



EUROPEAN COMMISSION

**GUIDELINES FOR DETERMINING FINANCIAL CORRECTIONS
TO BE MADE TO EXPENDITURE CO-FINANCED BY THE EU UNDER THE STRUCTURAL FUNDS AND THE
EUROPEAN FISHERIES FUND FOR NON-COMPLIANCE WITH THE RULES APPLICABLE
TO FINANCIAL ENGINEERING INSTRUMENTS FOR THE 2007-2013 PROGRAMMING PERIOD**

DISCLAIMER:

This is a document prepared by the Commission services. On the basis of the applicable EU Law, it provides technical guidance to the attention of public authorities, practitioners, beneficiaries or potential beneficiaries, and other bodies involved in the monitoring, control or implementation of the Cohesion policy on how to interpret and apply the EU rules in this area. The aim of this document is to provide Commission's services explanations and interpretations of the said rules in order to facilitate the implementation of operational programmes and to encourage good practice(s). However this guidance note is without prejudice to the interpretation of the Court of Justice and the General Court or evolving Commission decision making practice.

Table of contents

1.	INTRODUCTION	4
1.1.	Purpose and scope of the guidelines.....	4
1.2.	Legal basis and reference documents	6
1.2.1.	Legal basis	6
1.2.2.	Guidelines on financial corrections	6
1.2.3.	Guidance note from the Commission services on financial engineering instruments	7
2.	MAIN TYPES OF IRREGULARITIES AND CORRESPONDING RATES OF FINANCIAL CORRECTIONS.....	7
2.1.	Irregularities with corresponding rates of financial corrections.....	7
2.2.	Sound financial management in the implementation of FEIs	9
3.	REPLACEMENT OF IRREGULAR EXPENDITURE WHEN FINANCIAL CORRECTIONS HAVE TO BE APPLIED	10
3.1.	Corrections by the Member States	10
3.2.	Corrections by the Commission	12
	ANNEX. OVERVIEW OF MAIN IRREGULARITIES OR DEFICIENCIES AND CORRECTIVE MEASURES.....	13

GLOSSARY

The EFF Regulation - Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund

The EFF Implementing Regulation - Commission Regulation (EC) No 498/2007 of 26 March 2007 laying down detailed rules for the implementation of Council Regulation (EC) No 1198/2006 on the European Fisheries Fund

FEIs - financial engineering instruments

The Financial Regulation - Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities

The General Regulation - Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999

The Implementing Regulation - Commission Regulation (EC) No 1828/2006 of 8 December 2006, setting out rules for the implementation of Council Regulation (EC) No 1083/2006, laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund

MA - managing authority

1. INTRODUCTION

Financial engineering instruments (FEIs) have become an increasingly important delivery tool of cohesion policy during the 2007-2013 programming period. Their use has been promoted because of the value added of revolving instruments compared to grants in terms of the efficiency of use of public resources.

In relation to the ERDF and the ESF, the specificities of these instruments have already given rise to the issuance of specific guidance notes on FEIs to clarify the application of the regulatory framework to these instruments¹. For the same reason, these specific guidelines provide indications for the financial corrections to be made for non-compliance with rules applicable to FEIs in case of irregularities affecting expenditure co-financed under the 2007-2013 programming period.

1.1. Purpose and scope of the guidelines

This document sets out guidelines for the financial corrections to be applied in relation to FEIs set up under a programme for the 2007-2013 period. Financial corrections may be made by the Commission where expenditure is irregular and have not been corrected by the Member State. Financial corrections may also be made where there is a serious deficiency in the management and control system which has put at risk the EU contribution already paid to a programme, or where a Member State has not investigated irregularities and made the corrections required.

According to Article 2(7) of the General Regulation and Article 3(q) of the EFF Regulation, an irregularity is defined as any infringement of a provision of Union law 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. The definition of irregularities covers, *inter alia*, breaches of the provisions of the General Regulation and of the Implementing Regulation, as well as breaches of the provisions of the EFF Regulation and of the EFF Implementing Regulation.

Both the General and Implementing Regulations contain provisions requiring that the management and control system ensures that FEIs are set up and implemented efficiently and effectively. The specific characteristic of a FEI is that, once set up, it may operate for many years during a programming period as a mechanism for the investment of a very substantial amount of EU funds from a programme.

Under Article 60 of the General Regulation, the MA has a clear responsibility for management and implementation of the programme “*in accordance with the principle of sound financial management*”. To this effect, Article 60(b) requires the MA to verify that co-financed projects and services are delivered and that expenditure declared by the beneficiaries for operations has actually been incurred. If there has been a non-respect of the sound financial management principle in the set-up or implementation of an FEI, this may have important financial consequences for the EU budget. The certifying and audit authorities have obligations to ensure that these verifications are carried out properly.

The monitoring committee, pursuant to Article 65(b) and (c) of the General Regulation, also has the task to periodically review progress towards the targets in the programme and to examine the results of implementation and it can propose to the MA to revise or examine the programme to improve management, including financial management. Importantly, the MA and monitoring committee have the obligation under Article 66(1) of the General Regulation to “ensure the

¹ Latest Guidance note from the Commission services on financial engineering instruments under Article 44 of Council Regulation (EC) No 1083/2006 lastly revised on 8 February 2012 (COCOF 10.0014-05).

quality of implementation of the operational programme.” The reporting obligations in Article 67 of the General Regulation are also intended to ensure that any significant problems in implementing the programme are reported by the MA and resolved: either through remedial action at the initiative of the MA or following a recommendation by the Commission pursuant to Article 68(2) of the General Regulation.

