

MEMO

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Subject Principles, criteria and indicative scales to be applied when determining financial corrections made by the Commission

The EU Commission may make financial corrections by cancelling all or part of the Union contribution to a national programme.

The purpose of the Memo is to provide guidance on the principles, criteria and indicative scales to be applied when determining financial corrections made by the Commission under Article 47 of Regulation 514/2014¹. When MS authorities detect irregularities during their controls and/or audits, they are invited to apply the required corrections in accordance with Article 46 of the Horizontal Regulation.

The purpose of financial corrections is to restore a situation where all of the expenditure declared for co-financing is in line with the applicable rules and ensuring, inter alia, respect of the principles of equal treatment and proportionality. When deciding upon the amount of financial corrections on the basis of Article 47 HR, the Commission takes into account the nature and gravity of the irregularity/ies and deficiency/ies and the extent and financial impact of the identified irregularities/deficiencies. The financial corrections applied by the Commission under Article 47 are net correction, meaning that there is a definitive reduction of Union funds to the Member States.

Types of irregularities and deficiencies

An irregularity means any infringement of a provision of Union or national law or infringement of national rules resulting from an act or omission by an economic operator which has or would have the effect of prejudicing the general budget of the European Union by charging an unjustified item of expenditure to the general budget.

They can be of an individual nature or of a systemic nature.

¹ Based on AMIF-ISF Working Document - *Note on the assessment of the MCS and on the principles, criteria and indicative scales to be applied when determining financial corrections made by the Commission*

Types of irregularities

An individual irregularity is a one-off error which is independent of other errors in the population or deficiencies in the system.

A systemic irregularity is an irregularity found in the sample audited that may have an impact on the non-audited population and occurs in well-defined and similar circumstances. It is in general associated with ineffective control procedures within (part of) the management and control system.

System deficiency is a weakness in the management and control system. A deficiency in the functioning of the management and control system is qualified as serious where any of the key requirements of the MCS are not followed.

Types of corrections

Quantifiable corrections whenever feasible and cost-effective the financial impact of an irregularity should be calculated exactly on the basis of an examination of the individual cases.

Extrapolated corrections in the case of irregularities where a representative sample is tested and it is not cost-effective to verify the regularity of expenditure not included in the audit sample, the financial correction may be based on extrapolation.

Non-quantifiable corrections (Flat rate corrections) in case of a systemic irregularity, where the sample cannot be extrapolated, flat-rate corrections should be applied to the rest of the population from which the sample was drawn for the purpose of determining the financial correction.

In case of a system deficiency (for example ineffective controls or audits, non-compliance with designation criteria), where it is not possible to quantify the financial correction precisely, a flat-rate correction should be applied to the expenditure declared for all or part of the management and control system.

Flat-rate corrections can also be applied in respect of individual irregularities.

Flat-rate corrections

Flat-rate corrections may be envisaged when the information resulting from the enquiry does not permit the financial impact of an irregularity or a system deficiency to be quantified precisely either by statistical means or by reference to other verifiable data. Such corrections should be considered when

- the Commission identifies a failure to adequately carry out any control explicitly required by the regulations applicable to the Funds
- the Commission identifies deficiencies in the management and control system resulting from breaches of the applicable rules
- the Member States' authorities detect such system deficiencies or irregularities but fail to take appropriate and timely corrective action (e.g. a failure to implement financial corrections).

The level of flat-rate correction shall be proportionate to the seriousness of the irregularities or the deficiency in the functioning of the management and control system and shall be fixed taking into account the following elements:

- a. the degree of seriousness of the irregularity or of the system deficiency either in relation to the overall system or part of it, or to types of expenditure declared;
- b. the degree of risk of loss to which the Union budget was exposed due to the system deficiency in the functioning of the management and control system or the irregularity;
- c. the vulnerability of the expenditure to fraud due to system deficiency or irregularity in the functioning of the management and control system.

Indicative scales for flat-rate corrections

100%	Where the irregularity or the deficiency in the management and control system is so fundamental, frequent or widespread that it represents a complete failure of the system that puts at risk the legality and regularity of all expenditure concerned. In case of fraud and where the MS has been negligent, the Commission may apply a financial correction of 100%.
25%	Where the irregularity or the deficiency in the management and control system is so frequent and widespread that it represents an extremely serious failure of the system that puts at risk the legality and regularity of a very high proportion of the expenditure concerned.
10%	Where the irregularity or the deficiency in the management and control system is due to the system not fully functioning so poorly or so infrequently that it puts at risk the legality and regularity of a high proportion of the expenditure concerned.
5%	Where the irregularity or the deficiency is in the management and control

The fact that the way in which a system operates is perfectible is not in itself sufficient grounds for a financial correction. There must be a deficiency of compliance with the EU rules and the deficiency must expose the EU budget to a real risk of loss or irregularity.

Repeated breaches where after a first flat rate correction a Member State has failed to take adequate corrective measures to address the system deficiency, the rate of the flat-rate correction may be increased in a subsequent financial year to the next higher category if the same deficiency or irregularity is established in relation to expenditure after the date of the first correction.

Borderline cases where the financial correction resulting from a strict application of the rates of 100%, 25% or 10% would be clearly disproportionate, it may be proposed to apply the rate of correction in the next lower category. Similarly, in accordance with the principle of proportionality, the correction rate may be reduced from 5% to 2% where the nature and gravity of the irregularity or system deficiency is not considered to justify a 5% correction rate.

Basis of assessment whenever the situation in other Member States is known, a comparison between them should be made to ensure equal treatment in the assessment of the rates of correction.

Flat rate corrections are to be applied to the expenditure remaining after the deduction of the amounts corrected with regard to individual cases.

Procedure

Before taking a decision on a financial correction, the Commission services shall open the conformity clearance procedure by informing the Member State of its provisional conclusions and requesting the Member State to submit its comments within two months. The MS is always given the opportunity to demonstrate that the actual extent or gravity of the irregularity and therefore the real loss or risk to the EU budget was less than that assessed by the Commission. In other shared management Funds, the Court of Justice has held that the burden of proof in such cases falls on the MS.

Before taking any decision, the Commission will give careful consideration to the proportionality of the correction rules proposed in order to ensure equal treatment both between and within Member States.