



Brussels, 19.12.2013
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COMMISSION DECISION

of 19.12.2013

on the setting out and approval of the guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Whereas:

- (1) The purpose of these guidelines is to provide guidance to the relevant Commission services on the principles, criteria and scales that should be applied in respect of financial corrections made by the Commission concerning expenditure financed by the Union under shared management, for non-compliance with the applicable rules on public procurement, as specified in the guidelines.
- (2) In accordance with Article 80(4) of the Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union¹, the Commission is required to: (i) make financial corrections on Member States in order to exclude from Union financing expenditure incurred in breach of applicable law; (ii) base its financial corrections on the identification of amounts unduly spent, and the financial implications for the budget and, where such amounts cannot be identified precisely, the Commission may apply extrapolated or flat-rate corrections in accordance with the sector-specific rules; (iii) when deciding on the amount of a financial correction, take account of the nature and gravity of the breach of applicable law and the financial implications for the budget, including the case of deficiencies in management and control systems.
- (3) In accordance with Articles 99 and 100 of Council Regulation (EC) N° 1083/2006 of 11 July 2006, laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund², the Commission may make financial corrections by cancelling all or part of the contribution made by the Union to an operational programme. Similar provisions exist in other sector-specific rules, namely Articles 97 and 98 of Council Regulation (EC) N°1198/2006 of 27 July 2006 laying down general provisions on the European Fisheries Fund³, Article 44 of Council Decision 2007/435/EC of 25 June 2007 establishing the European Fund for the Integration of third-country nationals for the period 2007 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows'⁴, Article 46 of Decision 573/2007/EC of 23 May 2007 of the European Parliament and the Council establishing the European Refugee Fund (ERF III) for the period 2008 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows'⁵, Article

¹ OJ L 298, 26.10.2012, p. 1–96.

² OJ L 210, 31.7.2006, p. 25-78.

³ OJ L 223, 15.8.2006, p. 1-44.

⁴ OJ L 168, 28.6.2007, p. 18-36.

⁵ OJ L 144, 6.6.2007, p. 1–21.

48 of Decision 574/2007/EC of 23 May 2007 of the European Parliament and the Council establishing the External Borders Fund for the period 2007 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows'⁶, Article 46 of Decision 575/2007/EC of the European Parliament and the Council establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows'⁷ and Article 31 of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the Financing of the Common Agricultural Policy⁸. As for the European Union Solidarity Fund, Article 80(4) of the Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union⁹ is also applicable, in line with Article 5(3) of the Council Regulation (EC) No 2012/2002 of 11 November 2002 establishing the Fund¹⁰.

- (4) These guidelines will be applicable to all shared management Funds included in the multiannual financial framework 2014-2020, including those not constituting continuation of the existing Funds such as the instrument for financial support for police cooperation, preventing and combating crime, and crisis management within the Internal Security Fund.
- (5) These guidelines are an update of the guidelines on financial corrections for non-compliance with public procurement rules for programming periods 2000-2006 and 2007-2013¹¹. These updated guidelines reflect the experience drawn from the application of the previous guidelines and intends to bring clarification on the level of corrections to be applied in line with the principle of proportionality and taking into account the case-law of the Court of Justice of the European Union. These guidelines contribute also to address the European Parliament 2010 discharge recommendation to harmonise the treatment of public procurement errors for the following policy areas: Agriculture and Natural Resources, Cohesion, Energy and Transport and to promote an increased harmonisation of European Court of Auditors' and Commission's quantification of irregularities in public procurement.
- (6) These guidelines should be used by the Commission to ensure equal treatment between Member States, transparency and proportionality when applying financial corrections in relation to expenditure financed by the Union. The purpose of financial corrections is to restore a situation where all of the expenditure declared for financing by the Union is legal and regular, in line with the applicable national and Union rules.

⁶ OJ L 144, 6.6.2007, p. 22–44.

⁷ OJ L 144, 6.6.2007, p. 45–65.

⁸ OJ L 209, 11.8.2005, p. 1–25.

⁹ OJ L 298, 26.10.2012, p. 1–96.

¹⁰ OJ L 311, 14.11.2002, p. 3–8.

¹¹ Ref. COCOF 07/0037/03-EN of 29/11/2007 applicable to the European Regional Development Fund, Cohesion Fund and European Social Fund; Ref. EFFC/24/2008 of 1/4/2008, applicable to European Fisheries Fund; and "SOLID/2011/31 REV" of 11/01/2012, i.e. the guidelines for the financial corrections to be applied for irregularities in the application of the Union regulations on public procurement to contracts co-financed by the four Funds of the General Programme "Solidarity and Management of Migration Flows" during the programming period 2007-2013.

HAS DECIDED AS FOLLOWS:

Article 1

This Decision sets out in the Annex the guidelines for determining financial corrections to be made to expenditure financed by the Union under shared management for the programming periods 2007-2013 and 2014-2020, for non-compliance with the rules on public procurement.

Article 2

The guidelines set out in the Annex replace the guidelines on financial corrections for non-compliance with public procurement rules for programming periods 2000-2006 and 2007-2013, as specified above in recital 5.

The guidelines set out in the Annex shall be applied by the Commission when making financial corrections related to irregularities detected after the date of adoption of this Decision.

Done at Brussels, 19.12.2013

For the Commission
Johannes HAHN
Member of the Commission