



Procedure for the Recovery of Fraudulently Spent Funds and the Prevention of Double Funding

Document	Procedure for the Recovery of Fraudulently Spent Funds and the Prevention of Double Funding
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INTRODUCTION

The aim of this Procedure for the Recovery of Fraudulently Spent Funds and the Prevention of Double Funding (hereinafter, the "Procedure") is: (i) to define the steps to be followed by ICN2 to recover fraudulently spent funds from the Recovery, Transformation and Resilience Plan (hereinafter, the "RTRP") (this procedure can also be applied to other types of future funds and where required by law) and; (ii) to avoid situations of double funding. This is why, unless otherwise stated, all mentions of the RTRP shall be deemed to include all other types of future funds managed by ICN2 when the application of this Procedure to them is also legally required.

This procedure contains a description of the main actions to be carried out by ICN2 to recover unduly spent amounts resulting from acts of corruption, conflicts of interest, fraud or other acts in any area of the organisation. It also contains the main actions to be taken to avoid situations of double funding in the management of the European funds for the RTRP. They are all subject to all the specific control measures also established by ICN2 in this regard in its various processes.

In order to effectively recover the RTRP funds or avoid double funding, ICN2 shall establish a number of measures for monitoring, detecting and alerting of suspicious cases. When such cases are detected, there are corrective measures or guidelines, which shall be applied by the appropriate body within ICN2. They allow the specific situations of fraudulent use of European or other funds to be neutralised and the resulting facts and measures adopted to be reported to the other organisations forming part of the sub-project of the RTRP or others.

In addition, ICN2 shall adopt the necessary measures to carry out the legally established procedures to demand accountability from the appropriate people, as well as to recover the amounts of European funds or other amounts unduly received in any of the cases mentioned herein.

This document must be checked against the Corruption, Fraud and Conflicts of Interest Prevention Policy and the Protocol for the Investigation of Suspected Cases of Fraud.

1. SCOPE

The scope of application of this Procedure is as follows:

Legal scope: This procedure is applicable to ICN2 and to its employees and senior officers.

Personal scope: This Procedure is applicable to all levels of ICN2, including the governing and administrative bodies, the control bodies and all personnel, regardless of their position, function or capacity, including personnel from other entities attached to ICN2 (hereinafter jointly referred to as "employees" or "personnel").

Objective scope: This Procedure shall apply to the management and monitoring of EU funds earmarked for the implementation of the RTRP, as well as to any other funds that ICN2 may receive in the future for which this is legally required.

Relational scope: The scope of application of this Procedure shall include, to the extent possible, the contractors and subcontractors of the RTRP, grant managers and others. Where this is not possible, either contracting shall be restricted to subjects that have similar procedures, or standards of conduct, preventive measures and control systems shall be required by contract.

Geographical scope: This Procedure shall apply to public and private dealings in relation to the RTRP or any others that ICN2 may establish in any geographical area, whether local, national or international.

2. PROCESS FOR THE RECOVERY OF UNDULY DISBURSED FUNDS

In this process, there are **two main contexts** in which ICN2 can take steps to carry out the procedures established by law, both of which are aimed at recovering unduly spent funds:

a) In relation to grants (after identifying fraud by a member of ICN2 itself in relation to obtaining or justifying a grant):

- Reimbursement of a grant (Arts. 35 and 41 *et seq.* of Law 38/2003, of 17 November, General Grants Law (hereinafter the "LGS")).

After conducting an investigation in accordance with the procedure for managing the information received, ICN2 shall report the facts to the responsible body of the decision-making or competent organisation in order to start the grant reimbursement process if any fraudulent actions have been identified. This is regardless of any criminal or administrative sanctions that may apply (such as detection of fraud in a grant application or in the use of a grant).

Interim measures may be taken where considered necessary. These must be the subject of a reasoned resolution in a report issued by the Committee responsible for the AFMP and must provide minimum guarantees. In addition, the interested party must be notified so that they can challenge them if appropriate (e.g. if the employee who may be responsible for the fraud identified has been suspended from work but with no suspension of salary during the investigation).

ICN2 must analyse the amount of funds fraudulently or unduly spent and submit a report to the decision-making or responsible body so that it can decide on the reimbursement of the grant. This analysis may be carried out on the basis of the report of conclusions drawn up by the Committee responsible for the AFMP or the Protocol for the Investigation of Suspected Cases of Fraud or on the basis of the report of conclusions issued in connection with the Procedure for the Management of Communications Received.

The reimbursement procedure must be carried out in full compliance with Articles 41 *et seq.* of the LGS.

ICN2 shall cooperate as far as possible to ensure that the reimbursement procedure is completed, with an express resolution in accordance with Article 42 of the LGS within twelve (12) months from the date of the resolution to start the procedure, thus ensuring that the procedure does not expire and the deadline established by the grant-awarding organisation is met. When the funds are still in ICN2's possession, it shall reimburse them in coordination with the grant-awarding body. When, on the other hand, the funds are no longer in ICN2's possession (e.g. because they have been paid through an administrative contract), it shall follow the instructions that may be issued by the granting body and those provided by law.

b) In matters of public procurement:

If the irregularity involving a potential fraudulent use of RTRP funds takes place in the context of a public procurement contract with a contractor and/or subcontractor, ICN2 shall apply the termination clauses contained in the specific administrative conditions, supplemented by the provisions of Art. 188 *et seq.* of the Public Procurement Act on the effects of breach of contract (termination of the contract, enforcement of the pre-established security, compensation for damages, etc.).

