

To: Secretary General
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From: Foreign Service Control Unit
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**The Ministry of Foreign Affairs' zero-tolerance policy on corruption.
How can it best be put into practice?**

1. Introduction

The Government has discussed corruption in a number of communications to the Storting. In the budget proposal for 2007 (Proposition No. 1 (2006–2007) to the Storting), the Government's aims for its anti-corruption efforts are expressed as follows:

“Norway will make it quite clear that corruption is unacceptable. The Government has a zero-tolerance policy on corruption in all our own programmes and all the programmes and projects we support. Our partner countries must be supported in their efforts to combat corruption. We will also support the anti-corruption efforts of international organisations.”

Now that work on this zero-tolerance policy has been in progress for some time, it may be useful to describe in more depth how the policy can best be put into practice. This memorandum has been written in consultation with the relevant departments of the Ministry.

The Foreign Service Control Unit has drawn up guidelines for handling suspicion of financial irregularities in consultation with the relevant departments. These mainly deal with procedures prior to any reaction by the Ministry. They will need to be updated on the basis of this memorandum. The content of this memorandum will also have to be harmonised with the current rules on follow-up and control in grant management, and the General Instructions for Financial Management in the Foreign Service.

As a general rule, grant management agreements specify that the costs of audits and controls are to be covered by the supplement provided for administrative overheads. There are not normally such arrangements for operating costs, including procurement costs. In cases where considerable documentation is required, various costs must be met (consultancy fees, legal fees, auditing fees, etc.). We therefore propose that the budget of the Foreign Service Control Unit should be used to cover costs of this kind if they cannot be met by the budgets of the relevant departments and embassies.

2. Corruption and other forms of financial irregularity

The Regulations on Financial Management in Central Government lay down requirements for internal control systems. For instance, they require all agencies to establish “systems and routines containing internal controls to ensure that (...) malpractices and financial crime are prevented and disclosed.” This document takes as its basic premise that the zero-tolerance policy applies to corruption as the concept is understood in the Regulations on Financial Management and the Penal Code.

We propose that any use of funds in a way that is not in accordance with the conditions and purpose specified by the Storting and the Government in connection with the allocation should be considered to constitute a breach of the principle of zero tolerance of corruption. “Financial irregularities” is used here as a general term for matters the Ministry intends to react to.

Financial irregularities include corruption, embezzlement, misuse of funds, fraud, theft and favouritism or nepotism. In this context, the concept also includes acts of negligence. In the new Penal Code, negligence is defined as follows: “Any person who acts contrary to the requirement of proper conduct in any area, and who in the light of his personal qualifications can be censured, is negligent.” Negligence may therefore include passivity, failure to act or lack of judgement.

Non-compliance with the terms of an agreement is considered to constitute a breach of the agreement. Such matters are also grounds for a reaction from the Ministry, which will vary according to the type of non-compliance.

In implementing the zero-tolerance policy on financial irregularities, the Ministry may investigate and react to cases that differ in their nature and seriousness. They may involve anything from clearly

criminal offences to an unintended breach of an agreement. The procedures followed in each case, including the scope of the investigations and the reaction form chosen, will depend on what has been revealed.

3. Grant funds and operating funds

The zero-tolerance policy on financial irregularities is to be implemented in the management of all funds allocated by the Storting to the budget of the Ministry of Foreign Affairs.

This means that the policy applies to both grant funds and operating funds, regardless of whether they are managed directly by the Foreign Service or this responsibility has been delegated to other actors. Other actors may be subsidiary bodies, NGOs, the governments of other countries, multilateral organisations, global programmes or global funds.

4. The investigation phase

a) Consequences of non-compliance with an agreement

The zero-tolerance policy on corruption entails an obligation to carry out further investigations in cases where it can be established that there is objective non-compliance with the terms of the agreement. In such cases, the reasons for non-compliance must be further investigated.

To the extent that it can be established that non-compliance is due to matters beyond the control of the person or entity responsible for managing the funds, hereafter named as “counterparty”, it will not be necessary to carry out further investigations concerning possible financial irregularities. There will, however, be grounds for some form of reaction, for instance stopping further payments or claiming repayment of funds, if the breach of the agreement is of a kind that justifies this (see point 5 below). The type of reaction will depend on the wording of the agreement and the circumstances otherwise.

