The Intermediate Body<sup>1</sup> checks for irregularities and reports them immediately to the NCU and NAA. NAA reports to Switzerland.

### **1.1. Irregularities that have to be reported immediately to Switzerland**

NAA shall immediately report to Switzerland any irregularities discovered or suspected to have occurred when they:

- a) involve allegations of an act of omission which constituted a criminal offence, such as corruption, fraud, bribery or embezzlement; or
- b) pose an immediate threat to the successful completion of the project, due to the amounts in proportion to the total project cost, their gravity or any other reason; or
- c) involve amounts larger than 50,000 CHF which have totally or at least partly been included in the respective interim report submitted to Switzerland and subsequently totally or partly disbursed from the Swiss contribution.

Any procedures initiated following these immediately reported cases of irregularities and any important changes resulting from these actions will be included in the regular reports to Switzerland (see the following point no. 1.2.).

### **1.2. Regular reports on new irregularities and on the measures taken regarding already reported irregularities**

Regular reports shall include a description of suspected and actual cases of irregularities and a review of procedures initiated following all irregularities previously reported, and important changes resulting from these actions. The regular reporting involves just the cases of irregularities where the amounts have totally or at least partly been included in the respective interim report submitted to Switzerland and subsequently totally or partly disbursed from the Swiss contribution and the amounts of irregularities are larger than 4,000 CHF.

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<sup>1</sup> In case that no Intermediate Body is set (NGO BG) or the Intermediate Body is the Ministry of Finance, the responsible body is the Central Finance and Contracts Unit, which is part of the NCU.

These reports shall be done on six months basis. The NAA sends them to Switzerland six weeks after the end of the six months reporting period.

Should there be neither new irregularities nor development with regard to the procedures to report in the period, the NAA shall inform Switzerland within the period set out in the previous paragraph.

### **1.3. Irregularities that should be reported only upon request of Switzerland**

Irregularities involving amounts less than 4,000 CHF are not subject to regular reporting to Switzerland, nonetheless the obligations on reporting of irregularities by Intermediate Bodies/NGO BG Intermediary and enforcements of their recovery to the NCU pursuant to national law are maintained. The records on these irregularities and their development are still held by the Czech Republic, particularly by the NAA, and their regular recovery through the Paying Authority to Switzerland is ensured.

The Czech Republic shall, upon request from Switzerland, provide information on such irregularities within 15 days.

### **1.4. Irregularities that do not need to be reported to Switzerland**

Any irregularity (excluding point 1.1., a and b) which has been detected and solved before the inclusion of the related amounts in the respective interim report and their disbursement from the Swiss contribution does not need to be reported to Switzerland as there is no risk for Switzerland regarding any irregular use of the Swiss contribution.

In these cases the irregularity is detected in the stage when:

- the Executing Agency (referred hereinafter as Project promoter) financed the concerned amounts from its own budget; or
- the funds have already been pre-financed from the State budget of the Czech Republic, but not yet included in the respective interim report neither disbursed from the Swiss contribution

and is as such solved on the level of the national legislation of the Czech Republic.

These irregularities are not reported to Switzerland, nonetheless the NAA maintains all records on these irregularities and they are also still subject to legal proceedings by the national authorities.

### **1.5. Exchange rate to be applied for reporting on irregularities**

The amounts suspected to be irregular are calculated in CZK.

- If the amount related to the suspected irregularity has already been included in the respective Interim report submitted to Switzerland and subsequently disbursed from the Swiss contribution, the respective exchange rate of the Interim report, which the irregularity is related to, shall be used in the Report on irregularities.
- If the amount related to the suspected irregularity has already or at least partly been included in the respective interim report submitted to Switzerland and subsequently totally or partly disbursed from the Swiss contribution, the respective exchange rate of

the interim report, which the irregularity is related to, shall be used in reports on irregularities.

