



EUROPEAN COMMISSION

European Structural and Investment Funds

Guidance for Member States on  
Amounts Withdrawn, Recovered, to be Recovered and  
Irrecoverable Amounts

Revision 2018

**DISCLAIMER:** This is a document prepared by the Commission services. On the basis of the applicable EU law, it provides technical guidance to colleagues and other bodies involved in the monitoring, control or implementation of the European Structural and Investment Funds (except for the European Agricultural Fund for Rural Development (EAFRD)) 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 programmes' implementation and to encourage good practice(s). This guidance note is without prejudice to the interpretation of the Court of Justice and the General Court or decisions of the Commission

## Table of Contents

1.	BACKGROUND.....	5
1.1.	Regulatory references.....	5
1.2.	Purpose of the guidance .....	5
1.3.	Key differences with the 2007-2013 period.....	6
2.	DISTINCTION BETWEEN WITHDRAWAL AND RECOVERY .....	6
3.	MEMBER STATES' OBLIGATION TO PREVENT, DETECT AND CORRECT IRREGULARITIES, INCLUDING FRAUD .....	7
3.1.	Implementation of financial corrections.....	8
3.2.	Cancellation of public contribution.....	9
3.3.	Irrecoverable amounts .....	10
3.4.	Disclosure in the accounts.....	10
4.	SUBMISSION OF INFORMATION ON AMOUNTS WITHDRAWN AND RECOVERED DURING THE ACCOUNTING YEAR (APPENDIX 2).....	11
4.1.	Explanations on columns (A) and (B) of Appendix 2.....	11
4.1.1.	Column A .....	11
4.1.2.	Column B .....	11
4.2.	Explanations on columns (C) and (D) of Appendix 2.....	12
4.2.1.	Column C .....	12
4.2.2.	Column D .....	12
5.	SUBMISSION OF INFORMATION ON AMOUNTS RECOVERED DURING THE ACCOUNTING YEAR PURSUANT TO ARTICLE 71 CPR - DURABILITY OF OPERATIONS (APPENDIX 4).....	12
6.	SUBMISSION OF INFORMATION ON AMOUNTS TO BE RECOVERED AS AT THE END OF THE ACCOUNTING YEAR (APPENDIX 3).....	13
6.1.	Explanations on column (A) of Appendix 3 .....	13
6.2.	Explanations on column (B) of Appendix 3.....	14
7.	SUBMISSION OF INFORMATION ON IRRECOVERABLE AMOUNTS AS AT THE END OF THE ACCOUNTING YEAR (APPENDIX 5).....	14
8.	ADVICE ON COMPLETION OF THE ACCOUNTS.....	15
8.1.	General .....	15
8.1.1.	Information to be submitted at priority level.....	15
8.1.2.	Required format.....	15
8.1.3.	Exchange rate to be used by non-euro-zone countries .....	15
8.1.4.	Adjustments not related to irregularities .....	15
8.1.5.	Split of amounts withdrawn, to be recovered and recovered during the accounting year by accounting year of declaration of the expenditure (Appendices 2, 3 and 4).....	16
8.1.6.	Disclosure of amounts corrected as result of the AA's audits of operations according to Article 127(1) CPR .....	16
8.1.7.	Total and public amounts .....	16

8.1.8. Interest.....	16
8.2. Deduction from the accounts of amounts related to payment applications made during the accounting year .....	17
8.3. Withdrawal of amounts found irregular after the submission of the accounts .....	17
8.4. Recovery of amounts found irregular after the submission of the accounts ...	18
9. DETERMINING WHETHER IRRECOVERABLE AMOUNTS SHALL BE REIMBURSED BY MEMBER STATES .....	19
10. AMOUNTS THAT THE MEMBER STATE DECIDES NOT TO RECOVER AND WHICH DO NOT EXCEED EUR 250 IN CONTRIBUTION FROM THE FUNDS AND THE EMFF .....	20

## LIST OF ACRONYMS AND ABBREVIATIONS

AA	Audit Authority
CA	Certifying Authority
CDR	Commission Delegated Regulation (EU) 2016/568 of 29.1.2016 on the conditions and procedures to be applied to determine whether amounts which are irrecoverable shall be reimbursed by Member States
CPR	Common Provisions Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17.12.2013, as amended by Regulation (EU, Euratom) 2018/1046.
CIR	Commission Implementing Regulation (EU) No 1011/2014 of 22.9.2014
EMFF	European Maritime and Fisheries Fund
ESIF	ESIF corresponds to all European Structural and Investment Funds. This guidance applies to all funds except for the European Agricultural Fund for Rural Development (EAFRD).
ETC	European Territorial Cooperation Regulation (Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17.12.2013)
FR	Regulation (EU, EURATOM) 2018/1046 of the European Parliament and of the Council of 18.07.2018 on the financial rules applicable to the general budget of the Union
IB	Intermediate Body
MA	Managing Authority
MCS	Management and Control System
RTER	Residual total error rate (calculated by the audit authority, based on the sample of operations audited and after deducting individual and extrapolated financial corrections applied before submission of the accounts by the Member State in relation to the errors detected by the AA)
YEI	Youth Employment Initiative

## **1. BACKGROUND**

### **1.1. Regulatory references**

<b>Regulation</b>	<b>Articles</b>
Reg. (EU) No 1303/2013 as amended by Regulation (EU, Euratom) 2018/1046  Common Provisions Regulation <i>(hereafter CPR)</i>	Article 72 (h) management and control system  Article 122(2) irrecoverable amounts to be reimbursed by the Member State  Articles 126 (b) and 137(1) accounts prepared by the CA  Article 137-139 preparation, submission and acceptance of accounts  Article 143(2) financial corrections
Commission Implementing Regulation (EU) No 1011/2014 of 22.9.2014 <i>(hereafter CIR)</i>	Article 7 and Annex VII – model for the accounts
Commission Delegated Regulation (EU) No 2016/568 on the conditions and procedures to be applied to determine whether amounts which are irrecoverable shall be reimbursed by Member States <i>(hereafter CDR)</i>	

### **1.2. Purpose of the guidance**

The purpose of this guidance note is to provide

- guidance on how to submit the information to the Commission on withdrawals, recoveries, amounts to be recovered and irrecoverable amounts using the model tables of Appendices 2, 3, 4 and 5 of Annex VII CIR (hereafter the word "Appendix" refers always to the Appendices in the model accounts of Annex VII CIR) in the electronic exchange system SFC2014;
- clarifications on the distinction between withdrawal and recovery;
- guidance on the procedure through which a Member State can make a request to the Commission that an irrecoverable amount, previously included in certified accounts, should not be reimbursed to the Union budget when it considers it has exhausted all the recovery possibilities available through the national institutional and legal framework.

### 1.3. Key differences with the 2007-2013 period

Subject/procedure	2014-2020	2007-2013
Certification that the expenditure complies with applicable law	Following Article 126 (b) CPR the certification that the expenditure complies with applicable law is provided by the CA once a year in the accounts.	Following Article 61 of Regulation (EC) 1083/2006 the certification that the expenditure complies with Community and national rules is provided by the CA in each payment application.
Timeline for reporting	The accounts to be submitted before 15 February in year N must include information on amounts withdrawn, recovered, to be recovered and irrecoverable amounts, as set out in Article 137 CPR.	Reporting on amounts withdrawn, recovered, to be recovered and irrecoverable amounts is made by 31 March in year N
Procedure for making a request to the Commission that an irrecoverable amount above EUR 250 in contribution from the Funds and the EMFF should not be reimbursed by the Member State	A parallel procedure to the accounts reporting set out in CDR: where a Member State considers that an irrecoverable amount included previously in certified accounts should not be reimbursed to the Union budget, the CA shall make a separate request to the Commission.	The request was to be made by 31 March in year N. No threshold for irrecoverable amounts.
Decision not to recover amounts below EUR 250 in contribution from the Funds and the EMFF ( <i>de minimis</i> amounts)	A Member State may decide not to recover from a beneficiary an amount, not including interest, which does not exceed EUR 250 in contribution from the Funds and the EMFF. Such amounts need not be reimbursed to the budget of the Union.	Regulations for 2007-2013 did not include any provision on <i>de minimis</i> amounts below EUR 250 in contribution from the Funds and the EMFF.

## 2. DISTINCTION BETWEEN WITHDRAWAL AND RECOVERY

Pursuant to Article 122 CPR, Member States are required to correct and recover amounts unduly paid. Member States have two choices:

- 1) Withdrawal: withdrawing the irregular expenditure from the programme immediately when it has been detected, by deducting it from the next interim payment application, thereby releasing EU funding for commitment to other operations.
- 2) Recovery: leaving the expenditure, for the time being in the programme, pending the outcome of proceedings to recover the unduly paid grant from the beneficiaries, and deducting the expenditure from the next interim payment application only once recovery is effective. However, at the time of submission of accounts, different treatment should be applied with regard to expenditure in the current accounting year and expenditure already certified in previous accounting years (see sections 3.1 for further details in this regard)

In addition, with regard to the expenditure declared in the current accounting year, it should be also noted that (as stated in recital 3 of Regulation (EU) 2016/568) deductions made before submission of certified accounts cannot be considered as recoveries if they relate to the expenditure included in an interim payment application (including final) of a given accounting year for which the accounts are prepared. Such amounts are to be reported in the accounts only as withdrawals in Appendix 2 (if the deduction has been made latest in the final payment claim) or reflected in Appendix 8 (if deducted directly from the accounts). This applies also for cases where such deductions are made following the recovery process at national level.

Each of the two options (withdrawal or recovery) has advantages, disadvantages and implications that Member States are invited to consider. Immediate withdrawal of the irregular expenditure immediately releases the respective amount of the EU funding for use in other operations, but the Member State assumes with its national budget the risk of failing to recover from the beneficiary the unduly paid public funding. Deferring withdrawal until effective recovery from the beneficiary leaves less time for re-using the EU funding to other eligible operation(s), but protects the Member State financially should it be unable to recover the grant from the beneficiary after having exhausted all recoveries possibilities through the national institutions and legal framework.

The two cumulative amounts for a given accounting year, representing “withdrawals” and “recoveries”, are intended to be mutually exclusive: although after withdrawal the Member State will normally go on to recover the undue grant or part of the grant from the beneficiary (including for amounts withdrawn in an interim payment application or deducted from the accounts in relation to the current accounting year), such subsequent recovery should nevertheless not be included again in the “recovered amounts”, because this would lead to overlap and double counting between the amounts reported. After a withdrawal is implemented, the further recovery of the irregular amount from the beneficiary is a national issue.