The above shall apply regardless of any other legal action that may be taken by ICN2.

3. DOUBLE FUNDING PREVENTION PROCESS

The aim of this double funding prevention process is to ensure that there is no double funding in relation to the RTRP.

a. Prohibition of double funding:

Any project funded by the RTRP or others must adhere to the limits established in relation to public funding and, in particular, avoid double funding.

Double funding of RTRP projects is prohibited. Under no circumstances may the same expenses be subsidised twice, whether with RTRP funds or with any other national, EU or international grant.

Without prejudice to the foregoing, RTRP projects may receive financial assistance from other national, EU or international programmes and instruments provided that it does not cover the same cost and they are compatible under the applicable regulations.

b. Mechanisms to avoid double funding:

In order to avoid double funding of a project with RTRP funds, compliance with the following matters, as well as with any that may be created according to needs and by regulatory changes, must be checked before the application or during its processing.

- a) Establishment of a separate and individualised accounting system for each project.
- b) Identification of each project with a specific nomenclature and an individual identification number. For example: 00013304:2021ERC-COG ATOMIST.
- c) Control of expenses co-funded according to the previous system. The co-funding and distribution of the funds involved may under no circumstances add up to the total expenditure.
- d) No other grant, whether national, EU or international, may have been applied for in relation to a project covering the same expenditure.
- e) The managers of the RTRP at ICN2 must complete the attached Annex I to analyse whether the grant entails double funding.
- f) At the justification stage, when the grant in question has been co-funded, ICN2 shall check in its systems the expenditure allocated to each grant.

If it is found through any database or additional information that the expenditure of the project to be covered by RTRP funds has already been subsidised by the RTRP or other grants, the procedure in question must be reviewed and the necessary measures to avoid double funding must be taken.

If the double funding is confirmed, ICN2 shall reimburse the relevant amounts in any case.

4. HISTORY, APPROVAL AND ENTRY INTO FORCE

History:

The following table reflects the different versions of the Procedure that have been drawn up, as well as the date and subsequent modifications that each version of the document may have undergone:

VERSION	DATE	AUTHOR	CHANGES
1.0	November 2023	Committee responsible for the AFMP	Final version February 2024

Approval and entry into force:

This Procedure shall be approved by ICN2's governing body, and it shall come into force on the date of its approval.

5. FOLLOW-UP, CONTINUOUS ADAPTATION AND AMENDMENT OF THE PROCEDURE

Follow-up and continuous adaptation:

Periodic revisions of the content of the Procedure shall be established in order to ensure that it is always appropriate for ICN2's circumstances, legislative changes, changes to the case law, etc. The Procedure shall thus be adapted in accordance with the case law criteria established by the courts and the criteria established in the guides, reports or resolutions of any public administration that may be applicable to the Procedure.

In addition, the rulings and delegated acts issued by the services of the European Commission in relation to the requirements for each of the RTRP management principles shall also be taken into account when updating the Procedure.

Amendments:

ICN2 may amend the Procedure on its own initiative and/or at the proposal of any of its intended recipients, and the amendments shall always be reviewed by the person responsible for the RTRP. Amendments to the Procedure shall always be proposed in the following circumstances: (i) If serious breaches of the Procedure become apparent; (ii) if there are significant changes to ICN2's control structure or its activity according to the powers that may be attributed to it; and (iii) if advisable due to changes to legislation or the case law.

6. COMMITMENT AND ACCEPTANCE BY THE RECIPIENTS OF THE PROCEDURE

All recipients of this Procedure must be familiar with it, actively contribute to its compliance and consider any breaches they may be aware of, as well as any defects they may observe in its content or development.

Anyone who observes a breach of the Procedure or signs or evidence of a fact capable of constituting an unlawful act of corruption, fraud or breach of regulations, including both laws and ICN2's internal rules, must bring this to the attention of the Committee in charge of the AFMP through any of the communication channels established by the organisation.

ANNEX I – DOUBLE FUNDING CHECKLIST

In order to ensure compliance with European regulations and facilitate the preparation of the mandatory reports and management declarations regulated by the RTRP, the following questions must be answered in relation to any project subsidised by the RTRP:

#	Question	Answer	
1.	Is the project being funded with Recovery and Resilience Facility funds expected to also receive funding from other instruments, whether national or European?	Yes	No
<i>Continue only if you have answered "YES" to question 1.</i>			
2.	Is there a control procedure (for example, in a separate accounting system) to check that funding from other instruments has not been used to cover the same costs funded with Recovery and Resilience Facility funds?	Yes	No
3.	Does the project have its own Unique Project Identifier?	Yes	No
<i>If you have answered "NO" to any of questions 1, 2, or 3, you must inform the Committee responsible for the AFMP to warn them and so they can review the case.</i>			

ANNEX II – ACKNOWLEDGEMENT OF RECEIPT OF THE PROCEDURE

Internal receipt of the Procedure

By signing this document, I certify that I have received, read and understood the Procedure for the Recovery of Fraudulently Spent Funds and the Prevention of Double Funding. I also undertake to adhere and comply with it.

Furthermore, I understand that failure to comply with its content could lead to a disciplinary sanction by the Catalan Institute of Nanoscience and Nanotechnology (ICN2).

DATE:

NAME/ID (DNI):

SIGNATURE: