



Photo: Reuters

Report on cases of financial irregularities in 2018

Foreign Service Control Unit

Norwegian Ministry of Foreign Affairs

Foreign Service Control Unit: Report on cases of financial irregularities in 2018

1. Introduction

The Foreign Service Control Unit deals with cases involving breaches of Foreign Service rules, unless responsibility for following up a specific type of irregularity has been assigned to a different unit in the Ministry of Foreign Affairs. The Foreign Service Control Unit also oversees cases involving breaches of rules in subordinate agencies.

2. Zero tolerance

The Ministry practises zero tolerance of financial irregularities and other misuse of Ministry funds. This principle must be observed by all Foreign Service employees, suppliers of goods and services, and organisations and others that manage funds allocated by the Ministry. For more details, see the policy memorandum *Zero tolerance of financial irregularities in practice*, which was updated in December 2018.

As a general rule, misused funds must be repaid to the Ministry. The same applies in cases where it cannot be documented that funds have been used in accordance with an agreement. The Ministry will consider reporting cases of this kind to the police if it is likely that a criminal offence has been committed.

3. Dealing with cases of suspected financial irregularities

In connection with the revision of the policy memorandum *Zero tolerance of financial irregularities in practice*, the *Guidelines for dealing with suspected financial irregularities in the Foreign Service* were also updated (see annexes).

Most of the cases dealt with by the Foreign Service Control Unit have to do with possible misuse of grant funds. Suspected financial irregularities are normally reported to the Foreign Service Control Unit by the relevant unit in the Foreign Service or by the organisation that has received the funds. If the Foreign Service Control Unit finds reason to investigate the matter more closely, it is registered as a case of suspected financial irregularities.

As a rule, further disbursements to the recipient will be suspended until the case has been investigated and adequate risk-reducing measures have been implemented.

Investigations are usually carried out by the Foreign Service Control Unit, in close cooperation with the affected units in the Foreign Service. In some cases, external experts are engaged to investigate a case or perform a forensic audit. The Ministry of Foreign Affairs has framework agreements with five different companies that provide such services. In addition, the Foreign Service Control Unit engages external legal experts to follow up legally complex cases. If the organisation that has received the grant funds initiates its own investigation, the Foreign Service Control Unit usually waits until the results of this are available before considering its response.

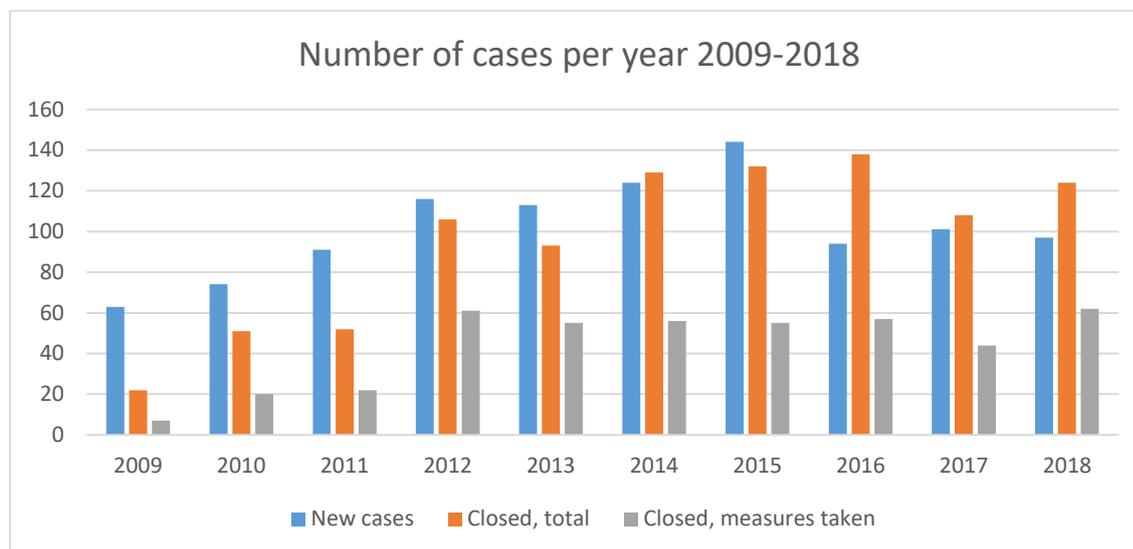
In most cases of financial irregularities, the grant recipient agrees to repay the misused funds. If, however, the Foreign Service Control Unit's claim for repayment is contested, legal proceedings may be initiated to recover the funds.

A case will be closed if the investigation concludes that a response from the Ministry is not required. In cases where the Ministry claims repayment, the case will not be closed until the funds have been repaid.

Information on cases that have required a response from the Ministry before being closed is published on a quarterly basis on the Government website (in Norwegian only).

