

**GUIDANCE ON THE TREATMENT OF IRREGULARITIES
FOR 2007 – 2013 ROUND OF FUNDING**

INTRODUCTION

The following guidance sets out the action to be taken to identify, record, report, follow-up and clear irregularities involving EU Structural Funds and reflects the requirements of the Commission General Regulation (EC) No 1083/2006 and its Implementing Regulation (EC) No. 1828/2006 effective for the Programme period 2007 - 2013.

The Irregularities Regulation 1681/94 as amended by Regulation 2035/05 has been transposed into Articles 27-36 of the Implementing Regulation 1828/2006 covering:

- Définitions (Article 27);
- Derogations (Article 28);
- Urgent cases (Article 29);
- Reporting of follow-up – non-recovery (Article 30);
- Electronic transmission (Article 31);
- Reimbursement of judicial costs (Article 32);
- Contacts with Member States (Article 33);
- Use of information (Article 34);
- Provision of information to Committees (Article 35); and Irregularities under the reporting threshold (Article 36)

The Department for Business Enterprise and Regulatory Reform (BERR) is responsible for co-ordinating irregularities on behalf of the UK (as a Member State). European Division DFP acts in that capacity for Northern Ireland.

Departments and Implementing Bodies should note that this guidance and the on-line reporting structures only relate to irregularities notified under the 2007-13 Operational Programmes. Any irregularities relating to the 2000-06

Operational Programmes should continue to use the existing paper processes.

Updates to this guidance will be issued as necessary and will be dated to reflect effective implementation dates.

2. DEFINITIONS

1. The definition of an 'irregularity' in Structural Funds terms is very wide and includes any administrative or financial mismanagement that comes about either by act or by omission whether or not there is an actual loss of funds.
2. Fraud can only be classed as suspected fraud at the outset of an enquiry. Cases should be indicated as suspected fraud if the details suggest intent to deceive or misappropriate funds. Poor management, financial control or record keeping is not suspected fraud.
3. For the purposes of identifying and reporting irregularities the following definitions will apply;

***"Irregularity"** means any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities by charging an unjustified item of expenditure to the Community Budget. - Council Regulation 1083/2006 Article 2(7)*

***"Suspected Fraud"** means an irregularity giving rise to the initiation of administrative and/or judicial proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud, as referred to in point (a), of Article 1(1) of the Convention (drawn up on the basis of Article K.3 of the Treaty on European Union), on the protection of the European Communities' financial interests.*

***"Bankruptcy"** means insolvency proceedings within the meaning of Article 2 (a) of Council Regulation 1346/2000 Annex A: -*

- *Winding up by or subject to the supervision of the Court;*

- *Creditors' voluntary winding up (with confirmation by the Court);*
- *Administration;*
- *Voluntary arrangements under insolvency legislation; and*
- *Bankruptcy or sequestration.*

“Economic operator” means any natural or legal person or other entity taking part in the implementation of assistance from the Funds, with the exception of a Member State exercising its prerogatives as a public authority.

“Primary administrative or judicial findings” means a first written assessment by a competent authority, either administrative or judicial, concluding on the basis of specific facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure.

4. The contents of the EC Regulation make it clear that any failure to comply with the Regulations and or any breakdown of management and/or control systems should be treated as an irregularity whether or not the irregularity itself involves any loss or potential loss of funds.
5. In applying this to the management of projects part funded by Structural Funds, an irregularity should be taken as meaning *any breach of the conditions of grant set out in the terms of the Letter of Offer*. Such breaches will include action on the part of those receiving grant or failure by them to take action.
6. It is advisable to take note of the definition of ‘*primary administrative or judicial finding*’ in Section 2 as the Commission auditors are adamant that irregularities must be reported as soon as the report is written identifying an irregularity. Even if, as a result of further investigation or enquiries that the report is withdrawn at a later date, or the amount of irregular expenditure has been reduced. This means that if a reportable irregularity is identified during the first quarter of the year (i.e. end March) within two months of the end of that quarter (i.e. end May) an Article 28 report must be submitted to OLAF,

via European Division, DFP and BERR providing the information required under the regulation. If the case is not closed when the Article 28 notification takes place then follow up Article 30 (1) reports will be due subsequently to detail the progress and resolution of the case and any financial impact it may have/has had .