When carrying out their management and control activities, the national authorities should take into account that operations comprising FEIs are implemented by beneficiaries to allow “achievement of the goals of the priority axis” to which they relate and achievement of the goals of the programme. As explained in recital 41 of the General Regulation, the provisions on FEIs aim “*to ensure that improved access to finance and innovative financial engineering are available primarily to micro, small and medium-sized enterprises and for investing in public-private partnerships and other projects included in an integrated plan for sustainable urban development.*”

Moreover, funding agreements signed with FEIs must, pursuant to Articles 43 and 44 of the Implementing Regulation, ensure monitoring of implementation in accordance with applicable rules.

In light of the above, where either the national authorities or the Commission note a problem concerning the implementation of an FEI, including where implementation is not in line with the principle of sound financial management, this should be addressed immediately by the national authorities. Where this is not done and where a recommendation or request of the Commission is not acted upon within an agreed time frame, the Commission may conclude that this constitutes a serious deficiency in the management and control system of the programme concerned, putting at risk the EU contribution, and may carry out a financial correction.

When the Commission services detect irregularities or a serious deficiency in the management and control system during their audits, they determine the amount of financial correction applicable in line with these guidelines. If the irregularity or the impact of the serious deficiency cannot be quantified precisely, the amount of the financial correction is calculated as a flat-rate, applying the suitable scale under the guidelines, to be applied to the contribution from the programme that has been declared to the Commission. The same correction rate should, where appropriate, be applied also to any future expenditure affected by the same type of irregularity or serious deficiency.

The “Guidance document on management verifications to be carried out by Member States on operations co-financed by the Structural Funds and the Cohesion Fund for the 2007 – 2013 programming period” (COCOF note 08/0020/04 of 5 June 2008) and the “Guidance document on management verifications to be carried out by Member States on operations co-financed by the European Fisheries Fund for the 2007 – 2013 programming period” (EEFC/28/2008 of 12 September 2008) provide further recommendations on how management verifications should be organised in order to prevent and detect irregularities. As stated in these documents, “verifications should be carried out as soon as possible after the particular process has occurred as it is often difficult to take corrective action at a later date”.

In such cases, Member States are required to make the necessary corrections in accordance with Article 98 of the General Regulation and Article 96 of the EFF Regulation. The competent authorities in the Member States are recommended to apply the same criteria and rates as defined in these guidelines, unless they apply stricter standards.

1.2. Legal basis and reference documents

1.2.1. Legal basis

The legal bases for financial corrections are Articles 99 and 100 of the General Regulation and Articles 97 and 98 of the EFF Regulation.

The specific regulatory provisions on the setting up and implementation of FEIs in the 2007-2013 programming period are the following:

- 1) Article 44 and Article 78(6)-(7) of the General Regulation as well as Article 55(8) of the EFF Regulation on FEIs;
- 2) Articles 43-46 of the Implementing Regulation and Articles 34-37 of the EFF Implementing Regulation.

In addition, besides provisions of Union law, specific legal provisions set out in national laws, operational programmes and funding agreements defining and limiting the scope of the set-up and implementation of FEIs must be complied with.

1.2.2. Guidelines on financial corrections

In relation to the ERDF and the ESF, Commission Decision C(2011) 7321 of 19 October 2011 approved the guidelines on the principles, criteria and indicative scales to be applied in respect of financial corrections made by the Commission under Articles 99 and 100 of the General Regulation, applicable to the 2007-2013 programming period². The Commission Decision states, inter alia, that:

"When deciding upon the amount of a correction on the basis of Articles 99 and 100 of Regulation (EC) No 1083/2006, the Commission takes into account the nature and gravity of the irregularity/ies and the extent and financial impact of the identified deficiencies in the management and control system."

The aim of the present guidance document is to provide, without prejudice to the guidelines referred to above, and without prejudice to the guidelines for determining financial corrections to be made for non-compliance with public procurement rules³, clarifications on the application of financial corrections to FEIs due to their specific structures where corrections can be applied at different levels, namely at programme level, FEI level or final recipient level⁴.

² For the period 2000-2006, the "Guidelines on the principles, criteria and indicative scales to be applied by the Commission departments in determining financial corrections under Article 39(3) of Regulation (EC) No 1260/1999" were adopted by Commission Decision C/2001/476. A similar document was adopted for the Cohesion Fund (see Commission Decision C/2002/2871).

³ 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 (see Commission Decision C(2013) 9527 final).

⁴ **Programme level** – cancellation of the funds allocated to the operational programme; **FEI level** – cancellation of the programme contribution to the FEI operation; **final recipient level** – cancellation of the programme contribution to the final recipient.

1.2.3. Guidance note from the Commission services on financial engineering instruments

The Commission's "Guidance Note on Financial Engineering Instruments under Article 44 of Council Regulation (EC) No 1083/2006" (referred to hereinafter as "the COCOF Guidance note on FEIs") of 21 February 2011 encompassing new guidance and guidance issued under previous guidance notes, was last revised on 8 February 2012 (COCOF 10/0014/05).

The four COCOF notes on FEIs from 2007 (COCOF/07/0018/01), 2008 (COCOF 08/002/03) 2011 (COCOF 10/0014/004) and 2012 (COCOF 10/0014/05) form an integral part of the framework as they provide important interpretation and clarification on the applicable provisions. These COCOF notes were officially presented and discussed with Member States prior to their finalisation.

The present guidelines are without prejudice to paragraph 1.1.7 of the COCOF Guidance note on FEIs, which continues to reflect the Commission's position as regards agreements for FEIs for which legal and financial commitments were made before the date of the note in question.

2. MAIN TYPES OF IRREGULARITIES AND CORRESPONDING RATES OF FINANCIAL CORRECTIONS

2.1. Irregularities with corresponding rates of financial corrections

The main types of irregularities in the area of FEIs are described in Annex where they are grouped into two categories. The first category concerns irregularities affecting the set-up of FEIs (design, relationship between managing authority/Holding Fund/financial intermediary, funding agreement, separate block of finance, etc.). The second category relates to irregularities affecting the implementation of these instruments (relationship between Holding Fund/financial intermediary/final recipient, eligibility of investments, final recipients, management costs and fees, state aid and management verifications, etc.). Other cases not specifically mentioned in Annex should be dealt with in accordance with the principle of proportionality and, where possible, by analogy to the cases identified in these guidelines.