4. Trends in the number of cases

Since the Foreign Service Control Unit was established in 2007, it has registered 1087 cases of financial irregularities and closed 975 cases. A response was required in 381 of the closed cases – most often a claim for the repayment of funds. A total of NOK 115.2 million has been repaid during this period. In addition to funds managed by the Ministry, the figures also include cases involving funds managed by Norad and Norec.¹



The number of new cases rose steadily until 2015, but has fallen somewhat since then. This is probably partly because the Foreign Service Control Unit has introduced more stringent criteria for registering a case as a case of suspected financial irregularities: clearer indications that there has been a financial irregularity are now required before a case is registered. In addition, there is naturally some variation in the number of cases from year to year. It is therefore not possible to draw any conclusions regarding other reasons for the decline in the number of new cases.

5. Cases dealt with in 2018

In 2018, the Foreign Service Control Unit registered 97 new cases. In the same period, 124 cases were closed. A response was required in 62 of these cases, all of which fell under programme area 03 – international development assistance. In 2018, a total of NOK 18.7 million was repaid. In addition to funds managed by the Ministry, the figures also include cases involving funds managed by Norad and Norec.

	Carry-over from 2017	New	Closed, total	Closed, measures taken	In progress 31 Dec 2018
Ministry	99	43	78	26	64
Norad	36	50	43	36	43
Norec	4	4	3	0	5
	139	97	124	62	112

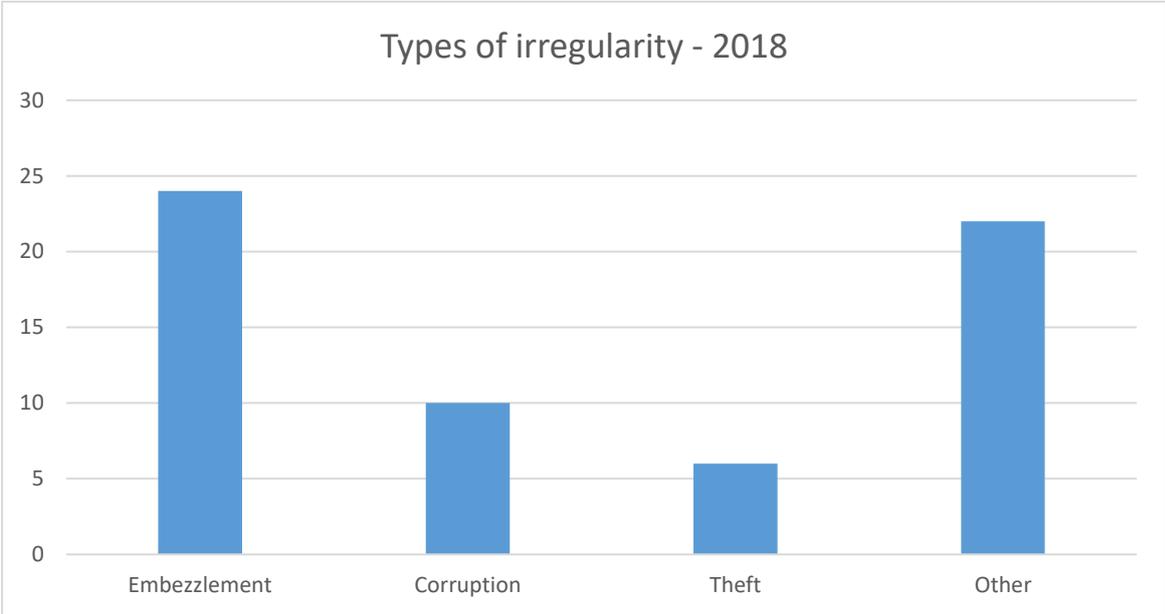
Norad responded in a much higher proportion of cases than the Ministry. This is probably largely because Norad and the Ministry have had different practices for registering suspected cases of

¹ Up until 2017, the figures also included cases involving funds managed by Norfund.

financial irregularities. The Ministry has tended to register most cases as they are received, whereas Norad conducts some preliminary investigations before registering a case.

5.1 Types of irregularities

In 2018, 24 of the 62 cases in which a response was required involved embezzlement, while 10 involved corruption and 6 involved theft. The category ‘other’ includes inadequate reporting and funds used for purposes other than those covered by the agreement in question. There were 22 cases of this kind in 2018.



It should be noted that the figure shows the number of cases of the various types of irregularities that were brought to light and in which a response was required. However, this is not necessarily a true reflection of the relative prevalence of the various types of irregularities. This is partly because some types of irregularities are easier to detect than others.

5.2 Type of organisation/grant recipient (agreement partner)

In 2018, 50 of the 62 cases in which a response was required involved Norwegian non-governmental organisations (NGOs). In most of these cases, the NGO’s local partner was responsible for the irregularities, but in a few cases, the local employees of the Norwegian NGO were involved.