Where the irregular expenditure is left in the programme pending the outcome of the recovery proceeding in relation to expenditure included in previous certified accounts, the programme authorities will take action under national law to effectively recover undue amounts from the beneficiary. Recovery from the beneficiary may be achieved through (incl. their combination):

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

### **3. MEMBER STATES' OBLIGATION TO PREVENT, DETECT AND CORRECT IRREGULARITIES, INCLUDING FRAUD**

In line with the general principles of MCS laid down in Articles 72(h) and 122(2) CPR, Member States are responsible for measures aiming at the prevention, detection and correction of irregularities, including fraud, and the recovery of amounts unduly paid, together with any interest on late payments.

The definitions of irregularities given in the CPR are the following:

- “irregularity” as defined in Article 2(36) means any breach of Union law, or of national law relating to its application, resulting from an act or omission by an economic operator involved in the implementation of the ESI Funds, which has, or would have, the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union.
- “systemic irregularity” as defined in Article 2(38) means any irregularity, which may be of a recurring nature, with a high probability of occurrence in similar types of operations, which results from a serious deficiency in the effective functioning of a MCS, including a failure to establish appropriate procedures in accordance with the CPR and the Fund-specific rules.

Article 126 (c) CPR establishes that the CA is responsible to certify once a year the completeness, accuracy and veracity of the accounts and that the expenditure entered in the accounts complies with applicable law. The accounts shall cover the accounting year running from 1 July to 30 June (except for the first accounting year which runs from 1 January 2014 to 30 June 2015).

### **3.1. Implementation of financial corrections**

Financial corrections should be calculated based on the amounts of affected expenditure declared in the interim payment application(s) to the Commission. The EU financing is reduced on the basis of the relevant co-financing rate for the priority axis under which the expenditure was declared.

Following the annual approach for the programme accounts, a distinction has to be made between implementation of financial corrections impacting either (a) expenditure certified in previous accounts or (b) expenditure included in an interim payment application in relation to the current accounting year. The IT system set up by the Member State will have to provide adequate audit trail by operation and accounting year to enable such a distinction.

(a) In the first case (amounts already certified in previous accounts), the financial corrections are to be implemented in an interim payment application in a subsequent accounting year, namely the year in which the irregularity is detected, as per Article 139(10) CPR.

As explained in section 2 of this guidance note, the Member State has the possibility to wait for the recovery procedures to be completed, before withdrawing the irregular expenditure from an interim payment application to the Commission and consider it as amount to be recovered included in the accounts until effective recovery.

(b) According to Articles 126(b) and 137(1) CPR (which correspond to Article 63(5)(a) FR), accounts are prepared by the CA for each programme and Fund. Member States should ensure that only legal and regular expenditure is certified in the accounts submitted to the Commission. Therefore, any irregularity detected before submission of the accounts in relation to the expenditure included in an interim payment application of the accounting year for which the accounts are prepared will have to be reimbursed to the Union budget. Therefore in the second case (expenditure included in an interim payment application of the accounting year for which the accounts are not yet submitted to the Commission), the financial correction is implemented either by withdrawing the concerned expenditure in a subsequent interim

payment application for that accounting year (including final interim payment application) or by deduction of the irregular amount directly from the accounts.

In this respect, it is important to recall that any irregular amount related to the accounting year cannot be kept into the certified accounts (therefore cannot be considered as amount to be recovered at the time of submitting the accounts) and, in addition, that it is not possible to certify the legality and regularity of expenditure which is under ongoing assessment in line with provisions of Article 137(2) CPR.

Withdrawal of irregular expenditure from the interim payment application (including final interim payment application) or its deduction from the accounts is considered final and this expenditure should not be re-introduced in any subsequent interim payment application for any accounting year (with the exception of specific cases related to decisions by a Court or other bodies in the judicial system referred to in section 10). However, for cases of expenditure under ongoing assessment of its legality and regularity previously included in an interim payment application, Article 137 (2) CPR gives a possibility to deduct such expenditure from the accounts and later re-introduce it to the Commission if found to be legal and regular.

The provision of Article 137.2 CPR refers to the accounts only (i.e. deduction of the expenditure under ongoing assessment should be done in the accounts, not at the level of interim payment applications). Reintroduction of that expenditure in a payment claim of a subsequent accounting year can only be made if the amounts under ongoing assessment at the time of previous accounts were later found to be legal and regular. If expenditure deducted under Article 137(2) CPR is subsequently introduced in an interim payment application, the CA is expected to keep available the evidence to fully justify the reintroduction of such expenditure for audit purposes.

In case of a residual total error rate (RTER) above 2% and in order to allow the AA to issue an unqualified audit opinion on the legality and regularity of the certified expenditure, the MA and CA are expected to decide to apply an additional financial correction by extrapolation to bring the RTER down to or below 2%. The CA has to ensure also that the amounts in relation to these additional extrapolated corrections are properly deducted from the accounts.

The established irregularities are supported by final control or audit reports. When the contradictory procedure was not concluded at the time of submission of the accounts (draft control or audit reports), the amounts at stake can be treated as “ongoing assessment” and the CA should deduct them from the accounts, while keeping the right to declare again in subsequent accounting years the expenditure that will subsequently be found to be legal and regular. Alternatively, in order to reduce the residual risk the CA may treat such amounts as definitive financial corrections<sup>1</sup>.