The rates of financial corrections set out in Annex take into account the relevant EU regulations and the Commission's guidance documents on financial corrections and on the FEIs. The present guidelines intend to clarify the level of corrections to be applied depending on the type of deficiency or irregularity.

A first distinction could be drawn between system deficiencies and systemic or individual irregularities occurring at the set-up and implementation of the FEIs.

System deficiencies of the management and control system established by the Member State and their treatment are addressed in the "Guidelines on the principles, criteria and indicative scales to be applied in respect of financial corrections made by the Commission under Articles 99 and 100 of Council Regulation (EC) N° 1083/2006 of 11 July 2006"⁵.

A further distinction could be drawn between systemic and individual irregularities at the level of the FEI operation.

Systemic irregularities are irregularities which may be of a recurring nature, with a high probability of occurrence in similar types of operations and/ or investments in final recipients,

⁵ C(2011) 7321 final and C(2012)3876 final for EFF.

resulting from the existence of (a) serious deficiency(ies) in the structure and procedures established to implement the FEI operation as well as their effective functioning.

Individual irregularities are irregularities that are not systemic in nature and are independent of other irregularities in the FEI operation.

Systemic and individual irregularities may be detected (i) in the set-up of the FEI (relationship between managing authority/Holding Fund/financial intermediary) and/or (ii) in the implementation of the FEI (relationship between Holding Fund/financial intermediary/final recipient).

With regard to the set-up of the FEIs, mainly systemic irregularities are likely to be found since most of the potential irregularities would involve serious deficiencies in the structure and procedures established to implement the FEI operation causing other errors.

With regard to the implementation of the FEIs, irregularities are systemic if they result in the existence of serious deficiencies in the structure and procedures established to implement the FEI operation because of, either:

- a. the illegal or irregular set-up of the FEI structure; or
- b. the application of an illegal or irregular funding agreement; or
- c. the application of illegal, irregular or ineffective procedures established by the holding fund manager and / or financial intermediaries to implement the FEI; or
- d. the incorrect application of a legal and regular funding agreement, independently of whether it results in irregular investments; or
- e. a deviation from the legal, regular and effective procedures established by the holding fund manager and / or financial intermediaries to implement the FEI, independently of whether they result in irregular investments.

The amount of the financial correction is quantified precisely, whenever it is possible, on the basis of the examination of individual cases, to calculate the exact amount of expenditure wrongly charged to the EU budget.

In certain cases also systemic irregularities may be quantified precisely and corrected withdrawing the related irregular expenditure following a re-evaluation by the Member State of the entire activity of the Holding Fund and/or FEI, without the need to carry out a flat-rate correction.

Where systemic irregularities or individual irregularities are detected and cannot be quantified precisely, flat-rates or extrapolated corrections within the meaning of Article 99(2) of the General Regulation and Article 97(2) of the EFF Regulation may be applied to all the operations affected by these irregularities/deficiencies. In this case, flat-rate corrections of 5%, 10%, 25% or 100% should be applied taking into account the seriousness of the irregularity and the principle of proportionality as set out in Article 99(3) of the General Regulation and Article 97(3) of the EFF Regulation.

The "seriousness" of an irregularity is assessed notably by taking into account the following factors: financial impact to the EU budget or amounts concerned, systemic nature of deficiencies or irregularities, distortion of competition, lack of transparency and irregularity affecting an essential element of the FEIs.

The rates of financial corrections set out in Annex may be increased to 100% of the expenditure at stake where the irregularity relates to established fraud or gross negligence by the Member States. Moreover, a higher level of correction than those specified in Annex may be applied where irregular transactions or practices continued after the date on which the Commission concluded on

the existence of an irregularity and formally asked the Member State to proceed with its correction.

Where a 5% correction is indicated in Annex, in accordance with the principle of proportionality, the correction rate may be reduced to between 2% and 5% where the nature and gravity of the irregularity, either individual or systemic, or system deficiency although serious, is not considered to justify a 5% correction rate⁶.

For irregularities affecting guarantees, the financial corrections should take into account the multiplier ratio if this is defined in the investment strategy (financial correction = amount of ineligible loan or other risk sharing instrument for which guarantee(s) was issued / multiplier ratio). If the multiplier ratio is not defined, the financial correction equals to the ineligible programme amount committed as a guarantee.

Financial corrections applied in relation to FEIs can be cumulated if they relate to different types of irregularities/deficiencies. For instance, in a situation where there are deficiencies in both the set-up and implementation of an FEI, both irregularities/deficiencies should be corrected. In any case, the amount of the correction cannot exceed the amount of the EU contribution. If there is an overlap of funding contribution affected by the corrections, the amount of overlap should only be subject of one correction.

In addition, interest earned on payments from the programmes to the FEI, which are attributable to the EU contribution must be used in accordance with Article 78(7) of the General Regulation. If it is not the case and such interests are not deducted from eligible expenditure in the closure declaration, financial corrections should be applied.

2.2. Sound financial management in the implementation of FEIs

Article 14 of the General Regulation and Article 10 of the EFF Regulation require that the implementation of the EU budget within the framework of shared management takes into account the principle of sound financial management in accordance with Article 48(2) of the Financial Regulation. As laid down in the Financial Regulation⁷, the concept of sound financial management is based on three underlying principles, namely the principles of economy, efficiency and effectiveness.

