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**ADDENDUM 1 to NOTE**

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from : Presidency  
to : Permanent Representatives Committee (part 2)/Council

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Subject: Cohesion Policy legislative package  
- Presidency compromise on Financial Management

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Delegations will find attached a compromise text on the Financial Management parts of the proposal for the Common Provisions Regulation and of the ETC Regulation.

The modifications highlighted in bold are for the Common Provisions Regulation those in comparison to the proposal presented by the Commission on 6 October 2011, corrected on 14 March 2012 and as amended on 11 September 2012 as well as for the ETC Regulation those in comparison to the revised version (corrigendum) presented by the Commission on 14 March 2012.

## **COMMON PROVISIONS REGULATION**

### **PART ONE**

#### **SUBJECT-MATTER AND DEFINITIONS**

Recitals:

- (48) In order to safeguard the Union's financial interests, there should be measures limited in time that allow the authorising officer by delegation to interrupt payments where there is **clear** evidence to suggest a significant deficiency in the functioning of the management and control system, evidence of irregularities linked to a payment application, or a failure to submit documents for the purpose of **examination and acceptance** of accounts. **It is appropriate for the duration of the interruption period to be up to nine months- if a Member State so wishes - to give sufficient time to resolve the situation which gave rise to the interruption with a view to avoid having to resort to suspensions.**

#### *Article 2<sup>1</sup>*

##### **Definitions**

- (14) 'public **expenditure**' means any **public contribution** to the financing of operations **whose** origin [...] is the budget of national, regional or local public authorities, the budget of the Union related to the CSF Funds, the budget of public law bodies or the budget of associations of public authorities or public law bodies;
- (19) [...] ('rolling closure')

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<sup>1</sup> Based on the CLS written opinion on the issues of "applicable Union and national law" and irregularity and financial corrections issued on 12 November 2012 (document 16129/12), for the sake of legal certainty definitions of "irregularity" and of "systemic irregularity" will be inserted in the Regulation at a later stage.

## PART TWO

### COMMON PROVISIONS APPLICABLE TO CSF FUNDS

#### TITLE I

##### Principles of Union support for the CSF Funds

###### *Article 6*

[ [...] Applicable law]

**[Applicable law means the applicable Union and the related national implementing law to which operations financed by the CSF Funds shall comply with in accordance with the provisions of this Regulation and the Fund specific rules.]<sup>1</sup>**

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<sup>1</sup> The CLS has issued on 12 November 2012 a written legal opinion on the issue of "applicable Union and national law" and irregularity and financial corrections (document 16129/12). All relevant articles will be reviewed at a later stage in light of this opinion.

## TITLE IX

### FINANCIAL MANAGEMENT, [...] ACCOUNTS AND FINANCIAL CORRECTIONS, DECOMMITMENT

#### CHAPTER I

##### **Financial management**

##### *Article 66*

##### **Budget commitments**

The budget commitments of the Union in respect of each programme shall be made in annual instalments for each Fund during the period between 1 January 2014 and 31 December 2020. The decision of the Commission adopting a programme shall constitute the financing decision within the meaning of Article 75(2) of the Financial Regulation and once notified to the Member State concerned, a legal commitment within the meaning of that Regulation.

For each programme, the budget commitment for the first instalment shall follow the adoption of the programme by the Commission.

The budget commitments for subsequent instalments shall be made by the Commission before 1 May of each year, on the basis of the decision referred to in the second subparagraph, except where Article 13 of the Financial Regulation applies.

[As regards the performance reserve, budget commitments shall follow the Commission decision approving the amendment of the programme.]<sup>1</sup>

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<sup>1</sup> **Subject to MFF agreement.**

### *Article 67*

#### **Common rules for payments**

1. Payments by the Commission of the contribution from the CSF Funds to each programme shall be made in accordance with budget appropriations and subject to available funding. Each payment shall be posted to the earliest open budget commitment of the Fund concerned.
2. Payments shall take the form of pre-financing, interim payments and payment of the [...] final balance.
3. For forms of support under Article 57(1)(b), (c) and (d), **58 and 59**, [...] **costs calculated on the applicable basis** shall be regarded as eligible expenditure.

### *Article 68*

#### **Common rules for calculating interim payments, [...] and payment of final balance**

The Fund-specific rules shall lay down rules for the calculation of the amount reimbursed as interim payments [...], and of the final balance. This amount shall be a function of the specific co-financing rate applicable to the eligible expenditure.

### *Article 69*

#### **Requests for payment**

1. The specific procedure and information to be submitted for requests for payment shall be laid down in the Fund-specific rules.

2. The request for payment to be submitted to the Commission shall provide all the information necessary for the Commission to produce accounts in accordance with Article 61(2) of the Financial Regulation.

