

INTERNATIONAL MONETARY FUND

Making the Misreporting Policies Less Onerous in *De Minimis* Cases

Prepared by the Legal and Policy Development and Review Departments
(In consultation with other Departments)

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Summary of the Proposal

The Managing Director's Medium-Term Strategy referred to complex misreporting procedures for even trivial forms of misreporting and called for streamlining. This paper presents a proposal to reduce the burden of the Fund's misreporting policies in cases involving *de minimis* deviations from program conditions.

The proposal is to consider deviations from a performance criterion or other condition to be *de minimis* where they are so small as to be trivial with no impact on the assessment of program performance. In instances where management judges that misreporting was *de minimis* (subject to Board oversight) the following changes would be made:

- All the notifications to the member could be made by the Area Department, and not by the Managing Director as is the norm now, and a written response would not be expected.*
- The Managing Director's findings and recommendations would, wherever possible, be presented to the Board in other documents (e.g., an Article IV or use of Fund resources staff report) and addressed in the context of a Board meeting on that other document, rather than in a separate Board document and meeting as is the norm now.
- With Board approval to use the *de minimis* procedures, cases of noncomplying purchases and disbursements arising from *de minimis* misreporting would be exempted from the general publication requirement that presently applies to all misreporting cases. A low-key factual statement would be made to correct the public record and record the waiver of the performance criterion. When *de minimis* misreporting is folded into another Board document, the sections of the document dealing with the *de minimis* misreporting would be deleted before publication. Stand-alone Board documents discussing *de minimis* misreporting cases would not be published.

Consistent revisions are proposed to misreporting procedures under Article VIII, Section 5, the HIPC Instrument, and the Policy Support Instrument, and to the Fund's publication policy.

Staff believes that this proposal would strike a reasonable balance between reducing the cost to members of the misreporting policy in *de minimis* cases while preserving incentives for good data reporting and the Fund's capacity to deal with serious cases of misreporting.

* While many Directors shared the staff's position on this issue, there was stronger support to retain the existing policy. These Directors stressed that the Fund would continue to welcome a response by the authorities.

I. INTRODUCTION¹

1. Reliable and timely information is essential for all aspects of the Fund's work. Without such information, the Fund cannot provide sound policy advice in its consultations with member countries or judge confidently the basis on which to provide financial support. Poor data can lead to inaccurate assessments, and inappropriate policy advice and program design, with negative outcomes and reputational effects for the member and the Fund itself.

2. The provision of timely and accurate information to the Fund is the responsibility of the member. The Fund's relationship of trust with the member is fundamental to securing such information. While the Fund is not merely a passive recipient of information, the procedures and safeguards that exist within member countries must play the primary role in ensuring the quality of the data provided to the Fund. The Fund's legal framework addresses the issue of misreporting of information. It rests primarily on two pillars: (i) Article VIII, Section 5, which applies to all members, and which contains general provisions on the furnishing of information by members to the Fund with some qualifications (e.g., relating to capacity and confidentiality), and (ii) the Guidelines on Misreporting and Noncomplying Purchases in the General Resources Account and disbursements under the Poverty Reduction and Growth Facility (PRGF) or the Exogenous Shocks Facility (ESF) (hereinafter collectively referred to as the "Misreporting Guidelines"), which address misreporting in the context of Fund arrangements.^{2,3} Several other Fund policies (i.e., the HIPC Trust Instrument, the decision on Policy Support Instruments, and the publication policy) also contain specific provisions on misreporting. Taken together these various provisions of the Fund's Articles, and Fund policies comprise the Fund's "misreporting framework."

3. Several episodes of egregious misreporting in the late 1990s led the Fund to adopt a firmer stance on misreporting. In particular, the Misreporting Guidelines were amended in 2000 to: (i) lengthen from two to four years the period during which the Fund may take action with respect to misreporting (the "limitation period"); (ii) subject reporting on specified prior actions to the Misreporting Guidelines; and (iii) grant waivers only on condition that the information provided to assess the performance criterion (or other relevant performance conditions) is accurate. It was also decided that all cases of misreporting would be made public (Box 1). In 2002, a framework to address cases of data revision under the HIPC Initiative was established, and a framework for the strengthening of the effectiveness

¹ This paper was prepared by Mr. Boote, Mr. MacArthur, Mr. Erickson von Allmen, and Mr. Hilaire (all in PDR) and Mr. Leckow, Ms. Mouysset, and Mr. Eastman (all in LEG).

² See: *Strengthening the Effectiveness of Article VIII, Section 5*, Decision No. 13183-(04/10), January 30, 2004.

³ See: *Misreporting and Noncomplying Purchases in the General Resources Account, Guidelines on Corrective Action*, Decision No. 7842-(84/165), adopted November 16, 1984, as amended; and *Instrument to Establish the Poverty Reduction and Growth Facility and Exogenous Shocks Facility (ESF) Trust*, annexed to Decision No. 8759-(87/1 76) ESAF, adopted December 18, 1987, as amended, Appendix I.

of Article VIII, Section 5 was adopted in 2004. The Fund decision establishing the Policy Support Instrument adopted in 2005 contained provisions on the misreporting of information.^{4,5}

4. In the context of the use of Fund resources, there has been a sharp increase in the number of misreporting cases brought to the Executive Board since these changes were initiated in July 2000 (Figure 1 and Annex). The 37 misreporting cases brought to the Board in July 2000–March 2006 involved 49 conditions. Out of these conditions, the most common ones were performance criteria (PCs) on non-accumulation of external arrears (12), fiscal balances (seven), debt (six), net international reserves, net domestic assets or reserve money (nine), and financing (four). The rest were mostly related to structural measures or the avoidance of certain measures. In six of the 37 cases, the member had to make an early repurchase or repayment; in the other cases, either the Board granted a waiver for nonobservance or the member had already made an advance repurchase (repayment). There has been only one case of misreporting to arise exclusively under Article VIII, Section 5, since the 2004 Decision was adopted (Paraguay in 2005).