In the context of FEIs, the principle of *economy* would require *inter alia* that public resources allocated to FEIs should be limited (in quantity) to the amounts and products (quality) necessary to meet the demand for such instruments, that such resources should be delivered in accordance with an investment strategy and delivery planning (timely) (Article 43(3) of the Implementing Regulation) consistent with the objectives and assistance priorities of the relevant programme(s); that FEIs and implementing bodies are selected based on a transparent selection process; that the costs inherent to the delivery of support to final recipients through FEIs (including related management costs and fees) are transparent and represent good value for money in terms of achievement of the expected outcome of this form of assistance. The principle of *efficiency* would entail a demonstrable advantage of using FEIs as compared to other forms of support, namely by leveraging additional resources or producing higher results in support of the objectives and

⁶ This is without prejudice to the application 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 (see Commission Decision C(2013) 9527 final), in particular as the levels of financial corrections are concerned.

⁷ C.f. Article 30 of Regulation (EC) No 966/2012. Regulation (EC) N° 966/2012 repeals Regulation (EC) No 1605/2002, the Article 27 of which defined the principle of sound financial management.

assistance priorities of the relevant programmes, at a lower cost to the EU budget, by having a longer term impact of the EU budget through recycling of funds for further investments and through better quality and sustainability of the actions supported. Finally, the principle of *effectiveness* would require that support provided through FEIs achieved the intended results indicators in a timely manner (within the programming period), in line with the funding agreements and the objectives of the programmes concerned.

The COCOF Guidance note on FEIs includes ample references to good practice and guidance, covering key elements of the decisional process, design and implementation of FEIs, to assist MAs in verifying and ensuring that the principle of sound financial management is observed.

Where these elements are incorporated or reflected in funding agreements or in applicable provisions of EU or national law, the breach of the corresponding obligation can give rise to a financial correction.

Equally, as set out in point 1.1, where a recommendation or request of the Commission to take action to remedy a problem of implementation concerning non-compliance with the sound financial management principle is not acted upon within an agreed timeframe, the Commission may conclude that this constitutes a serious deficiency in the management and control system of the programme concerned putting at risk the EU contribution, and may carry out a financial correction.

3. REPLACEMENT OF IRREGULAR EXPENDITURE WHEN FINANCIAL CORRECTIONS HAVE TO BE APPLIED

The General Regulation and the EFF Implementing Regulation provide for FEIs that the total amount of eligible expenditure as defined in respectively Article 78(6) and Article 34(2) will only be identified at the moment of the partial or final closure of the programme. However, these provisions do not preclude the application of the provisions on financial corrections before the final or partial closure and provisions on financial corrections do not foresee any exceptions for the FEIs.

As already indicated in chapter 1.1 of "Commission Decision on guidelines on the principles, criteria and indicative scales to be applied on financial corrections made by the Commission under Article 89 and 100 of General regulation" (C (2011) 7321 final from 19.10.2011) "the purpose of financial corrections is to restore a situation where all of the expenditure declared for co-financing from the Structural Funds and the Cohesion Fund is in line with the applicable rules and ensuring, inter alia, respect of the principles of equal treatment and proportionality".

3.1. Corrections by the Member States

Article 98 of the General Regulation and Article 96 of the EFF Regulation lay down that a Member State must apply the financial correction required in connection with individual or systemic irregularities detected in operations or programmes.

Therefore, if the conditions of Article 98 of the General Regulation and Article 96 of the EFF Regulation are fulfilled, irregularities affecting FEIs must be corrected as soon as possible after their detection and thus before closure.

Since the operation is defined for FEIs as the financial contributions from a programme to the FEI and the subsequent investments made by the FEI, which ultimately constitutes eligible expenditure in accordance with Article 78(6) of the General Regulation and Article 34(2) of the EFF Implementing Regulation, the irregularity must be corrected at the level of the final recipients or at the level of the FEI depending on who has committed an irregularity.

Where the irregularity is detected at the level of the final recipient, the contribution to this final recipient must be recovered⁸ and the corresponding expenditure should not be declared at partial or final closure. Where the irregularity is detected at the level of the Holding Fund or FEI, the correction is to be made at the related level (Holding Fund or FEI)⁹.

Since the operation in the context of FEIs also covers the investments done in final recipients, when more than one round of investments has been carried out, the Member State may nevertheless utilise regular investments made in final recipients exceeding the nominal contribution into the Holding Fund or, in the absence of Holding Fund, into the FEI to replace irregular investments in a FEI. The replacement is only possible for individual irregularities under the condition that the managing authority ensures when submitting the closure documents that the following conditions are met:

- a. the replacement is made with legal and regular investments carried out by the FEI in final recipients and activities eligible under the operational programme by 31 March 2017 and made from:
 - either resources recovered/repaid from illegal or irregular investments, or
 - resources returned from legal and regular investments of the programme contribution into the Holding Fund or FEI, i.e. following a 1st cycle of investments of the OP contribution committed in the funding agreement and effectively paid into the Holding Fund or FEI minus eligible management costs and fees;
- b. the investments used for replacement are fully compliant with all EU and national rules, including EU and national eligibility rules, operational programme provisions, funding agreement;
- c. in a Holding Fund, individual irregularities in a given FEI may be replaced by investments done by another FEI in excess of the OP contribution transferred from the Holding Fund, provided that the funding agreements and all other EU and national rules have been respected.

In addition, the replacement requires that the audit authorities have provided in the closure declaration assurance on the investments in final recipients¹⁰ for which the managing authority has ensured the legality and regularity as described above. In order to provide its assurance the audit authority will, on the basis of the list of investments in final recipients provided by the managing authority, include all investments in the audit procedures in view of the preparation of the closure declaration.

Resources used for replacement purposes would be considered as eligible expenditure under Article 78(6) of the General Regulation.

Where it is not possible to recover in total or partially the amount of expenditure affected by individual irregularities and there are not enough resources returned to the Holding Fund or the FEI exceeding the programme contribution into them, the managers of the Holding Fund or the FEI may still restore the capital of the Holding Fund or the FEI with new resources to be as well utilised for eligible investments in further final recipients by 31 March 2017.

