



OBSERVATOIRE DU SAHARA ET DU SAHEL  
SAHARA AND SAHEL OBSERVATORY

# Arbitration Procedure : suspension, reduction and termination of funding

*October 2016*



## ARBITRATION PROCEDURE : suspension, reduction, and termination of funding

### 1. SUBJECT

Projects managed by the Sahara and Sahel Observatory are governed by rules and procedures that guarantee, on the one hand, the effective management of allocated funds and make financial operations more transparent, on the other. Grant agreements and consultancy contracts, service provision, acquisition of goods and equipment are subject to the principles, rules, and practices of international law.

To that end, OSS has adopted and implemented policies and procedures relating to the fight against fraud and corruption as well as a process for monitoring procurement plans and commitments. In addition, another procedure has been set up for a better monitoring of funds and grants management. In case of litigation and / or non-compliance with the Financing Agreement concluded between OSS and its beneficiary partners, an arbitration process is to be implemented in accordance with the present procedure.

### 2. SCOPE OF APPLICATION

OSS has developed the present "Arbitration Procedure" to clarify the administrative process through which cases requiring arbitration are managed. This process is advocated by the general conditions of contracts / agreements linking OSS with its partners and grants/financing beneficiaries.

This procedure also applies to corrupt practices and fraudulent, collusive, coercive and obstructive manoeuvres reported within operations financed via OSS.

It applies to individuals and firms as well as financing transactions, management, and procurement.

### 3. REFERENCE DOCUMENTS

The present Arbitration procedure is fully compatible with OSS policy for good financial and administrative governance. It has been elaborated based on the following documents:

- 1) OSS Procedures Manual, April 2012 version 1.0
- 2) General Conditions of the Convention (OSS-Partners)
- 3) Grant Agreement
- 4) Whistleblowing Policy
- 5) OSS Financial Regulations
- 6) Consulting Contract
- 7) Procurement Guidelines
- 8) Arbitration Committee at OSS (ACOSS)<sup>1</sup>

The OSS Arbitration procedure complies with related international standards. It was inspired from the standards applied by other implementing entities like the World Bank and the European Union.

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<sup>1</sup> The ACOSS is composed of the Executive Secretary as a chairman, internal auditor and coordinators of Water and Environment Programs at OSS. The committee is open to any member whose presence is deemed necessary.



## 4. CONTENT

### A. GENERAL POINTS:

OSS, as an implementing entity, is required to monitor and control the proper execution of projects' activities and administrative and financial operations.

It is worth noting that according to the OSS's regulations, only the funds beneficiaries are responsible for the implementation of actions and compliance with the Agreement provisions.

They shall ensure that: i) all liabilities related to procurement, consultation or service provision are materialized by contracts and that every contract includes and respects national laws, international practices, and contractual clauses.

OSS exhorts its partners / Grant and financing recipients to respect the different regulations stipulated by the Financing Agreement. Any breach of these rules shall be considered ineligible for funding and may entail the arbitration procedure to suspend funds, or even retrieve them.

Partner / beneficiaries shall ensure:

- The provision by OSS of information, upon request, on the eligibility of costs, the proper execution of activities and compliance with any other obligation under the Agreement;
- Information about events and circumstances that may affect the Agreement;
- The obligation to maintain written records and other supporting documents in order to prove the correct implementation of the action and costs it declared as eligible;
- The requirement for submission of deliverables in a timely fashion and the terms defined by contracts / agreement;
- Submission to OSS of technical and financial reports as stipulated in the Financing Agreement;
- The submission of technical reports, supporting documents of procedures and their implementation and periodic financial statements for controls, reviews and audits by OSS or the auditor that OSS designates.

### B. The OSS's approach for the application of the Arbitration Procedure

The coordinator in charge of monitoring the financing agreement at OSS shall ensure its respect and must report any violations (see point 2) that he will notice.

In general, an initial review by the OSS internal auditor of reported infringements permits an expeditious resolution without resort to a full arbitration procedure.

In more complicated cases or in case of difficulties of settlement, an arbitration process should be applied.

This procedure shall be conducted with full transparency. Its steps are regularly reported to the funder who has the right to contest or approve the measures applied by OSS.