### **3.2. Cancellation of public contribution**

Once the CA has identified irregular expenditure and decided to deduct it through withdrawal or recovery from subsequent interim payments and the accounts, the Member State has to decide on the cancellation of the public contribution in application of Article 143 CPR.

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<sup>1</sup> See also Commission's *Guidance on the Annual Control Report and Audit Opinion* (EGESIF 15\_0002), as updated.

Article 143(2) CPR establishes that Member States shall make the financial corrections required in connection with such individual or systemic irregularities detected in operations or programmes. Financial corrections shall consist of cancelling all or part of the public contribution to an operation or programme. Financial corrections shall be recorded in the accounts for the accounting year in which the cancellation is decided and implemented. In order to apply a proportionate correction and subsequent cancellation of the public contribution, the Member States shall take into account the nature and gravity of the irregularities and the financial loss to the Funds or the EMFF.

According to Article 143(4) CPR the contribution cancelled 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.

### **3.3. Irrecoverable amounts**

In accordance with the CDR (in particular Article 1.1 and recital 3), where a Member State considers that an amount unduly paid to a beneficiary, previously included in certified accounts submitted to the Commission is irrecoverable and where it considers that this amount should not be reimbursed to the Union budget, the CA may make a request to the Commission.

Therefore, the request to the Commission regarding irrecoverable amounts can only concern amounts already included in certified accounts previously submitted to the Commission. Consequently, any deductions made before submission of certified accounts cannot be considered as recoveries and subsequently as irrecoverable amounts if they relate to the expenditure included in the final interim payment application of a given accounting year for which the accounts are prepared.

### **3.4. Disclosure in the accounts**

All financial corrections implemented in an interim payment application during the accounting year will be reported in the accounts by including them in Appendix 2 as amounts withdrawn or recovered<sup>2</sup>.

In case of expenditure already certified in previous accounts, the Member State may decide to wait for the recovery procedures to be finalised and then the irregular amounts will be reported in Appendix 3 of the accounts of amounts to be recovered at the end of the accounting year. Following the model established in the CIR, information is disclosed by accounting year of declaration of the corresponding expenditure.

With regard to irregular expenditure included in an interim payment application in relation to the current accounting year, not withdrawn in an interim payment application, the CA will make the deduction directly from the accounts and the corresponding financial correction will be disclosed in Appendix 8 (reconciliation of expenditure) providing explanations on the differences in the column of comments. Advice on how to fill in Appendix 8 is provided in

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<sup>2</sup> Deductions implemented by a Member State within the interim payment applications (i.e. deductions made before declaring the accepted amounts to the Commission in an interim payment application) are considered as ex-ante correction. Such corrections are not to be included in Appendix 2 which reports on withdrawals and recoveries of expenditure included in previous interim payment applications.

section 6 of the Commission's Guidance on Preparation, Examination and Acceptance of Accounts<sup>3</sup>. When the CA makes a deduction of the irregular amount directly from the accounts and reported it in Appendix 8, no further action is required in subsequent interim payment applications.

#### **4. SUBMISSION OF INFORMATION ON AMOUNTS WITHDRAWN AND RECOVERED DURING THE ACCOUNTING YEAR (APPENDIX 2)**

The information at priority level<sup>4</sup> on amounts withdrawn or recovered during the accounting year have to be submitted to the Commission using the model set out in Appendix 2, as indicated in the table below:

Priority	WITHDRAWALS		RECOVERIES	
	Total eligible amount of expenditure included in payment applications	Corresponding public expenditure	Total eligible amount of expenditure included in payment applications	Corresponding public expenditure
	(A)	(B)	(C)	(D)
Priority (category of region/type of intervention (YEI) when applicable)	<type="Cu" input="M">	<type="Cu" input="M">	<type="Cu" input="M">	<type="Cu" input="M">

##### **4.1. Explanations on columns (A) and (B) of Appendix 2**

The "withdrawals" columns A and B of Appendix 2 must be used for amounts withdrawn, keeping in mind the distinction between withdrawal and recovery, as explained in section 2 above.

###### *4.1.1. Column A*

Column A of Appendix 2 contains the total eligible expenditure withdrawn during the accounting year in an interim (including final) payment application. **An amount deducted at the level of the CA after the submission of the final interim payment application and before the submission of the accounts to the Commission is not to be reported in Appendix 2** but gives rise to explanations on the differences to be provided in the comments column of Appendix 8 (the appendix on reconciliation of expenditure)<sup>5</sup>.

###### *4.1.2. Column B*

The figure in column B of Appendix 2 is the actual public expenditure corresponding to the total eligible amount of expenditure (as defined in Article 2 (15) CPR). In some cases (e.g. programme based on public expenditure only), the total eligible amount can result

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<sup>3</sup> EGESIF 15\_0018, as updated

<sup>4</sup> Depending on the calculation base, the co-financing rate at priority axis should be applied to total or public expenditure to calculate the fund contribution. In this respect, the financing plan to be considered is the one valid at the time of the submission of the final interim payment application for a given accounting year.

<sup>5</sup> See also the Commission's *Guidance note on preparation, examination and acceptance of accounts*

from the public expenditure only, in which case the total eligible amount equals the public expenditure.

#### **4.2. Explanations on columns (C) and (D) of Appendix 2**

The "recoveries" column must be used for amounts recovered during the accounting year, keeping in mind the distinction between withdrawal and recovery, as explained in section 2 of this guidance.