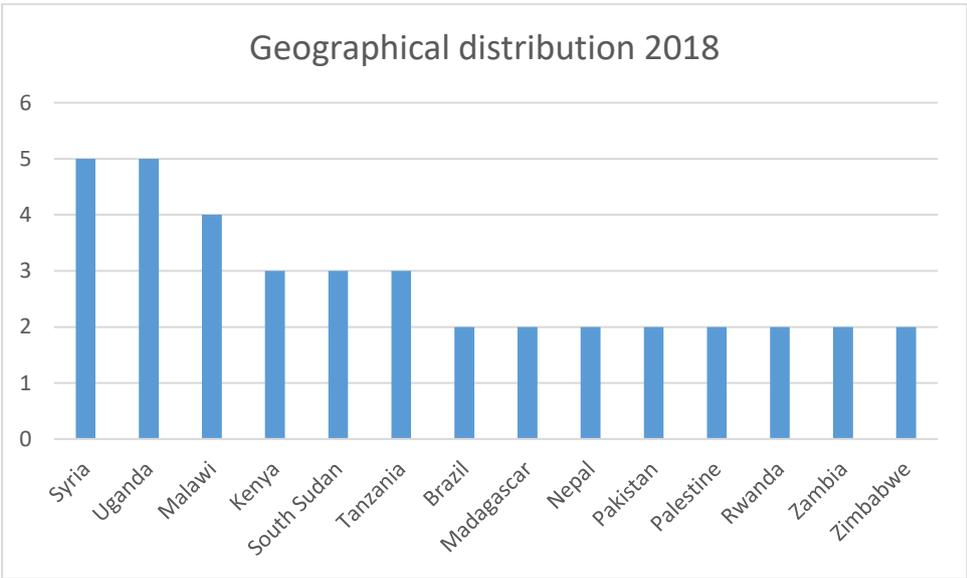


It cannot be concluded from these figures that Norwegian NGOs are more susceptible to financial irregularities than others. Experience has shown that the Norwegian NGOs have good systems for detecting and reporting possible irregularities. The quality of the systems used by other recipients of Norwegian support is more variable. When carrying out controls in the time ahead, it will be important to pay greater attention to these recipients.

In 2018, none of the cases that required a response before being closed involved multilateral organisations. Support channelled through multilateral organisations is provided largely in the form of general contributions or softly earmarked thematic funding under Norway’s high-priority, long-term plans. These organisations have independent internal audit systems or investigative units, and the Foreign Service Control Unit will only register cases of irregularities if they involve projects funded by Norway. In the governing bodies of UN agencies, Norway has worked to promote the independence, transparency and capacity of the agencies’ internal audit systems, including their capacity for dealing with financial irregularities. The major UN agencies publish information about financial irregularities and this information is included in reports to the governing bodies.

5.3 Geographical distribution

In 2018, Syria, Uganda and Malawi were the countries with the largest number of cases in which a response was required. The fact that there were a relatively large number of cases in Syria is a new development. Uganda and Malawi have been among the countries with many cases registered by the Foreign Service Control Unit in previous years. An overview of the countries in which a response was required in two or more cases in 2018 is given below.



The differences between the countries may be due to a number of factors, such as differences in crime levels and other forms of risk. The extent of Norwegian support and the way it is provided is probably also relevant in this context. The degree to which it is possible to control the use of funds is another important factor. It may be particularly difficult to detect financial irregularities in countries affected by crisis and war.

For more information (in Norwegian only) on individual cases in 2018 that required a response before they were closed, see the quarterly reports on the Government website (regjeringen.no).

[Rapporter om økonomiske mislighetssaker - regjeringen.no](http://Rapporter_om_økonomiske_mislighetssaker_-_regjeringen.no)

ZERO TOLERANCE OF FINANCIAL IRREGULARITIES IN PRACTICE

1. Introduction

The Ministry of Foreign Affairs has a policy of zero tolerance of financial irregularities in connection with the use of funds allocated to the Ministry by the Storting (Norwegian parliament). The principle of zero tolerance applies to both operating funds and grant funds.

The Ministry seeks to reduce risk and prevent financial irregularities in all parts of the organisation. Zero tolerance means that the Ministry will respond to any deviation from the rules and conditions that form the basis for the use of Ministry funds, including agreements relating to operational activities and grant management. The form of response will be adapted to the nature and severity of the irregularity.

The principle of zero tolerance of financial irregularities also applies to the use and management of funds that the Ministry has allocated (through an allocation letter or by other means) to third parties, including its subsidiary agencies – Norad and Norec (formerly FK Norway). It also applies to grants given by Norfund.

Allocation letters and agreements, debit authorisations and letters of assignment regarding the transfer of administrative responsibility must all refer to the principle of zero tolerance of financial irregularities, and contain provisions stating that cases of suspected financial irregularities are to be reported to the Ministry and followed up in accordance with the *Guidelines for dealing with suspected financial irregularities in the Foreign Service*.

All grant recipients must also undertake to show zero tolerance of financial irregularities in connection with funds provided by Norway, and to report any deviations from this principle.

As far as procurement contracts are concerned, there are provisions in Norway's public procurement legislation to ensure that contracts are not awarded to tenderers that for specified reasons do not fulfil the criteria for eligibility. This means that in certain situations there may be a right or a duty to exclude a tenderer if there are grounds for doing so.

The policy of zero tolerance for financial irregularities must be implemented in line with current applicable legislation relating to the use of allocated funds and the current Ethical Guidelines for the Public Service.

2. Financial irregularities and breaches

The term financial irregularities is used in this document as a general term for financial practices or conduct that are illegal or that involve misuse of Ministry funds.

