

## MEMO

9/2016

**To** Raphael Scerri, Director General, Funds & Programmes Division

**From** Marilyn Grima, Senior Manager, Financial Control Unit

**Date** 22<sup>nd</sup> April 2016

**Subject** Guidance for Member States on amounts withdrawn, amounts recovered, amounts to be recovered and irrecoverable amounts

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### Introduction

The purpose of this Memo is to summarize the salient points of *EGESIF\_15\_0017-02 Guidance for Member States on amounts withdrawn, amounts recovered, amounts to be recovered and irrecoverable amounts* which gives guidance to Member States on how to submit the information to the Commission on withdrawals, recoveries, amounts to be recovered and irrecoverable amounts together with clarifications on the distinction between withdrawal and recovery.

For 2014-2020, the certification that the expenditure complies with applicable law is provided by the CA once a year in the accounts and the accounts are to be submitted by 15 February n + 1. Where a MS considers that an irrecoverable amount included previously in certified accounts should not be reimbursed to the Union budget, the CA shall make a separate request to the Commission. A MS may also decide not to recover from a beneficiary an amount, not including interest, which does not exceed €250 in contribution from the Funds. Such amounts need not be reimbursed to the budget of the Union.

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### Distinction between Withdrawal and Recovery

MS are required to correct and recover amounts unduly paid in line with Article 122 of the CPR and two choices are available:

**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. But the MS assumes with its national budget the risk of failing to recover from the beneficiary the unduly paid public funding.

**Recovery** leaving the expenditure, 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. In the case of amounts to be recovered and included in interim payment application during the accounting year for which the accounts are prepared, if not withdrawn before, the CA will have to deduct the irregular amounts when drawing the accounts. Recovery from the beneficiary may be achieved through

repayment to the programme authorities by the beneficiary of the amount received unduly and/or offsetting, whereby the amount to be recovered is deducted from a subsequent payment due to the beneficiary.

Although after withdrawal the MS will normally go on to recover the undue grant or part of the grant from the beneficiary, such subsequent recovery should nevertheless not be included in the recovered amounts because this would lead to an overlap and double counting between the amounts reported. After a withdrawal is implemented, the further recovery of the irregular amount from the beneficiary is a national issue.

The CA must always ensure that only legal, regular and eligible expenditure is certified in the accounts submitted to the Commission and it is not permitted to reintroduce previously withdrawn or deducted irregular expenditure into a new interim payment application (except where suspected irregular amounts were later found to be legal and regular given all evidence to fully justify this is maintained).

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#### **MS obligation to prevent, detect and correct irregularities, including fraud**

The CA is responsible to certify once a year the completeness, accuracy and veracity of the accounts and that the expenditure complies with applicable law. A distinction has to be made between financial corrections impacting either previously included in certified accounts or expenditure included in an interim payment application in relation to a current accounting year. The IT system set up by the MS will have to provide adequate trail by operation and accounting year to enable such a distinction.

**For amounts already certified in previous accounts, the financial correction will always be implemented in an interim payment application since irregular amounts detected after the submission of the accounts are to be corrected in the accounts for the accounting year in which the irregularity is detected.**

**In the second case, the financial correction is implemented either by withdrawing the concerned expenditure in a subsequent interim payment application when still possible (latest in final interim payment application between 1 and 31 July) or by deduction of the irregular amount directly from the accounts.**

The established irregularities are supported by final control or audit reports.

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#### **Cancellation of public contribution and irrecoverable amounts**

Once the CA has identified irregular expenditure and decided to withdraw / recover from subsequent interim payments, the MS then has to decide on the cancellation of the public contribution in line with Art 143 of the CPR. Financial corrections shall consist of cancelling all or part of the public contribution to an operation or operational programme. They shall be recorded in the accounts for the accounting year in which the cancellation is decided and implemented. Where a MS considers that an amount unduly paid to a beneficiary, previously included in certified accounts

submitted to the Commission is irrecoverable and where it considers that this amount should not be reimbursed to the Union budget, the CA may make a request to the Commission.