*[Article 70<sup>1</sup>*

**~~Accumulation of pre-financing and interim payments~~**

- ~~1. The cumulative total of pre-financing and interim payments and, where applicable, the annual balance by the Commission shall not exceed 95 % of the contribution from the CSF Funds to the programme.~~
- ~~2. When the ceiling of 95 % is reached, the Member States shall continue transmitting requests for payment to the Commission.]~~

*Article 71*

**Use of the euro**

Amounts set out in programmes submitted by Member States, forecasts of expenditure, statements of expenditure, requests for payment, [...] accounts and expenditure mentioned in the annual and final implementation reports shall be denominated in euro.

*Article 72*

**Payment of initial pre-financing**

1. [Following the Commission decision adopting the programme, an initial pre-financing amount for the whole programming period shall be paid by the Commission. The initial pre-financing amount shall be paid in instalments according to budgetary needs. The instalments shall be defined in the Fund-specific rules.]<sup>2</sup>

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<sup>1</sup> The text of the Article is deleted but is inserted in brackets since it needs to be verified whether the necessary provisions are included in the Fund specific rules of EAFRD and EMFF.

<sup>2</sup> Subject to MFF agreement.

2. Pre-financing shall be used only for [...] payments to beneficiaries in the implementation of the programme. It shall be made available without delay to the responsible body for this purpose.

*Article 73*

**Clearance of initial pre-financing**

The amount paid as initial pre-financing shall be totally cleared from the Commission accounts at the latest when the programme is closed.

*Article 74*

**Interruption of the payment deadline**

1. The payment deadline for an interim payment claim may be interrupted by the authorising officer by delegation within the meaning of the Financial Regulation for a maximum period of **six** months if:
  - (a) following information provided by a national or Union audit body, there is **a clear** evidence to suggest a significant deficiency in the functioning of the management and control system;
  - (b) the authorising officer by delegation has to carry out additional verifications following information coming to his attention alerting him that expenditure in a request for payment is linked to an irregularity having serious financial consequences;
  - (c) there is a failure to submit one of the documents required under Article **59(5) of the Financial Regulation**.

**The Member State may agree to an extension of the interruption period for another 3 months.**

2. The authorising officer by delegation **shall** limit the interruption to the part of the expenditure covered by the payment claim affected by the elements referred to in paragraph 1, **unless it is not possible to identify the part of the expenditure affected.** The authorising officer by delegation shall inform the Member State and the managing authority **in writing** immediately of the reason for interruption and shall ask them to remedy the situation. The interruption shall be ended by the authorising officer by delegation as soon as the necessary measures have been taken.

## CHAPTER II

### **Examination and acceptance of accounts [...]**

#### *Article 75*

[...]

#### *Article 76*

#### **Deadline for the examination and acceptance of accounts by the Commission**

By **31 May** of the year following the end of the accounting period, the Commission shall, in accordance with **Article 59(6) of the Financial Regulation, apply procedures for the examination and acceptance** of the accounts **and inform the Member State in accordance with Fund specific rules.** [...].

2. [...]



## CHAPTER III

### Financial Corrections

#### *Article 77*

#### **Financial corrections by the Commission**

1. The Commission shall make financial corrections by cancelling all or part of the Union contribution to a programme and effecting recovery from the Member State in order to exclude from Union financing expenditure which is in breach of [applicable Union and national law], including in relation to **serious** deficiencies in the management and control systems of Member States which have been detected by the Commission or the European Court of Auditors.
2. A breach of [applicable Union and national law] shall lead to a financial correction only [...] **in relation to expenditure which has been declared to the Commission and** where one of the following conditions is met:
  - (a) the breach has [...] affected the selection of an operation by the responsible body for support by the CSF Funds **or in cases where due to the nature of the breach it is not possible to establish this impact there is a substantiated risk that the breach has had such an effect;**
  - (b) [...] the breach has [...] affected the amount of expenditure declared for reimbursement by the Union budget **or in cases where due to the nature of the breach it is not possible to quantify its financial impact there is a substantiated risk that the breach has had such an effect.**
3. When deciding on the **application and the** amount of a financial correction under paragraph 1, the Commission shall **respect the principle of proportionality by taking** account of the nature and gravity of the breach of [applicable Union and national law] and its financial implications for the Union budget.

4. The criteria and the procedures for applying financial corrections shall be laid down in the Fund-specific rules.

## **CHAPTER IV**

### **DECOMMITMENT**

#### *Article 78*

#### **Principles**

1. [All programmes shall be submitted to a decommitment procedure established on the basis that amounts linked to a commitment which are not covered by pre-financing or a request for payment within a defined period shall be decommitted.]<sup>1</sup>
2. The commitment related to the last year of the period **shall** be decommitted according to the rules to be followed for the closure of the programmes.
3. The Fund-specific rules shall specify the precise application of the decommitment rule for each CSF Fund.
4. That part of commitments still open shall be decommitted if any of the documents required for the closure has not been submitted to the Commission by the deadlines established in the Fund-specific rules.

