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European Structural and Investment Funds

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Amounts Withdrawn, Amounts Recovered, Amounts to be Recovered and Irrecoverable Amounts

**DISCLAIMER**

**“***This is a working document prepared by the Commission services. On the basis of applicable EU law, it provides technical guidance for colleagues and bodies involved in the monitoring, control or implementation of the European Structural and Investment Funds on how to interpret and apply the EU rules in this area. The aim of this document is to provide Commission services' explanations and interpretations of the said rules in order to facilitate the programme implementation and to encourage good practice(s). This guidance is without prejudice to the interpretation of the Court of Justice and the General Court or decisions of the Commission.***”**

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**LIST OF ACRONYMS AND ABBREVIATIONS**

|  |  |
| --- | --- |
| AA | Audit Authority |
| CA | Certifying Authority |
| CDR | Commission Delegated Regulation (EU) No xxx/2015 of xxx 2015 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 |
| 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) |
| IB | Intermediate Body |
| MA | Managing Authority |
| MCS | Management and Control System |
| YEI | Youth Employment Initiative |

# Background

## Regulatory references

|  |  |
| --- | --- |
| **Regulation** | **Articles** |
| Reg. (EU) N° 1303/2013  Common Provisions Regulation  *(hereafter CPR)* | Article 72 (h) – management and control systems shall provide for the prevention, detection and correction of irregularities, including fraud, and the recovery of amounts unduly paid, together with any interest on late payments.  Article 122(2) – when amounts unduly paid to a beneficiary cannot be recovered and this is a result of fault or negligence on the part of a Member State, the Member State shall be responsible for reimbursing the amounts concerned to the budget of the Union.  Articles 126 (b) and 137(1) - accounts are prepared by the certifying authority for each operational programme and Fund. These accounts shall cover the accounting year including the amounts withdrawn and recovered during the accounting year, the amounts to be recovered as at the end of the accounting year, the recoveries effected pursuant to Article 71 during the accounting year and the irrecoverable amounts as at the end of the accounting year.  Article 143(2) - Member States shall make the financial corrections required in connection with individual or systemic irregularities detected in operations or operational programmes  Article 137-139 – Preparation, submission of information, examination and acceptance of accounts |
| Commission Implementing Regulation (EU) No 1011/2014 of 22.9.2014 | Article 7 – model for the accounts |
| Commission Delegated Regulation (EU) No xxx/2015 of xxx 2015 on the conditions and procedures to be applied to determine whether amounts which are irrecoverable shall be reimbursed by Member States | To be updated when adopted |

## 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 to CIR 1011/2014 in the electronic exchange system SFC;
* complementary advice on completion of Appendices 2, 3, 4 and 5;
* 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 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.

## 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) of CPR the certification that the expenditure complies with applicable law is provided by the CA on 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 on each application for payment. |
| Timeline for reporting | The accounts to be submitted before 15 February in year N must include information on amounts withdrawn, amounts recovered, amounts to be recovered and irrecoverable amounts, as set out in Article 137 CPR. | Reporting on amounts withdrawn, amounts recovered, amounts 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 should not be reimbursed by the Member State | A parallel procedure to the accounts reporting set out in Commission Delegated Regulation (EU) No xxx/2015 of xxx 2015: 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 in 2007- 2013 regulations for irrecoverable amounts. |
| Decision not to recover amounts below EUR 250 in contribution from the Funds (*de minimis* 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. Such amounts need not be reimbursed to the budget of the Union.. | Regulations for 2007-2013 did not include any provision on *de minimis* amounts below EUR 250 in contribution from the Funds. |

## Member States' obligation to prevent, detect and correct irregularities, including fraud

In line with Article 122 of the CPR, Member States shall prevent, detect and correct irregularities and shall recover amounts unduly paid, together with any interest on late payments. They shall notify to OLAF irregularities that exceed EUR 10.000 in contribution from the Funds and shall keep it informed of significant progress in relation to related administrative and legal proceedings.

In line with the general principles of the management and control systems laid down in Articles 72 (h) and 122 (2) of the 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 management and control system, including a failure to establish appropriate procedures in accordance with this Regulation and the Fund-specific rules.

In line with Article 143(2) of the CPR Member States shall make the financial corrections required in connection with such individual or systemic irregularities detected in operations or operational programmes. Financial corrections shall consist of cancelling all or part of the public contribution to an operation or operational programme. Financial corrections shall be recorded in the accounts by the MA for the accounting year in which the cancellation is decided and implemented.