5. Part of this sharp increase in misreporting cases can be attributed to the strengthened Misreporting Guidelines themselves, including eight incidents relating to prior actions that, in effect, were not subjected to the policy before 2000. There has also been a more vigilant attitude in the Fund with respect to misreporting. The Fund's more diligent approach to misreporting has likely led to an increase in misreporting incidents that may have gone unnoticed before, and some of these involve *de minimis* deviations from targets.

⁴ *Strengthening the Effectiveness of Article VIII, Section 5*, Decision No. 13183-(04/10), adopted January 30, 2004.

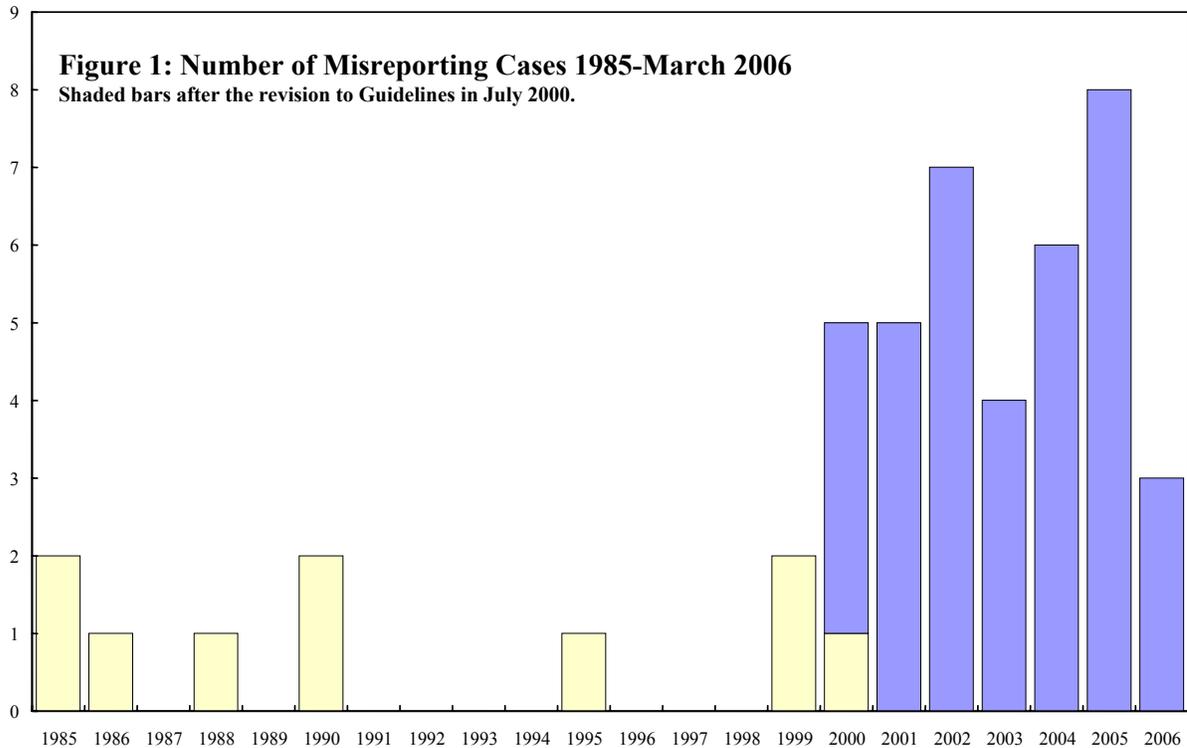
⁵ *Implementation of the Policy Support Instrument, A Framework for Policy Support Instruments*, Decision No. 13561-(05/85), adopted October 5, 2005.

Box 1. The Guidelines for Misreporting and Noncomplying Purchases

- The Guidelines apply to performance criteria and other conditions (e.g., prior actions) applicable to an outstanding purchase in the GRA or disbursement under the PRGF or ESF, and to information provided in the context of requests for waivers.^{1/}
- Whenever evidence comes to the attention of the staff indicating that a performance criterion or other condition applicable to an outstanding purchase/disbursement may not have been observed, the Managing Director shall promptly inform the member concerned.
- If, after consultation with the member, the Managing Director finds that the performance criterion or other condition was not observed, the Managing Director shall promptly notify the member of this finding. At the same time, the Managing Director shall submit a report to the Board together with recommendations.
- In any case where the noncomplying purchase/disbursement was made no more than four years prior to the date on which the Managing Director informed the member, the Board may decide either (a) that the member shall be expected to repay or repurchase the outstanding amount of its currency resulting from the noncomplying purchase/disbursement normally within 30 days from the Board decision, or (b) that the nonobservance will be waived.
- A waiver will normally be granted only if the deviation from the relevant performance criterion or other condition was minor or temporary, or if, subsequent to the purchase/disbursement, the member adopted additional policy measures appropriate to achieve the objectives supported by the relevant decision.
- After the Board has determined that misreporting occurred, the Fund proceeds to make relevant information public in every case, with Board review of the text for publication (to ensure the text is appropriately calibrated based on the severity of the case).^{2/}

^{1/} See Decision No. 7842-(84/165), adopted November 16, 1984, as amended.

^{2/} See *Concluding Remarks by the Acting Chairman: Strengthening the Application of the Guidelines on Misreporting* (Selected Decisions, Thirtieth Issue, IMF, December 31, 2005, page 646).



6. It is against this background that the Managing Director’s Medium-Term Strategy referred to “complex misreporting procedures for even trivial forms of misreporting” and called for proposals “to streamline such activity so as to make the Fund’s work procedures less taxing for members and indeed for the Fund itself.” The next section discusses how such streamlining could be achieved, and sets out general principles that should be observed in any modification of the misreporting framework. Section III sets out specific proposals for the modification of the legal framework for misreporting to address *de minimis* cases. Section IV sets out an analysis of the proposal and reaches conclusions. Issues for discussion are specified in Section V.