As for the systemic irregularities, no replacement possibilities are allowed before or after submission of the closure documentation according to Article 98(3) of the General Regulation and therefore such irregularities may only give rise to net financial corrections.

⁸ Pursuant to the contractual arrangements, either by the Fund Manager / FEI or MA.

⁹ See footnote no 2 (section 1.2.2).

¹⁰ Investments in final recipients as indicated in Article 78(6) of the General Regulation, points a) to c) and e).

3.2. Corrections by the Commission

Where a Member state does not fulfil its obligations under Article 98 of General Regulation, the Commission may make financial corrections by cancelling all or part of the EU contribution to an operational programme.

As indicated in chapter 3 of Commission Decision C (2011) 7321 final from 19.10.2011 "where the Member State agrees to make the financial correction proposed in the procedure under Article 99(1) of the General Regulation, the Commission need not to impose a net reduction in the funding to the programme but allow the Member State to re-use the Funds released in accordance with Articles 98(2) and 98(3) of the General Regulation".

However, financial corrections imposed by a Commission decision under Article 100(5) of the General Regulation after completion of the procedure laid down by Article 100(1) to (4) will involve a net reduction of the Union contribution into the programme.

ANNEX. OVERVIEW OF MAIN IRREGULARITIES OR DEFICIENCIES AND CORRECTIVE MEASURES¹¹

[IN THIS TABLE, GR = GENERAL REGULATION, IR = IMPLEMENTING REGULATION, EFF = EFF REGULATION, EFF-IR = EFF IMPLEMENTING REGULATION]

No	Irregularity/ deficiency	Legal basis	Description	Type and rate of correction / recommendation ¹²
1. SET-UP OF THE FEI				
1.1 Design of the FEI				
1.1.1	Non-compliance with the implementing modalities for Holding Funds	Art 44 GR, Art 36 EFF-IR Programme Directive 2004/18/EC	The holding fund has not been implemented through one of the three forms laid down in Article 44 of the General Regulation and Article 36 of the EFF Implementing Regulation, namely: <ul style="list-style-type: none"> a) through the award of a public contract in accordance with applicable public procurement law; b) through the award of a grant to a financial institution without a call for proposal pursuant to a national law compatible with the principles set out in the TFEU; c) through the award of a contract directly to the EIB or to the EIF. 	100% of management costs and fees paid by the MA to the holding fund ¹³ . This correction can be lowered in accordance with the applicable guidelines ¹⁴ . This irregularity does not require any further financial correction beyond the one on management costs and fees. New funding agreement should be signed in compliance with applicable rules.

¹¹ This is not an exhaustive list.

¹² See also chapter 2.1 for the quantification of the financial corrections.

¹³ When management costs and fees are covered by both OP contribution and other resources, the correction applies only to the OP contribution.

¹⁴ 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 [C(2013)9527 final].

No	Irregularity/ deficiency	Legal basis	Description	Type and rate of correction / recommendation ¹²
1.1.2	Non-compliance with the rules for selection of Financial Intermediaries	Programme Directive 2004/18/EC, State aid rules	The financial intermediary was not selected in compliance with applicable EU and national law, including where appropriate law on public procurement and state aid rules.	The correction should be applied in accordance with the applicable guidelines ¹⁵ . New funding agreement should be signed in compliance with applicable rules.
1.1.3	Absence of essential elements in the business plan	Art 43(2) IR and Art 35(2) EFF-IR	For the instruments set up before the entry into force of Commission Regulation (EC) No 846/2009 of 1 September 2009, the business plan does not include all essential elements requested by Article 43(2) of the Implementing Regulation and Article 35(2) of the EFF Implementing Regulation, namely: <ul style="list-style-type: none"> a) the targeted market of enterprises or urban projects and the criteria, terms and conditions for financing them; b) the operational budget of the FEI; c) the ownership of the FEI; d) the co-financing partners or shareholders; e) the by-laws of the FEI; f) the provisions on professionalism, competence and independence of the management; g) the justification for, and intended use of, the EU contribution; h) the policy of the financial engineering instrument concerning exit from investments in 	Depending on the seriousness of the irregularity, a flat-rate correction of 25%, 10% or 5% of the programme contribution to the FEI disbursed under the incompliant business plan, if the business plan is not amended within 6 months from the first written notification of the deficiency and in any event before closure.

¹⁵ 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 [C(2013)9527 final].

No	Irregularity/ deficiency	Legal basis	Description	Type and rate of correction / recommendation ¹²
		Art. 43(3) IR	<p>enterprises or urban projects;</p> <p>i) the winding-up provisions of the FEIs, including the reutilisation of resources returned to the FEI from investments or left over after all guarantees have been honoured, attributable to the contribution from the programme.</p> <p>For the instruments set up after the entry into force of Commission Regulation (EC) No 846/2009 of 1 September 2009, the financial engineering instruments shall submit a business plan or other appropriate document in line with the requirements of this revised provision.</p>	
1.1.4	Absence of / inconsistency of investment strategy with programme's objectives	Art 2(3) GR and Art 3(k) EFF Art 43(3) and 44(2) IR and Art 36(3) EFF-IR Programme	The investment strategy is absent or not consistent with programme/priority objectives as regards the purpose of financing, eligible investments, final recipients and targets to be achieved.	Depending on the seriousness of the irregularity, a flat-rate correction of 25%, 10% or 5% of the programme contribution to the FEI.
1.1.5	Modification of the FEI set-up not in accordance with applicable rules	Art. 9(5) and Art. 56 GR Art. 13(2) IR	The modification of the FEI set-up is not in accordance with the European and national law, operational programme and/or funding agreement.	Depending on the seriousness of irregularity, a flat-rate correction of 100%, 25%, 10% or 5% of the programme contribution to the FEI.
1.2 Funding agreement				
1.2.1	Absence of funding agreement	Art 43(3), 44(1) and 44(2) IR	No funding agreement concluded between the MA and the FEI.	A flat-rate correction of 100% of the programme contribution to the FEI.