Stages of the Arbitration procedure are as follows:

1. **Reporting of reprehensible practice** by project coordinator at OSS to the Arbitration Committee (AC-OSS)



**2. The AC-OSS examines the evidence** submitted for assertion or refutation of the existence of reprehensible practice.

**a. Evidence furnished by the project coordinator at OSS is considered insufficient.**

In this case, the ACOSS does not issue a "**Temporary Suspension Notice**". The coordinator may resubmit a request for temporary suspension if he has new elements of irregularities;

**b. Evidence provided by the project coordinator at OSS is considered sufficient.**

If the ACOSS deems it necessary, a **Temporary Suspension Notification** is addressed the party in charge of the project implementation, considered in this context as "**the defendant party**". Thus, the defendant party will be temporarily deprived of the project financings. *It should be noted that the suspension period may extend to a maximum of three months.*

*The note shall serve to inform the defendant about the temporary suspension and how it can provide an explanation and contest the Arbitration decisions.*

*The Suspension Note must be supplemented by a Statement on possible Arbitration decisions and rebukes to the evidence furnished, as well as copies of OSS Arbitration procedures and composition of the ACOSS in force upon issuance of the notice.*

**3. Submission of a preliminary explanation:** the defendant party must provide any relevant evidence in response to the addressed complaint<sup>2</sup> no later than thirty days after the notice issuance.

**4. Preliminary assessment of evidence submitted by the defendant:**

**a. If the ACOSS receives the explanations requested within the time limit and if it considers that the response is sufficient,** it shall classify the regularization evidence obtained and communicate them, for opinion, to the concerned funder and this in order to terminate the temporary suspension period;

**b. If the response is considered insufficient,** the ACOSS and after consulting the concerned funder may analyze facts to issue the final arbitration decision.

**5. Analysis of all elements submitted to the ACOSS:**

**a. If the evidence review leads to the Refutation of the presence of reprehensible practice.**

The temporary suspension period shall be interrupted. The project coordinator may request a new Notice of Arbitration if he has new evidence.

**b. If the evidence review leads to the confirmation of the presence of reprehensible practice.**

In case of absence of a response / explanation of the defendant or in case of insufficiency of explanatory elements, the final arbitration decision shall be taken in consultation with the funder. The ACOSS takes its arbitration decision with the agreement of the absolute majority of its members. It addresses to the defendant party an arbitration procedure notice specifying the decision and / or the recommendations to be adopted.

**6. Appeal to arbitration decisions**

The defendant has thirty days to object the arbitral decisions in order to end or modify them. The ACOSS may, however, close the procedure if the defendant provides sufficient evidence