II. OBJECTIVES IN MODIFYING THE MISREPORTING FRAMEWORK TO ADDRESS *DE MINIMIS* CASES

7. The Fund’s misreporting framework establishes procedures that are followed in all relevant cases. These procedures may be taxing in cases that may be viewed as *de minimis*:

- Staff missions and the authorities may spend large amounts of time trying to establish the accuracy of past data;
- Management, senior officials from the member country, and the Executive Director concerned will, in practice, be involved in an exchange of formal letters, and their role will be more extensive if there are disputes; and

- There may be a reputational cost to being identified publicly as having misreported and this cost can seem disproportionate in cases of *de minimis* misreporting.⁶ Such a stigma may also potentially discourage data revisions.
8. The challenge for a reform of the misreporting framework is to reduce the stigma and burden in *de minimis* cases, while protecting several fundamental objectives:
- The reform should preserve strong incentives for timely and accurate data reporting, and should not compromise the Fund’s capacity to deal adequately with more serious cases of misreporting.
 - The reform would need to be consistent with the legal framework set out in the Articles of Agreement and, in particular, Article VIII, Section 5, and should not change the fundamental nature of Fund arrangements, which work well. In this regard, under a Fund arrangement, the Fund applies a “bright line” test in determining whether a performance criterion has been observed; a member’s failure to meet a performance criterion by even a minimal amount will still give rise to a finding of nonobservance, with no discretion applied in this analysis. However, if it is determined that a performance criterion was not observed, the Fund does exercise discretion in deciding whether or not to grant a waiver for nonobservance and, in particular, will take into account the magnitude of the nonobservance. A similar approach is taken in assessing observance of performance conditions after a purchase has been made and deciding whether to grant a waiver in the context of the Misreporting Guidelines.
 - Any new policy should promote uniformity of treatment in the application of the legal framework to individual cases.

III. PROPOSED MODIFICATIONS TO THE LEGAL FRAMEWORK

9. Given these objectives and constraints, staff proposes a package of amendments to existing Fund policies aimed primarily at reducing the stigma and procedural burden associated with misreporting in *de minimis* cases involving the use of Fund resources or support under the PSI. The proposed policy changes would focus on the Misreporting Guidelines, and other relevant policies would also need to be aligned. It is not proposed to

⁶ It should be noted that the Fund has exercised considerable flexibility in the form of publication to reflect the circumstances of each case. Examples range from stand-alone Public Information Notices (PIN) to an indirect reference within a PIN on program performance or surveillance. See for example the sharp contrast between the September 6, 2000 News Brief for Ukraine *IMF Finds Ukraine National Bank Misreported International Reserves, Considers Circumstances, and Proposes Measures to Prevent Recurrences* with the September 14, 2000 News Brief for Mexico *IMF Completes Final Mexico Review*, which stated that “When final fiscal data for 1999 became available, there was a very minor revision resulting from the standard process for producing fiscal information in Mexico. The resulting deviation from a fiscal performance criterion was inadvertent and temporary. These minor data revisions do not change the Fund’s favorable assessment of fiscal policy implementation under the program.”

amend Fund policies to address *de minimis* misreporting in the context of surveillance as, in this area, the Fund has not encountered significant problems; the amendments proposed below would apply to surveillance only in “hybrid” cases involving the misreporting of information both for the purposes of UFR/PSI and surveillance.

A. Identifying and Defining *De Minimis* Deviations

10. Under the proposals outlined below, special procedures would apply to *de minimis* cases under the misreporting framework. It would be the Managing Director who would make a judgment, in the first instance, whether a particular case of misreporting was *de minimis* and whether the special procedures would be used. As all such cases would continue to be submitted to the Executive Board, it would be open to the Board to reject management’s assessment of a case as *de minimis* and deal with it under the standard procedures.

11. The Managing Director’s judgment will need to be based on a definition of *de minimis* that provides reasonable guidance about which cases qualify and which do not, consistent with the principle of uniformity of treatment. Several approaches are possible:

- A precise or quantified definition of *de minimis* (e.g., “deviations of no more than x”) would facilitate consistent application but would be difficult to establish for all conditions and all members (e.g., structural conditions). It would also quickly lead to issues of “*de minimis* deviations” from this definition.
- A second approach would be to consider as *de minimis* every misreporting case involving a deviation that meets the criteria for waivers (i.e., where the member would not be requested to repurchase the noncomplying purchase or to repay the noncomplying disbursement). This approach has the advantage that it would not require a new category of *de minimis* to be established. But it suffers from the drawback that, since waivers are granted in all but the most serious cases, most misreporting cases would be subjected to the *de minimis* procedures. Alternatively, the Fund could treat as *de minimis* any case of misreporting involving a deviation that meets the criteria for a waiver on the basis that the underlying nonobservance is “minor” or “temporary”, but not when the member had been required to undertake corrective action. However, for many misreporting cases involving very small deviations (e.g., relating to external arrears), the waiver is granted only after corrective action is taken (e.g., the arrears are cleared), not (only) because of the deviation being small. Moreover, either of these approaches would be difficult to apply in an even-handed manner, and might reduce incentives for good data reporting to the Fund.
- A third approach, which staff favors, would be to (i) define as *de minimis* any deviation from a performance criterion or other specified condition (e.g., prior action) that is so small as to be trivial with no impact on the assessment of performance

under the member's program; and (ii) identify from experience examples of *de minimis* cases that would be used as yardsticks in providing guidance.

12. This third approach would be based on sometimes difficult judgments by staff and management in recommending that a particular case be considered *de minimis*, with the ultimate decision resting with the Board. Since repeated occurrences of misreporting, even if very small, suggest there might be a larger problem that needs to be resolved, such cases would typically not be considered *de minimis*. For misreporting involving structural reforms, coming to a judgment as to whether a particular case should be considered *de minimis* may not be easy—often the implications of the deviation are not possible to quantify.