No	Irregularity/ deficiency	Legal basis	Description	Type and rate of correction / recommendation ¹²
1.2.2	Absence of essential elements in the funding agreement	Art 5 and 6 EFF-IR Art 43 and 44 IR Art 5 and 6 EFF-IR	The funding agreement does not include all essential elements required by Article 43 and Article 44 of the Implementing Regulation.	100% of the amount not used where exit policy and winding-up provisions are not defined, if the funding agreement is not amended within 6 months from the first written notification of the deficiency and in any event before closure. In other cases, depending on the seriousness of irregularity, a flat-rate correction of 25%, 10% or 5% of the programme contribution to the FEI, if the funding agreement is not amended within 6 months from the first written notification of the deficiency and in any event before closure.
1.2.3	Breach of funding agreement: national co-financing not effectively paid at the level of the FEI	Art 43(3), 44(2)(a) IR Art 35(3) EFF-IR Funding agreement	The national contribution to the capital of the FEI was not effectively paid in breach of the funding agreement. The national contribution to the capital of the FEI was withdrawn.	A flat-rate correction of 5% of the programme contribution to the FEI. National contribution to be effectively paid as foreseen in the funding agreement.
1.3 Separate block of finance and financial proceeds				
1.3.1	Absence of a separate block of finance within a financial institution	Art 43(2) IR Art 35(3) EFF-IR	The FEI is implemented by a financial institution but there is no separate block of finance within the financial institution that would allow distinguishing the new resources invested in the FEI, including those contributed by the programme, from the resources initially available in the financial institution.	Depending on the seriousness of irregularity, a flat-rate correction of 10% or 5% of the programme contribution to the FEI, if the irregularity is not remedied within 6 months from the first written notification of the deficiency and in any event before closure. The period of 6 months can be extended in

No	Irregularity/ deficiency	Legal basis	Description	Type and rate of correction / recommendation ¹²
				duly justified cases.
1.3.2	Funding from more than one programme – use of pro rata principle	Art 15 and 43(2) IR Art 41 EFF-IR Programme	Several programmes contributed to the same FEI on a pro rata allocation but separate accounts and records for each stream of financing were not created and / or monitoring system did not contain information on the different source of financing (different operations) at the level of individual transactions.	If all the eligibility requirements have been respected for all the sources of financing – depending on seriousness of the irregularity, a flat-rate of 5% of the programme contributions to the FEI, if the irregularity is not remedied within 6 months from the first written notification of the deficiency and in any event before closure. The period of 6 months can be extended in duly justified cases. A correction resulting from non-respect of the eligibility requirements should be assessed and applied in addition to the correction resulting from the absence of separate accounts and record for each stream of financing.
1.3.3	Capitalisation of the programme contribution to the FEI	Art 43(2) IR Art 35(3) EFF-IR Programme Funding agreement	Where not foreseen or allowed, the contribution from the programme to the fund was converted by the FEI into its equity and as such replaced its share capital / quota holdings.	A flat-rate correction of 10% of the programme contribution to the FEI and withdrawal from the FEI.
2. IMPLEMENTATION OF THE FEI				
2.1 Eligibility of investments				
2.1.1	Ineligible forms of support made by the	Art 2(3), 44 and 56 GR and Art 3(k) and Art 55 EFF and	The FEI provided to final recipients other forms of support (e.g. ineligible grants) than the type of support allowed under the EU regulations/ national	A flat-rate correction of 100% applicable to ineligible forms of support.

No	Irregularity/ deficiency	Legal basis	Description	Type and rate of correction / recommendation ¹²
	FEI	Art 34 EFF-IR	eligibility rules/programme/priority/ funding agreement/ (equities, loans, guarantees or other repayable investments or other products provided in a single financing package with eligible investments ¹⁶).	
2.1.2	Financing provided for ineligible activities	Art 56 GR Art 43(3) and 45 IR and Art 35(1), 35(2) and 37 EFF-IR Programme Funding agreement National eligibility rules	Support was provided to finance activities that are not eligible under applicable legislation and rules.	Guarantees: amount of ineligible loan or other risk sharing instrument for which guarantee(s) was issued / multiplier ratio (if multiplier ratio is defined), otherwise the amount of ineligible guarantees. Loans/equities: amount of ineligible loan(s)/equity.
2.1.3	Combination of different forms of assistance: FEI loans, FEI guarantees and grants (including interest rate rebate and capital rebate) for the same eligible expenditure	Art 56 GR State aid rules Programme Funding agreement National eligibility rules	The combination of loans, guarantees and grants constitutes a breach of Regulation (EC) No 1083/2006 and of Regulation (EC) No 1828/2006 if applicable European and national law and contractual arrangements are not respected, in particular: a) such combination of different forms of assistance is not considered by the managing authorities as necessary to achieve the objectives of the assistance and thus it does not support the specific objectives of the operational	Amount of the expenditure exceeding 100% of the total value of the investment at the level of final recipient, <i>i.e.</i> : - for guarantees: amount of ineligible loan or other risk sharing instrument for which guarantee(s) was issued / multiplier ratio (if multiplier ratio is defined), otherwise amount of ineligible guarantees; - for loans: amount of ineligible loan(s); - for interest rate rebate: amount of

¹⁶ See point 4.3 of the latest Guidance note from the Commission services on financial engineering instruments under Article 44 of Council Regulation (EC) No 1083/2006 lastly revised on 8 February 2012 (COCOF 10.0014-05).