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<sup>1</sup> **Subject to MFF agreement.**

Article 79

**Exception to the decommitment**

1. The amount concerned by decommitment shall be reduced by the **following** amounts [...]:
  - (a) **that part of the budget commitment for which the** operations **are** suspended by a legal proceeding or by an administrative appeal having suspensory effect; or
  - (b) **that part of the budget commitment for which it has not been possible to make a request for payment for** reasons of *force majeure* seriously affecting implementation of all or part of the programme. The national authorities claiming *force majeure* shall demonstrate the direct consequences of the *force majeure* on the implementation of all or part of the programme **or**
  - (c) **that part of the budget commitment for which a request for payment has been made but whose reimbursement has been interrupted or suspended by the Commission at the deadline for decommitment.**

**For the purpose of subparagraphs (a) and (b),** the reduction may be requested once if the suspension or *force majeure* lasted up to one year, or several times corresponding to the duration of the *force majeure* or the number of years between the date of the legal or administrative decision suspending the implementation of the operation and the date of the final legal or administrative decision.

2. By 31 January, the Member State shall send to the Commission information on the exceptions referred to in paragraph 1 **(a) and (b)** for the amount to be declared by the end of preceding year.

*Article 80*

**Procedure**

1. The Commission shall inform the Member State and the managing authority in good time whenever there is a risk of application of decommitment under Article 78.
2. On the basis of the information it has on 31 January, the Commission shall inform the Member State and the managing authority of the amount of the decommitment resulting from the information in its possession.
3. The Member State shall have two months to agree to the amount to be decommitted or to submit its observations.
4. By 30 June, the Member State shall submit to the Commission a revised financing plan reflecting for the financial year concerned the reduced amount of support over one or several priorities of the programme. Failing such submission, the Commission shall revise the financing plan by reducing the contribution from the CSF Funds for the financial year concerned. This reduction shall be allocated to each priority proportionately.
5. The Commission shall amend the decision adopting the programme, by means of implementing acts, not later than 30 September.

## PART THREE

### GENERAL PROVISIONS APPLICABLE TO THE ERDF, THE ESF AND THE CF

#### TITLE VII

### FINANCIAL MANAGEMENT, [...] ACCOUNTS AND FINANCIAL CORRECTIONS

#### CHAPTER I

#### Financial management

##### *Article 119*

#### Common rules for payments

The Member State shall ensure that at the latest by the closure of the operational programme, the amount of public **expenditure** paid to beneficiaries is at least equal to the contribution from the Funds paid by the Commission to the Member State.

##### *Article 120*

#### Common rules for calculating interim payments and payment of the [...] final balance

1. The Commission shall reimburse as interim payments 90% of the amount resulting from applying the co-financing rate for each priority axis laid down in the decision adopting the operational programme to the eligible expenditure for the priority axis included in the payment application. [...]. **The Commission shall determine the remaining amounts to be reimbursed as interim payments or recovered in accordance with Article 130.**
2. The contribution from the Funds to a priority axis through the interim payments and payment of [...] the final balance shall not be higher than:

- (a) the **eligible** public **expenditure** indicated in the payment application for the priority axis; and
  - (b) the contribution from the Funds for the priority axis laid down in the decision of the Commission approving the operational programme.
3. [...]

*Article 121*

**Payment applications**

1. Payment applications shall include, for each priority axis:
  - (a) the total amount of eligible expenditure **incurred** by beneficiaries **and** paid in implementing operations, as entered into the **accounting system** of the certifying authority;
  - (b) the total amount of public **expenditure** incurred in implementing operations, as entered into the **accounting system** of the certifying authority.
  - (c) [...]
2. **Eligible** expenditure included in a payment application shall be supported by receipted invoices or accounting documents of equivalent probative value, except for forms of support under Articles 57 (1) (b) (c) and (d), 58, 59 (1) and 93 of this Regulation and under Article 14 of the Regulation (EU) No [...] /2012 of the European Parliament and of the Council of the European Social Funds and repealing Regulation (EC) No 1081/2006 [ESF]. For such forms of support, the amounts included in a payment application shall be the costs [...] **calculated on the applicable basis**.