13. Table 1 reports examples that could be considered *de minimis* misreporting on this basis. The cases of Djibouti, Dominica, Paraguay, Rwanda, and Tajikistan all involved very small deviations from the performance criterion relating to external payments arrears (and for Dominica (2005) the duration of the deviation was also very short); the case of Mexico involved a deviation from the fiscal performance criterion that was equal to 0.01 percent of GDP; in the case of the Democratic Republic of Congo the breach of a continuous structural performance criterion involved unauthorized spending equal to 0.015 percent of GDP; and Pakistan's breach of the structural performance criterion on tax exemption had no implications for tax revenue.

B. The Misreporting Guidelines

14. The Misreporting Guidelines apply to all cases in which a member makes a "noncomplying" purchase or disbursement as a result of "misreporting." In such cases, a member will be "expected" to make an early repurchase or repayment unless the Fund grants a waiver for nonobservance (see Box 1).

Table 1. Some Examples of *De Minimis* Misreporting 1/

Mexico SBA	2000	Fiscal balance: data revision resulted in deviation from the target of \$57 million (0.01 percent of GDP).
Tajikistan PRGF	2001	External arrears: \$500,000.
Djibouti PRGF	2002	External arrears: SDR 59,214.
Dominica SBA/PRGF 1/	2004	External arrears: \$326,300 (claim reclassified as external in 2004).
Dominica PRGF	2005	External arrears: \$109,000 (delayed 29 days).
Rwanda PRGF	2005	External arrears: \$25,145.
Congo, Dem. Rep. PRGF	2005	Structural PC: Central Bank failed to receive prior Treasury approval for purchases totalling \$1 million (0.1 percent of total budgetary expenditures).
Pakistan PRGF	2005	Structural PC: tax exemption but had no budgetary implications.
Paraguay SBA 1/	2005	External arrears: \$4 million.

1/ Dominica (2004) was misreporting both under the Guidelines and Article VIII, Section 5. Paraguay (2005) was misreporting under Article VIII, Section 5 only, not under the Misreporting Guidelines, because no purchase was made as the SBA was treated as precautionary. In the case of Mexico (2000), staff considered whether the data revision that led to misreporting also gave rise to a breach of Article VIII, Section 5, but found that it did not. The other examples above did not involve breach of Article VIII, Section 5 because it does not apply to PRGF-arrangements.

15. Staff proposes modifications to the Fund's Misreporting Guidelines to address cases of noncomplying purchases/disbursements arising from *de minimis* misreporting. Special *de minimis* procedures would provide for the following:

- Under the Misreporting Guidelines, the Managing Director is required to notify a member promptly: (a) that a noncomplying purchase/disbursement may have been made and that an enquiry has been commenced by staff; and (b) if needed, that he has concluded that a noncomplying purchase/disbursement was in fact made. For *de minimis* cases, these notifications could be made by the Area Department and not by the Managing Director, and a written responses from the authorities would not be expected.*
- Whenever the Managing Director concludes that a noncomplying purchase/disbursement was made, he must report his finding to the Board and make a recommendation with respect to corrective action; this report is normally contained in a separate Board document. For *de minimis* cases, the Managing Director would still be required to report to the Board and make recommendations, but not normally in a separate Board document. Rather, the Managing Director's findings and recommendations would, wherever possible, be folded into other documents (e.g., an Article IV or UFR staff report) and addressed in the context of a Board meeting on that other document. In the rare cases where such a document cannot be issued to the Board promptly after the Managing Director's conclusion that a noncomplying purchase/disbursement has been made, management would consult Executive Directors (e.g., through an informal country matters session) and, if deemed appropriate by management, a short stand-alone document would be prepared for a lapse-of-time consideration by the Board.

* While many Directors shared the staff's position on this issue, there was stronger support to retain the existing policy. These Directors stressed that the Fund would continue to welcome a response by the authorities.

- It would be made clear that cases of noncomplying purchases/disbursements arising from *de minimis* misreporting would, if the Board agrees that the case is *de minimis*, result in the Board granting of a waiver for nonobservance. The Misreporting Guidelines provide that the Board may grant a waiver, inter alia, when the relevant nonobservance is “minor” or “temporary.”⁷
- Cases of noncomplying purchases/disbursements arising from *de minimis* misreporting would be exempted from the general publication requirement that now applies to all misreporting cases and would no longer be published; cases of *de minimis* misreporting would not be mentioned in PINs, Chairman’s statements, factual statements or other public statements issued by the Fund. Once it is determined that a particular case of misreporting was *de minimis*, management and the Board would have no discretion with respect to publication; in all such cases, no publication of the misreporting would be made.⁸ To correct the public record, the Fund would include in a Chairman’s statement, factual statement or PIN or other press release, a statement clarifying that a waiver had subsequently been granted for nonobservance of a program condition, but without stating that the relevant condition was the subject of misreporting. (Publication policy is discussed more fully below).
- In those circumstances when the *de minimis* misreporting is presented in a Board document dealing with a broader set of issues (e.g., an Article IV consultation staff report), the sections of the Board document dealing with the *de minimis* misreporting would be deleted before publication. Stand-alone Board documents discussing *de minimis* misreporting cases would not be published.

16. Staff does not favor a more fundamental change to the Misreporting Guidelines under which *de minimis* misreporting would not be treated as misreporting at all. While such an approach might address the problem of the cost associated with a zero-tolerance policy in *de minimis* cases of misreporting—it would also be difficult to administer, would reduce incentives for good reporting, and would change the nature of a Fund arrangement.

17. Box 2 shows how the *de minimis* procedures set out in this paper would have been applied in the case of Rwanda’s misreporting incident, which the Board considered on April 11, 2005.

⁷ In the case the misreporting relates to external arrears, the arrears would need to be resolved for the granting of a waiver.

⁸ A similar approach to publication would apply in the case of the policies discussed in sections C, D and E.

Box 2. How the staff proposal would have been implemented—the case of Rwanda

This box shows how the *de minimis* procedures set out in this paper would have been applied in the case of Rwanda’s misreporting incident, which the Board considered on April 11, 2005. Rwanda’s accumulation of \$25,145 in new non-reschedulable external payments arrears in 2003 led to two non-complying disbursements under the PRGF and one of interim assistance under the Enhanced HIPC Initiative.