Examples of financial irregularities include corruption, embezzlement, misuse of funds, fraud, theft, accounting violations, favouritism or nepotism, or other abuse of position in connection with the funds provided by Norway. Corruption and other forms of economic crime are regulated by the Norwegian Penal Code. The rules and guidelines for employees in the public service also contain provisions on financial irregularities. Grant agreements define and give examples of financial irregularities that are prohibited under the agreements.

The term breaches is used here as a general term for various kinds of breaches of conditions and agreements. The terms 'financial irregularities' and 'breaches' are partly overlapping, since a financial

irregularity will almost always involve a breach of an agreement. Many kinds of breaches, for example delayed reporting, will not, however, constitute a financial irregularity on their own, but will be followed up as a deviation by the person or organisation responsible for administering the funds.

3. Response

When grant funds are made available under an agreement, the agreement partner (grant recipient) undertakes to use the funding provided in accordance with the agreement. Any deviation may give grounds for a response by the grant provider.

As a rule, grant agreements contain a definition of financial irregularities as all use of grant funds that is not in accordance with the agreement and/or approved implementation plans and budget, in addition to unacceptable practices such as corruption, embezzlement and nepotism. If financial irregularities have occurred, the Ministry has broad powers to suspend payment of all or part of the grant, terminate the agreement, and claim repayment of all or part of the grant.

The severity and nature of unacceptable conditions that are uncovered and that require a response will vary. As a rule, the misused funds must be repaid. The specific follow-up of a case, including the extent of the investigations and the form of response chosen, will depend on what has been uncovered in the case concerned. The response should be proportional to the irregularity, i.e. to the kind of irregularity concerned, the amount of funding in question, and the resources needed to follow up the matter and respond. The purpose of the response, whether under administrative law or contract law, should not be to punish the recipient.

3.1 Suspension of further payments

If there are grounds to suspect financial irregularities in the operations of a recipient of funding from the Ministry, regardless of the reason, all disbursements to the recipient under the grant agreement concerned must as a rule be suspended immediately, until the case has been investigated and adequate risk-reducing measures have been implemented, where appropriate. It is normally only disbursements under the relevant agreement that will be suspended.

3.2 Repayment of funds

As a rule, a claim will be brought for the repayment of grant funds if there is documentation that the funds have been misused, or if the grant recipient is unable to document that the funds have been used in accordance with the agreement. The agreement itself will usually form the basis for a claim for the repayment of funds, but a claim may also be brought on the basis of a legally binding judgment or an admission by the person or organisation responsible for administering the funds. A claim for repayment of funds must be brought within a reasonable period of time. The rules on the limitation period set absolute limits for when claims for the repayment of funds can legally be brought. The Regulations and Provisions on Financial Management in Central Government set out a more detailed framework for following up claims.

In certain cases, and on certain conditions, losses as a result of financial irregularities or breaches of a grant agreement may be covered by the grant recipient repaying the amount concerned to the project.

In order for repayment to take place in this way, it is an absolute condition that the grant recipient has uncovered the irregularity or breach itself, and has notified the Ministry immediately.

In addition, the Ministry will assess the specific case, and importance will be attached to the following points:

- the Norwegian state does not suffer any harm or loss;
- the grant recipient has established sound routines for internal control with regard to the administration of the funds, and is not itself significantly to blame for the irregularity or breach;
- the matter has been reported to the police, as long as there is a legal basis for doing so. Any exceptions to this rule, e.g. because the principles of the rule of law are not upheld in the country concerned and reporting the matter is therefore not advisable, must be agreed with the Ministry;
- any conditions that made the irregularity or breach possible have been rectified, and the Ministry is of the view that the funds will in future be used responsibly and in accordance with the agreement.

3.3 Claims for compensation

In each individual case, an assessment should be made of whether a claim for compensation should be brought against the agreement partner (grant recipient) or others. There are various situations in which bringing a claim for compensation may be appropriate, for example if the Ministry has suffered a financial loss or if expenses have been incurred in connection with the irregularity or breach. A claim for compensation may be based on the agreement, or on the general rules on non-contractual compensation (tort).

3.4 Legal steps, including criminal proceedings

If a claim for repayment or compensation is contested, the Ministry should consider taking legal steps to recover the funds. Once sufficient documentation has been obtained and it has been established beyond reasonable doubt that a criminal offence has been committed, consideration should always be given to initiating criminal proceedings.

3.5 Exceptions in cases of force majeure

In certain cases, the grant recipient or another party to the agreement may claim exemption from liability due to special circumstances beyond human control, which could therefore clearly not be prevented (force majeure). Moreover, agreements that refer to Norwegian legislation may give grounds for an assessment of reasonableness under contract law when following up irregularities or breaches. As a rule, the Ministry's grant agreements do not contain provisions on exemption from liability or grounds for cancelling the agreement due to force majeure or unreasonableness. However, in certain cases there may nevertheless be grounds for claiming exemption from liability due to force majeure or unreasonableness, in line with relevant rules.

Financial irregularities, by their very nature, will only in exceptional cases fulfil the conditions for exemption from liability on grounds of force majeure.

3.6 Disciplinary measures

In cases that concern Foreign Service employees, disciplinary measures may be appropriate, possibly in combination with other forms of response, including reporting the matter to the police. The Norwegian Civil Service Handbook contains guidelines for handling cases of this kind.