7. Examples of irregularity will therefore include:

- Evidence gathered at a monitoring visit indicating that items of ineligible expenditure have been included in the calculation of grant previously claimed and paid.
- Evidence that a project has failed to implement the European Commission's requirements on publicity or procurement.
- A qualified annual audit certificate received for a project – if appropriate.
- Evidence that an Implementing Body has not set up adequate systems to control and monitor the grant awarded to projects.

In addition, Article 28(2) of, Commission Regulation 1828/2006 indicates that the following cases need **not** be reported:

- (a) cases where the irregularity consists solely in the failure to execute, in whole or in part, an operation included in the co-financed operational programme owing to the bankruptcy of the beneficiary;
- (b) cases brought to the attention of the managing authority or certifying authority by the beneficiary voluntarily and before detection by either of them, whether before or after the payment of the public contribution;
- (c) cases which are detected and corrected by the managing authority or certifying authority before any payment to the beneficiary of the public contribution and before inclusion of the expenditure concerned in a statement of expenditure submitted to the Commission.

However, irregularities preceding a bankruptcy and cases of suspected fraud must be reported. It is important to note that although not all irregularities need to be reported, all irregularities must be recorded.

8. The extent of the definition of irregularity means that all those engaged in delivering Structural Funds Programmes must have systems and resources in place to detect, record, report and follow-up cases. This must involve not only those responsible for monitoring/inspection and financial administration. All irregularities, suspected or attempted fraud or other illegal act being suspected must be recorded and where appropriate, reported immediately.

3. IDENTIFICATION OF IRREGULARITIES

1. Whilst not underestimating the difficulties inherent in tackling this work the normal conduct of business provides plenty of mechanisms for identifying irregularities including:
 - monitoring visits;
 - notification by grant recipients;
 - detailed checking of grant claims and progress reports;
 - management verification visits;
 - local knowledge (press/members of the public); and
 - National and Commission audit reviews.
- i. Managing Authorities/Implementing Bodies must ensure that irregularities identified are recorded immediately and in enough detail to allow them to check whether there is any evidence of a breakdown of systems or a need to take action to correct emerging systemic weaknesses in the programme management and control arrangements they have put in place. Managing Authorities/Implementing Bodies must also ensure that all relevant original documentation and computer based files are preserved in a safe place for further investigation.

- ii. Details of identified systemic weaknesses should be reported to the Audit Authorities and the relevant Certifying and Managing Authorities.

4. **REPORTING OF IRREGULARITIES**

1. Irregularities, involving loss or overpayment of grant of the equivalent of €10,000 (E.U. Element) or more must be reported. In the 2007-13 programmes this will be via the System 2007 database and web based pages are being developed for this purpose.
2. With the potential for financial correction, which may have an impact on the budget of a Department, irregularities documentation must be authorised at **Head of Branch** level and copied to the relevant Audit Authority and Certifying Authority for information.
3. All irregularity returns must be reported in Euros, not in £'s Sterling whether payment has been made or not. For ease of future identification it would also be useful to keep a record of the original sterling amount used. The amount recorded under project financings shall be converted into Euro as follows: -

Total amount of project financing – Convert into Euro using the Commission monthly accounting rate in force for the month in which the irregularity is detected.

If no payments made – Convert into Euro using the Commission monthly accounting rate in force for the month in which the irregularity was detected before any payment was made.

Calculating Irregular Expenditure – Where payment has been made convert into Euro using the Commission monthly accounting rate in force for the month in which the payment was made. If more than one payment has been made use the rate for the month in which the last payment was made.

Details of monthly accounting rates can be found on the following Commission website

http://ec.europa.eu/budget/inforeuro/index.cfm?fuseaction=currency_historique¤cy=GBP&Language=en

Recovery of irregularly paid monies – Convert into Euro using the same rate as above (to ensure consistency of Euro / Sterling value).