The 10-page Board document provided a full description of the misreporting incident, and included a letter from the Acting Managing Director to the authorities, two letters from the authorities to the Acting Managing Director, correspondence between the authorities and staff, and the Managing Director’s report to the Fund’s Executive Board. It was considered by the Board at the same time as the fourth review under the PRGF arrangement for Rwanda.

The press release *IMF Executive Board Completes the Fourth Review of Rwanda’s PRGF Arrangement and Addresses Misreporting of Information* (No. 05/85, 4/13/05) included the following paragraphs:

“The Board also considered the issue of inaccurately reported information in connection with the continuous performance criterion on external arrears. This performance criterion was not observed as a result of the incurring arrears to the Arab Bank for Economic Development for Africa during the fourth quarter of 2003, which were not reported to the IMF at that time. Consequently, the disbursements following the completion of the second and third program reviews under the PRGF arrangement were rendered noncomplying and a similar conclusion pertained to the disbursement of interim assistance made under the enhanced HIPC Initiative at the time of the completion of the second program review. However, in view of the settlement of the arrears in the context of satisfactory program implementation, the Board decided not to take remedial action in relation to the misreporting.”

“On the issue of the noncomplying disbursement, Mr. Carstens said: “The Executive Board regretted the authorities’ failure to ensure the accuracy of information relating to the accumulation of external payments arrears, which led to a breach of the relevant performance criterion under the PRGF arrangement and to two noncomplying disbursements under the arrangement and disbursements of interim assistance under the Enhanced HIPC Initiative. There was a misunderstanding between the authorities and one creditor as to the due date of an interest payment, leading to the misreporting to the Fund. However, given that the deviation was minor, had been settled in the interim, and had not endangered achievement of the other objectives of the PRGF-supported program, the Executive Board decided to grant a waiver of nonobservance of the performance criterion.”

Under the proposal set out in this staff paper, Rwanda’s misreporting would have been considered as *de minimis* and the following procedures would have been followed:

- The authorities would have been notified about the misreporting incident by the Area Department rather than via a letter from the Acting Managing Director, with no need for a formal reply.
- There would have been no separate Board document or separate Board meeting on the misreporting incident. A brief description of the facts and a proposed decision on a waiver would have been included in the PRGF review Board documents (*Rwanda—Fourth Review Under the Three-Year Arrangement Under the Poverty Reduction and Growth Facility and Requests for Waiver of Nonobservance of Performance Criteria and for Extension of the Arrangement* (IMF Country Report 05/171, May 2005). Information on misreporting would have been excluded from the summing up and would be deleted from the staff report prior to publication, assuming publication was agreed, as it was for this review.
- To correct the public record, the approval of the waiver of nonobservance would have been mentioned in the press release on the fourth PRGF review, but without direct reference to the misreporting itself. The sentence would have been along the following lines: “The Board also approved a waiver of nonobservance of the continuous performance criterion on external arrears that was breached in the fourth quarter of 2003.”

C. Article VIII, Section 5

18. Broadly speaking, whenever misreporting occurs in the context of the use of the Fund's general resources (GRA), Article VIII, Section 5 is also implicated.⁹ Moreover, while Article VIII, Section 5 does not apply to misreporting under the PRGF, the ESF, or a PSI *per se*, there are circumstances in which the misreporting of performance criteria under a PRGF or ESF arrangement or a PSI can lead to a breach of Article VIII, Section 5. More specifically, such information will be covered by Article VIII, Section 5 if (i) it is required by the Fund for the purposes other than PRGF/ESF financial assistance or the PSI such as surveillance (e.g., it is specifically listed in Article VIII, Section 5 or in the Executive Board Decision of January 2004 strengthening the effectiveness of Article VIII, Section 5) and (ii) understandings have been reached between the staff and the member that, when such information is reported in the context of the PRGF or ESF arrangement or the PSI, it is also being reported for such other purposes. Box 3 summarizes the current procedures for misreporting under Article VIII, Section 5.

19. Where a case of misreporting in the context of using GRA, PRGF, or ESF resources, or under a PSI would be treated as *de minimis* under the revised Misreporting Guidelines (or the relevant provisions of the PSI as proposed below), it is recommended that any potential breach of Article VIII, Section 5 also be treated as *de minimis* under the procedural framework for dealing with breaches of Article VIII, Section 5.¹⁰ The procedural framework established to deal with *de minimis* cases under Article VIII, Section 5 would permit (i) the preliminary communications with the member to be sent by the Area Department rather than the Managing Director, and (ii) as a matter of normal practice, the Managing Director's findings and recommendations, wherever possible, to be folded into other documents (e.g., an Article IV or UFR staff report) and addressed in the context of a Board meeting on that other document.^{11,12,13} Moreover, for *de minimis* cases involving a breach of Article VIII,

⁹ *Strengthening the Effectiveness of Article VIII, Section 5*, Decision No. 13183-(04/10), January 30, 2004.

¹⁰ By definition, these cases would involve inaccurate reporting by a member rather than a refusal to provide information. The latter cases are also covered by Article VIII, Section 5.

¹¹ Under Decision No. 13183-(04/10), adopted January 30, 2004, there are two such notifications contemplated under paragraph 6: (i) the Managing Director is required to consult with the member to assess whether a case of inaccurate reporting is due to a lack of capacity on the part of the member; and (ii) if he concludes that there is no reason to believe there was a lack of capacity, he must notify the member of his intention to make a report to the Board for a breach of obligation under Rule K-1 unless the member demonstrates such a lack of capacity within a period of not less than one month.

¹² Rule K-1 requires the Managing Director to report to the Board any case in which it appears to him that a member is in breach of obligation under the Articles. Under present procedures, it is open for any case under Article VIII, Section 5 to be presented on a lapse of time basis. When a *de minimis* misreporting case cannot be folded into a Board document on another issue, lapse of time consideration would be provided for.