- If the amount related to the suspected irregularity has not been included in any Interim report and in the case of the NGO BG, provided that the Immediate report of a serious irregularity for the SDC / SECO<sup>2</sup> is processed, amounts in CHF shall be converted from the amounts in CZK by applying exchange rate used in the Immediate report of serious irregularity. This exchange rate corresponds with the IS Viola exchange rate in force on the day before the last working day of the last month, previous to the month when the Immediate report of serious irregularity is being sent to the SDC / SECO.
- If the amount related to the suspected irregularity has not been included in any Interim report and in the case of the NGO BG, provided that it the regular Report on irregularities for the SDC / SECO<sup>3</sup> is processed, amounts in CHF shall be converted from the amounts in CZK by applying exchange rate used in the Report on irregularities. This exchange rate corresponds with the IS Viola exchange rate in force on the day before the last working day of the last month of the respective reporting period.
- If the amount related to the suspected irregularity has not been included in any Interim report and in the case of the NGO BG, provided that neither the regular Report on irregularities nor the Immediate report of a serious irregularity for the SDC / SECO<sup>4</sup> are processed, amounts in CHF shall be converted from the amounts in CZK by applying the IS Viola exchange rate in force on the day before the last working day of the last month of the respective reporting period, when the Report on irregularities (the internal document of the NCU where exchange rate is not specified) is being sent to the AFCOS.
- In other specific cases amounts in CHF shall be converted from the amounts in CZK by applying the IS Viola exchange rate in force on the day when the irregularity was received on the NCU bank account for recoveries.

Exchange rate differences resulting from these operations are covered by the state budget.

## **2. Transfer of recoveries**

### **2.1. Overview of set-up related to irregularities within the Swiss – Czech Cooperation Programme**

The rights of Switzerland concerning irregularities are fixed in the bilateral Framework Agreement. Annex 2, Point 4 of the Agreement states "Switzerland is entitled to stop reimbursements immediately, to instruct the NCU to stop payments from the Swiss Contribution and to ask repayment of illegitimately paid reimbursements at any stage of the project. The reasons for the respective instructions shall be communicated in writing to the NCU and other partners involved." These rights are also reflected in the Project Agreements.

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<sup>2</sup> The Central point AFCOS shall immediately report about any irregularity if its issue is: a suspicion of crime, suspicion of unsuccessful fulfillment of the project or the amount of discrepancy is greater than 50 000 CHF. However, if it has been already reported in any regular report on such irregularity before, the relevant ex-change rate is used in the Immediate report of serious irregularity.

<sup>3</sup> If the amount on suspicion of irregularity is greater than 4 000 CHF report on irregularities is processed in two steps. Firstly, an internal document of the NCU for the AFCOS, where an amount is stated just in CZK, is proceeded. Secondly, on the basis of this internal document the regular Report on irregularities for the SCO / SECO which sets the exchange rate CZK / CHF, is proceeded.

<sup>4</sup> The regularReport on irregularities for the SDC / SECO, which sets exchange rate of CZK / CHF for each reported irregularity, is not proceeded if the amount on suspicion of irregularity is lower than 4 000 CHF or if the error is detected and resolved prior to including appropriate amounts to the IR and its reimbursement (except in several cases of note 2).

The Implementation Agreements, which are issued by the Intermediate Bodies for each project / programme / fund<sup>5</sup>, define the legal framework for the implementation. As the Swiss contribution enters into the State budget, they are governed by the related legislation. The core acts are Act on Budgetary Rules (Act No. 218/2000/ Coll.), Act on Financial Control (Act No. 320/2011/ Coll.), Tax Code (Act No. 280/2009 Coll.) and Procurement Law (Act No. 137/2006 Coll.).

These acts define, among others, the authorities responsible for examining suspicions on irregularities, their verification and also empower these authorities to impose recovery of funding and inflict a fine provided that the irregularity is confirmed.

These authorities (Tax Offices, Financial Directorates, General Financial Directorate or the Office for Protection of Economic Competition) are absolutely independent of the NCU/Intermediate Bodies and act and decide in their own competence. They perform control activities or accept reporting on suspicions on irregularities from the grant providers (NCU/Intermediary/Intermediate Bodies) as well as other entities. Therefore, the decision on the result of the irregularity examination as well as the deadlines for taking such decision, are completely out of the NCU or Intermediate Bodies' control. It can be expected that examination of suspicions on irregularities and management of recoveries will be carried on even after completion of projects or the Programme itself.

The grant provider (NCU/Intermediary/Intermediate Body) is obliged to examine any suspicion of irregularity with exception when the grant provider rejects the suspicion of irregularity as clearly unjustified.

If the grant provider suspects a breach of budgetary discipline as stated in the Act on Budgetary Rules or suspects a criminal offence in any phase of solving irregularities, the grant provider shall refer the matter to a competent body to conduct further investigation.

