The 2014–2020 Interreg Programme Management Handbook is composed of fact sheets. Each theme is covered by one fact sheet so that the reader can easily and quickly choose the relevant fact sheet.

Fact Sheet; Errors, financial corrections, irregularities, recoveries and withdrawals

1. What is it? What is the definition of the term / theme of this fact sheet?

A financial error or irregularity is usually the grounds for doing a financial correction. The definition of an irregularity can be found in Article 2 (36) of the Common provision regulation, which states that: *"'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"*. It is therefore **the timing of the detection of the ineligible expenditure** that determines if the amount is to be considered an error or an irregularity. An error that was already included in an application of payment to the European Commission (EC) by the Certifying Authority (CA) is considered an irregularity. If not included, it is considered a financial error. Examples of ineligible expenditure that are NOT deemed an irregularity include ineligible amounts:

- corrected by controller or the lead partner before the submission of the project report to the Managing Authority (MA)/Joint Secretariat (JS);
- deducted by the MA/JS during verification of project reports;
- addressed by the CA during their verifications before including the amount in the application for payment to the EC;

However, article 122 of the CPR regulations states that; "*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.*"

Irregularities must be reported to OLAF (the European Anti-Fraud Office) if they are greater than 10 000 € ERDF, or if they involve fraud of any value. However, there are exceptions where irregularities do not need to be reported to OLAF; namely, 1) in case of bankruptcy of the beneficiary, and 2) in cases brought to the attention of the Managing Authority or Certifying Authority voluntarily by the beneficiary.

The purpose of financial corrections is to restore a situation where expenditure declared for co-financing from the Structural Funds is in line with the applicable national- and EU rules and regulations. If an error is detected, a financial correction will be necessary.

2. Why we are discussing it?

Most errors are usually the result of a mistake. However, all detected errors must still be corrected, no matter whether they are intentional or not. If a programme detects an error in expenditure that has already been paid out to the project, the programme usually deducts the amount from the next project report. In cases where the amount cannot be corrected by deducting it from the next project report, programmes need to reclaim the amount from the project. This means projects are then asked to pay back the amount to the programme. Obviously these financial corrections are time-consuming procedures, which is why good internal control of the project partners and high-quality management verifications by the controller and JS are essential to avoid errors being included in amounts actually paid out to beneficiaries.

Undetected and uncorrected errors at project level accumulate at programme level, and can eventually lead to irregularities at programme level. Irregularities are detected by controls/audits that happen AFTER the expenditure in question has already been included in an application for payment to the EC. This means irregularities are most often detected by auditors and European Commission Audits. In addition, on-the-spot management verifications can detect irregularities because they often address expenditure from 'old' project reports.

Irregularities require programme-level corrections in the form of withdrawals or recoveries. As at project level, the CA can simply deduct the amount in question from the next programme application for payment to the EC (i.e., a withdrawal). Alternatively, the CA can also pay back the amount to the EC (i.e., a recovery).

Amounts withdrawn, amounts recovered, amounts to be recovered and irrecoverable amounts must be reported to EC by the CA.

3. Reference to the regulations and what is new in the 2014-2020 programming period compared with the 2007-2013 programming period

Legislative framework:

- EC Regulation 1303/2013 (CPR),
  - Article 2 (36-38), Definitions
  - Article 22(7), Application of the performance framework
  - Article 23 (11), Measures linking effectiveness of ESI Funds to sound economic governance
  - Article 72 (h), General principles of Management and Control Systems
  - Articles 74 & 122, Responsibilities of the Member States
  - Article 83, Interruption of the payment deadline
  - Article 132 (2), Payment to beneficiaries
  - Article 137 (2), Preparation of accounts
  - Article 142, Suspension of payments
  - Article 143, Financial corrections by Member States
  - Article 144, Financial corrections by the Commission
  - Article 145, Procedure
  - Article 146, Obligations of Member States
  - Article 147, Repayment
  - Annex III, Provisions for determining the scope and the level of suspension of commitments or payments referred to in Article 23(11)

- Commission Delegated Regulation 480/2014
  - Article 2, Determination of the level of financial correction
  - Article 3, Level of financial correction
  - Article 30, Criteria for determining serious deficiencies in the effective functioning of management and control systems

  Article 31, Criteria for applying flat rates or extrapolated financial correction and criteria for determining the level of financial correction
- EC Regulation 1299/2013 (ETC), Article 27, Budget commitments, payments and recoveries

4. Challenges and frequently-asked questions

- How do we write programme rules to help prevent errors/irregularities?
- How can we help controllers find mistakes before they become irregularities?
- What documents must be submitted to address systemic errors?

- How do we proceed in case of irregularities and financial corrections?
- How can we prevent programme interruption and suspension?

5. How they are addressed and how does it work in practise?

The Audit Authority (AA) is the responsible body for a programme's audit, which it independently coordinates with the help of the Group of Auditors (GoA). The AA is also responsible for the annual selection of projects for audit. For further information about the Audit Authority and the Group of Auditors, please see the fact sheet: Audit and Control Bodies.