No	Irregularity/ deficiency	Legal basis	Description	Type and rate of correction / recommendation ¹²
			<p>programme;</p> <p>b) the value of expenditure exceeds 100% of the total value of the investment at the level of final recipient, this being subject to the obligation of verification by the managing authority of the reality of the costs supported by receipted invoices or accounting documents of equivalent probative value (Article 13(2) of Commission Regulation (EC) No 1828/2006).</p> <p>c) state aid rules were not respected (at the level of the FEI/grant operation as well as at the level of the final recipient/beneficiary of the grant);</p> <p>d) the funding agreement or the investment strategy (Article 43(3)(a) of Commission Regulation (EC) No 1828/2006) explicitly forbids this kind of combination.</p>	<p>ineligible interest rate rebate;</p> <p>- for capital rebate: amount of ineligible capital rebate.</p> <p>Amount of illegal State aid.</p> <p>Such over-financing should be calculated by adding up the nominal value of loans, grants and guaranteed loans or other risk sharing instruments</p>
2.1.4	<p>Financing pure working capital when not linked to early stage or expansion (financing related to period before the entry into force of Regulation (EC) N° 1236/2011, i.e. 01/12/2011)</p>	<p>Art 43(3) and 45 IR and Art 37 EFF-IR</p> <p>Point 4(3)(2) of guidelines 2006/C194/02 Programme</p>	<p>Before 1 December 2011, financing was provided to enterprises to finance exclusively working capital that were not at:</p> <p>a) the early stage of activities (start-up capital, seed capital), or</p> <p>b) the expansion of activities (expansion capital).</p>	<p>Guarantees: amount of ineligible loan or other risk sharing instrument for which guarantee(s) was issued / multiplier ratio (if multiplier ratio is defined), otherwise the amount of ineligible guarantees.</p> <p>Loans/equities: amount of ineligible loan(s)/equity.</p>
2.1.5	<p>Irregular capital rebates within FEI loans.</p>	<p>Art 43(1) IR and Art 34(2) EFF-IR</p> <p>State aid rules</p>	<p>Capital rebates constitute an irregularity if European or national law or contractual arrangements are not respected.</p>	<p>Difference between the principal of the loan and the overall amount (capital and interests) effectively repaid by the final</p>

No	Irregularity/ deficiency	Legal basis	Description	Type and rate of correction / recommendation ¹²
		Programme Funding Agreement		recipient.
2.1.6	Guarantees not committed/provided to foster entrepreneurship and innovation funding for SMEs (no new loans)	Art 43(1), (2), (3) IR Art 44 GR and Art 34(1), 36(1) EFF-IR Art 4(1) of Regulation (EC) No 1080/2006 (ERDF Regulation) Programme Funding Agreement	Guarantees were not committed/provided to foster entrepreneurship and innovation funding for SMEs	Guarantees: amount of ineligible loan or other risk sharing instrument for which guarantee(s) was issued / multiplier ratio (if multiplier ratio is defined), otherwise the amount of ineligible guarantees.
2.1.7	Loans not provided to foster entrepreneurship and innovation funding for SMEs (no new investments)	Art 43(1), (2), (3) IR Art 44 GR and Art 34(1), 36(1) EFF-IR Art 4(1) of Regulation (EC) No 1080/2006 (ERDF Regulation) Programme Funding	Loans did not foster entrepreneurship and innovation funding for SMEs	Amount of the ineligible loan(s).

No	Irregularity/ deficiency	Legal basis	Description	Type and rate of correction / recommendation ¹²
		Agreement		
2.1.8	Standalone interest subsidies, guarantee subsidies and equivalent measures including capital rebates declared as FEI	Art 43(1) IR Art 44 GR Programme	The interest subsidies, guarantee subsidies and other equivalent measures are given as grants but declared as FEI in order to circumvent the rules governing grant operations (<i>e.g.</i> they were not combined in the FEI with Structural Fund loans or guarantees in a single financing package).	A flat-rate correction of 100% applicable to an amount of the ineligible forms of support in the FEI.
2.1.9	Investments not linked to establishment or expansion (before the entry into force of Regulation (EC) N° 1236/2011, <i>i.e.</i> 01/12/2011)	Art 43(1), 43(3) and 45 IR Art 37 EFF-IR Programme Funding agreement	Investments in final recipients not provided for the establishment or expansion of the enterprise's business activities, or were financing the acquisition of the enterprise from its previous owners.	A flat-rate correction of 100% of the programme contribution to FEI. This can be lowered to a flat rate of 25%, 10% or 5% of the programme contribution to the FEI depending on the seriousness of the irregularity, <i>e.g.</i> when the investment was used mainly for an implementation of a business plan for expansion.
2.1.10	Absence of adequate audit trail	Art 15, 43(2) IR Art 35(3) EFF-IR	The transactions between the holding fund and the financial intermediary and/or between the financial intermediary and final recipients cannot be traced or can only be partially traced. Adequate audit trail is missing.	100% correction of the amounts not supported by adequate audit trail. Depending on the seriousness of the irregularity, the level of correction can be decreased to 25% or 10%.
2.2 Eligibility of final recipients				
2.2.1	Financing firms in difficulty	Art 45 IR Programme	Support from FEI was provided to firms that fulfilled the following criteria to be considered as being in difficulty: a) in the case of a limited liability company, where more than half of its registered capital has disappeared and more than one quarter of that	Guarantees: amount of ineligible loan or other risk sharing instrument for which guarantee(s) was issued / multiplier ratio (if multiplier ratio is defined), otherwise the amount of ineligible guarantees. Loans/equities: amount of ineligible