In case of suspicion concerning a breach of budgetary discipline as stipulated in the Act on Budgetary Rules, the grant provider shall forward this suspicion to the relevant Tax Office for further investigation.

In case the grant provider assumes there has been a breach of conditions stated within the grant (stated in the implementation contract or/and by the national legislation), and/or there is a failure to comply with the defined purpose of the grant which (or any part of it) has not been disbursed yet, the grant provider is entitled to refuse any disbursement of such a grant or its part. The amount of undisbursed part of the grant will be set in accordance with the table (the table is an annex to every implementation contract issued for each project) concerning the amounts of grant recovery for breach of budgetary discipline. It is a given percentage for each breach concerning public procurement and conditions stated under the grant. The percentage of recovery is stated in accordance with the EU rules for such recoveries (public procurement) and in accordance with the nature of conditions stated under the grant. The grant provider shall always take into account the seriousness of the breach and its impact on fulfilling of the conditions and/or scope of the grant. The grant provider shall inform the Project

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<sup>5</sup> In case of the NGO BG, where no Intermediate body is set, the Implementation Agreement was issued by the Central Finance and Contracts Unit to the NGO BG Intermediary.

Promoter/Intermediary/Intermediate Body<sup>6</sup> as well as the competent Tax Office about such a taken measure. The Project Promoter/Intermediary/Intermediate Body may appeal against such a measure. The grant provider shall inform the relevant Tax Office about the appeal decision, if appropriate.

In case the grant provider assumes, based on its control findings, the Project Promoter/Intermediary/Intermediate Body has breached any condition

- a) stated in the implementation contract; or
- b) stated in the table (the table is an annex to every implementation contract issued for each project) concerning the amounts of grant recovery for breach of budgetary discipline in cases when the recovery is lower than the total amount of the grant (it is a given percentage of each recovery of the grant counted from the value of public procurement/activity/whole grant depending on the breach) and
- c) when correction of such a breach is possible within the period given for implementing corrective measures,

the grant provider shall require the Project Promoter/Intermediary/Intermediate Body to implement corrective measures, and shall set a time period for such measures to be implemented. The grant provider shall inform the relevant Tax Office without delay about issuing such a requirement and about the reaction to it. No irregularity is considered to be occurred to the extent to which the Project Promoter/Intermediary/Intermediate Body has implemented the corrective measures.

In case the grant provider assumes, based on its control findings, the Project Promoter/Intermediary/Intermediate Body failed to comply with the conditions stated in the implementation contract or/and by the national legislation in cases where no correction can be made, the grant provider shall require the Project Promoter/Intermediary/Intermediate Body to return the whole grant or its part within the given period. The grant provider shall inform the relevant Tax Office about issuing of such a requirement and also about the reaction to this requirement without delay. The amount proposed in the requirement to return the grant or its part must be set within given percentage of each recovery of the grant (counted from the value of public procurement/activity/whole grant depending on the breach). No irregularity is considered to be occurred related to the extent to which the Project Promoter/Intermediary/Intermediate Body implemented the recovery of the grant or its part.

Irregularity is considered to have occurred related to the extent to which the Project Promoter/Intermediary/Intermediate Body failed to implement the corrective measures, or failed to return the grant or its part, and the grant provider shall refer the suspicion of irregularity to the relevant Tax Office for further investigation.<sup>7</sup>

The Tax Office decides whether the Budgetary Rules were infringed or not. The irregularity is considered to be confirmed not later than 12 months since the decision of the Tax Office has come into force provided that no further steps (appeal, request for waiver) from the Project Promoter have been taken.

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<sup>6</sup> The conditions stated in the Implementation contract can be breached on all levels of implementation – on the level of the Project Promoter, the Intermediary or the Intermediate Body.

<sup>7</sup> The above stated rules on solving a breach of budgetary discipline apply also in projects where the implementation contracts were issued before the amendment to the Act on Budgetary Rules came into force.

After the decision of the Tax Office comes into force, the Project Promoter can use his right to **appeal** to the respective Financial Directorate against the positive decision of the Tax Office or to request the General Financial Directorate for a full or partial **waiver** of the recovery connected with irregularity in the 12 months statutory period (beginning with the date when the decision of the Tax Office came into force).