If a preliminary investigation shows that non-compliance may be due to matters under the control of the counterparty, further investigations should be initiated to establish whether or not there are grounds for suspicion of financial irregularities.

b) Threshold for initiating investigations: suspicion of financial irregularities

Under the zero-tolerance policy on corruption, any suspicion of financial irregularities must be investigated, irrespective of the amount of money involved, with a view to clarifying whether or not there are grounds for suspicion. This is the case regardless of whether the suspicion concerns financial irregularities under an agreement or not.

Anyone who has reason to suspect financial irregularities must report this without undue delay to the Foreign Service Control Unit, either directly or via the department concerned or the law firm G-Partner AS.

If there are reasonable grounds to believe that the suspicion may be justified, a verification process is to be initiated. The case is referred to the Foreign Service Control Unit. In consultation with the department or embassy concerned, the unit decides whether to initiate an investigation, or if appropriate a preliminary investigation, to obtain the material needed to assess whether to proceed further with the case.

Steps should be taken to establish whether or not there have been financial irregularities and to consider what would be an adequate reaction even if a particular project has been completed, the grant recipient declares bankruptcy or threatens to do so or is the subject of bankruptcy proceedings, or the recipient organisation has been liquidated.

c) Documentation as a basis for the Ministry's further reaction

The next step in cases where there is suspicion of financial irregularities is to seek to confirm or refute this by obtaining sufficient documentation to establish the probability that irregularities have in fact taken place. The procedure to be followed, including the scope of the investigations that are initiated, will vary according to the nature of the financial irregularities, how serious they are, and whether the agreement contains provisions that place the burden of proof on the counterparty. The approach and the scope of the investigations must therefore be tailored to the case in question.

The party suspected of financial irregularities must be given the opportunity to comment on the facts established in their case. The timing of this must be decided on the basis of any risk that the evidence will be tampered with or attempts made to disrupt the preliminary investigation and any subsequent criminal proceedings.

The Ministry must not accept any extrapolation or generalisation from individual findings as documentation of the scale of financial irregularities. However, it may be acceptable for the scale of financial irregularities to be estimated by the counterparty if it is clear that this is the only way of assessing their scale. The Ministry must make an independent assessment of the reliability of the estimates.

5. The forms of reaction open to the Ministry

The reaction chosen in a particular case will depend on the nature and seriousness of the financial irregularities. The reactions described in points 5.1 and 5.2 are applicable in all cases where there is reasonable suspicion of financial irregularities.

A reaction is normally only appropriate if financial irregularities have been documented. However, in specific cases where documentation is not available, careful consideration should be given to discontinuing or not initiating any further projects with the partner in question.

If there is documentation of non-compliance with the terms of the agreement but not of financial irregularities, some of the forms of reaction described below may be used, particularly those in points 5.1 and 5.2.

5.1 Immediate steps

Stopping further disbursements

If there is reasonable suspicion of financial irregularities, irrespective of the reason for this, all transfers of funds to which the suspicion applies to a final recipient should as a general rule be frozen until the case has been investigated. A decision to unfreeze disbursements must be made by the Foreign Service Control Unit in consultation with the department or embassy concerned.

The Ministry's aim must be to ensure that all grants, and all agreements, are based on the principle that as little time as possible should elapse between the recipient's activities and Norwegian disbursements. Every effort should be made to disburse grants in instalments as needed, based on verifiable milestones that make it possible to stop disbursements during any given project, programme or contract.

5.2 Claims for reimbursement or compensation

a) Reimbursement

A claim for reimbursement must be made if there is documentation that funds have been misused (used in a way that is not in compliance with the agreement), regardless of why the misuse has arisen. Such funds are to be reimbursed to the Norwegian authorities.

In order for the Ministry to claim reimbursement of funds, one of the following criteria must be met: misuse of funds

- has been established in a criminal case;
- has been established in a civil action;
- entails an unconditional right to claim reimbursement under the terms of the contract with the counterparty or grant recipient;
- has been admitted by the party responsible;
- is considered to be highly probable (documented) on the basis of the investigations the Ministry has carried out.

If the other party contests the Ministry's right to claim reimbursement because it disputes that funds have been misused, the Ministry should consider taking legal steps to recover the funds. The steps to be taken must be considered on the basis of the specific case, the type of non-compliance, the amount involved, the wording of the agreement, the likelihood of recovering the funds in relation to the costs involved, etc. The decision on how to proceed is taken by the Foreign Service Control Unit.

The Ministry must put forward a claim for reimbursement within a reasonable period of time. The rules on limitation periods set absolute limits for when claims for reimbursement may be put forward.

b) Civil action

Ministry policy should be to institute civil proceedings and claim reimbursement and, if appropriate, compensation when there has been a breach of agreement of a financial nature that the partner concerned refuses to settle.

