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Guidance on Treatment of Irregularities 2014-2020 ESIF Programmes

(A) GENERAL.

The purpose of this guidance is to permit Programme Authorities to identify irregularities which need to be reported to the European Commission and to assign responsibility for the various stages of the process.

The initial draft is being written in advance of the establishment of the database facilities for local recording and may need revision as these facilities are defined and implemented.

(B) THE 2014-2020 ESIF REGULATIONS.

The Common Provisions Regulation (EU 1303/2013)¹

Article 2 (36) defines irregularities:

'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.

Article 122 (2) sets out the Member State responsibilities:

Member States shall prevent, detect and correct irregularities and shall recover amounts unduly paid, together with any interest on late payments. They shall notify the Commission of irregularities that exceed EUR 10 000 in contribution from the Funds and shall keep it informed of significant progress in related administrative and legal proceedings.

The Member States shall not notify the Commission of irregularities in relation to the following:

- (a) 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;
- (b) 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;
- (c) 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 Commission.

In all other cases, 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 Commission.

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R1303>

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When amounts unduly paid to a beneficiary cannot be recovered and this is as a result of fault or negligence on the part of a Member State, the Member State shall be responsible for reimbursing the amounts concerned to the budget of the Union. Member States may decide not to recover an amount unduly paid if the amount to be recovered from the beneficiary, not including interest, does not exceed EUR 250 in contribution from the Funds

The Commission shall be empowered to adopt delegated acts in accordance with Article 149 laying down additional detailed rules on the criteria for determining the cases of irregularity to be reported, the data to be provided and on the conditions and procedures to be applied to determine whether amounts which are irrecoverable shall be reimbursed by Member States.

The Commission shall adopt implementing acts setting out the frequency of the reporting of irregularities and the reporting format to be used. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 150(2).

The CAP financing, management and monitoring Regulation (EU 1306/2013)²

Article 48(3) sets out Member State responsibilities:

Member States shall make available to the Commission information about irregularities and suspected fraud cases detected, as well as information about the steps taken pursuant to Section III of this Chapter to recover undue payments in connection with those irregularities and frauds.

The European Territorial Cooperation Regulation (EU 1299/2013)

Article 27 states:

1. The ERDF support to cooperation programmes shall be paid into a single account with no national subaccounts.
2. The managing authority shall ensure that any amount paid as a result of an irregularity is recovered from the lead or sole beneficiary. Beneficiaries shall repay to the lead beneficiary any amounts unduly paid.
3. If the lead beneficiary does not succeed in securing repayment from other beneficiaries or if the managing authority does not succeed in securing repayment from the lead or sole beneficiary, the Member State or third country on whose territory the beneficiary concerned is located or, in the case of an EGTC, is registered shall reimburse the managing authority any amounts unduly paid to that beneficiary. The managing authority shall be responsible for reimbursing the amounts concerned to the general budget of the Union, in accordance with the apportionment of liabilities among the participating Member States as laid down in the cooperation programme.

Implementing Regulations.

These responsibilities are amplified in a series of Implementing Regulations which set out criteria for reporting, data to be reported, frequency of reporting and format of reports and procedures for dealing with irrecoverable amounts.

EU 2015/1970 sets out criteria for reporting and data to be reported for ERDF, ESF and EMFF.

EU 2015/1971 sets out provisions for reporting of irregularities for EAFRD.

EU 2015/1974 sets out the frequency and format of reporting for ERDF, ESF and EMFF.

² <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R1306>

EU 2015/1975 sets out the frequency and format of reporting for EAFRD.

EU 2016/568 deals with the responsibility for irrecoverable amounts for ERDF, ESF and EMFF.

A list of the data items to be reported for an irregularity is at Annex 1.

In short, qualifying irregularities are to be reported to the Commission by the Member State within 2 months of the end of the quarter in which a primary administrative finding has been made, using the Irregularity Management System (IMS) provided by the Commission. Follow-up reports are to be entered on the system by the Member State.

For MS not using the euro (eg the UK) the Euro value of an irregularity shall be determined by converting using the date:

1. When the amount was registered in the accounts of the Certifying Authority (ie for a drawdown claim), else
2. The rate '*at the moment of initial reporting*' – presumably the entry by the Managing Authority onto the local Database.

The Delegated Regulation also sets out processes for accounting for irrecoverable amounts:

Details of withdrawn, recoverable and irrecoverable amounts will be included in the annual accounts submitted by the Certifying Authority and the Commission will examine proposals that the Member State should not bear the cost. In the absence of a communication from the Commission, they are deemed to have assented.