**2bis. As regards aid schemes under Article 107 of the Treaty on the Functioning of the European Union, the public contribution corresponding to the expenditure included in a payment application shall have been paid to the beneficiaries by the body granting the aid.**

**2ter. By way of derogation from paragraph 1, as regards state aid, the payment application may include advances paid to the beneficiary by the body granting the aid under the following cumulative conditions:**

- (a) they shall be subject to a guarantee provided by a bank or other financial institution established in the Member State or be covered by a facility provided as a guarantee by a public entity or by the Member State;**
- (b) they shall not exceed 40% of the total amount of the aid to be granted to a beneficiary for a given operation;**
- (c) they shall be covered by expenditure paid by beneficiaries in implementing the operation and supported by receipted invoices or accounting documents of equivalent probative value at the latest within three years following the year of the payment of the advance or on 31 December 2022, whichever is earlier, failing which the next payment application shall be corrected accordingly.**

**2quater. Each payment application which includes advances referred to in paragraph 2 ter shall separately disclose the total amount paid from the operational programme as advances, the amount which has been covered by expenditure paid by beneficiaries within 3 years of the payment of the advance in accordance with paragraph 2 ter (c), and the amount which has not been covered by expenditure paid by beneficiaries and for which the three year period has not elapsed.**

3. The Commission shall adopt, by means of implementing acts, **uniform conditions on** the model for payment applications. These implementing acts shall be adopted in accordance with the **examination** procedure referred to in Article 143(3).

## *Article 122*

### **Payment to beneficiaries**

Managing authorities shall ensure that the beneficiaries receive the total amount of the public **expenditure** as quickly as possible and in full [...]. No amount shall be deducted or withheld and no specific charge or other charge with equivalent effect shall be levied that would reduce these amounts for the beneficiaries.

## *Article 123*

### **Use of the euro**

1. Member States which have not adopted the euro as their currency on the date of an application for payment shall convert the amounts of expenditure incurred in national currency into euro. This amount shall be converted into euro using the monthly accounting exchange rate of the Commission in the month during which the expenditure was registered in the accounts of the **certifying** authority of the operational programme concerned. This rate shall be published electronically by the Commission each month.
2. When the euro becomes the currency of a Member State, the conversion procedure set out in paragraph 1 shall continue to apply to all expenditure recorded in the accounts by the **certifying** authority before the date of entry into force of the fixed conversion rate between the national currency and the euro.



*Article 124*

**Payment of pre-financing**

1. [The initial pre-financing amount shall be paid in instalments as follows:
  - (a) in 2014: 2 % of the amount of support from the Funds for the entire programming period to the operational programme;
  - (b) in 2015: 1 % of the amount of support from the Funds for the entire programming period to the operational programme;
  - (c) in 2016: 1 % of the amount of support from the Funds for the entire programming period to the operational programme.

If an operational programme is adopted in 2015 or later, the earlier instalments shall be paid in the year of adoption.]<sup>1</sup>

2. An annual pre-financing amount shall be paid before 1 July in the years 2016 to 2022. In 2016, it shall be 2 % of the amount of the support from the Funds for the whole programming period to the operational programme. In the years 2017 to 2022, it shall be 2,5% of the amount of the support from the Funds for the whole programming period to the operational programme.<sup>2</sup>

*Article 125*

[...]

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<sup>1</sup> **Subject to MFF agreement.**

<sup>2</sup> **Article 124 paragraph 2 in conjunction with the provisions of Article 120, paragraph 1 will be subject to review at a later stage following the agreement on the MFF.**

## Article 126

### **Deadlines for presentation of interim payment applications and for their payment**

1. The certifying authority shall submit on a regular basis an application for interim payment **in accordance with article 121(1)** covering amounts entered in its **accounting system** [...] in the accounting year<sup>1</sup> [...]. **However, the certifying authority, when it considers necessary, may include such amounts in payment applications submitted in subsequent accounting years.**
2. The certifying authority shall submit the final application for interim payment by 31 July following the end of the previous accounting year and, in any event, before the first application for interim payment for the next accounting year.
3. The first application for interim payment shall not be made before the [...] **notification of the Commission of the designation of** the managing **and certifying** authorities **in accordance with Article 113 bis** [...].
4. Interim payments shall not be made for an operational programme where the annual implementation report has not been sent to the Commission in accordance with Article 101.
5. Subject to available funding, the Commission shall make the interim payment no later than 60 days after the date on which a payment application is registered with the Commission.

## Article 127

### **Decommitment**

1. [The Commission shall decommit any part of the amount calculated in accordance with the second subparagraph in an operational programme that has not been used for payment of the initial and annual pre-financing **and** interim payments [...] by 31 December of the second financial year following the year of budget commitment under the operational programme or for which a payment application drawn up in accordance with Article 121 has not been submitted in accordance with Article 126.