The steps to be taken must be considered on a case-to-case basis, depending on the type of non-compliance, the amount involved, the wording of the agreement and the likelihood of recovering the funds in

relation to the costs involved in the country in question. The decision on how to proceed is taken by the Foreign Service Control Unit in consultation with the relevant department.

If a civil action has to be brought before a court in a foreign country, the rules on state immunity and, possibly, on the diplomatic immunity of personnel posted abroad may come into play. Questions relating to state immunity and/or diplomatic immunity should be considered before any civil action is brought, in consultation with the Legal Affairs Department.

Questions relating to the giving of evidence by personnel posted abroad should be referred to the Ministry in the usual way.

c) Cancellation of claims

If it can be established that there are not sufficient funds available to reimburse the sum that has been misused, it is possible to cancel the claim. The Provisions on Financial Management in Central Government set out the procedure for this. There is a very high threshold for cancelling claims. It is not sufficient that the party that has misused funds claims that there are no funds available.

The first step towards cancelling a claim is to suspend it. The Provisions on Financial Management in Central Government require a thorough assessment to be made before recovery is suspended. If the costs of continuing the collection process exceed the expected incoming payment, the recovery may be suspended.

In principle, the consent of the Storting is required for the cancellation of government claims. However, the Ministry of Finance has been given the authority to decide which body is to make decisions in specific cases. All proposals to cancel claims must therefore be submitted to the Ministry of Foreign Affairs, which will consult the Ministry of Finance.

d) Compensation claims

Ministry policy should be to assess on a case-to-case basis whether the Ministry has grounds for a compensation claim against a partner or counterparty. There are various factors that may give rise to a compensation claim. The agreement may provide grounds for a claim, or this may follow from the general non-statutory rules on compensation outside contracts, and an assessment must be made on a

case-to-case basis. For example, the Ministry might have a basis for a compensation claim during a procurement process if it suffers a financial loss because the counterparty delivers the goods too late. In some cases, it may also be appropriate to claim compensation for expenses the Ministry has incurred in documenting financial irregularities. In cases where it can be established that the Ministry has suffered a loss, a claim for compensation should be filed against the partner or counterparty. A compensation claim may be filed in addition to a claim for reimbursement of misused funds.

5.3. Criminal proceedings

Once the occurrence of financial irregularities has been documented with a sufficient degree of probability, the Ministry must always consider reporting the case to the relevant prosecuting authority. The general rule is that the Ministry is to report all unlawful activities relating to financial irregularities.

The relevant prosecuting authority and the country in which the matter should be reported must be considered in each individual case. The provisions on corruption in the Penal Code apply to acts committed abroad by Norwegian and foreign nationals. This means that persons who violate these provisions abroad may be prosecuted in Norway under Norwegian law. In each individual case, consideration must be given to whether the case should be submitted to a Norwegian prosecuting authority instead of, or in addition to, reporting it to a prosecuting authority in the country in question. This decision is made by the Foreign Service Control Unit in consultation with the Legal Affairs Department.

There may be cases where it is considered to be a sufficient reaction that the prosecuting authority and/or foreign ministry in the country concerned are informed of the facts established in the case, and urged to initiate criminal proceedings in accordance with the country's legal system.

The decision to report the facts of the case or to take other steps is made by the Foreign Service Control Unit in consultation with the Legal Affairs Department.

In deciding whether or not to initiate a prosecution in a case, a close assessment must always be made of the way the legal system functions in the country where any judicial proceedings would take place. A key

question in such an assessment must be whether or not the legal system functions in accordance with fundamental principles of due process. Questions that could be included in an examination of this kind are, for instance, whether or not judicial proceedings could lead to the death penalty or other forms of punishment that are not accepted in Norway, how long the process could take, and the costs involved in such a process.

Questions relating to the giving of evidence by personnel posted abroad should be submitted to the Ministry in the usual way.

5.4 Disciplinary measures

Depending on the nature of the case, disciplinary measures may also be called for. Exceptions from this rule may only be made in extraordinary cases. According to the provisions of the Instructions for the Foreign Service, senior officials and civil servants are liable to the authorities for any losses caused by the mismanagement of funds. Guidelines for dealing with such cases are set out in the Norwegian Civil Service Handbook.

5.5 Discontinuing cooperation. Cooperation with the same partner on other matters. Resuming cooperation

Cooperation must be discontinued if it has been confirmed that the partner has failed to comply with the terms of the agreement and to show the necessary willingness and ability to rectify the matter. A partner that has been convicted of corruption or other financial irregularities cannot expect to be allowed to manage government funds in the future, unless it is clearly documented that there has been a fundamental and radical change in the partner's attitude and practices with regard to financial irregularities and that the necessary control systems are now in place.