Grant recipients, suppliers and those responsible for administering allocated funds are expected to consider disciplinary measures in cases of financial irregularities that involve their employees.

3.7 Consequences for cooperation

Cooperation should be discontinued if there are grounds for terminating the agreement because of financial irregularities, and if the partner has not shown the necessary ability or willingness to rectify the situation.

4. Cooperation with other donors

In cases where Norway is not the only donor providing funds to an agreement partner (grant recipient), other donors should as a rule be informed when financial irregularities are suspected in connection with the funds provided by Norway. Where appropriate, other donors should be encouraged to share information.

When several donors are affected by financial irregularities, there will be a need to discuss the response with a view to finding a common, coordinated response. It should be clearly communicated that Norway practices a policy of zero tolerance of financial irregularities and that its usual practice is to claim repayment of the funds.

5. Funds channelled through multilateral channels

The UN, the development banks and other multilateral organisations and funds supported by Norway are expected to show zero tolerance of financial irregularities and follow this up by means of preventive measures, control systems and internal guidelines, and by responding in the event of deviations. This means that the organisations should have, or be affiliated with, an independent internal audit and investigation function with the necessary mandate and capacity to supervise the organisations and carry out investigations in the event of suspected irregularities within the organisations or in the operations of external partners. Norway is working in various ways, for instance by participating in governing bodies, to strengthen the organisations' financial management, control functions and handling of cases of suspected financial irregularities.

The responsibility for preventing, uncovering and dealing with financial irregularities lies with the organisations themselves. They are also responsible for reporting on irregularities in their annual reports, and in some cases to each donor. Norway is to follow the organisations' handling of cases of suspected irregularities, and seek to cooperate with other donor countries on a joint response where appropriate. The organisations' obligations vis-à-vis Norway in cases where Norwegian funds may be involved are regulated by agreements and are followed up in line with these agreements.

GUIDELINES FOR DEALING WITH SUSPECTED FINANCIAL IRREGULARITIES IN THE FOREIGN SERVICE

*As of 11 December 2018
(Replaces the previous guidelines of 18 March 2011)*

1 Introduction

Zero tolerance of financial irregularities is to be practised in the Foreign Service. This means that the Foreign Service is to respond to any deviations from the rules and conditions that form the basis for the management of the Ministry's funds, including agreements relating to operational activities and grant management. The form of response will be adapted to the nature and severity of the irregularity.

The guidelines apply to the Foreign Service (Ministry of Foreign Affairs and diplomatic and consular missions) and are designed to ensure that correct procedures are followed when dealing with cases of suspected financial irregularities. They apply to all funds managed by the Foreign Service, both operating funds and grant funds.

The Guidelines must be viewed in conjunction with current applicable legislation and the current Ethical Guidelines for the Public Service.

2 Scope of the guidelines

2.1 Financial irregularities and breaches

The term *financial irregularities* is used in these guidelines as a general term for financial practices or conduct that are illegal or that involve misuse of Ministry funds.

Examples of financial irregularities include corruption, embezzlement, misuse of funds, fraud, theft, accounting violations, favouritism or nepotism, or other abuse of position in connection with the funds provided by Norway. Grant agreements define and give examples of financial irregularities that are prohibited under the agreements. Corruption and other forms of economic crime are regulated by Norway's criminal legislation.

The term *breaches* is used here as a general term for various kinds of breaches of conditions and agreements. The terms 'financial irregularities' and 'breaches' are partly overlapping, since a financial irregularity will involve a breach of an agreement. Many kinds of breaches, for example delayed reporting, will not, however, constitute a financial irregularity. Breaches may also require a response from the Ministry, depending on their nature and the provisions set out in the agreement concerned.

When the Ministry makes funding available under an agreement, the agreement partner (grant recipient) undertakes to use the funding provided in accordance with the agreement, including in cases where the funding is allocated to third parties. Any deviations from the provisions of the agreement provide grounds for a response from the Ministry.

