



## ERDF INVESTMENT FOR GROWTH AND JOBS PROGRAMME FOR NORTHERN IRELAND 2014 – 2020

### MANAGING AUTHORITY GUIDANCE NOTE ON THE TREATMENT OF IRREGULARITIES

| <b>Version Control:</b> |                |  |
|-------------------------|----------------|--|
| <b>Date</b>             | <b>Version</b> | <b>Change</b>  |
| December 2016           | 1.0            | Original version finalised                             |
| January 2017            | 1.1            | Amendment to Para 4.6 Conversion from Sterling to Euro |
|                         |                |  |
|                         |                |  |

#### 1. INTRODUCTION

1.1 The following guidance sets out the actions to be taken by Managing Authority and Intermediate Bodies to identify, record, follow-up and clear irregularities involving EU Structural Funds.

1.2 The guidance is based on the key EU documents listed below which relate to irregularities for the 2014-2020 funding period and which should be referred to for further detail of the various irregularity requirements:

- Regulation (EU) No 1303/2013 (The Common Provisions Regulation);
- Commission Delegated Regulation (EU) No 2015/1970 (Specific provisions on the reporting of irregularities);
- Commission Implementing Regulation (EU) No 2015/1974 (Frequency and format of reporting irregularities);
- Commission Delegated Regulation (EU) No 2016/568 (Conditions and procedures to determine whether amounts which are irrecoverable shall be reimbursed by Member States);
- Expert Group on European Structural and Investment Funds (EGESIF) Guidance Note 15-0017.

## DEFINITIONS

- 1.3 **“Irregularity”** means any breach of Union law, or of national law relating to its application, resulting from an act or omission by an economic operator involved in the implementation of the ESI funds, which has, or would have, the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union. – Regulation (EU) No 1303/2013 Article 2 (36).
- 1.4 Any failure to comply with the EU 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.
- 1.5 In applying this to the management of projects part funded by the Programme, 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 the grant or failure by them to take action.
- 1.6 Examples of an irregularity will 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 the 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 the Intermediate Body / Beneficiary has not set up adequate systems to control and monitor the grant awarded to projects.
- 1.7 **“Economic operator”** means any natural or legal person or other entity taking part in the implementation of assistance from the ESI Funds, with the exception of a Member State exercising its prerogatives as a public authority. – Regulation (EU) No 1303/2013 Article 2 (37).
- 1.8 **“Systemic irregularity”** means any irregularity, which may be of a recurring nature, with a high probability of occurrence in similar types of operation, which results from a serious deficiency in the effective functioning of a management and control system, including a failure to establish appropriate procedures in accordance with this Regulation and the Fund-specific rules”. – Regulation (EU) No 1303/2013 Article 2 (38).
- 1.9 **“Serious deficiency in the effective functioning of a management and control system”** means, for the purposes of implementation of the Funds and the EMFF under Part Four, a deficiency for which substantial improvements in the system are required, which exposes the Funds and the EMFF to a significant risk of irregularities, and the existence of which is incompatible with an unqualified audit opinion on the functioning of the management and

control system – Regulation (EU) No 1303/2013 Article 2 (39).

1.10 **“Suspected fraud”** means an irregularity that gives rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud, as referred to in Article 1(1)(a) 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 – Commission Delegated Regulation (EU) 2015/1970 Article 2 (a).

1.11 **“Primary Administrative or judicial finding”** 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. – Commission Delegated Regulation (EU) 2015/1970 Article 2 (b).

1.12 Therefore, if a reportable irregularity is identified during the first quarter of the year, within two months of the end of that quarter an initial report of the irregularity must be submitted to the European Anti-Fraud Office (OLAF), via the Department of Finance’s European Union Division (DoF EUD), providing the information required under Article 3 of Regulation 2015/1970. If the case is not closed when the Article 3 notification takes place, follow-up Article 4 reports shall detail the progress and resolution of the case and any financial impact it may have or has had.

1.13 In the context of this document, “Member State” should be understood as being those bodies with responsibility for administering EU and national rules and the associated budgets. This will include Managing Authority and Intermediate Bodies, as well as the Department of Finance.

## 2. IDENTIFICATION OF IRREGULARITIES

2.1 Article 122 (2) of Regulation (EU) No 1303/2013 states that Member States shall prevent, detect and correct irregularities and shall recover amounts unduly paid, together with any interest on late payments.

2.2 In line with Articles 72 (h) and 122 (2) of Regulation (EU) No 1303/2013, Member States are responsible for measures aimed at the prevention, detection and correction of irregularities, including fraud, and the recovery of amounts unduly paid, together with any interest on late payments.