Member States may write off sums not over €250 (EU contribution), which should be included in the list of irrecoverable amounts associated with the annual accounts. Information to be provided for each such irregularity is listed in the delegated regulation.

(C) RESPONSIBILITIES AND PROCESSES

Responsibility for:

- raising suspicion of irregularity to the Managing Authority rests with all who participate in the management of the Structural Funds programmes.
- recording the initial administrative finding which creates an irregularity, for overseeing and recording follow-up action and for closing the irregularity rests with the Programme Managing Authority. *[the decision to create an irregularity should be taken at a suitable level of authority]*

- reporting irregularities to the European Commission lies with the Member State. For irregularities reported by Managing Authorities of NI Structural Funds programmes, this work will be done by European Union Division of DoF.
- reporting of EAFRD irregularities lies with the UK Rural Payments Agency, to whom Northern Ireland irregularities are reported by DAERA.
- reporting of irregularities in Northern Ireland EMFF operations lies outside the scope of this Guidance Note as the programme is managed at UK level.
- Reporting irregularities in Territorial Cooperation programmes – in accordance with Article 27 of the ETC Regulation responsibility for reporting an irregularity should be assigned to the Member State where the liable (lead or sole) beneficiary is located.

Within the requirements of this guidance and the facilities available on the Database Systems, Managing Authorities should establish and share processes for the identification, recording and clearing of irregularities within their programmes.

(D) EXCEPTIONS

Rules for Territorial Cooperation Programmes are subject to agreement of the participating national authorities.

(E) REFERENCES.

A library of Cohesion Policy information resources is maintained by the Directorate General for Regional and Urban Policy at the European Commission at:

http://ec.europa.eu/regional_policy/information/index_en.cfm

Training materials (including in podcast format) may be downloaded at:

http://ec.europa.eu/regional_policy/what/future/experts_training_en.cfm

Annex 1

- (a) Data to be provided when reporting irregularities.

(Article 3, EU 2015/1970)

In the initial report Member States shall provide the following information:

- (a) the fund, goal, category of region where appropriate, name and the Common Identification Code (CCI) number of the operational programme, priority and operation concerned;
- (b) the identity of the natural or legal persons concerned, or both, or of any other entity having a role in the commission of the irregularity and their role, except where that information is irrelevant for the purposes of combating irregularities, given the nature of the irregularity concerned;
- (c) the region or area where the operation has been carried out, identified using appropriate information such as the NUTS level;
- (d) the provision or provisions which have been infringed;
- (e) the date and source of the first information leading to the suspicion that an irregularity has been committed;
- (f) the practices employed in committing the irregularity;
- (g) where appropriate, whether the practice gives rise to suspected fraud;
- (h) the manner in which the irregularity was discovered;
- (i) where appropriate, the Member States and third countries involved;
- (j) the period during which, or the date on which, the irregularity was committed;
- (k) the date on which the primary administrative or judicial finding on the irregularity was established;
- (l) the total amount of expenditure of the operation concerned, expressed in terms of the Union's contribution, the national contribution and the private contribution;
- (m) the amount affected by the irregularity, expressed in terms of the Union's contribution and the national contribution;
- (n) in the case of suspected fraud, and where no payment of the public contribution has been made to the beneficiary, the amount which would have been unduly paid had the irregularity not been identified, expressed in terms of the Union's contribution and the national contribution;
- (o) the nature of the irregular expenditure;
- (p) the suspension of payments, where applicable, and the possibility of recovery of amounts paid.

- (b) Data to be reported in respect of irrecoverable amounts to be charged to the EU budget: (see ANNEX EU 2016/568)

Item	Data
(a)	Priority
(b)	Name of Operation and IT identification number
(c)	Name of beneficiary
(d)	date and proof of last payment of public contribution to the beneficiary for the operation concerned
(e)	the nature of the irregularity

(f)	Body which detected the irregularity
(g)	date of detection of irregularity
(h)	total expenditure declared as irrecoverable
(i)	amount of corresponding public expenditure
(j)	amount of irrecoverable EU contribution
(k)	Accounting years in which the expenditure corresponding to the irrecoverable Union contribution was declared.
(l)	date of launch of recovery proceedings
(m)	copy of the first and any subsequent recovery orders
(n)	date of establishment of irrecoverability
(o)	reason for irrecoverability
(p)	documents related to bankruptcy procedures, when applicable
(q)	Indicate whether the Union contribution should be borne by the EU budget