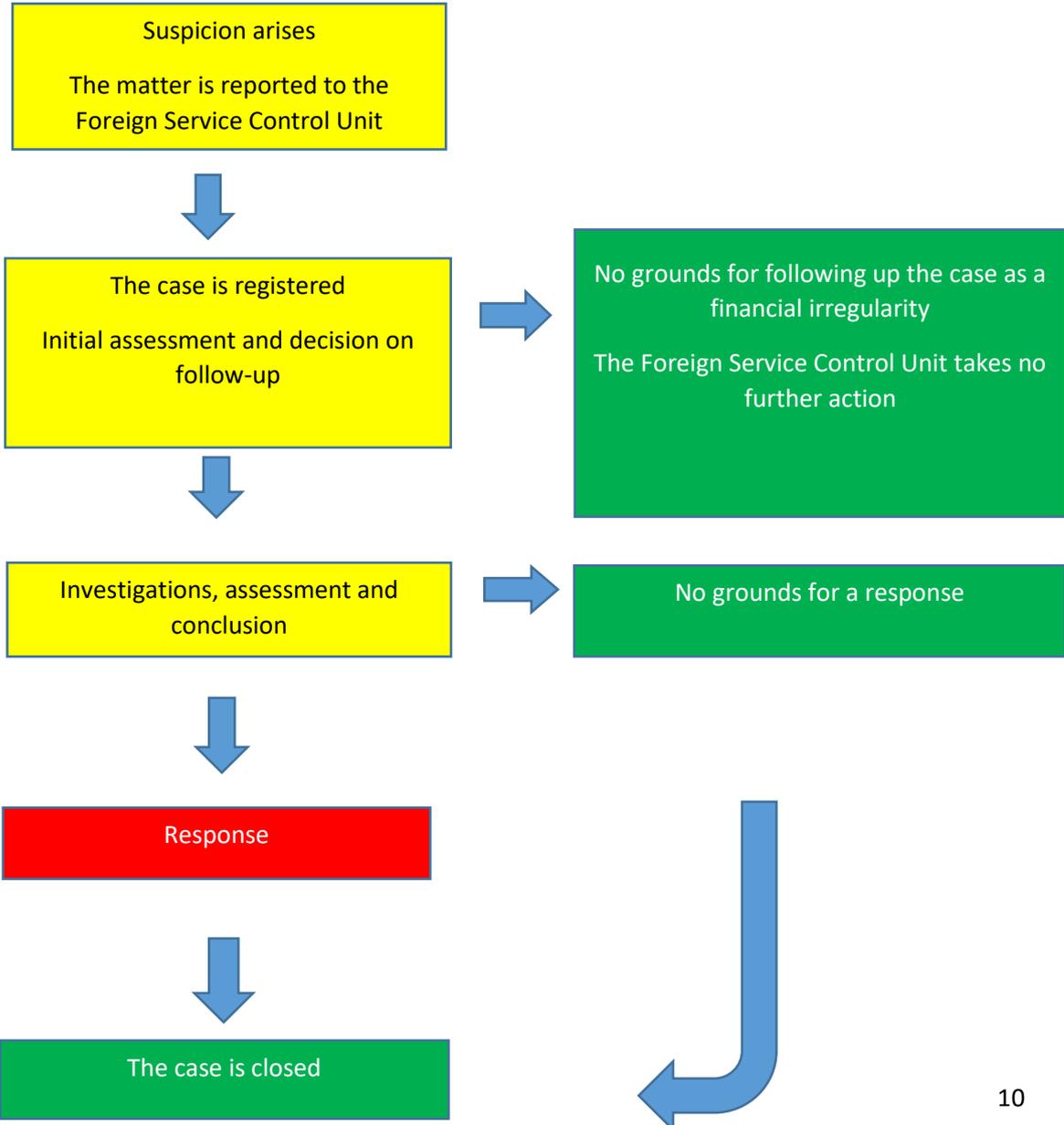
All cases relating to financial irregularities will be followed up by the Foreign Service Control Unit, while cases involving breaches that are not related to financial irregularities will normally be followed up by the unit responsible for managing the agreement concerned.

2.2 Other unacceptable conditions or issues of concern

These *Guidelines for dealing with suspected financial irregularities in the Foreign Service* are, as far as possible, to be used in cases that involve unacceptable conditions or issues of concern such as violations of laws, rules and instructions in connection with case processing or the performance of tasks in an official capacity. The Foreign Service has separate guidelines that are to be used when dealing with personnel matters, the *Guidelines for dealing with conflicts, harassment or other improper conduct*.

3 Procedure for dealing with cases of suspected financial irregularities

In somewhat simplified terms, the procedure for dealing with cases of suspected financial irregularities is as follows:



The individual steps are described in more detail below.

3.1 Suspicion arises. The matter is reported to the Foreign Service Control Unit.

It is usually in connection with ordinary case processing that a suspicion of financial irregularities arises. Typically, a suspicion will arise in cases where there is conflicting information or where information is incomprehensible or inadequate.

The nature and gravity of irregularities vary. Simply put, they involve an action or omission that is in violation of current legislation or agreements. If the irregularity is related to a specific agreement, the agreement will be a vital reference document in assessing whether or not an irregularity has taken place and how the case should be followed up.

The unit that has budget responsibility for the funds in question has an obligation to investigate any irregularities that are detected. Any suspected financial irregularities are to be reported in writing without undue delay to the Foreign Service Control Unit. If there is any doubt as to whether the case involves financial irregularities or should be reported, the Foreign Service Control Unit should be consulted.

Usually, reporting to the Foreign Service Control Unit will be done by management, but individual employees may also contact the Foreign Service Control Unit directly.

The right and duty to report a concern

Everyone has the right to report issues of concern. As an employee, you have a duty to inform the employer of any circumstances or conditions that could cause loss or damage to the employer, employees or the immediate environment.

All employees have a duty to report any suspected financial irregularities.

All those who report an issue of concern may choose to remain anonymous.

More information on reporting concerns can be found on UDintra (click on 'Gå til' in the top right-hand corner, and then click on the 'Whistleblowing' button in the box that appears). There you will find, among other things, the *Guidelines for whistleblowing and reporting issues of concern in the Foreign Service*.

Project partners may also detect or report deviations from rules or regulations in connection with their work to follow up projects. In some cases, sources inside a partner organisation may report possible irregularities.