##### *4.2.1. Column C*

Column C contains the total eligible expenditure deducted as result of recoveries, which corresponds to the irregular amounts detected and recovered during the accounting year. This is a cumulative figure for a given accounting year.

##### *4.2.2. Column D*

The "corresponding public expenditure" referred to is the total amount of public expenditure (both EU and national co-financing).

#### **5. SUBMISSION OF INFORMATION ON AMOUNTS RECOVERED DURING THE ACCOUNTING YEAR PURSUANT TO ARTICLE 71 CPR - DURABILITY OF OPERATIONS (APPENDIX 4)**

Priority	RECOVERIES	
	Total eligible amount of expenditure (A)	Corresponding public expenditure (B)
Priority (category of region/type of intervention (YEI) when applicable)	<i>&lt;type="Cu" input="M"&gt;</i>	<i>&lt;type="Cu" input="M"&gt;</i>

Article 71 CPR relates to the requirement of durability of operations. In case of non-respect of this requirement, the sums unduly paid for the operation shall be recovered by the Member State in proportion to the period for which the requirement has not been fulfilled. The information on amounts regarding recoveries effected pursuant to Article 71 must be submitted to the Commission using the model set out in Appendix 4 and not be reported in Appendix 2 (recoveries in Appendix 2 and Appendix 4 are mutually exclusive). However, the withdrawals reported in Appendix 2 and the amounts to be recovered reported in Appendix 3 should include also the irregular amounts related to Article 71 CPR (such amounts of withdrawals and recoveries to be made should not be included in Appendix 4 reporting only on recoveries effected).

## 6. SUBMISSION OF INFORMATION ON AMOUNTS TO BE RECOVERED AS AT THE END OF THE ACCOUNTING YEAR (APPENDIX 3)

Priority	Total eligible amount of expenditure (A)	Corresponding public expenditure (B)
Priority (category of region/type of intervention (YEI), when applicable)	<i>&lt;type="Cu" input="M"&gt;</i>	<i>&lt;type="Cu" input="M"&gt;</i>

The information at priority level on amounts to be recovered as at the end of the accounting year have to be submitted to the Commission using the model set out in Appendix 3.

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

Thus, information on amounts to be recovered as at the end of the accounting year are distinct from the amounts reported under Appendix 2 (amounts withdrawn and amounts recovered during the accounting year) and Appendix 4 (amounts recovered during the accounting year pursuant to Article 71 CPR (durability of operations)) above, as well as from the amounts deducted in the accounts and reported in Appendix 8.

The information reported in Appendix 3 derives from the debtor's ledger of the CA. It shows the situation as at the end of the accounting year. The split by accounting year of the amounts to be recovered is to be provided for audit trail purposes.

### 6.1. Explanations on column (A) of Appendix 3

In column A of Appendix 3, the total eligible amount of expenditure to be recovered is to be reported cumulatively. This means that also the amounts which were reported as pending recoveries under previous accounting periods should again be included as pending recoveries (i.e. amounts to be recovered) for the accounting period in question, unless they have been recovered (in which case they should be reported as recovered in Appendix 2<sup>6</sup> or they are irrecoverable (in which case they should be reported as irrecoverable amounts in Appendix 5).

Pending recoveries may be considered irrecoverable after the national authorities have sought to pursue all the recovery possibilities available through the national institutional and legal framework. Whenever this is the case, such irrecoverable amounts should no longer be reported under amounts to be recovered as at the end of the accounting year in Appendix 3, but must be reported as irrecoverable amounts as at the end of the accounting year (in Appendix 5 – see section 7 below).

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<sup>6</sup> Or Appendix 4 in the case of application of Article 71 CPR.

## 6.2. Explanations on column (B) of Appendix 3

The "corresponding public expenditure" referred to in column B of Appendix 3 is the corresponding amount of public expenditure (both EU and national co-financing).

## 7. SUBMISSION OF INFORMATION ON IRRECOVERABLE AMOUNTS AS AT THE END OF THE ACCOUNTING YEAR (APPENDIX 5)

Priority	IRRECOVERABLE AMOUNTS		
	Total eligible amount of expenditure (A)	Corresponding public expenditure (B)	Comments (Obligatory) (C)
Priority (category of region/type of intervention (YEI), when applicable)	<type="Cu" input="M">	<type="Cu" input="M">	<type="S" maxlength="1500" input="M">

The statement on irrecoverable amounts at priority level as at the end of the accounting year, **relating to amounts unduly paid to beneficiaries that were certified in previous accounts submitted to the Commission**, must be transmitted to the Commission using the model set out in Appendix 5. The amounts to be reported are not cumulative year-on-year: this means that irrecoverable amounts already reported in previous accounts should not be included in the accounts for the current accounting period, as they will have been cleared in accounts under previous years (see section 8 below for further details).

As regards irrecoverable amounts reported in Appendix 5, the Member State is responsible for reimbursing the amount concerned to the budget of the Union, unless it has made a request by 15 February to the Commission pursuant to the procedure foreseen under CDR that the Union budget bears its share of the financial consequences. The Commission may exceptionally extend the deadline to 1 March, upon request by the Member State concerned.

As indicated in Appendix 5, the "comments" section in the last column is obligatory. It is recommended that this column includes information on the aggregate irrecoverable amounts at priority level which, in the view of the Member State, should be borne by the Union budget. It is also possible to include further comments supporting the request.

