

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

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

Version Control:		
Date	Version	Change
December 2016	1.0	Original version finalised
January 2017	1.1	Amendment to Para 4.6 Conversion from Sterling to Euro
February 2019	1.2	Exemption from irregularity process (para 2.7 – 2.8); Deminimis irregularity level (para 3.4); (The application of a deminimus threshold is applied retrospectively to cover cases from the start of the programme). Update on deminimis recovery threshold (para 6.4); Also: Outline of Certifying Authority deductions process (para 7.1 – 7.3). Addition of Annex 2 (irregularity process map)

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;
- European Anti-Fraud Office (OLAF) Handbook on Reporting of irregularities in shared management 2017.

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 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.
 - Evidence that the project has failed to implement the European Commission’s requirements on 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.
- 1.6 ***“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). This includes action on the part of those receiving the grant or failure by them to take action.
- 1.7 ***“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).

- 1.8 **“Serious deficiency in the effective functioning of a management and control system”** means, for the purposes of implementation of the Funds..., a deficiency for which substantial improvements in the system are required, which exposes the Funds... 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).
- 1.9 **“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).
- 1.10 **“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).
- 1.11 In the context of this document, “Member State” should be understood as referring to those national 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.
- 2.7 Given the delays in the implementation / availability of the European Structural and Investment Funds (ESIF) Database, and in order to facilitate the implementation of the 2014-2020 programme in as practical a manner as possible, the Managing Authority had determined that it was not necessary to record an irregularity in respect of any irregular expenditure that had been identified and removed from a claim before that claim had been recorded on the ESIF Database. This dispensation was agreed on the basis that expenditure may be considered not to form part of a request for EU funding before it has been recorded on the ESIF Database. Until that has happened, it can be considered that the irregular expenditure does not have the potential to prejudice the budget of the EU, in line with definition of an irregularity quoted at Section 1.3 above.
- 2.8 This dispensation applied to the period prior to 26th April 2018 when the irregularities module of the ESIF Database became available for the ERDF programme. However, with effect from that date, the dispensation outlined in paragraph 2.7 is no longer required and all irregular expenditure, whether or not it was identified and removed before the claim was recorded on the ESIF Database, must be treated as an irregularity and entered on the ESIF Database accordingly.

3. RECORDING IRREGULARITIES

- 3.1 Except where the express permission of the Managing Authority has been provided in line with paragraph 3.3 below, all detected irregularities, and their associated preventative and corrective measures, must be recorded on a timely and regular basis on the 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”.
- 3.4 The Managing Authority has set a de-minimis threshold for individual instances of irregular expenditure within the programme of €1.00 (EU contribution), below which no irregularity needs to be recorded on the database. Any irregular expenditure below this level is not regarded as justifying the work required of the Managing Authority and Intermediate Body to create an irregularity record. This is in line with the guidance referred to in paragraph 6.4 below.

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/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

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); see also page 33 of the OLAF Handbook on Reporting Irregularities.
- 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 The two primary options in terms of correcting irregular expenditure included in previous claims to the European Commission are:
 - **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 Article 122 (2) of Regulation (EU) 1303/2013 allows Member States to decide whether or not to pursue recovery if the amount to be recovered (not including interest) does not exceed €250 ERDF.

EGESIF_15_0017-04 provides guidance for Member States on amounts withdrawn, recovered, to be recovered and irrecoverable amounts. Section 10 of this guidance note clarifies that the de minimus limit allowed for by the regulation is to be calculated by operation per accounting year, furthermore it also states that amounts below €250 in contribution from the Funds do not need to be reimbursed to the budget of the Union (thus they do not need to be deducted from the certified amounts). The full guidance note is available on the ERDF Programme website through the following link:

http://www.jobsandgrowthni.gov.uk/downloads/EGESIF_15-0017_GN_withdrawals_and_recoveries_rev.pdf

However the Managing Authority has decided not to utilise this full dispensation in the programme because of the need to have alternative systems in place to demonstrate that the €250 threshold has not been exceeded. Instead, as referenced in paragraph 3.4 a £1 de-minimus level has been introduced which will still have the effect of reducing administrative burden. The Managing Authority considers that there is no risk of any single operation breaching the regulatory limit of €250 allowed for in any single accounting year. On that basis Managing Authority does not consider it necessary to introduce/maintain a central record of these amounts.

- 6.5 Grant should be recovered where this is appropriate and the Managing Authority / 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. DEDUCTIONS – For Certifying Authority Action Only

- 7.1 The annual accounting period runs from 1st July to 30th June each year and the Certifying Authority is responsible for submitting the annual accounts to the European Commission by 15th February of the following year. One of the elements that the accounts must include is the sum for which recovery procedures are underway or have been completed.

After the submission of the Final Payment Application (FPA) for the Accounting Year (the FPA will be submitted between 1st July and 31st July), if any expenditure is identified as being irregular, or potentially irregular, that expenditure must be deducted from the annual accounts.

- 7.2 For irregularities related to expenditure certified in the current Accounting Year, withdrawal or recovery corrections which have not been included in an Interim Payment Application (IPA) or FPA by the end of the Accounting Year, will be converted to 'Deduction' transactions and reported to the European Commission as part of the Annual Accounts. These 'Deduction' transactions will never appear in an IPA/FPA as they will have already been reported to the European Commission through the Annual Accounts process.
- 7.3 For irregularities certified in a previous Accounting Year with pending withdrawals or recoveries, withdrawal or recovery transactions can be included in the next IPA/FPA as normal.

8. IRRECOVERABLE AMOUNTS

- 8.1 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.
- 8.2 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).
- 8.3 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.
- 8.4 On the basis of the determination referred to in Section 9.3, 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).

8.5 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).

9. FURTHER INFORMATION

9.1 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>.

9.2 The procedures for recording irregularities, withdrawals, recoveries and deductions on the ESIF Database are detailed in the Database User Manual which is available from within the database itself.

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