2.3 The normal conduct of business provides ample mechanisms for identifying irregularities including:

- Monitoring visits;
- Notification by grant recipients;

- Detailed checking of grant claims and progress reports;
- Management verification visits;
- Local knowledge, including via the media and members of the public; and
- National and European Commission audit reviews.

2.4 All detected irregularities must be recorded immediately and in enough detail to enable a check to establish whether or not there is any evidence of a breakdown in systems, or a need to take action to correct emerging systemic weaknesses in the programme management and control arrangements that are in place.

2.5 All relevant original documentation and computer based files must be preserved for further investigation.

2.6 Details of identified systemic weaknesses should be immediately reported to the Audit Authority, Certifying Authority and Managing Authority.

### **3. RECORDING IRREGULARITIES**

3.1 Except where the express permission of the Managing Authority has been provided in line with Section 3.3 below, all detected irregularities, and their associated preventative and corrective measures, must be recorded on a timely and regular basis on the European Structural and Investment Funds (ESIF) Database.

3.2 All those engaged in delivering the programme must ensure that adequate systems and resources are in place to detect, record, report and follow up on irregularity cases. All irregularities, suspected or attempted fraud, or other suspected illegal act, must be recorded and, where appropriate, reported immediately.

3.3 If an Intermediate Body or beneficiary wishes to utilise local systems (other than the ESIF Database) to record pre-payment irregularities, the written permission of the Managing Authority must be obtained. Any such local system must be able to record all appropriate information to the programme authorities or European Commission on request. In this context pre-payment is defined as “before payment is issued to the beneficiary”.

### **4. REPORTING IRREGULARITIES**

4.1 Irregularities are reportable if they meet any of the following criteria:

- They affect an amount that exceeds €10,000 in contribution from the funds i.e. the ERDF (60%) element (Commission Delegated Regulation 1970/2015 Article 3 (1)(a)). If an operation has more than one de minimis level irregularity, the sum of all its irregularities must be taken into account to ensure that the total does not exceed the de minimis threshold.

- Have been the subject of a primary administrative or judicial finding (Commission Delegated Regulation 1970/2015 Article 3 (1)(b)).
- Are cases of suspected fraud (Commission Delegated Regulation 1970/2015 Article 3 (3) refers).
- Are irregularities which precede a bankruptcy (Commission Delegated Regulation 1970/2015 Article 3 (3) refers).

4.2 The Member State is required to report irregularities to the European Commission in accordance with the provisions set out in Article 3 of the Commission Delegated Regulation (EU) 2015/1970.

4.3 Within 2 months following the end of each quarter, an initial report of the irregularity must be submitted to OLAF, providing the information required under this regulation. If the case is not closed when the Article 3 notification takes place, then follow up Article 4 reports shall detail the progress and resolution of the case and any financial impact it may have/has had.

4.4 Managing Authority will be required to review reports produced by DoF European Union Division and provide updates where appropriate, to ensure the accuracy and timeliness of the information to be reported to OLAF.

4.5 All irregularities must be reported in Euros. Programme payments in sterling will be converted using the monthly exchange rate from the Commission's InforEuro website: [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/index_en.cfm)

4.6 Exchange rates used should be as follows:

1. Total amount of expenditure of the project concerned (in line with Article 3 (2) (I) of Regulation 2015/1970) – Use the European Commission's monthly accounting rate applicable to the month of initial reporting.
2. Amounts of irregular expenditure - Use either:
  - a. The monthly accounting exchange rate of the Commission in the month during which the expenditure was registered in the accounts of the Certifying Authority (i.e. included in an interim payment application) - Article 133 of Regulation 1303/2013 refers. If more than one payment has been made, the Commission's monthly accounting rate applicable to the month in which each payment was registered should be used; or
  - b. Where the expenditure has not been registered in the accounts of the Certifying Authority, the most recent monthly accounting exchange rate, published electronically by the Commission at the moment of initial reporting, shall be used (Article 4 of Regulation 2015/1974). Where such expenditure is subsequently registered in the accounts of the Certifying Authority, the financial information can be

updated during the follow-up reporting process under Article 4 of Regulation 2015/1970.

4.7 In line with Article 122 (2) of Regulation (EU) No 1303/2013 irregularities should be recorded as non-reportable in the following instances:

- Cases where the irregularity consists **solely** of 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.
- Cases brought to the attention of the Managing Authority or Certifying Authority by the beneficiary voluntarily and before detection by either authority, whether before or after the payment of the public contribution.
- Cases which are detected and corrected by the Managing Authority or Certifying Authority before inclusion of the expenditure concerned in a statement of expenditure submitted to the European Commission.

In all other cases meeting the criteria at 4.1 above, and in particular those preceding a bankruptcy or in cases of suspected fraud, the detected irregularities and the associated preventive and corrective measures shall be reported to the European Commission.