In many cases, the activity that has generated suspicion will concern only part of the Ministry's and/or department's dealings with the partner in question. In such cases it will be necessary to assess the causes of what went wrong in the case in question before deciding whether or not to continue to cooperate with the partner in question on other matters.

Before resuming cooperation on the suspended activity, the Ministry must make sure that everything possible has been done to rectify any

financial irregularities and ensure that they will not occur again. This must take precedence over the need to continue the activity. There must be satisfactory documentation that this has in fact been done.

The matter should be submitted to the Foreign Service Control Unit, which will decide how to proceed.

6. Cooperation with other donors

In cases where Norway is cooperating with other donors, the form of reaction must be discussed in appropriate forums with a view to arriving at a common, coordinated solution. It should be made quite plain that Norway pursues a zero-tolerance policy on financial irregularities.

In cases where Norway collaborates with other donors in making funds available to a partner, Norway should as a rule inform the other donors of any suspected irregularities that have come to its attention. The other donors should do the same.

7. Funds channelled through multilateral organisations

As far as international organisations or institutions that manage Norwegian funds are concerned, it is assumed that they have adequate preventive measures, control systems, follow-up routines and reactions that meet the requirement for zero tolerance of financial irregularities. The organisations or institutions concerned must be able to document this. If, in Norway's view, the organisation or institution is not managing the funds in a satisfactory manner, improvement measures must be discussed in the appropriate forums, including their governing bodies.

When a suspicion of financial irregularities involves bodies that are part of the UN family or other international institutions, the institution in question is as a rule responsible for following up any suspicions of this kind. The Ministry always has the opportunity to raise issues relating to anti-corruption efforts in such international institutions in general terms in the appropriate forums. In cases where allocations are made outside the ordinary budgets, for instance in the form of grants for special measures, the person or entity that is responsible for controlling the management of the funds and for ensuring that the necessary follow-up routines are adequate is to be specified in the agreement.

8. Responsibility/delegation

In those cases where responsibility for the management and control of funds is delegated under an agreement, the Ministry's responsibility for control and follow-up is governed by the agreement. This means that particular care must be taken when assessing whether or not the person or entity to whom this responsibility is to be delegated has sufficient experience, administrative capacity and adequate systems for control and follow-up. If necessary, expert assistance should be sought when making this assessment. This also means that if any suspicion of financial irregularities should arise, the Ministry is to order the person or entity responsible to take responsibility for the situation and take steps to rectify the situation.

If the Ministry requires that an audit be carried out of the accounts of the counterparty or any person or entity to which the counterparty has delegated the task of managing the funds, it must be specifically agreed that the Ministry is not to cover the costs of this. Examples of provisions to this effect have been set out in the guidelines for administrative grants. However, in special cases the Ministry must be prepared to finance such audits in order to ensure that they are conducted properly and independently. Such costs are covered by the Foreign Service Control Unit.

Handbooks, grant scheme rules, guidelines and templates for use in grant management are key tools for establishing the appropriate division of responsibility in accordance with the terms of the specific agreement.

9. Auditing

As a general rule, the Ministry accepts the conclusions arrived at by independent, recognised auditing firms when they examine cases of suspected financial irregularities. In cases where the Ministry has reason to doubt the validity of the audit, further steps are to be taken to establish the facts. This may be the case, for instance, when it seems reasonably clear that the audit has not been carried out by an independent auditing firm, when there is reason to doubt the validity of the documentation, or when only some of the problems to be dealt with in the audit have been examined. Audits must be carried out in accordance with the International Standards on Auditing, and local standards may only be used as the basis for audits in countries where they coincide with international standards, as is the case in Norway.

The guidelines and templates for grant management also provide guidance on various aspects of the auditing process.

10. Transparency

The Ministry has a duty to provide the Office of the Auditor General with a general overview of cases of suspected or proven financial irregularities and corruption for the purpose of notification and follow-up. The overview is not to include cases that occur in multilateral bodies or global/regional arrangements, unless Norwegian funds are directly involved.

An overview of the number of cases that have been reported to the Ministry and that have been dealt with will be published on the Ministry's website. It is to include information on the amount of money involved and how much of it has been reimbursed to the Norwegian authorities, as well as the forms of reaction used. The overview is also to give a certain indication of the person or entity that was responsible for managing the funds and when the case came to the attention of the Ministry.