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<sup>1</sup> **Definition of accounting year in paragraph (23) of Article 2 to be reviewed.**

For the purposes of the decommitment, the Commission shall calculate the amount by adding one sixth of the annual budget commitment related to the 2014 total annual contribution to each of the 2015 to 2020 budget commitments]<sup>1</sup>.

2. By way of derogation from the first subparagraph of paragraph 1, the deadlines for decommitment shall not apply to the annual budget commitment related to the 2014 total annual contribution.
3. If the first annual budget commitment is related to the 2015 total annual contribution, by way of derogation from paragraph 1, the deadlines for decommitment shall not apply to the annual budget commitment related to the total annual contribution of 2015. In such cases, the Commission shall calculate the amount under the first sub-paragraph of paragraph 1 by adding one fifth of the annual budget commitment related to the 2015 total amount contribution to each of the 2016 to 2020 budget commitments.
4. That part of commitments still open on 31 December 2022 shall be decommitted if any of the documents required under Article 133(1) has not been submitted to the Commission by **the deadline set out in Article 133 (1)**.

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<sup>1</sup> **Subject to MFF agreement.**

## CHAPTER II

### Preparation, examination and acceptance of accounts and closure

#### SECTION I

#### PREPARATION OF ACCOUNTS

##### *Article 128*

##### Preparation of the [...] accounts

1. The [...] accounts **referred to in Article 59 (5)(a) of the Financial Regulation shall be submitted to the Commission** for each operational programme. **The accounts** shall cover the accounting year and shall include at the level of each priority axis:
  - (a) the total amount of eligible expenditure entered into the **accounting systems** of the certifying authority [...] **which has been included in payment applications submitted to the Commission in accordance with Articles 121 and 126 (2) by 31 July following the end of the accounting year** and the total amount of **the corresponding public expenditure** [...];
  - (b) the amounts withdrawn and recovered during the accounting year, the amounts to be recovered as at the end of the accounting year, the recoveries effected pursuant to Article 61, and the irrecoverable amounts;
  - (c) [...] **the amounts of pre-financing paid to financial instruments under Article 35 (1) and advances of state aid under Article 121 (2ter);**
  - (d) for each priority axis, a reconciliation between the expenditure stated pursuant to point (a) and the expenditure declared in respect of the same accounting year in payment applications, accompanied by an explanation of any differences.

2. **Where a Member State excludes from the accounts, expenditure previously included in an application for interim payment for the accounting year because it is subject to an ongoing assessment of its legality and regularity, the whole or part of such expenditure which is found to be legal and regular may be included in an application for interim payment relating to subsequent accounting years. [...]**
3. **The Commission shall adopt, in order to lay down uniform conditions, implementing acts, in accordance with the examination procedure referred to in Article 143 (3), setting out the model for the accounts.**

*Article 129*

**Submission of information**

For each year from 2016 until and including 2024, the Member State shall submit the documents referred to **and by the deadline set out in Article 59(5) of the Financial Regulation namely:**

- (a) the accounts referred to in Article 128 paragraph 1 for the preceding accounting year;**
- (b) the management declaration and the summary report referred to in Article 114 (4) (e);**
- (c) the audit opinion and the control report referred to in Article 116 (5) (i) and (ii).**

**Examination and acceptance of accounts**

- 1. The Commission shall carry out an examination of the documents submitted by the Member State under Article 129. Upon request by the Commission, the Member State shall provide all necessary additional information to enable the Commission to determine whether the accounts are complete, accurate and true by the deadline set out in Article 76(1).**
- 2. The Commission shall accept the accounts where it is able to conclude that the accounts are complete, accurate and true. The Commission shall reach such a conclusion where the audit authority has provided an unqualified audit opinion regarding the completeness, accuracy and veracity of the accounts unless the Commission has specific evidence that the audit opinion on the accounts is unreliable.**
- 3. The Commission shall inform the Member State by the deadline set out in Article 76(1) whether or not it is able to accept the accounts.**
- 4. If for reasons attributable to Member State, the Commission is not able to accept the accounts by the deadline set out in Article 76(1) the Commission shall take a decision by means of an implementing act, specifying the reasons for such a decision in accordance with paragraph 2 and of the actions which must be undertaken and the time period for their completion. At the end of the time period for the completion of these actions the Commission shall inform the Member State whether it is able to accept the accounts.**
- 5. Issues related to legality and regularity of the underlying transactions concerning expenditure entered in the accounts shall not be taken into account for the purposes of acceptance of the accounts by the Commission. The procedure for examination and acceptance of the accounts shall not interrupt the treatment of applications for interim payments and shall not lead to suspension of payments, without prejudice to the application of Articles 74 and 134.**