¹³ While cases of noncomplying purchases/disbursements under the Misreporting Guidelines are subject to a four-year limitation period, no such limitation period applies under Article VIII, Section 5. In cases of *de*

(continued...)

Section 5, the procedural framework would make it clear that, upon a finding by the Board of a breach of obligation, (i) no further action would be expected to be taken by the Fund with respect to the member, and (ii) the finding of breach would not be published.

Box 3. Procedures for Misreporting under Article VIII, Section 5

- Under Article VIII, Section 5, members are required to provide certain information to the Fund. There is no breach of obligation if a member's failure to accurately report such information is due to the member's inability to do so. The Executive Board has put in place a procedural framework to address cases in which members, inter alia, provide the Fund with inaccurate information that is required under Article VIII, Section 5. Its principal features are as follows:
- Whenever it appears to the Managing Director that a member has inaccurately reported information required under Article VIII, Section 5, the Managing Director shall consult with the member to assess whether the inaccuracy is due to a lack of capacity on the part of the member.
- If the Managing Director is not satisfied that the inaccuracy is the result of the member's lack of capacity, he notifies the member of his intention to report a breach of obligation to the Board unless the member demonstrates, within a period of not less than one month, that it was unable to provide more accurate information.
- If the member fails to demonstrate a lack of capacity, the Managing Director reports to the Board that he believes a breach of obligation to have occurred.
- The Executive Board decides whether a breach of obligation has occurred and decides on a course of action and, in particular, may call on the member to take specific measures to prevent a recurrence of the breach of obligation.
- If the member fails to implement actions specified by the Board within specified time frames, the procedures allow the Board to take a graduated series of measures including a declaration of censure, and the application of sanctions under Article XXVI of the Fund's Articles (i.e., declaration of ineligibility to use the Fund's general resources, suspension of voting rights, and compulsory withdrawal).
- All Board decisions arising from a breach of obligation give rise to a public announcement with prior review of the text by the Board.

minimis misreporting that are subject to Article VIII, Section 5 and are not subject to corrective action under the Misreporting Guidelines because they arose more than four years before the date on which the Managing Director informed the member that a noncomplying purchase may have been made, the procedures for *de minimis* cases under the Article VIII, Section 5 framework will apply.

D. Policy Support Instrument

20. The Policy Support Instrument (PSI) incorporates an abridged and simplified version of the Misreporting Guidelines (Box 4). It would need to be modified to follow the approach contemplated under the Misreporting Guidelines.¹⁴ Specifically, the procedural framework for misreporting under the PSI would need to be modified to provide for the preliminary communications with the member to be sent by the Area Department rather than the Managing Director in *de minimis* cases. The PSI decision would also need to be amended to provide that cases of *de minimis* misreporting would, by definition, be regarded as having no effect on the assessment of program performance. The PSI decision would also specify that findings of *de minimis* misreporting, given their irrelevance for overall program performance, would not be published.¹⁵ To correct the public record, the non-observance itself would be mentioned in a low-key fashion in any PIN, Chairman's statement, or factual statement, or other press release that would be issued after the Board meeting on the paper in which the misreporting was handled.

Box 4. Misreporting under PSI

Board decisions approving a PSI or completing a review under a PSI are conditioned on the accuracy of information reported on performance under assessment criteria and on the implementation of prior actions. The basic procedures are:

- When there is evidence that the member's reporting of such information was inaccurate in relation to a PSI approved or a review completed within the preceding three years, the Managing Director shall promptly inform the member concerned.
- If the Managing Director concludes that the member had reported inaccurate information to the Fund, the MD shall promptly notify the member.
- The Board's consideration of the misreporting would normally take place at the same time as the next scheduled PSI review, based on a combined staff report. The Executive Board shall decide whether misreporting has occurred and shall reassesses program performance in light of that determination.
- In all cases in which the Board has determined that misreporting has occurred, relevant information on the Board decision, such as the finding of misreporting and any impact on past Board assessments under the member's PSI, would be published.

¹⁴ Excerpts from *Policy Support Instrument--Framework*. Decision No. 13561-(05-85), adopted October 5, 2005.

¹⁵ This will require amendment to the misreporting provisions in the PSI decision. Provision would also be made to address misreporting cases on a lapse of time basis when warranted.

E. The Enhanced HIPC Initiative

21. Some modifications to the framework for handling revisions of information underlying the HIPC Initiative would be necessary. This framework, established in 2002, deals with two types of revisions: (i) revisions to information used to calculate the amount of debt relief to be accorded to a member; and (ii) revisions to information on the member's track record that is used in deciding whether to make interim assistance available to the member (Box 5).

- The provisions governing the revision of information used to calculate the amount of debt relief already incorporate a *de minimis* standard. More specifically, the revisions to the HIPC Instrument made in 2002 are designed to avoid a proliferation of minor cases, and provide that upward and downward adjustments will be made only when the change in the U.S. dollar amount of HIPC Initiative assistance exceeds one percent of the targeted net present value (NPV) of debt after HIPC Initiative relief.¹⁶ No change to this provision is proposed.
- The provisions governing the revision of information used in deciding whether to make interim assistance available to a member do not incorporate an explicit *de minimis* standard. Rather, the Fund examines the magnitude of the change in information and decides whether amounts that have been disbursed from the HIPC Trust as interim assistance and which remain in the HIPC umbrella account pending their use for debt relief should be transferred back to the HIPC Trust. In examining this question, the Fund may decide that disbursements continue to be appropriate notwithstanding the misreporting of track record information, and refrain from recovering interim assistance remaining in the umbrella account (Box 5). It is unlikely that a case of *de minimis* misreporting under a Fund arrangement would ever lead to the retransfer of interim assistance under the HIPC decision.