## 5. SUSPECTED FRAUD

5.1 If there is suspicion or evidence that an irregularity involves fraud, theft or corruption, the details must be reported (Commission Delegated Regulation 1970/2015 Article 3 (3) refers).

5.2 In such cases, the Managing Authority or Intermediate Body must also take action in line with the Departmental Fraud Policy and the relevant chapter of Managing Public Money Northern Ireland (MPMNI).

## 6. FOLLOWING UP AND CLEARING IRREGULARITIES

6.1 Timely and appropriate action should be taken to follow-up and correct all irregularities. Best practice indicates that irregularities should be investigated, resolved and cleared **within six months of being identified**.

6.2 Managing Authority and Intermediate Bodies / beneficiaries have responsibility for investigating and resolving irregularities. If irregularities are not cleared within six months, a separate detailed report shall be sought by DoF European Union Division.

6.3 There are two options in terms of correcting irregular expenditure included in previous claims to the European Commission:

- **Withdrawal** – “withdrawing the irregular expenditure from the programme immediately when it has been detected, by deducting it from the next interim payment application, thereby releasing EU funding for commitment to other operations” (EGESIF Guidance Note 15-0017 Section 2).

Immediate withdrawal of the irregular expenditure releases the respective amount of EU funding for use in other operations immediately, but the Member State assumes with its national budget the risk of failing to recover from the beneficiary the unduly paid public funding.

- **Recovery** – “leaving the expenditure, certified in previous accounts, for the time being in the programme, pending the outcome of proceedings to recover the unduly paid grant from the beneficiaries, and deducting the expenditure from the next interim payment application only once recovery is effective” (EGESIF Guidance Note 15-0017 Section 2).

Deferring withdrawal until recovery has been effected from the beneficiary leaves less time for re-using the EU funding in other eligible operations, but protects the Member State financially should it be unable to recover the grant from the beneficiary.

6.4 In line with Article 122 (2) of Regulation (EU) 1303/2013, Member States may decide not to pursue recovery if the amount to be recovered (not including interest) does not exceed €250 ERDF.

6.5 Grant should be recovered where this is appropriate and the Intermediate Body / beneficiary shall be responsible for taking the necessary steps.

6.6 In line with EGESIF Guidance Note 15-0017 Section 2, previously withdrawn irregular expenditure cannot be reintroduced to a new payment claim, except in the context of Article 137 (2) of Regulation (EU) No 1303/2013 which allows for the reintroduction of suspected irregular amounts if they have been found to be legal and regular. Evidence justifying the reintroduction of such expenditure must be retained.

6.7 The detail contained in irregularity reports should be in proportion to the amount involved and the seriousness of the irregularity, for example systemic irregularities will warrant a longer explanation than a one-off individual error. Reports should include the following information:

- Action taken since the last update, including details of action taken to minimise the risk of recurrence;
- The amount of any funds recovered to date and the amount expected to be recovered;
- Details of any legal proceedings;
- Referral to DoF European Union Division in the event of partial or non-recovery;
- Action taken from formal investigation to implement recommendations and lessons learned.

6.8 When closing an irregularity on the ESIF database, a clear statement must be added to the case confirming that any funds recovered have been deducted from a payment declaration to the European Commission, with the date of that declaration noted.

## **7. IRRECOVERABLE AMOUNTS**

7.1 If, despite recovery efforts, an amount is considered to be irrecoverable and should not be reimbursed to the European Union budget, a full explanation of the steps taken to recover amounts must be recorded on the ESIF Database.

7.2 In a parallel procedure to the accounts, the Certifying Authority shall submit a request to the European Commission to confirm that the amount is considered irrecoverable (Article 1 of Commission Delegated Regulation (EU) 2016/568 refers).

7.3 The European Commission shall determine whether or not failure to recover is found to be due to fault or negligence on the part of the Member State in line with Articles 2 and 3 of Commission Delegated Regulation (EU) 2016/568.

7.4 On the basis of the determination referred to in Section 7.3, the European Commission shall decide on the appropriate course of action. If the Member State is found to be at fault, it shall be responsible for reimbursing the amount concerned to the European Commission (Article 3 (2)(b) of Commission Delegated Regulation (EU) refers).

7.5 No information needs to be provided to the European Commission in the context of Commission Delegated Regulation 2015/568 if a Member State decides not to recover an amount which does not exceed €250 not including interest (Article 4 refers).

## **8. FURTHER INFORMATION**

8.1 Further information and guidance is available on the Investment for Growth and Jobs website, accessible via the following link: <http://www.jobsandgrowthni.gov.uk/guidance> .



**Annex 1 – Northern Ireland system for identifying, recording and reporting irregularities**