6. **On the basis of the accepted accounts, the Commission shall calculate** the amount chargeable to the Funds for **the** accounting year **and the consequent adjustments in relation to the payments to the Member State.** The Commission shall take into account:
- (a) the [...] amounts [...] in the accounts referred to in Article 128(1)(a) **and** to which shall be applied the co-financing rate for each priority axis;
  - (b) the total amount of payments made by the Commission during that accounting year, consisting of:
    - (i) the amount of interim payments paid by the Commission in accordance with Article 120(1) and Article 22; and
    - (ii) the amount of the annual pre-financing paid under Article 124(2).
7. **Following the procedure under paragraph 6, the Commission shall clear the respective annual pre-financing and pay any additional amount due within 30 days of the acceptance of the accounts. Where there is an amount recoverable from the Member State, it shall be subject to a recovery order issued by the Commission which shall be executed, where possible, by offsetting against amounts due to the Member State under subsequent payments to the same operational programme. Such recovery shall not constitute a financial correction and shall not reduce support from the Funds to the operational programme. The amount recovered shall constitute assigned revenue in accordance with Article 177(3) of the Financial Regulation.**
8. **Where following the procedure set out in paragraph 4, the Commission is not able to accept the accounts, the Commission shall determine, on the basis of available information and in accordance with paragraph 6, the amount chargeable to the Funds for the accounting year, and shall inform the Member State. Where the Member State notifies the Commission of its agreement within two months of the transmission by the Commission of the information, paragraph 7 shall apply. In the absence of such agreement, the Commission shall adopt a decision, by means of implementing acts,**

setting out the amount chargeable to the Funds for the accounting year. Such decision shall not constitute a financial correction and shall not reduce support from the Funds to the operational programme. On the basis of the decision, the Commission shall apply the adjustments to the payments to the Member State in accordance with paragraph 7.

9. The acceptance of the accounts by the Commission, or a decision by the Commission under paragraph 8, is without prejudice to the application of corrections under Articles 136 and 137.

10. Member States may replace irregular amounts which are detected after the submission of the accounts by making the corresponding adjustments in the annual accounts for the accounting year in which the irregularity is detected, without prejudice to Articles 136 and 137.

*Article 131*

[...]

*Article 132*

**Availability of documents**

1. Without prejudice to the rules governing State aid, the managing authority shall ensure that all supporting documents regarding expenditure supported by the Funds on operations for which the total eligible expenditure is less than EUR 5000000, are made available to the Commission and the European Court of Auditors upon request for a period of three years from 31 December following the submission of the accounts in which the expenditure of the operation is included. In the case of all other operations, all supporting documents are made available for a two year period from 31 December following the submission of the accounts in which the final expenditure of the completed operation is included.



This **time** period **may** be interrupted either in the case of legal [...] proceedings or by a duly justified request of the Commission.

**1bis The managing authority shall inform beneficiaries of the start date of the period referred to in paragraph 1.**

2. The documents shall be kept either in the form of the originals, or certified true copies of the originals, or on commonly accepted data carriers including electronic versions of original documents or documents existing in electronic version only.
3. The documents shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed.
4. The Commission shall [...] adopt, **in order to lay down uniform conditions, implementing acts in accordance with the advisory procedure referred to in article 143(2), setting out the selection methods and criteria, based on which in the application of this Article** data carriers can be considered as commonly accepted.
5. The procedure for certification of conformity of documents held on commonly accepted data carriers with the original document shall be laid down by the national authorities and shall ensure that the versions held comply with national legal requirements and can be relied on for audit purposes.
6. Where documents exist in electronic version only, the computer systems used must meet accepted security standards that ensure that the documents held comply with national legal requirements and can be relied on for audit purposes.

## SECTION II

### CLOSURE OF OPERATIONAL PROGRAMMES

#### *Article 133*

##### **Submission of closure documents and payment of the final balance**

1. Member States shall submit the following documents **by the deadline referred to in Article 59(5) of the Financial Regulation in 2024**:
  - (a) [...]
  - (b) a final implementation report for the operational programme; and
  - (c) the documents referred to in Article **129** for the final accounting year, from 1 July 2022 to 30 June 2023.
2. The final balance shall be paid no later than three months after the date of **acceptance** of accounts of the final accounting year or one month after the date of acceptance of the final implementation report, whichever date is later.

