

Irregularities Guideline

**The EEA Financial Mechanism
&
The Norwegian Financial Mechanism
2004-2009**

Approved: 26 April 2006

**The EEA Financial Mechanism & the Norwegian Financial Mechanism
2004-2009**

Irregularities

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1. Responsibilities of the Beneficiary States

In accordance with Article 6.2 of the Rules and Procedures and this guideline, the Beneficiary States shall make every effort possible to prevent, detect, and nullify the effect of any cases of irregularities. Similarly, any suspected and actual cases of irregularities shall be investigated promptly and efficiently, and properly remedied. Irregularities that affect or prejudice the implementation of the EEA Financial Mechanism and/or the Norwegian Financial Mechanism, as well as any measures taken by competent national authorities to prevent, investigate, or remedy such irregularities, shall be reported to the Financial Mechanism Office (FMO) in accordance with this guideline.

Unduly paid amounts shall be recovered and reimbursed in accordance with the Grant Agreements.

2. Definition of an Irregularity

An irregularity shall mean an infringement of:

- the legal framework governing the EEA Financial Mechanism and/or the Norwegian Financial Mechanism, referred to in Article 1.2 of the Terms and Conditions (Annexed to the Grant Agreement),
- any provision of European Community law, or
- any provision of the national law of the Beneficiary State,

when this infringement would affect or prejudice any stage of the implementation of the EEA Financial Mechanism and/or the Norwegian Financial Mechanism in the Beneficiary State, in particular, but not limited to, the implementation and/or the budget of any type of project assistance (including any sub-projects) financed by the EEA Financial Mechanism and/or the Norwegian Financial Mechanism, for instance by unjustified or disproportionate expenditure, or by reducing or losing revenue under the project.

3. Reporting on Irregularities

3.1 Body responsible for the reporting of irregularities

The Focal Point shall be responsible to the FMO for the reporting on irregularities in accordance with this guideline. The Focal Point may, with the approval of the FMO,

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delegate the task of preparing and submitting reports on irregularities to an appropriate national authority.

3.2 *Irregularities that have to be reported immediately*

Each Beneficiary State shall immediately report to the FMO any irregularities discovered or supposed to have occurred when they:

- involve allegations of an act or omission which constitutes a criminal offence under the national legislation of the Beneficiary State, such as corruption, fraud, bribery or embezzlement,
- involve amounts larger than 50.000 euros, or
- 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.

This report shall as far as possible contain the information required in Article 3.3 of this guideline.

3.3 *Regular reports on new irregularities*

During the two months following the end of each quarter, each Beneficiary State shall send the FMO a description of suspected and actual cases of irregularities.

As far as possible, the Beneficiary State shall provide the following details:

- (a) the name and the FMO registration number of the project in which the irregularity took place,
- (b) the total amount of support for the project and its distribution between the EEA Financial Mechanism, the Norwegian Financial Mechanism and other sources of funding,
- (c) the provision or provisions which have been infringed and a description of the irregularity, including the practices employed when committing the irregularity,
- (d) the nature and amount of the expenditure wrongfully incurred by the irregularity, or, in cases where no payment has been made, the amounts which would have been wrongly paid had the irregularity not been discovered,
- (e) the period during which, or the moment at which, the irregularity was committed,
- (f) the manner in which the irregularity was discovered, including the date and source of the first information leading to suspicion that an irregularity was in evidence,
- (g) the national authorities or bodies which drew up the official report on the irregularity, and the date on which the official report was drawn up,

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- (h) the financial consequences, the suspension of any payments and the possibilities of recovery,
- (i) where appropriate, any other countries involved,
- (j) the identity of the natural and/or legal persons involved, save in cases where such information is of no relevance in combating irregularities on account of the character of the irregularity concerned,
- (k) any procedures, including any criminal investigation, initiated because of the irregularity and the stage reached in this procedure, including the stage of recovery,
- (l) measures taken or envisaged to prevent the recurrence of the case of irregularity already detected.

Where some of the information is not available, and in particular that concerning the practices employed in committing the irregularity and the manner in which it was discovered, the Beneficiary State shall as far as possible supply the missing information when forwarding subsequent quarterly reports of irregularities under Article 3.4 of this guideline.

Should there be no new irregularities to report in the period, the Beneficiary State shall inform the FMO of this within the time limit set out in the first paragraph of this article.

3.4 *Reports on the measures taken regarding already reported irregularities*

During the two months following the end of each quarter, and together with each quarterly report on new irregularities, each Beneficiary State shall report to the FMO of the procedures initiated following all irregularities previously reported, and of important changes resulting from these actions. Reference to any previous report of the irregularity shall be made.

The report shall, inter alia, include:

- (a) the amounts which have been, and/or are expected to be recovered,
- (b) the interim and precautionary measures taken by the Beneficiary State to safeguard the recovery of sums wrongly paid,
- (c) the judicial and administrative procedures initiated with a view to recover sums wrongly paid and to impose sanctions,
- (d) the reasons for any abandonment of recovery procedures and any abandonment of criminal prosecutions or other procedures for imposing sanctions. The FMO shall as far as possible be notified before a decision on such abandonment is taken,
- (e) the administrative or judicial decisions, or the main points thereof, concerning the termination of recovery procedures and/or procedures for imposing sanctions,

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(f) the measures taken in order to prevent and avoid similar irregularities,

Should there be no development with regard to the procedures that need to be reported under to this article, the Beneficiary State shall inform the FMO of this within the time limit set out in the first paragraph.

3.5 *Irregularities that should be reported only upon request*

The Beneficiary States do not have to report the irregularity when:

- the error or negligence is detected before payment and does not result in any administrative or judicial penalty, or
- the irregularity relate to sums of less than 4,000 euros.

The Beneficiary State shall, upon request from the FMO, provide information on such irregularities within 15 days.

3.6 *Exchange rate to be applied*

Amounts referred to in reports on irregularities shall be in euros. Beneficiary States which do not have euro as their currency shall convert the amounts of the irregularities into euro, applying the rates in force on the day before the last working day of the last month of the respective reporting period. These rates are published in the C series of the Official Journal of the European Communities.

4. Confidentiality

The Beneficiary States and the FMO shall take all necessary precautions to ensure that the information they exchange within the framework of this guideline remains confidential. The information referred to in this guideline may not be sent to persons other than those in the Beneficiary States, within the EEA Financial Mechanism or the Norwegian Financial Mechanism (including auditors and monitoring agents), and within the European Community, whose duties require that they have access to it, unless the Beneficiary State supplying it has expressly so agreed.

The paragraph above shall not impede the use of the information referred to in this guideline in any legal actions or proceedings subsequently instituted for non-compliance with the rules governing the EEA Financial Mechanism and/or the Norwegian Financial Mechanism, including the Grant Agreement. The Focal Point shall be informed immediately and without delay of such use.

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Where a Beneficiary State notifies the FMO that a natural or legal person whose name has been communicated to the FMO pursuant to this guideline proves on further inquiry not to be involved in any irregularity, the FMO shall immediately inform all those to whom it disclosed that name.

5. Role of the FMO

The FMO shall maintain appropriate contacts with the Beneficiary States concerned for the purpose of supplementing the information supplied within the framework of this guideline. The FMO will process the information received and recommend to the Financial Mechanism Committee and/or the Norwegian Ministry of Foreign Affairs what actions are appropriate.