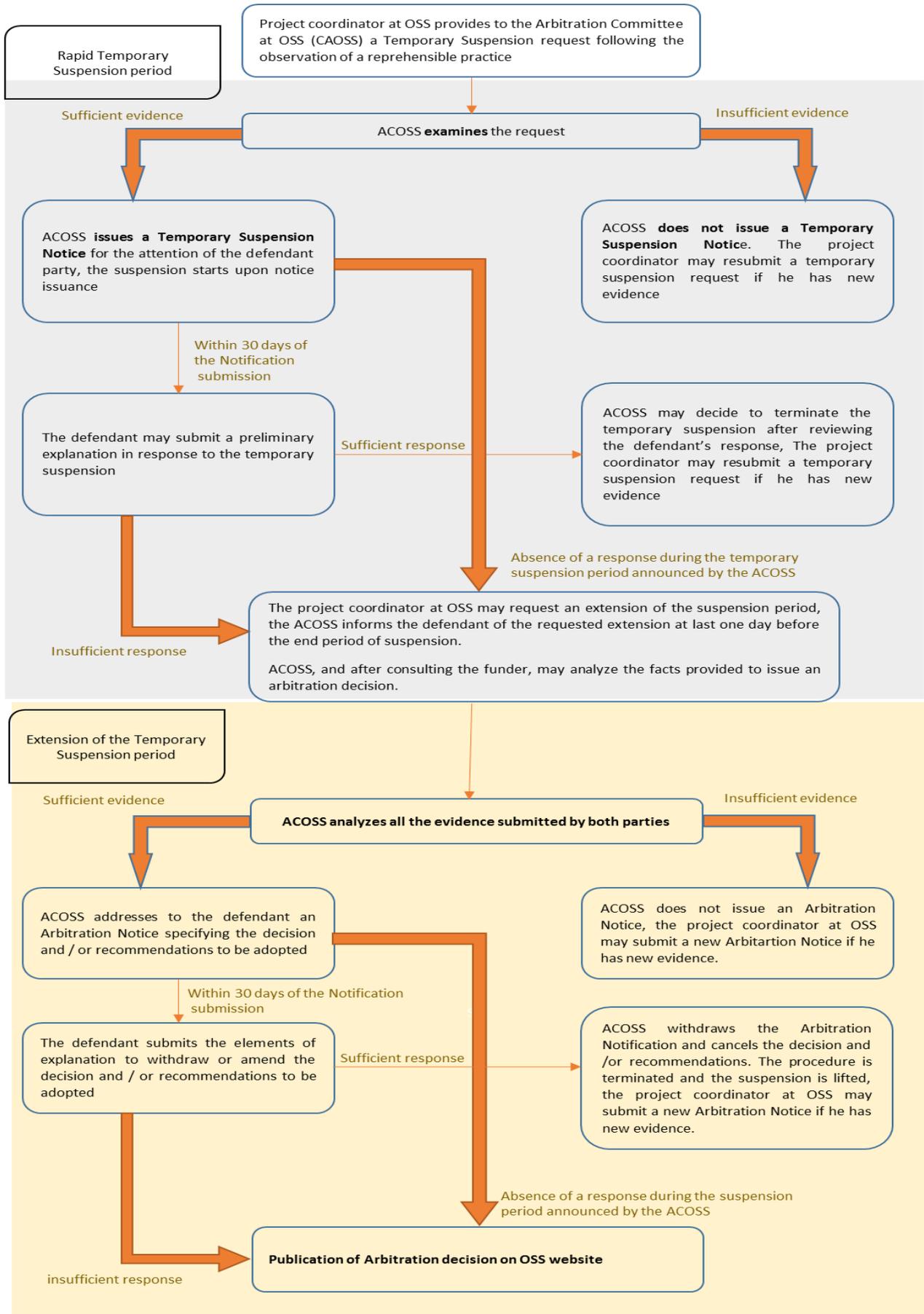
**7. Publication of Arbitration decision on OSS website.**

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<sup>2</sup> In case of absence of response from the defendant party, the project coordinator at OSS may request the AC-OSS to extend the temporary suspension period of the project financings.



### C. Overview of the Arbitration Procedure





The table below details the implementation process of the Arbitration procedure

WHAT	HOW	WHO
Step 1: Reporting of reprehensible practice	<ul style="list-style-type: none"> <li>- observation of a reprehensible practice</li> <li>- submission of a written request endorsed by evidence to the AC-OSS</li> </ul>	The project coordinator at OSS
Step 2: Examination of the evidence	<ul style="list-style-type: none"> <li>- Reception of the request and the evidence</li> <li>- Issuance of a Temporary Suspension Notice for the attention of the defendant in case of sufficient evidence</li> </ul>	The AC-OSS
Step 3: Submission of a preliminary explanation	<p>Providing relevant evidence in response to the addressed complaint The evidence should be sent to <a href="mailto:boc@oss.org.tn">boc@oss.org.tn</a> no later than thirty days after the notice issuance</p>	The defendant
Step 4: Preliminary assessment of evidence submitted by the defendant	<ul style="list-style-type: none"> <li>- Reception of the defendant's response</li> <li>- Assessment of evidence</li> <li>- Consulting the funder for depth evaluation of evidence in case of insufficient response</li> </ul>	The AC-OSS
Step 5: Analysis of all elements submitted to the ACOSS	<p>Refutation of the presence of reprehensible practice: interruption of the temporary suspension period confirmation of the presence of reprehensible practice: issuance of the Arbitration decision after consulting the funder</p>	The AC-OSS
Step 6: Appeal to arbitration decisions	<p>Providing response in order to end or modify the arbitral decision. The response should be sent to <a href="mailto:boc@oss.org.tn">boc@oss.org.tn</a> no later than thirty days after the notice issuance</p>	The defendant
Step 7: Publication of Arbitration decision on OSS website	<p>Publication of the final arbitral decision on the OSS website</p>	OSS