**Disclosure in the accounts**

Appendix 2 all financial corrections implemented in an interim payment application during the accounting year, hence amounts withdrawn and amounts recovered during the accounting year

	WITHDRAWALS		RECOVERIES	
	Total eligible amount of expenditure included in payment applications	Corresponding public expenditure	Total eligible amount of expenditure included in payment applications	Corresponding public expenditure
	A	B	C	D

Column A the total eligible expenditure withdrawn during the accounting year in an interim payment application

Column B the actual public expenditure corresponding to the total eligible amount of expenditure

Column C the total eligible expenditure deducted as result of recoveries corresponding to the irregular amounts detected and recovered during the accounting year (it is a cumulative figure for a given accounting year)

Column D the total amount of public expenditure (both EU and national co-financing)

Appendix 3 in the case of expenditure already certified in previous accounts, the MS may decide to wait for the recovery procedures to be finalised and then the irregular amounts are reported here;

The amounts reported to be recovered (pending recoveries) relate to amounts certified in previous amounts and for which recovery orders have been issued to the beneficiaries but which have not yet been reimbursed by the beneficiaries as at the end of the accounting year

	Total eligible amount of expenditure	Corresponding public expenditure

Appendix 5                   irrecoverable amounts unduly paid to beneficiaries which were certified in previous accounts submitted to the Commission (non cumulative – irrecoverable amounts already reported in previous accounts should not be included in the accounts for the current accounting period, as they will have been cleared in accounts under previous years)

The CA in this case makes a request to the Commission applicable to amounts previously certified in the accounts after which the Commission will then review each case and by 31 May will either request the MS to submit further information or inform the MS about their intention to continue its recovery procedure. The MS then shall reply within three months to the Commission's request for information and within three months of receiving the reply / non reply, the Commission informs the MS whether it concludes that the Union contribution should be reimbursed by the MS setting out the basis for its conclusion.

Appendix 8                   in the case that it was not possible to withdraw the irregular amount in an interim payment application, the CA will make deduction directly from the accounts and the corresponding financial correction will be disclosed here – hence amounts deducted at the level of the CA after the submission of the final interim payment application and before the submission of the accounts

**Submission of information on amounts recovered during the accounting year pursuant to Art 71 CPR – Durability of Operations**

An operation comprising investment in infrastructure or productive investment shall repay the contribution from the ESI Funds if **within five years** of the final payment to the beneficiary, it is subject to any of the following:

- (a) a cessation or relocation of a productive activity outside the programme area;
- (b) a change in ownership of an item of infrastructure which gives to a firm or a public body an undue advantage;
- (c) a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives.

Sums unduly paid in respect of the operation shall be recovered by the Member State in proportion to the period for which the requirements have not been fulfilled.

### **Withdrawal of amounts which were found to be irregular after the submission of the accounts**

In line with Article 139 (10) CPR, MS may replace irregular amounts which are deducted after the submission of the accounts, unless the Commission or the European Court of Auditors detect before the MS a serious deficiency in the effective functioning of the management and control system.

### **Issues related to recovery of amounts which were found to be irregular after the submission of the accounts**

If an amount which was previously certified in the accounts to the Commission is recovered, it should be deducted from a subsequent payment application and reported under Appendix 2. If the amount remains still to be recovered, it should be reported under Appendix 3 and if the amount, after exhausting all the recovery possibilities available through the national institutional and legal framework cannot be recovered, then the amount should be included under Appendix 5.

### **Amounts that MS decide not to recover and which do not exceed €250 in contribution from the Funds**

MS may decide not to recover amounts below €250 and this threshold is to be calculated by operation and accounting year. Operation is defined in Article 2 CPR as *a project, contract, action or group of projects selected by the managing authorities of the programmes concerned, or under their responsibility, that contributes to the objectives of a priority or priorities*;

No information needs to be communicated to the Commission and it follows that no assessment of possible fault or negligence of the MS of amounts below the threshold will be carried out by the Commission. Amounts below €250 should be included in Appendix 1 of the accounts but need not be reported in Appendix 5.

### **Conclusion**

- Irregularities referring to the expenditure certified in a given accounting year and detected before submission of the final interim payment application should be treated as withdrawals or recoveries, and should therefore reduce the expenditure declared in the final interim payment application (and presented in Appendix 2 of the accounts)
  - Irregularities referring to the expenditure certified in a given accounting year detected after submission of the final interim payment application but before the submission of the accounts should reduce expenditure presented in Appendix 1 of the accounts and inserted in Appendix 8
  - Irregularities detected after submission of the accounts may be treated as withdrawals or recoveries and should be detected from an interim payment application of the accounting year in which the irregularity is detected and should be presented in Appendix 2 of the accounts in the accounting year when the amounts are deducted.
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