4. Article 28(1) requires Member States to report, to OLAF, each calendar quarter any new irregularities and the action taken to clear both them and any existing cases. For the UK this report is collated by BERR. European Division, DFP is responsible for supplying BERR with the necessary information relating to Structural Funds in Northern Ireland. This will include the following detail:
- a) The Fund, objective, operational programme, priority axis and operation concerned and the Common Identification Code (CCI) number;
 - b) The provision which has been infringed;
 - c) The date and source of the first information leading to suspicion that an irregularity had been committed;
 - d) The practices employed in committing the irregularity;
 - e) Where appropriate, whether the practice gives rise to suspicion of fraud;
 - f) The manner in which the irregularity was discovered;
 - g) Where appropriate, the Member States and third countries involved;
 - h) The period during which, or the moment at which, the irregularity was committed;
 - i) The national authorities who drew up the official report on the irregularity and the authorities responsible for administrative and/or judicial follow-up;
 - j) The date on which the primary administrative or judicial finding on the irregularity was established – See Section 2 for definition.
 - k) The identity of any natural and/or legal persons involved or any other participating entities, except where this information is irrelevant for the purposes of combating irregularities, given the nature of the irregularity in question;
 - l) The total budget and public contribution approved for the operation and the distribution of its co-financing between Community and national contribution;
 - m) The amount of public contribution affected by the irregularity and the corresponding Community contribution at risk;
 - n) Where no payment of the public contribution has been made to the persons or other entities identified in k), the amounts which would have been unduly paid if the irregularity had not been identified. [This

requirement is so that OLAF can show that financial controls are functioning and we are preventing irregularities. There is also the requirement to report potential irregularities, although this is where there is considered intent to commit an irregularity, not just a mistake on the claim form or accounting error];

o) The suspension of payments, where applicable, and the possibilities of recovery;

p) The nature of the irregular expenditure.

5. If a Managing Authority/ Implementing Body has evidence that an irregularity involves fraud, theft or corruption or there is a suspicion of fraud, theft or corruption details should be reported. In such cases the Managing Authority/Implementing Body must also take action in line with Departmental Fraud Policy and relevant chapter of the Managing Public Money NI (MPMNI).
6. As part of the closure process, at the end of the 2007-13 round of programmes, all irregularities must be notified to the Commission therefore cases below de minimus level (€10,000) must be recorded by each Managing Authority/Accountable Department/Implementing Body. To facilitate accurate and timely recording the System 2007 database must be updated with this data on a quarterly basis. As a best practice approach Managing Authorities/Implementing Bodies/Accountable Departments should apply the standard of procedures associated with reported irregularities when dealing with irregularities that need only to be recorded. European Division, DFP will confirm data on the System 2007 database at the end of each calendar year.
7. It should also be remembered that if a beneficiary has more than one project and each project has a de minimis level irregularity the sum of all its irregularities must be taken into account to ensure that it is still below the de minimis threshold. An applicant with multiple projects and a number of irregularities of the same or similar nature could suggest as systemic failure and must be reported and action taken to remedy systemic failure as soon as possible.

8. Exemption for bankruptcy – if the only cause of the irregularity is the bankruptcy of the project (i.e. unable to deliver requirements of the Letter of Offer) it is exempt from the reporting requirement. If, however, there was an irregularity **before** the bankruptcy occurred it must be reported.
9. If it is considered that irregularities reported may have wider impact across other Member States for example, where a new malpractice has been employed, European Division, DFP, will alert BERR immediately in order that the Member State may circulate details in compliance with Article 29 of Regulation 1828/2006.

5. FOLLOWING UP AND CLEARING IRREGULARITIES

1. Good working practice would dictate clearance of irregularities in a timely fashion. Based on previous guidance the European Commission has indicated that irregularities should in the main be cleared **within six months of being identified**. Responsibility for investigating and resolving irregularities rests with the Managing Authorities/Implementing Bodies. If irregularities are not cleared within 6 months a separate detailed report will be sought by European Division, DFP on likely timescales.
2. Managing Authorities/Implementing Bodies must take timely and appropriate action to follow-up and correct all irregularities, recover grant where appropriate and take steps to reduce the risk to the EU and public purse. As recording will be via the systems 2007 database it is imperative that details of follow-up and clearance action are updated regularly. These updates must also be communicated to both the Audit and relevant Certifying Authority.
3. Failure to recover the grant paid may result in a net loss to the Department and the general presumption is that recovery will be pursued in all cases. If recovery proves to be impossible, or the Managing Authority/Accountable Department/Implementing Body wishes to recover less than the full amount due the matter must be referred to European Division, DFP using the processes for the 'special report' as detailed at paragraph 6 below. European Division, DFP will consider with the relevant Accountable Department before forwarding any documentation to OLAF via BERR.