The submitted information on irrecoverable amounts in Appendix 5 at priority level is for information purposes only and does not liberate Member States from the obligation to reimburse an irrecoverable EU contribution to the Union budget. In order to make a request to the Commission that the irrecoverable amounts should not be reimbursed to the Union budget, Member States must initiate a separate parallel procedure for which the rules have been set out in the CDR (see section 8).

## **8. ADVICE ON COMPLETION OF THE ACCOUNTS**

### **8.1. General**

#### *8.1.1. Information to be submitted at priority level*

All the amounts entered into the appendices of the accounts are aggregated at the level of each priority and, where applicable, category of regions or type of intervention for YEI.

#### *8.1.2. Required format*

All figures are introduced in euro, with at most two decimals.

#### *8.1.3. Exchange rate to be used by non-euro-zone countries*

Following Article 133 CPR, Member States that have not adopted the euro as their currency on the date of a payment application shall convert the amounts of expenditure incurred in national currency into euro. Those amounts shall be converted into euro using the monthly accounting exchange rate of the Commission in the month during which the positive expenditure was registered in the accounts of the CA of the programme concerned.

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 CA before the date of entry into force of the fixed conversion rate between the national currency and the euro.

With regard to the ETC programmes, the expenditure incurred in a currency other than the euro shall be converted into euro by beneficiaries using the monthly accounting exchange rate of the Commission in the month during which that expenditure was either incurred, submitted for verification or reported to the lead beneficiary (further details are provided in Article 28 of Regulation (EU) No 1299/2013).

#### *8.1.4. Adjustments not related to irregularities*

Adjustments not related to irregularities, such as those made for technical reasons or clerical mistakes are not considered financial corrections and consequently should not be included in the reporting on withdrawn and recovered expenditure, pending recoveries and irrecoverable amounts. However, an adequate audit trail will be kept in the CA's accounting system for verification and reconciliation purposes.

In case such wrong amounts were included in the final interim payment application of the accounting year for which the accounts are prepared, the corresponding negative adjustments have to be deducted from the accounts and reported in Appendix 8 in order to allow the reconciliation of expenditure.

As a general rule, negative adjustments thus reducing the expenditure declared under the final interim payment application could be done in the accounts. However, positive adjustments should be corrected in a subsequent interim payment application (subsequent accounting year) and not in the accounts.

*8.1.5. Split of amounts withdrawn, to be recovered and recovered during the accounting year by accounting year of declaration of the expenditure (Appendices 2, 3 and 4)*

Accounting records maintained at the level of the CA should allow factual and temporal reconciliation of all the amounts reported in the Appendices of Annex VII CIR.

With respect to the temporal reconciliation the CA should be able to determine the link between the irregular expenditure and the related accounting year. For instance, if in the accounting year N+1 the MA withdraws or recovers expenditure certified in the accounts for accounting year N, then the related ineligible expenditure should be reported among the amounts corrected in relation to accounting year N in the accounts for accounting year N+1 (see sub-tables: "Split of amounts withdrawn and recovered during the accounting year by accounting year of declaration of the corresponding expenditure").

*8.1.6. Disclosure of amounts corrected as result of the AA's audits of operations according to Article 127(1) CPR*

When completing the Appendices 2, 3, 4 and 8, the CA is requested to disclose the amounts corrected as result of the AA's audits of operations according to Article 127(1) CPR.

In order to be consistent with the Commission's *Guidance on Annual Control Report and Audit Opinion* (EGESIF\_15\_0002, as amended)<sup>7</sup> and in order to have an adequate audit trail for the purpose of the AA's calculation of the residual total error rate, the amounts to be reported as a result of the audit of operations include individual corrections (in relation to individual operations audited), extrapolated corrections (aiming at further reducing the risk identified by the AA below materiality) but also financial corrections applied by the Member State after the AA drew its sample if such corrections intend to reduce the risks identified by the AA's total error rate<sup>8</sup>.

*8.1.7. Total and public amounts*

When completing the Appendices of Annex VII CIR, the CA always provides the total and the public amounts (even if the basis for calculation is public expenditure, the CA should always declare the total expenditure). Missing data in a column may lead to delays in the acceptance of accounts by the Commission.

*8.1.8. Interest*

According to Article 122(2) CPR, Member States shall recover amounts unduly paid, together with any interest on late payment. Default interest is normally charged if repayments are made after the deadline set in the recovery order. Such interest earned on account of late payment should be added to the recovered amounts.

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<sup>7</sup> See section IV.4 of the guidance

<sup>8</sup> A typical example would be corrections made following MA's additional work carried out to fully delimit a systemic error initially detected by the AA in its audits of operations.

## **8.2. Deduction from the accounts of amounts related to payment applications made during the accounting year**

Amounts which have been included in the final interim payment application of an accounting year may be subject to assessment of the legality and regularity of expenditure, after the submission of the final interim payment application and before the transmission of the accounts on 15 February in year N.

a) If the assessment of the legality or regularity *has been finalised* before the transmission of the accounts to the Commission (15 February in year N) the following scenarios are possible:

- if the amounts are confirmed to be eligible they can be certified in the accounts.
- if (some of) the amounts are found not to be eligible, they should be deducted from the accounts and not be taken into account for the calculation of the balance. Such deductions (i.e. definitive financial corrections) will be disclosed in Appendix 8 (reconciliation of expenditure) together with explanations on the differences in the column of comments.

b) If the assessment of the legality or regularity *has not been finalised* (cf. Article 137(2) CPR) before the transmission of the accounts to the Commission (15 February in year N), these amounts should be deducted from the accounts and will therefore not be taken into account for the calculation of the balance. Such deductions will be disclosed in Appendix 8 (reconciliation of expenditure) providing explanations on the differences in the column of comments.