22. At the same time, it would be important for the HIPC decision to make it clear that cases of *de minimis* misreporting of track record information would not lead to a retransfer of resources to the HIPC Trust.¹⁷ Moreover, cases of *de minimis* misreporting of track record information would be subject to procedures that would be similar to those which apply under the Misreporting Guidelines. Thus: (i) relevant communications with the member could be sent from the Area Department; and (ii) such cases would normally be addressed in the context of a Board discussion of another issue or, if this is not possible, sent to the Board for

¹⁶ See: Section III, Paragraph 3(b) of the *Instrument to Establish a Trust for Special PRGF Operations for the Heavily Indebted Poor Countries and Interim PRGF Subsidy Operations* (annexed to Decision No. 11436-97/10), adopted February 4, 1997), as amended, hereinafter the "HIPC Trust Instrument".

¹⁷ Presumably, a finding that a particular case of misreporting was *de minimis* under the Misreporting Guidelines would lead to a similar finding under the HIPC Initiative; however, the converse may not be true.

consideration on a lapse of time basis.¹⁸ Moreover, with respect to publication, the HIPC Trust Instrument presently provides that the “Fund shall issue press releases on its decisions regarding the circumstances of the misreporting and the applicable remedies.”¹⁹ It is proposed that in cases of *de minimis* misreporting of track record information be excluded from the publication requirement.²⁰

Box 5. The main elements of the HIPC framework for Misreporting

- Under specified conditions, the amount of HIPC Initiative debt relief will be adjusted if the debt sustainability analysis used to determine the amount of assistance committed at the decision point turns out to have been based on incorrect information.
- The framework recognizes a *de minimis* category “to avoid a proliferation of minor cases, upward and downward adjustments will be made only when the change in the U.S. dollar amount of HIPC Initiative assistance exceeds one percent of the targeted net present value (NPV) of debt after HIPC Initiative relief.”
- Revisions to the data on exports, GDP, or fiscal revenue give rise to downward adjustments in the amount of assistance only if related to information provided by or on behalf of the authorities.
- Under specified conditions, interim assistance provided under the HIPC Initiative and transferred into the member’s umbrella account that has not yet been used to service debt obligations could be returned to the PRGF-HIPC Trust if such assistance was approved on the basis of inaccurate information about the member’s track record of performance.
- The HIPC Decision requires the Fund to issue press releases on its decisions regarding the circumstances of the misreporting and the applicable remedies.

F. Transparency

23. The publication policy, collectively embodied in several different decisions and summings up, requires the Fund to publish all cases of misreporting, with the language of the publication calibrated in accordance with the circumstances of the relevant case. While the principal Fund decision governing questions of publication is the Transparency Decision, the relevant provisions requiring publication of misreporting under the Misreporting Guidelines, Article VIII, Section 5, the PSI, and the HIPC Trust are contained in Board decisions and

¹⁸ The HIPC decision is presently silent on the questions of communications to the member, and lapse of time consideration of misreporting cases. The HIPC decision would be amended to provide explicit guidance on both these questions.

¹⁹ Section III, Paragraph 3(d) of the HIPC Trust Instrument.

²⁰ This will require an amendment to Section III, Paragraph 3(d) of the HIPC Trust Instrument.

Summings Up outside of the Transparency Decision.²¹ Each of these would be amended accordingly to implement the changes outlined above.

24. As noted above, while cases of *de minimis* misreporting would not be published, it would still be necessary in certain circumstances, to amend the public record. When a member makes a purchase or receives a disbursement, the Fund completes a review under a Fund arrangement, a PSI is approved or a PSI review is completed, or a member receives interim assistance under HIPC, the Fund will normally issue a public statement (e.g., Chairman's statement, or factual statement) that may include information that particular conditions have been met. To the extent that it is subsequently discovered that such a condition was not met, albeit by a *de minimis* margin, it will be necessary to correct information that has previously been issued to the public.

25. To address this issue, it is proposed that the Fund's publication policy provide that, for cases of *de minimis* misreporting, the Fund would only publicize the fact of nonobservance and the granting of a waiver and would not make reference to the misreporting associated with the nonobservance and waiver. This publication would normally be included in a PIN, Chairman's statement, or factual statement that is issued after the Board meeting on the paper into which the misreporting case is folded. In this manner, the public record may be corrected in a fairly low-key fashion.

26. The Transparency Decision's rules governing the deletions that may be made to a staff report before it is published would also require amendment. In their present form, these rules would not generally permit the Fund to delete references to misreporting by a member before the relevant staff report is published. Moving forward, the Transparency Decision would require the deletion of discussions related to *de minimis* misreporting in Board documents that are to be published (e.g., an Article IV or UFR staff report).

IV. ANALYSIS AND CONCLUSION

27. The modifications outlined above would have several advantages. The proposed approach may help reduce the stigma and contentiousness of misreporting in *de minimis* cases, and this in itself could be expected to reduce the amount of time spent on cases of misreporting. Also, the modifications would still leave the Board the discretion to make the final decisions on whether a case is *de minimis* and, accordingly, whether the misreporting should be published. The modifications would preserve the Fund's capacity to deal adequately with cases of misreporting.

²¹ Decision No. 13654-(05/85), adopted October 5, 2005. While this decision requires the publication of waivers for nonobservance, or of applicability, of performance criteria, it does not apply to the waivers approved in cases of misreporting.

28. On the other hand, the modifications would not eliminate the often time-consuming process of discovery that is required for every misreporting instance to protect the member and the Fund, though this should be less contentious. Also, the potential advantages associated with having an incident characterized as *de minimis* may end up providing incentives for members to take a more robust approach in requesting that their case be considered as *de minimis*. The stigma of misreporting might become worse for other (“near *de minimis*”) cases.

29. Overall, staff believes that the proposal outlined in this paper strikes a reasonable balance between reducing the cost of the misreporting framework in *de minimis* cases to members and the Fund while preserving incentives for good data reporting and the Fund’s capacity to deal with serious cases of misreporting.

30. Following the Executive Board’s discussion of the proposals presented in this paper, draft decisions would be circulated to the Board, possibly for consideration on a lapse-of-time basis.