The General Financial Directorate, which is independent of the NCU and superior to all Tax Offices and Financial Directorates, makes the final decision. If the Project Promoter requests for waiver in the 12 months statutory period, the irregularity is considered to be confirmed at the moment the decision of the General Financial Directorate came into force.

To sum up, the irregularity is fully confirmed once the decision on waiver comes into force or the statutory time period to claim for waivers has lapsed. To this point the irregularity is still considered as a suspicion on the irregularity and the final amount of the irregularity may vary.

At the moment of confirmation of the respective irregularity mentioned above, Switzerland shall be immediately informed by the NCU and asked to issue a Debit Note so that the amount can be transferred back to the Swiss account.

In respect of economical and efficient transfers, the minimum amount to be transferred in one tranche is 750 CHF. The amounts recovered to the NCU below the limit of 750 CHF are held on the NCU bank account for recoveries until the limit is reached.

Amounts related to irregularities shall be received at the NCU bank account for recoveries held in CZK. The Debit Note is issued in CHF.

## **2.2. Overview of procedures related to transfer of recoveries within the Swiss – Czech Cooperation Programme**

There are basically three procedures defined by the moment the suspicion on irregularity was identified:

### ***2.2.1. Suspicion on irregularity is identified and its entire amount relates to the payment(s) in Interim report(s) already approved by Switzerland. The whole amount was pre-financed by the Intermediate Body from the State budget and was/will be disbursed from the Swiss contribution.***<sup>8</sup>

If the entire amount related to the irregularity has already been included in the respective interim report(s) submitted to Switzerland and subsequently disbursed from the Swiss contribution, the whole amount of irregularity shall be refunded to the Swiss side.

In the meantime, when the suspicion on irregularity is examined by the independent authorities (Tax Office, Financial Directorates, General Financial Directorate or Office for Protection of Economic Competition), the NAA will report on suspected irregularity to Switzerland, however, further payments to the project from the Swiss

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<sup>8</sup> Except for the NGO BG which is not pre-financed from the State budget. In this case the whole grant is deposited on a special CZK Paying Authority account. From this deposited amount one advance payment was provided to the NGO BG Intermediary. This advance payment is continually supplemented to the Intermediary on the basis of incurred expenditures included in interim report which has to be approved from the Swiss side.

side will not be stopped as the Interim reports will not involve any expenditures connected with the suspected irregularity.

Provided that the national authorities confirm the final amount of the irregularity, the Paying Authority will recover the funds received from the Project Promoter and transfer them to Switzerland.

#### **The NGO BG as a special case**

If the entire amount related to the irregularity has already been included in the respective interim report(s) submitted to Switzerland, approved from the Swiss side and disbursed from the grant deposited on a special CZK Paying Authority account, the whole amount of irregularity shall be refunded to the Swiss side.

In the meantime, when the suspicion on irregularity is examined by the independent authorities (Tax Office, Financial Directorates, General Financial Directorate or Office for Protection of Economic Competition), the NAA will report on suspected irregularity to Switzerland, however, further payments to the project from the grant deposited on a special CZK Paying Authority account will not be stopped as the interim reports will not involve any expenditures connected with the suspected irregularity.

Provided that the national authorities confirm the final amount of the irregularity, the Paying Authority will recover the funds received from the NGO BG Intermediary and transfer them to Switzerland.

#### ***2.2.2. Suspicion on irregularity is identified and its amount relates partly to the payments(s) in Interim report(s) already approved and disbursed by Switzerland, but partly remain to be claimed by the Intermediate Body/NGO BG Intermediary in subsequent Interim report(s). The amount was in whole or partly pre-financed by the Intermediate Body from the State budget.***

If the amount related to the irregularity has already partly been included in the respective interim report submitted to Switzerland and subsequently disbursed from the Swiss contribution in the requested amount, the appropriate amount of irregularity shall be recovered and transferred to the Swiss side. The rest of the amount, not refunded from the Swiss funds, will be transferred back into the State budget which pre-financed the funds to the Project promoter.