## SECTION III

### SUSPENSION OF PAYMENTS

#### *Article 134*

##### **Suspension of payments**

1. All or part of the interim payments at the level of priority axes or operational programmes may be suspended by the Commission where:

- (a) there is a serious deficiency in the management and control system of the operational programme, **which has put at risk the Union contribution to the operational programme and** for which corrective measures have not been taken;
  - (b) expenditure in a statement of expenditure is linked to an irregularity having serious financial consequences which has not been corrected;
  - (c) the Member State has failed to take the necessary action to remedy the situation giving rise to an interruption under Article 74;
  - (d) there is a serious deficiency in the quality and reliability of the monitoring system or of the data on common and specific indicators;
  - (e) **there is a failure to complete actions to fulfil an** ex ante conditionality **subject to the conditions set out in Article 17;**
  - (f) there is evidence resulting from a performance review that a priority axis has **seriously** failed to achieve the milestones **relating to financial and output indicators and key implementation steps** set out in the performance framework **subject to the conditions set out in Article 20;**
  - (g) [the Member State fails to respond or does not reply satisfactorily under Article **21(5).**]<sup>1</sup>
2. The Commission may decide, by means of implementing acts, to suspend all or part of interim payments, after having given the Member State the opportunity to present its observations.
  3. The Commission shall end suspension of all or part of interim payments where the Member State has taken the necessary measures to enable the suspension to be lifted.

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<sup>1</sup> **Subject to MFF agreement.**

## CHAPTER III

### Financial corrections

#### SECTION I

#### FINANCIAL CORRECTIONS BY MEMBER STATES

##### *Article 135*

##### **Financial corrections by Member States**

1. The Member States shall in the first instance be responsible for investigating irregularities and for making the financial corrections required and pursuing recoveries. In the case of a systemic irregularity, the Member State shall extend its investigation to cover all operations potentially affected.
2. The Member State shall make the financial corrections required in connection with individual or systemic irregularities detected in operations or operational programmes. Financial corrections shall consist of cancelling all or part of the public contribution to an operation or operational programme. The Member State shall take into account the nature and gravity of the irregularities and the financial loss to the Funds and shall apply a proportionate correction. Financial corrections shall be recorded in the [...] accounts by the managing authority for the accounting year in which the cancellation is decided.
3. The contribution from the Funds cancelled in accordance with paragraph 2 may be reused by the Member State within the operational programme concerned, subject to paragraph 4.
4. The contribution cancelled in accordance with paragraph 2 may not be reused for any operation that was the subject of the correction or, where a financial correction is made for a systemic irregularity, for any operation affected by the systemic irregularity.

## SECTION II

### FINANCIAL CORRECTIONS BY THE COMMISSION

#### *Article 136*

##### **Criteria for financial corrections**

1. The Commission shall make financial corrections by means of implementing acts by cancelling all or part of the Union contribution to an operational programme in accordance with Article 77 where, after carrying out the necessary examination, it concludes that:
  - (a) there is a serious deficiency in the management and control system of the operational programme which has put at risk the Union contribution already paid to the operational programme;
  - (b) the Member State has not complied with its obligations under Article 135 prior to the opening of the correction procedure under this paragraph;
  - (c) expenditure contained in a payment application is irregular and has not been corrected by the Member State prior to the opening of the correction procedure under this paragraph.

The Commission shall base its financial corrections on individual cases of irregularity identified and shall take account of whether an irregularity is systemic. When it is not possible to quantify precisely the amount of irregular expenditure charged to the Funds, the Commission shall apply a flat rate or extrapolated financial correction.

2. The Commission shall, when deciding the amount of a correction under paragraph 1, take account, **in accordance with the principle of proportionality**, of the nature and gravity of the irregularity and the extent and financial implications of the deficiencies in management and control systems found in the operational programme.

3. Where the Commission bases its position on reports of auditors other than those of its own services, it shall draw its own conclusions regarding the financial consequences after examining the measures taken by the Member State concerned under Article 135(2), the notifications sent under Article 112(3), and any replies from the Member State.
4. **In accordance with Article 20 (4),** where the Commission, based on the examination of the final implementation report of the operational programme, establishes a serious failure to achieve the targets set out in the performance framework, it may apply financial corrections in respect of the priority axes concerned by means of implementing acts.
5. When a Member State does not comply with its obligations as referred to in Article 86, the Commission may, in relation to the degree of non-compliance with these obligations, make a financial correction by cancelling all or part of the Structural Funds contribution to the Member State concerned.
6. The Commission shall be empowered to adopt delegated acts in accordance with Article 142 establishing **further detailed rules on** the criteria for establishing the level of financial correction to be applied.
7. **The Commission shall adopt, by means of an implementing act, uniform conditions on the methodology for applying flat rates or extrapolated financial correction in accordance with the examination procedure, referred to in Article 143 (3).**

*Article 137<sup>1</sup>*

**Procedure**

1. Before taking a decision on a financial correction, the Commission shall launch the procedure by informing the Member State of the provisional conclusions of its examination and requesting the Member State to submit its comments within two months.