The Foreign Service is to work to ensure that multilateral organisations, global funds and programmes, and other international partners establish satisfactory systems for the prevention, detection and follow-up of financial irregularities. The Foreign Service Control Unit is to be kept informed about the work being done by these actors in this area. Cooperation agreements must be put in place to ensure that cases of suspected financial irregularities involving funding from Norway are reported to the Foreign Service Control Unit.

Checklist for reporting to the Foreign Service Control Unit

- ✓ Provide a reference number or code for the agreement (PTA number or other information about the agreement);
- ✓ Describe as clearly as possible what has happened and indicate how reliable the information is;
- ✓ Say what has been done and what steps are being planned in order to establish the facts of the case;
- ✓ Send or provide access to relevant documentation;
- ✓ Provide any other information you think the Foreign Service Control Unit should have in order to assess how the case should be followed up; and
- ✓ Follow the rules on handling personal data and sensitive information.

3.2 Registration, initial assessment, and decision on follow-up

When an issue of concern has been reported to the Foreign Service Control Unit, the Control Unit will make an initial assessment of the case and decide whether to register it as a case of suspected financial irregularities and how it should be dealt with.

The Foreign Service Control Unit will register the case in UDSak and will give the person who reported the matter the case number. This case number is to be included in all further correspondence. Access to cases relating to financial irregularities and other unacceptable conditions or issues of concern is restricted in UDSak.

The person who reported the matter will normally be kept informed about how the case will be followed up, or if the Foreign Service Control Unit has decided not to take any further action. Exceptions may be made in situations where there are reasons why this information cannot be shared, for example considerations relating to the protection of privacy or because sharing the information could compromise the investigation.

Multilateral organisations, global funds and programmes, the Financial Mechanism Office and public-private partnerships will usually be responsible for further examining and dealing with cases of financial irregularities that involve them. In such cases, the Foreign Service Control Unit will not carry out any further investigations.

3.3 Investigations, assessment and conclusion

Affected units in the Foreign Service will be kept informed when a decision has been made to follow up a matter as a suspected case of financial irregularities. The same applies to Norad and FK Norway if the case has relevance for them, for instance because they cooperate with the organisation concerned.

As a rule, the Foreign Service Control Unit will then instruct the units concerned to stop further

disbursements to the project until the case has been investigated or risk-reducing measures have been implemented. The purpose of this is to prevent any further misuse of Norwegian funds. It is normally only new disbursements under the relevant agreement that will be stopped.²

When the investigations concern possible irregularities in an organisation that is registered in PTA, the Foreign Service Control Unit should consider asking for the organisation concerned to be marked with a warning triangle in PTA, with a message to contact the Foreign Service Control Unit before entering into any new agreements with the organisation on additional funding.

In most cases it will be necessary to investigate a suspicion of financial irregularities. The Foreign Service Control Unit decides whether to initiate an investigation, usually in consultation with the unit(s) concerned. If other donors or parties to a contract are affected, they should be contacted with a view to involving them in the further investigation.

The purpose of the investigation phase is to document the facts of the case so that any suspected financial irregularities can be confirmed or dispelled. During the investigation phase, the focus will often be on obtaining documents (reports, accounts, auditing reports – including management letters, minutes of meetings, etc.). In some cases, a field visit may be appropriate. The investigations must be carried out in such a way that they do not increase the risk that the evidence will be tampered with.

Affected units in the Foreign Service will usually be asked to obtain relevant documents relating to the case and will also be consulted on how the case should be followed up. The Foreign Service Control Unit may also ask the units for practical assistance in connection with following up the case.

In some cases, it will be necessary to engage external experts to carry out a forensic audit and/or other forms of investigation, in order to dispel/confirm a suspicion that financial irregularities have occurred.

- ✓ The specifications for a forensic audit must be tailored to the case in question.
- ✓ All procurement must be in line with the legislation on public procurement and the Ministry's own instructions and routines (e.g. for financial management and procurement). Framework agreements on forensic audits and investigations are to be used where appropriate and relevant to the specific case.
- ✓ It is the Foreign Service Control Unit that approves the specifications for the audit/investigation, chooses who is to be given the assignment/task, and covers the costs of the forensic audit/investigation. Any deviation from this procedure must be agreed in writing.

The principle of the right to be heard must be safeguarded. Nevertheless, in some cases it is important for the further investigation that the person/organisation the suspicion concerns is not informed that the case has been reported. In such cases they must not be informed.

The investigation of the case must be completed within the period of limitation and before the time limit for submitting an application for public prosecution expires. Time limits will vary according to the legislation in the various countries and depending on which country's rules apply. The time limits that

² Stopping disbursements under existing agreements should be distinguished from putting new agreements on hold because of a suspicion of irregularities. From both an administrative law and contract law perspective, this is different from stopping disbursements under an existing agreement.

apply should be decided at an early stage. In some cases, it may be appropriate to follow up cases even if the period of limitation has passed. This should be considered in each specific case.