Irregularities can be a one-time event or systematic by nature:

- One-time irregularities: these are abnormalities that only appear once for one project partner and not regularly in expenditure of the same type or same type of partners or projects. They emerge out of intentional or unintentional mistakes, and are by and large isolated incidences.

- Systemic irregularities: are recurrent errors due to serious failings in management and control systems. These are irregularities that reoccur frequently, affecting, for example, many project partners of a specific type (e.g., private partners), many expenditure items of a specific type (e.g., procurement errors), or a specific region (e.g., serious lack of quality of FLC in that region).

Addressing systemic irregularities is a matter of confining the error. If there is a suspicion that a specific type of error (e.g., lack of public procurement) can also be found in other operations then there could be a systemic error. The programme then needs to show the AA that the error was confined to, e.g., private partners in a certain region, and did not affect the whole programme.

Irregularities can also be found, as mentioned before, on a programme level during programme implementation or closure. A programme cannot be closed before all irregularities have been corrected.

Financial corrections can be summarized in the following categories:

<u>Specifically quantified corrections</u>; a quantifiable error in individual expenditure items composed of an exact and easily identifiable amount; for example, an ineligible invoice.

<u>Extrapolated corrections</u>; an error that reoccurs in other expenditure of the same type, the same budget line, the same beneficiary, or within the same type of operation, organisation or measure. Extrapolating errors to larger populations of items involves making assumptions on the magnitude of error and frequency of occurrence.

<u>Flat-rate corrections</u>; individual breaches or systematic failures that is not quantifiable; for example, from procurement or publicity errors.

Scales of flat-rate corrections:

- 100% flat-rate deduction – A serious deficiency (e.g., of public procurement) that puts at risk the legality and regularity of all related expenditure items of one or more beneficiaries. For example, a project hiring an external expert without going through a public procurement procedure.

- 25% flat-rate deduction – A serious deficiency that puts at risk the legality and regularity of a part of the expenditure concerned. This could, for example, be a public procurement done without advertising it through the proper channels.

- 10% flat-rate deduction – A deficiency; for example, the time limits for receipt of tenders were extended without publication in accordance with applicable rules.

- 5% flat-rate deduction – A deficiency such as the description of the contract notice is inadequately written for the potential candidates to completely comprehend the topic of the agreement.

One of the consequences of irregularities in Interreg programmes is possible interruptions and suspensions of payments imposed by the EC. Under Article 142 of the CPR, the Commission may suspend all or part of the interim payments at the level of priorities or operational programme if one or more of the following conditions are met:

- A serious deficiency in the management and control systems of the Operational Programme and no corrective measures have been taken
- Serious irregularities in the statement of expenditure to the EC which has not been corrected
- MS fails to remedy the situation leading to interruption under Article 83 CPR (Interruption of the payment deadline).
- There is a serious deficiency in the quality and reliability of the monitoring system
- Failure to complete actions for ex-ante conditionality
- A performance review shows failure to achieve priority milestones

There are a few ways in which the Commission can recover undue payments if there is a clear case of a financial error or irregularity. Implementation of corrections from the Commission towards the programme can follow these two scenarios:

- The programme or Member State accepts the correction required or proposed by the Commission. The programme itself applies the financial correction, either through withdrawal or through recovery. The amount may then be reused for other eligible operations which have incurred regular expenditure. In these cases, there is no impact on the Commission's accounts, as the level of EU funding for a specific programme is not reduced. The EU's financial interests are thus protected against irregularities and fraud.

- The programme disagrees with the correction required or proposed by the Commission, following a formal 'contradictory' procedure with the programme/ Member State. In this case, the Commission adopts a formal financial correction decision and issues a recovery order to obtain repayment from the programme. These cases lead to a net reduction in the EU contribution to the specific operational programme concerned.

6. Good practice examples

Pay higher attention to beneficiaries and projects that are of high risk, such as partners with high budgets, inexperienced partners, project partners that are involved in many projects at the same time, projects with high investment or external expertise budget, and private companies such as SMEs.

Do not force private partners to apply public procurement rules.

Provide training for controllers, lead partners and project partners. Ensure high-quality work by controllers; by constantly monitor their capabilities and updating them on new developments/rules.

Focus measures towards high risk areas such as staff costs, overhead costs and public procurement.

7. Reference to other, more detailed papers

- Fact sheet: Audit
  http://admin.interact-eu.net/downloads/9562/INTERACT_Programme_Management_Handbook_Factsheet_Audit.pdf

- Fact sheet: Audit and Control bodies

- Fact sheet: First Level Control
  http://admin.interacteu.net/downloads/9460/INTERACT_Programme_Management_Handbook_First_Level_Control.pdf

- Fact sheet: Eligibility of Expenditure
  http://admin.interact-eu.net/downloads/9620/INTERACT_Programme_Management_Handbook_Eligibility_of_expenditure.pdf

- Commission Delegated Regulation 480/2014