A distinction has to be done between financial corrections impacting either expenditure included in previous certified accounts or expenditure included in an application for interim payment in relation to the current accounting year and therefore not yet certified in accounts to the Commission.

In the first case (amounts already certified in previous accounts), the financial correction will be always implemented in an application for an interim payment. As explained in chapter 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 application for interim payment to the Commission.

In the second case (expenditure not yet certified in accounts to the Commission but included in an application for interim payment of the accounting year for which the accounts are not yet submitted), the financial correction is implemented either by withdrawing the concerned expenditure in a subsequent application for interim payment (if still possible) or by deduction of the irregular amount directly in the accounts, when the irregularity is detected after the submission of the final application. On this respect, it is important to recall that all the irregular amounts must be excluded from the accounts and that it is not allowed to certify expenditure which has been found to be ineligible or is under ongoing assessment of its legality and regularity.

According to Articles 126 (b) and 137(1) of the CPR which correspond to Article 59(5)(a) of the revised Financial Regulation (FR), accounts are prepared by the CA for each operational 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 the interim payment applications of the accounting year for which the accounts are prepared** will have to be reimbursed to the Union budget.

In accordance with the CDR, where a Member State considers that an irregular amount which was previously certified 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.

All the financial corrections implemented in an application for interim payment during the accounting year will be reported in the accounts by including them in Appendix 2 of Annex VII to CIR as amounts withdrawn and recovered. In case the MS decides to wait for the recovery procedures to be finalised (this option is only valid for expenditure certified in previous accounts), the irregular amounts will be reported in Appendix 3. Following the model established in the CIR, it is very important to disclose the information by accounting year of declaration of the corresponding expenditure.

In the case of the deductions made by the CA directly in the accounts, the financial corrections will be disclosed in Appendix 8 of Annex VII to CIR (reconciliation of expenditure) providing explanations on the differences in the column of comments. Detailed advice on how to fulfil Appendix 8 is provided in section 3.1.1. of the Guidance Note on preparation, examination and acceptance of accounts.

1. **Distinction between withdrawal and recovery**

Pursuant to the aforementioned Article 122 of the CPR, Member States are required to correct and recover amounts unduly paid. Member States have two choices (in this respect there are no changes in the fundamental approach compared to the 2007-2013 period):

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, or

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 application for interim payment only once recovery is effective. However, this option is available only as regards expenditure included in previous certified accounts. In the case of amounts to be recovered and included in application for interim payment during the accounting year for which the accounts are prepared, in fact, the CA has to deduct them in the accounts and reported in Appendix 8.

Each of the two options (withdrawal or recovery) has advantages, disadvantages and implications which Member States are invited to consider. Immediate withdrawal of the irregular expenditure releases the respective amount of the EU funding for use in other operations immediately, 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 recovery has been effected 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 available through the national institutions and legal framework[[1]](#footnote-2).

As stated above, the CA must ensure that only legal, regular and eligible expenditure is certified in the accounts submitted to the Commission. It is not permitted to reintroduce previously withdrawn irregular expenditure into new payment claims except pursuant to Article 137(2) of the CPR. Article 137(2) sets out that expenditure previously included in an application for interim payment for the accounting year should be excluded from the accounts when there is an an-going assessment by the Member States of that expenditure's legality and regularity. Reintroduction can only be made if the suspected irregular amounts were later found to be legal and regular. If expenditure withdrawn under Article 137(2) CPR is subsequently re-introduced in an interim payment claim, the Commission requests the CA to keep the evidence to justify the reintroduction of such expenditure available for audit purposes.

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, 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.

Where the irregular expenditure is left in the programme pending the outcome of the recovery proceeding (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 final beneficiary may be achieved through:

• repayment to the programme authorities by the beneficiary of the amount received unduly;

• offsetting, whereby the amount to be recovered is deducted from a subsequent payment due to the beneficiary.

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# Submission of information on amounts withdrawn and recovered during the accounting year (Appendix 2 of Annex VII to CIR)

The information at priority level[[2]](#footnote-3) on amounts withdrawn or recovered during the accounting year have to be submitted to the Commission using the model set out in Appendix 2 of Annex VII to CIR 1011/2014. See 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">* |

## 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.

### Column A

Column A of Appendix 2 contains the total eligible expenditure withdrawn during the accounting year in an application for an interim payment. **An amount deducted at the level of the CA after the submission of the final application for an interim payment 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 of Annex VII to CIR (the appendix on reconciliation of expenditure)[[3]](#footnote-4).