In some cases, the Foreign Service Control Unit will wait for the completion of the internal investigation by the partner concerned before deciding whether there is a need for further investigations. In such cases it may be appropriate for the Foreign Service Control Unit to give guidance on the kind of investigations the partner should carry out. In special cases, the Foreign Service Control Unit can offer to fully or partially cover the costs of the investigations.

Once a case has been sufficiently investigated, the Foreign Service Control Unit is to reach a conclusion on the appropriate response. If necessary, affected units and/or the Legal Affairs Department will be consulted before a conclusion is reached. If, under the applicable guidelines, there is any doubt about how a case should be concluded, it should be referred to the Secretary General for a decision.

3.5 Response

If it has been established that financial irregularities have occurred, the Foreign Service Control Unit decides on the appropriate response. Various forms of response are described in the document *Zero tolerance of financial irregularities*. They include the suspension of payments; termination of the agreement; claims for the repayment of funds; claims for compensation; legal steps, including criminal proceedings; disciplinary measures; and termination of cooperation.

Follow-up

The Ministry must bring a claim for the repayment of funds within a reasonable period of time, and the rules on the limitation period set absolute limits for when claims for the repayment of funds can legally be brought.

The Regulations and Provisions on Financial Management in Central Government set out a more detailed framework for following up claims. The Ministry has entered into an agreement with the Norwegian National Collection Agency on the recovery of funds.

Civil proceedings

If the claim for repayment or compensation is contested, the Ministry should consider taking legal steps to recover the funds. When deciding which steps to take, consideration should be given to the nature of the case, the amount of funding to be recovered, the provisions of the agreement, the risks involved in the process, and the chances of recovering the funds. It is the Foreign Service Control Unit that makes a decision, having consulted the affected units and the Legal Affairs Department.

If civil proceedings have to be initiated before a foreign court, the proceedings could raise questions relating to the immunities of the state and of the posted employees. Questions relating to state immunity and/or diplomatic immunity should be considered in consultation with the Legal Affairs Department before civil proceedings are initiated. If a posted employee is requested to be a witness or to give a statement, the consent of the Ministry of Foreign Affairs must be obtained in advance, as set out in chapter 5, section 3 of the Instructions for the Foreign Service.

Criminal proceedings

Once sufficient documentation has been obtained and it has been established beyond reasonable doubt that financial irregularities have occurred, the Ministry must always consider whether to report the matter to the relevant prosecuting authority. In principle, the Ministry must report all criminal offences, including criminal offences committed by Foreign Service employees.

In each individual case, the legal basis for reporting the matter, the country in which it is to be reported and the relevant prosecuting authority must be considered. The question of whether the case should be reported to a Norwegian prosecuting authority, instead of or as well as to the local prosecuting authority, must also be considered.

There may be cases where it is sufficient to inform the prosecuting authority and/or the ministry of foreign affairs of the country concerned about the facts of the case, and to call on them to initiate criminal proceedings under the legal system in their country.

When deciding whether or not to initiate criminal proceedings in a case, an assessment must always be made of how well the legal system in the country concerned functions. A key question in an assessment of this kind will be whether the legal system upholds the fundamental principles of the rule of law. Other points that may be included in the assessment are whether or not a legal process could lead to capital punishment or other forms of punishment that are not accepted in Norway, whether or not the handling of the case will be based on rule-of-law principles, how long the legal process could take, and what the costs of a process would be. If the Ministry is considering reporting the matter in another country, consideration will have to be given to whether this will mean that the Norwegian state will become a party in the case and/or whether Norwegian civil servants will have to participate in the legal proceedings, e.g. as witnesses. In either case, a special assessment will need to be made on a possible waiver of immunity.

3.6 Closing the case

A case of suspected financial irregularities may be closed if it is concluded that there are no grounds for following up the matter further – either because it has been established that no irregularity has taken place or for other reasons, for example the case is outside the limitation period – or when the Foreign Service's claims have been met. Decisions to close cases are taken by the Foreign Service Control Unit.

For complex cases, a brief memo summing up the case must be drawn up as a basis for a decision to close the case. Other cases may be closed on the basis of a short recommendation setting out the grounds for closing the case.

4 Handling of documents and information

All documents relating to cases of suspected financial irregularities that are of archival value are to be stored by the Foreign Service Control Unit. Caution should be exercised with regard to the distribution of documents relating to such cases. As a general rule, access to information concerning cases involving suspected financial irregularities should be restricted to the employees in the unit concerned, management staff, the diplomatic or consular mission concerned and the Foreign Service Control Unit.

Case documents are to be properly stored in accordance with the current rules. Specific requirements for the processing and storage of personal data are set out in the Personal Data Act and appurtenant regulations. Sensitive information must be handled in accordance with the Security Act and the Protection Instructions.

The Foreign Service Control Unit deals with requests for access to documents relating to cases of

suspected financial irregularities. The unit concerned will be informed of any requests for access. All requests for access are processed in accordance with the Freedom of Information Act and section 18 of the Public Administration Act. Information that is subject to a duty of confidentiality by or pursuant to law is exempted from access under section 13 of the Freedom of Information Act.

The Foreign Service Control Unit publishes quarterly overviews of cases of financial irregularities that have been closed and the response taken (see *regjeringen.no*). It also publishes an annual report on cases of suspected financial irregularities.