Following the results of the assessment, the following two scenarios are possible:

- the amounts found to be eligible may be included in an interim payment application in a subsequent accounting year according to Article 137(2) CPR.
- if the amounts are found to be ineligible, no further action is required.

Further guidance in this regard, including treatment of cases of unfinished audits and controls, is provided in Commission's Guidance on Annual Control Report and Audit Opinion (EGESIF\_15\_0002), as amended and Guidance on Preparation, Examination and Acceptance of Accounts (EGESIF 15\_0018), as amended.

For reconciliation purposes and in order to have an adequate audit trail for the AA's calculation of the residual total error rate, it is recommended that the CA makes a distinction in column G of Appendix 8 between the amounts deducted from the accounts as financial corrections (i.e. case (a) above) and the amounts deducted under Article 137(2) CPR (i.e. case (b) above).

## **8.3. Withdrawal of amounts found irregular after the submission of the accounts**

According to Art 139 (10) CPR, Member States may replace irregular amounts which are detected after the submission of the accounts, unless the Commission or the European Court of Auditors detect before the Member State a serious deficiency in the effective functioning of the MCS where Articles 144 and 145 CPR on financial corrections will apply.

Replacement of expenditure is framed by the provisions of Article 143 CPR.

For instance, assuming that an irregularity is detected by the Member State in March 2017 after the submission of the accounts by 15 February 2017 (in relation to expenditure certified under the accounting period 01/07/2015 – 30/06/2016), the following corrective steps should be taken by the Member State:

1. Member States must withdraw an equivalent amount of expenditure from a subsequent interim payment application (for instance in June 2017) and may replace it with new regular expenditure.
2. The corresponding accounts (01/07/2016 – 30/06/2017) must reflect these corrections accordingly (recording of withdrawal of irregular amount from the previous accounting year in Appendix 2 and recording of regular expenditure in Appendix 1, as relevant).

A similar example when the recovery options are used by a Member State is illustrated under section 8.4 below.

#### **8.4. Recovery of amounts found irregular after the submission of the accounts**

*Example: the corresponding expenditure has been included in Appendix 1 of accounts submitted in February 2017 for the accounting year 01/07/2015 – 30/06/2016*

- a) If an amount which was previously certified in accounts to the Commission is recovered (for instance in September 2017), it should be deducted from a subsequent payment application (for instance in December 2017) and reported under Appendix 2 to the related accounting period under which the recovery took place (01/07/2017 – 30/06/2018 and relating to accounts to be submitted by 15/02/2019).
- b) If the amount remains still to be recovered (as at 30/06/2018 for instance), it should be reported under Appendix 3 of the accounts related to the accounting period under which the recovery is found pending (01/07/2017 – 30/06/2018 and relating to accounts to be submitted by 15/02/2019). If an amount remains to be recovered across several successive accounting periods, it should be repeatedly declared under each set of accounts.
- c) If the amount, after exhausting all the recovery possibilities available through the national institutional and legal framework (see scenario b) above), cannot be recovered and it is considered irrecoverable (for instance as at March 2018), it should be declared in Appendix 5 in relation to the accounting period under which the irrecoverability was established (01/07/2017 – 30/06/2018 and relating to accounts to be submitted by 15/02/2019). The outcome of the assessment by the Commission on irrecoverable amounts can be that:

- the irrecoverable amount is not reimbursed to the Union budget, because the Commission has concluded that there is no fault or negligence on the part of the Member State (see the conditions and procedures to be applied to determine whether amounts which are irrecoverable shall be reimbursed by Member States under section 9 below).

- or, if the irrecoverable amount is to be borne by the Member State's budget, then it should be withdrawn from the following interim payment application submitted by the Member State (in December 2018 for example) and reported under Appendix 2 (withdrawals) of the corresponding accounts (accounts for 01/07/2018 – 30/06/2019 and relating to accounts to be submitted by 15/02/2020).

Default interest could be charged by the Member State when the recovery is implemented after the deadline set out in the recovery order. Such interest earned should be added to the amount deducted from the expenditure declared to the Commission.

## **9. DETERMINING WHETHER IRRECOVERABLE AMOUNTS SHALL BE REIMBURSED BY MEMBER STATES**

The CDR sets out the conditions and procedures to be applied to determine whether amounts which are irrecoverable shall be reimbursed by Member States: where a Member State considers that an amount unduly paid to a beneficiary which was previously included in certified accounts submitted to the Commission is irrecoverable, and where it considers that this amount should not be reimbursed to the Union budget, the CA shall make a request to the Commission. Such requests can only be applicable to amounts previously certified in accounts submitted to the Commission.

The CA must submit the request at the level of each operation and accounting year in the format set out in the Annex of the aforementioned CDR by 15 February in SFC 2014 (i.e. by the same deadline as for the submission of the accounts).