In the meantime, when the suspicion on irregularity is examined by the independent authorities (Tax Office, Financial Directorates, General Financial Directorate or Office for Protection of Economic Competition), the NAA will report on suspected irregularity to Switzerland. Further payments related to the project will be claimed for in the Interim reports with funds concerned with the suspicion on irregularity as eligible expenditures (by the time the irregularity is not confirmed by the responsible authority, it is just suspicion, which moreover could be in some cases ruled out only after the end of project or disbursement deadline of programme. In such cases, the exclusion of related expenditures from Interim reports would mean loss of the Promoter's and/or Intermediate Bodies' right to claim eligible expenditures.)

Switzerland will reimburse the funds claimed for in Interim reports to the Paying Authority. However, the financial flows to the State budget in the amount of suspected irregularity claimed in the relevant Interim report will be suspended at the national level (Paying Authority) as long as the suspicion is either confirmed, or ruled out or waived.

Provided that the irregularity is ruled out or waived, the Paying Authority will release the payments received from Switzerland immediately to the State budget which pre-financed Promoter's expenses. At the same time the funds (if any) from the State budget which the Promoter has not received yet because of the suspicion of the irregularity will be released to him.

Should the irregularity be confirmed, the Paying Authority will recover the misused funds received from the Promoter, transfer them to Switzerland and release the payments suspended at the national level to the State budget which pre-financed Promoter's expenses.

If the amount of irregularity was just partly pre-financed from the State budget, the Paying Authority will add the amount retained on the national level to the misused funds received from the Promoter and recover the total amount related to irregularity back to Switzerland.

#### **The NGO BG as a special case**

If the amount related to the irregularity has already partly been included in the respective interim report submitted to Switzerland, approved from the Swiss side and subsequently disbursed from the grant deposited on a special CZK Paying Authority account in the requested amount, the appropriate amount of irregularity shall be recovered to the Swiss side. The rest of the amount, covered by the rolling advance provided to the NGO BG Intermediary, but not included in any interim report yet, shall decrease the next payment disbursed from the grant deposited on a special CZK Paying Authority account.

In the meantime, when the suspicion on irregularity is examined by the independent authorities (Tax Office, Financial Directorates, General Financial Directorate or Office for Protection of Economic Competition), the NAA will report on the suspected irregularity to Switzerland. Further Interim reports with funds suspected on irregularity will be submitted as eligible expenditures.

Switzerland will confirm the payment approvals submitted with the Interim reports. However, the financial flows to the NGO BG Intermediary in the amount of suspected irregularity claimed in the relevant Interim report will be suspended at the national level (special CZK Paying Authority account) as long as the suspicion is either confirmed, or ruled out or waived.

Provided that the irregularity is ruled out or waived, the Paying Authority will release the funds retained on special CZK Paying Authority account immediately to the NGO BG Intermediary.

Should the irregularity be confirmed, the Paying Authority will add the amount retained on the national level to the misused funds received from the NGO BG Intermediary and transfer the total amount related to the irregularity back to Switzerland.

***2.2.3. The breach of law or conditions stated by the Swiss side was identified, however no funds from the Swiss contribution were misused as no money has been claimed yet by the Intermediate Body and thus no funds were disbursed.***

If the amount related to the irregularity has not been included in any interim report submitted to Switzerland, the whole amount of irregularity shall be recovered to the State budget which pre-financed the funds to the Project promoter. In these cases (excluding point 1.1., a and b) no reporting to the Swiss side is required as no funds from the Swiss contribution were misused due to the precautionary steps at the national level.

If the amount related to the irregularity has not been included in any interim report submitted to Switzerland, however as the amount of irregularity is related to the whole subsidy, the Paying Authority will recover the funds received from the Project Promoter and transfer them to Switzerland.<sup>9</sup> In these cases (excluding point 1.1., a and b) no reporting to the Swiss side is required as no funds from the Swiss contribution were misused due to the precautionary steps at the national level.

**The NGO BG as a special case**

If the amount related to the irregularity has not been included in any interim report submitted to Switzerland, the whole amount of irregularity covered by the rolling advance provided to the NGO BG Intermediary shall decrease the next payment disbursed from the grant deposited on a special CZK Paying Authority account.

### 3. List of abbreviations

NGO BG	Block grant for Non-governmental organisations
CHF	Swiss Francs
CZK	Czech Crowns
NAA	National Audit Authority
NCU	National Coordination Unit
AFCOS	Central point for Anti-Fraud Coordinating Structure

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<sup>9</sup> The whole amount might be/do not need to be prefinanced from the state budget.