No	Irregularity/ deficiency	Legal basis	Description	Type and rate of correction / recommendation ¹²
			<p>capital has been lost over the preceding 12 months; or</p> <p>b) in the case of a company where at least some members have unlimited liability for the debt of the company, where more than half of its capital as shown in the company accounts has disappeared and more than one quarter of that capital has been lost over the preceding 12 months; or</p> <p>c) whatever the type of company concerned, where it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.</p>	loan(s)/equity.
2.2.2	Loans/guarantees/equities provided to ineligible final recipients	Art 2(3) and 56 GR Art 43(1), 43(3) and 45 IR Art 34(1), 35(1), 35(2), 37 EFF-IR Programme Funding agreement	Financing was provided to enterprises that are not eligible to receive support under EU regulations, programme, national eligibility rules and/or investment strategy/funding agreement of the FEI.	Guarantees: amount of ineligible loan or other risk sharing instrument for which guarantee(s) was issued / multiplier ratio (if multiplier ratio is defined), otherwise the amount of ineligible guarantees. Loans/equities: amount of ineligible loan(s)/equity.
2.3 Management costs and fees				
2.3.1	Arrangement fees overlapping with management costs and fees	State aid rules Funding agreement	Arrangement fees (i.e. transaction costs and monitoring fees) or any portion thereof are charged to final recipients and overlap with the management costs constituting undue financial benefit for the managers of holding funds or FEIs.	Amount of arrangement fees charged to final recipients overlapping with the management costs declared as eligible expenditure and constituting undue financial benefit.
2.3.2	Management costs not supported by evidence	Art 15 IR and Art 35(4) EFF-IR	Management costs paid from the programme to the managers of holding funds or FEIs that were declared	Amount of ineligible expenditure.

No	Irregularity/ deficiency	Legal basis	Description	Type and rate of correction / recommendation ¹²
			as eligible expenditure for reimbursement from Structural Funds/EFF were not supported by evidence of expenditure (i.e. invoices and other documents of equivalent probative value).	
2.3.3	Management costs paid after eligibility period	Art 56 GR, Art 55 EFF and Funding Agreement	The management costs paid for costs falling after the eligibility period set out in the funding agreement or defined by the regulations, are charged for reimbursement from the Structural Funds/EFF.	100% of the management costs paid after the eligibility period to be corrected.
2.3.4	Management costs paid for ineligible activities	Art 78(6) GR, Art 55 EFF and Funding Agreement	The management costs include costs that are directly imputable to the preparation and/or implementation of individual projects or investment plans by final recipients.	100% of the management costs paid for ineligible activities to be corrected.
2.3.5	Ceiling of management costs and fees exceed thresholds in the absence of call for tender	Art 43(4) IR and Art 35(4) EFF-IR	At closure, management costs paid from the programme to the managers of holding funds or FEIs were declared in excess of the ceilings defined in Article 43(4) of the Implementing Regulation, unless higher rates proved necessary following a competitive tender.	Amount in excess of the ceilings for the period.
2.4 State aid				
2.4.1	Incompatible state aid	Art 107, 108, 109 TFEU Regulations and guidelines implementing the TFEU provisions on state aid	State aid rules were not respected, mainly: <ol style="list-style-type: none"> 1. support was not considered to be state aid, where in fact it is state aid and should have been notified to the Commission; 2. aid was given as de minimis aid, but conditions for de minimis were not respected; 3. aid was granted under GBER, but GBER 	Amount of incompatible state aid.

No	Irregularity/ deficiency	Legal basis	Description	Type and rate of correction / recommendation ¹²
			<p>conditions were not respected;</p> <p>4. aid was granted under an aid scheme, but conditions of the aid scheme were not respected;</p> <p>5. for individual notification, the conditions laid down in the Commission decision were not respected.</p>	
2.5 Management verifications				
2.5.1	Absence of or in deficiencies in management verifications of FEIs	Art. 60 GR Art 13(2) IR and Art 39(2) EFF-IR	Management verifications were not carried out throughout the programming period or were carried out in a deficient way, i.e. at the set-up of the FEI and the implementation phase.	Depending on seriousness of the irregularity, a flat-rate of 100%, 25% 10% or 5% of the programme contribution to the FEI.
2.6 Funding agreement				
2.6.1	Breach of funding agreement: amount of loans/guarantees/equity provided to final recipients exceeds maximum thresholds	Funding agreement Art 43(3), Art 44 IR, Art 35(5), 35(6) EFF-IR	The loans/guarantees/equity were provided to final recipients at the amounts exceeding maximum amounts established for individual investments in the funding agreement.	Loans/equity: excessive amount of loan(s)/equity. Guarantees: excessive amount of ineligible loan or other risk sharing instrument for which guarantee(s) was issued / multiplier ratio (if multiplier ratio is defined), otherwise the excessive amount of guarantees.
2.6.2	Incorrect use of interests generated from programme contribution	Art 78(7) GR, Art 43(5) IR Art 34(3) and 35(7) EFF-IR Programme	Interest generated by payments from the programme to the instrument must be used for the FEI activity. Interests attributable to EU contributions should not be used for contributing the national co-financing nor to cover the cost of borrowing money in the financial	100% of the interest not used for the eligible activities.

No	Irregularity/ deficiency	Legal basis	Description	Type and rate of correction / recommendation ¹²
2.6.3	Incorrect use of resources returned	Art 78(7) GR Art 34(4) EFF-IR Art. 43.5 IR Programme Funding agreement	market for that purpose. Resources returned from support granted under FEI or left over after the guarantees have been honoured and attributable to the EU contribution are not used for the purpose set by the Regulation, namely: a) re-used for further investments or b) used to cover management costs and fees of the FEI or c) allocated to the competent authorities to the benefit of the same type of actions.	100% correction of resources returned if the funding agreement is not updated to specify the correct use of the funds within 6 months from the first written notification of the deficiency. In relation to the funds already spent for incorrect purposes, a financial correction of 100% is applicable if the funds are not returned to the FEI within 6 months from the first written notification of the deficiency. The amount of the correction cannot exceed the amount of the programme contribution.