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<sup>1</sup> **Regarding the issues covered in paragraph 6, a new recital will be inserted at a later stage.**

2. Where the Commission proposes a financial correction on the basis of extrapolation or a flat rate, the Member State shall be given the opportunity to demonstrate, through an examination of the documentation concerned, that the actual extent of irregularity is less than the Commission's assessment. In agreement with the Commission, the Member State may limit the scope of this examination to an appropriate proportion or sample of the documentation concerned. Except in duly justified cases, the time allowed for this examination shall not exceed a further period of two months after the two-month period referred to in paragraph 1.
3. The Commission shall take account of any evidence supplied by the Member State within the time limits set out in paragraphs 1 and 2.
4. Where the Member State does not accept the provisional conclusions of the Commission, the Member State shall be invited to a hearing by the Commission, in order to ensure that all relevant information and observations are available as a basis for conclusions by the Commission on the application of the financial correction.

**4bis. In case of an agreement and without prejudice to paragraph 6, the Member State may reuse the Funds concerned in conformity with Article 135(3)**

5. In order to apply financial corrections the Commission shall take a decision, by means of implementing acts, within six months of the date of the hearing, or of the date of receipt of additional information where the Member State agrees to submit such additional information following the hearing. The Commission shall take account of all information and observations submitted during the course of the procedure. If no hearing takes place, the six month period shall begin to run two months after the date of the letter of invitation to the hearing sent by the Commission.

6. [...] **Where** the Commission **in carrying out its responsibilities under Article 65** or the European Court of Auditors detects irregularities **de monstrating serious deficiencies in the effective functioning of the management and control systems and which, prior to the date of such detection, were neither identified in the management declaration, annual control report and the audit opinion submitted to the Commission in accordance with Article 59(5) of the Financial Regulation nor in other audit reports of the audit authority submitted to the Commission, nor were the subject of appropriate remedial measures by the Member State, the resulting financial corrections shall reduce support from the Funds to the operational programme. For the purposes of this paragraph, serious deficiencies in the effective functioning of management and control systems means deficiencies for which substantial improvements in the systems are required, which expose the Funds to a significant risk of systemic irregularities, and whose existence is not compatible with an unqualified audit opinion on the proper functioning of the management and control system. The assessment of the serious deficiencies shall be based on the [applicable Union and national law] when the relevant management declarations, annual control reports and audit opinions were submitted. The Commission shall be empowered to adopt delegated acts in accordance with Article 142 establishing further detailed rules on the criteria to be used for the assessment of serious deficiencies that might lead to net corrections together with the main types of such serious deficiencies.**

**When deciding on the application and the amount of a financial correction the Commission shall:**

- (a) respect the principle of proportionality by taking account of the nature and gravity of the serious deficiency and its financial implications for the Union budget;**
- (b) for the purpose of applying a flat rate or extrapolated correction, exclude irregular expenditure previously detected by the Member State which has been subject of an adjustment in the accounts in accordance with Article 130(10), and expenditure subject to an ongoing assessment of its legality and regularity under Article 128(2);**



- (c) take into account flat rate or extrapolated corrections applied to the expenditure by the Member State for other serious deficiencies detected by the Member State when determining the residual risk for the Union budget.**

*Article 138*

**Obligations of Member States**

A financial correction by the Commission shall not prejudice the Member State's obligation to pursue recoveries under Article 135(2) of this Regulation and to recover State aid in the meaning of Article 107(1) of the Treaty and under Article 14 of Council Regulation (EC) No 659/1999<sup>1</sup>.

*Article 139*

**Repayment**

1. Any repayment due to be made to the general budget of the Union shall be effected before the due date indicated in the order for recovery drawn up in accordance with Article 73 of the Financial Regulation. The due date shall be the last day of the second month following the issuing of the order.
2. Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate of such interest shall be one-and-a-half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls.

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<sup>1</sup> OJ L 83, 27.3.1999, p. 1.

## **ETC-REGULATION**

### **CHAPTER VII**

#### **FINANCIAL MANAGEMENT**

##### *Article 25*

##### **Budget commitments, payments and recoveries**

1. The ERDF support to cooperation programmes shall be paid into a single account with no national sub-accounts.
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 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 the amount 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.

*Article 26*

**Use of the euro**

By way of derogation from Article 123 of Regulation (EU) No [...] /2012 [CPR], expenditure incurred in a currency other than the euro shall be converted into euro by the beneficiaries [...] **using the monthly accounting exchange rate of the Commission either in the month during which expenditure was incurred, or in the month during which expenditure was submitted for verification to the managing authority or the controller in accordance with Article 20, or in the month during which expenditure was reported to the lead beneficiary. The method chosen shall be set out in the cooperation programme and be applicable to all beneficiaries.**

The conversion shall be verified by the managing authority or by the controller in the Member State or third country in which the beneficiary is located.

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