V. ISSUES FOR DISCUSSION

31. Directors may wish to focus their interventions on the following issues:

- Should the Fund’s misreporting framework be revised to make it less onerous in cases involving *de minimis* deviations?
- Do Directors support the approach proposed in paragraph 11 to identify *de minimis* cases?
- Do Directors agree that in *de minimis* cases:
 - The requirement to publish information on the misreporting be abolished, and that to correct the public record, the procedures set out in paragraph 15 be followed?
 - A procedure would be established that notification to the member of misreporting be made by staff, and there would be no notification from the Managing Director directly. The Area Department could simply notify the authorities through a memorandum to the relevant Executive Director.
 - The current practice of a separate Board Report from the Managing Director on the misreporting would be abolished, and that instead the misreporting discussion would normally be folded into other documents (e.g., Article IV or UFR). If these documents are published, the parts on *de minimis* misreporting would be deleted and they would not be mentioned in the Summing Up. Consequently, *de minimis* misreporting would generally be handled in the context of regular Board meetings.

ANNEX

Table A1. Cases of Misreporting Discussed by the Board
(through end-March 2006)

Member	Misreporting Board Date	Number of Purchases Affected	Performance Criteria/Prior Actions Affected			Waivers (Yes/No)	Repurchase Required 2/
			Type 1/	Number of conditions affected	Type of variable affected		
Mauritius	8/28/1985	1	CPC	1	Debt	Yes	
Zaire	9/20/1985	1	QPC	1	Debt	Yes	
Senegal	7/23/1986	1	QPC	1	Debt	Yes	
Mauritania	12/19/1988	1	CPC	1	External arrears	Yes	
Hungary	2/21/1990	3	QPC	1	Debt	No	Yes
Philippines	4/9/1990	1	QPC	1	NIR	Yes	
Ukraine	12/13/1995	1	CPC	1	External arrears	Yes	
Tajikistan	7/2/1999	1	QPC	1	Debt	Yes	
Pakistan	9/3/1999	1	QPC	1	Fiscal balance	Yes	
Pakistan	4/29/2000	1	QPC	1	Debt	No	Yes
After the strengthening of the guidelines							
Malawi	8/23/2000	1	CPC	1	Domestic arrears	Yes	
Ghana	8/21/2000	1	CPC	1	Multiple currency practices	Yes	
Ukraine	9/6/2000	2	QPC	2	NIR, NDA	No	Yes
Mexico	9/8/2000	1	QPC	1	Primary balance	No	No (Voluntary Rep.)
Bolivia	6/8/2001	1	QPC	2	Financing, fiscal balance	Yes	
Ghana	6/28/2001	1	PA/CPC	2	External arrears, debt	No	Yes
Tajikistan	7/11/2001	1	CPC	1	External arrears	Yes	
Niger	8/3/2001	1	PA	1	Closing of budget accounts	Yes	
Bosnia & Herzegovina	11/2/2001	1	PA	1	Pension collections	Yes	
Ghana	2/4/2002	2	QPC	4	Reserve money, debt, financing, primary balance, NFA	Yes 3/	No (Previously Rep.)
Tajikistan	2/13/2002	3	CPC	1	External arrears	No	Yes
Vietnam	6/21/2002	1	QPC	1	NIR	Yes	
Senegal	9/25/2002	1	PA	1	Tariffs/Prices	Yes	
Bosnia & Herzegovina	12/20/2002	1	PA	1	Transfers between the entities and the State	Yes	
Tajikistan	12/11/2002	2	CPC	1	External arrears	No	Previously Req.
Djibouti	12/20/2002	1	CPC	1	External arrears	Yes	
Chad	6/23/2003	1	CPC	1	External arrears	No	Yes
Lao, P.D.R.	7/9/2003	1	QPC	1	Debt	Yes	
Tajikistan	7/18/2003	3	PA/CPC	1	External arrears	Yes	No (Previously Req.)
Argentina	8/27/2003	1	SPC	1	Tariffs/Prices	Yes	
Gambia, The	3/8/2004	2	QPC	4	NIR, financing, NDA, primary balance	Yes 3/	Yes
Ghana	7/9/2004	1	PA	1	Tariffs/Prices	Yes	
Uganda	7/30/2004	1	QPC	1	Debt	Yes	
Dominica	8/4/2004	4	CPC	1	External arrears	Yes	
Uruguay	8/11/2004	1	QPC	1	Primary balance	Yes	
Argentina	9/17/2004	2	CPC	1	External arrears	Yes	
Dominican Republic	1/31/2005	1	QPC	2	Fiscal balance, debt	Yes	
Burkina Faso	2/2/2005	1	CPC	1	Debt	Yes	
Dominica	3/7/2005	1	CPC	1	External arrears	Yes	
Rwanda	4/12/2005	1	CPC	1	External arrears	Yes	
Turkey	4/26/2005	1	QPC	1	Primary balance	Yes	
Mauritania	5/27/2005	1	PA	1	Creating budget reports	No	Voluntary Rep.
Congo, Dem. Rep.	8/29/2005	2	CPC	1	Unauthorized expenditures	Yes	
Pakistan	11/2/2005	7	CPC	1	Introduction of new tax exemptions	Yes	
Nepal	1/18/2006	1	CPC	1	External arrears	Yes	
Serbia & Montenegro	2/6/2006	1	QPC	1	Wage Bill ceiling	Yes	
Mauritania	3/27/2006	2	QPC	3	NIR, NDA, financing	No	Yes

Source: Executive Board documents.

1/ QPC=Quantitative performance criteria; CPC=Continuous performance criteria; PA=Prior action; SPC=Structural performance criteria

2/ A blank indicates no repurchase was required. Voluntary Rep. indicates the member repurchased the amounts prior to the Board discussion of misreporting, so no waiver of a noncomplying purchase was needed. Previously Req. indicates the Board had previously required the repurchase due to a prior finding of misreporting relating to the purchase in question.

3/ Waivers were not granted for all conditions.