On receipt of such a request in SFC, the Commission services will review each case in the table, also taking into account any specific circumstances and the institutional and legal framework of the Member State. The CDR contains a list of elements indicating fault or negligence on the part of the Member State. This list is only indicative and non-exhaustive. The CDR indicates that other elements that are not listed could be taken into account if they indicate fault or negligence.

Following this assessment by 31 May of the year in which the accounts are submitted, the Commission will either:

- a) request the Member State in writing to submit further information on the administrative and legal measures taken to recover any Union contribution unduly paid to beneficiaries; or
- b) inform the Member State in writing about its intention to continue the recovery procedure.

In case the Commission has not acted in either way by 31 May, the Union contribution is not to be reimbursed by the Member State.

The deadline of 31 May shall not apply to irregularities preceding a bankruptcy or to cases of suspected fraud.

The Member State shall reply within three months to the Commission's request for information and, in case the Member State does not submit further information as requested, the Commission shall continue its assessment based on the information available.

Within three months of receiving the reply from the Member State, or, in the absence of a reply by the deadline, the Commission shall inform the Member State whether it concludes that the Union contribution should be reimbursed by the Member State, setting out the basis for its conclusion, and requesting the Member State to provide its observations within 2 months.

Within 6 months following the deadline for observations by the Member State, the Commission shall conclude its assessment and, when it maintains its conclusion that the Union contribution shall be reimbursed by Member State, shall adopt a decision.

For the purpose of calculating the Union contribution to be reimbursed by the Member State, the co-financing rate at the level of each priority as laid down in the financing plan in force at the time of the request, shall apply. If the irrecoverable amount is to be borne by the Member State's budget, then it should be withdrawn from the following payment application submitted by the Member State.

#### **10. AMOUNTS THAT THE MEMBER STATE DECIDES NOT TO RECOVER AND WHICH DO NOT EXCEED EUR 250 IN CONTRIBUTION FROM THE FUNDS AND THE EMFF**

Regarding amounts below EUR 250 (or other if Member State applies a lower threshold) in contribution from the Funds and the EMFF that a Member State may decide not to recover, no information needs to be communicated to the Commission under the CDR.

The threshold of EUR 250 is to be calculated by operation (following the definition set out in Article 2 of CPR) and accounting year.

It therefore follows that no assessment of possible fault or negligence of the Member State regarding amounts below EUR 250 in contribution from the Funds and the EMFF will be carried out by the Commission under the CDR.

Amounts below EUR 250 in contribution from the Funds and the EMFF do not need to be reimbursed to the budget of the Union (thus they do not need to be deducted from the certified amounts.).

With regard to ETC programmes, it is for the Member States and third countries participating in the programme to decide that neither the lead beneficiary nor the programme's MA is obliged to recover an amount unduly paid which does not exceed EUR 250, not including interest, in contribution from the Funds and the EMFF. Summary on how to treat detected irregularities in the accounts

As a summary of the above sections, the detected irregular and potentially irregular amounts should be treated as follows:

**Established irregularities** (i.e. irregularities established by the relevant authorities, including those disclosed in final control or audit reports):

1. Irregularities referring to the expenditure certified in a given accounting year and detected before submission of the final interim payment application should be treated either as (1) withdrawals, and should therefore reduce expenditure declared in final interim payment application and then be presented in Appendix 2 or (2) should be deducted directly from the accounts (reflected in Appendix 1) and reported in Appendix 8;
2. Irregularities referring to the expenditure certified in a given accounting year detected after submission of the final interim payment application but before submission of the accounts should be deducted from the accounts (i.e. reduction of expenditure presented in Appendix 1) and explained in Appendix 8. No further action is requested neither in Appendix 2 nor in interim payment applications of subsequent accounting year.

3. Irregularities detected after submission of the accounts may be treated as withdrawals or recovered amounts implemented in a subsequent interim payment application and should be presented in Appendix 2 for the accounting year when the amounts are deducted.

All the above mentioned corrections are considered definitive. Therefore, the deducted expenditure cannot be re-introduced in any subsequent payment application to the Commission (neither for current, nor for following accounting years). Exceptionally, after a decision by a Court (or other body that is part of the judicial system) challenging the substance of the application of the financial correction, and taking into account impact on the legality and regularity of the expenditure at stake, the national authorities may decide to re-introduce in the subsequent payment application the expenditure previously deducted and reported as financial correction.<sup>9</sup>

**Amounts under ongoing assessment** (i.e. potentially irregular expenditure in a given accounting year for which the assessment of legality and regularity has not yet been finalised):

Given that the provisions of:

- Article 126 (c) of CPR require certification once a year in the accounts, amongst others, that the expenditure entered in the accounts complies with applicable law and
- Article 137 (2) CPR, referring to expenditure excluded due to an ongoing assessment of its legality and regularity, concern the accounts

the treatment of potential irregularities as amounts under ongoing assessment is applicable only at the level of accounts (and not at the level of interim payment applications).

Therefore, in case of a potential irregularity related to the expenditure in a given accounting year, the Member State has a possibility to either (a) withdraw the related expenditure from the interim payment claim (this deduction is definitive) or (b) keep this expenditure in the interim payment claim until the accounts and deduct it then as ongoing assessment in line with Art. 137 (2) CPR.

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<sup>9</sup> Example: A decision of the national court interpreting a national eligibility rule where such interpretation differs from the interpretation by the MA/CA/AA and subsequently leads to the change of the conclusion regarding the eligibility of the expenditure at stake.