4. Member States are required to provide a quarterly report on irregularities. At the end of each calendar quarter European Division, DFP, will run the necessary prints from the System 2007 on irregularities reported to date which remain uncleared. Managing Authorities/Implementing Bodies will be asked to update these records with details of follow-up and clearance action as appropriate before release to BERR, who will in turn make the necessary Member State reports to the Commission.

5. Article 31 (1) updates on each reported irregularity are mandatory and should be in proportion to the amount of grant involved and the seriousness of the irregularity. Systemic irregularities will clearly warrant more explanation than one-off individual errors in record keeping which may have led to a failure of systems within a single project. The 'update report' page on System 2007 will be developed to include the following information:
 - Action taken since the last report including details of action taken to minimise the risk of recurrence;
 - The amount of any funds recovered and separately, the amount expected to be recovered;
 - Details of any legal proceedings.
 - Referral to European Division, DFP/BERR in the event of partial or non-recovery; and
 - Action taken following the formal investigation to implement recommendations and lessons learnt.

6. Reduced or abandoned cases

If the recovery of grant has been or is to be reduced or abandoned, a full explanation (special report) is required, particularly if the EU budget is being asked to share any loss. Article 30(2) of Commission Regulation (EC) No 1828/2006 states the minimum information required is as follows:

- a copy of the award decision;
- date last payment made to the beneficiary or recipient;

- a copy of the recovery order;
- where applicable in the case of bankruptcies subject to reporting under Article 28(2), a copy of the document attesting the insolvency of the beneficiary; and
- An outline description of the measures taken by the Member State, with and indication of their dates, to recover the relevant amount(s).

There is no format for the 'special report' – current best practice is to write a covering letter addressed to the Director of OLAF, detailing the reasons why the EU budget should share the burden of the unrecoverable amounts. This should be signed by at least Head of Branch level, and the above information could be enclosed as annexes. But the above information and covering letter is the minimum that is required for a request to be acceptable. Any such request should be forwarded to European Division, DFP who will ensure that it is submitted to OLAF via BERR.

7. In addition to the recording and reporting described above, Article 30(1) of Commission Regulation (EC) No 1828/2006 requires a report to be provided detailing the amounts of grant recovered and the amounts to be recovered, which have resulted from irregularities. Records will be required/maintained on the Systems 2007 database to show the year in which the irregularity, which has given rise to the recovery, was first identified. This data will be required by European Division, DFP as part of the quarterly reporting cycle. Web pages are being developed for ease of reporting.
8. When closing a case there must be a clear statement that any funds recovered have been deducted from a payment declaration to the Commission and the date of that declaration specified. (It may be necessary to check such details with the Fund/Programme Certifying Authority). OLAF has indicated that it will not consider a case closed without this information.

European Division

Department of Finance and Personnel

First Issued: October 2008

This revision: Revised February 2009

COMMON TYPES OF IRREGULARITY (this list is not exhaustive)

Ineligible costs

- Use of ineligible costs to obtain grant
- Inflated project costs
- Activities already funded from other sources
- Charging costs to a project already used in another Structural Funds project
- Fees, overhead costs not allowed under the regulations
- Incorrectly calculated overheads/staff salaries

Administrative errors – other than simple calculation errors

- Incorrectly completed claim form
- Failure to advertise contracts in the Official Journal
- Failure to maintain records – lack of clear audit trail
- Awarding contracts/committing funds after programme closure date
- Claiming for work done before start of programme

Breach of Terms and Conditions of Letter of Offer

- Failure to respect deadlines
- Lack of supporting documents to support expenditure
- Claiming for expenditure not defrayed
- Retention of documents

False claim/false supporting documents – suspected fraud

Incorrectly completed supporting documents – often down to poor managements skills

Misleading description of project – project not proceeding as in the application

Non-existing or incorrect match funding

Reduced assurance following Article 13 and Article 16 inspections

Northern Ireland System for Identifying, Recording and Reporting Irregularities under EC Regulation 1828/2006