### 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) of the CPR). In some cases (simplified cost options – e.g. employment aid scheme), the total eligible amount can result from the public expenditure, in which case the total eligible amount equals the public expenditure.

## 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 above.

### Column C

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

### Column D

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

Following the model established in CIR, the CA should pay attention to disclose the information in the table by accounting year of declaration of the corresponding expenditure including the one for which the accounts are prepared.

# Submission of information on amounts recovered during the accounting year pursuant to Article 71 CPR - durability of operations (Appendix 4 of Annex VII to CIR)

|  |  |  |
| --- | --- | --- |
| Priority | RECOVERIES | |
| Total eligible amount of expenditure **(A)** | Corresponding public expenditure  **(B)** |
| Priority (category of region/type of intervention (YEI) when applicable) | *<type="Cu" input="M">* | *<type="Cu" input="M">* |

Article 71 of the CPR relates to the requirement of durability of operations. In case of non-respect of this requirement, the sums unduly paid in respect of the operation shall be recovered by the Member State in proportion to the period for which the requirement has not be 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 of Annex VII to CIR 1011/2014 and is exclusive of the amounts reported in Appendix 2 of Annex VII to CIR 2011/2014.

# Submission of information on amounts to be recovered as at the end of the accounting year (Appendix 3 of Annex VII to CIR)

|  |  |  |
| --- | --- | --- |
| Priority | Total eligible amount of expenditure  **(A)** | Corresponding public expenditure  **(B)** |
| Priority (category of region/type of intervention (YEI), when applicable) | *<type="Cu" input="M">* | *<type="Cu" input="M">* |

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 of Annex VII to CIR 1011/2014.

The amounts reported as to be recovered (also referred to as "pending recoveries") relate to amounts previously certified in the accounts 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), Appendix 4 (on amounts recovered during the accounting year pursuant to Article 71 CPR (durability of operations)) above and 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 at the end of the accounting year. Therefore the split by accounting year of declaration of the amounts to be recovered is to be provided for audit trail purposes.

## Explanations on columns (A) and (B) of Appendix 3

### Column A

In column A of Appendix 3, the total eligible amount of expenditure to be recovered is to be reported cumulatively. This means that amounts which were reported as pending recoveries under the previous accounting period, 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) or unless they are irrecoverable (in which case they should be reported as irrecoverable amounts).

It should be mentioned that the amounts to be recovered pursuant to Article 71 (durability of operations) as at the end of the accounting year should also be included in this table.

Pending recoveries may, after the national authorities have sought to pursue all the recovery possibilities available through the national institutional and legal framework, be considered irrecoverable. 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 below under section 6).

### Column B

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)

# Submission of information on irrecoverable amounts as at the end of the accounting year (Appendix 5 of Annex VII to CIR)

|  |  |  |  |
| --- | --- | --- | --- |
| 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 irregular amounts which were previously certified in accounts submitted to the Commission***, must be transmitted to the Commission using the model set out in Appendix 5 of Annex VII to CIR 1011/2014. 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).

As regards irrecoverable amounts reported in Appendix 5, Member State are 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.

As indicated in Appendix 5, the comments section in the last column is obligatory. It is recommended that the comments column includes information on the aggregate irrecoverable amounts at priority axis 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 CDR (see section 8).

# Advice on completion of Annex VII to CIR 1011/2014

## General

### Information to be submitted at priority level

All the amounts entered into the appendices of Annex VII of CIR 1011/2014 of the accounts are aggregated at the level of each priority and, where applicable, category of regions/type of intervention for YEI.

### Required format

All figures are introduced in Euro, with maximum two decimals.

### Adjustments made for technical reasons or clerical mistakes

Adjustments 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.

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

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

### Split of amounts withdrawn and recovered during the accounting year by accounting year of declaration of the expenditure

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 to 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 year N+1 the managing authority withdraws or recovers expenditure certified in the accounts for accounting year of year N then related ineligible expenditure should be reported among the amounts corrected in relation to accounting year of N (see sub-tables: "Split of amounts withdrawn and recovered during the accounting year by accounting year of declaration of the corresponding expenditure).

### Total/Public

When completing the appendices of Annex VII of CIR, the CA always provides the total and the public amounts. Missing data in a column may lead to delays in the acceptance of accounts by the Commission.

### 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.

## Exclusion from the accounts of amounts related to payment applications made during the accounting year

### Assessment (finalised or not finalised) of legality and regularity of expenditure after the submission of the final interim payment application by 31 July in year N-1 and before the transmission of the accounts (by 15 February in year N)

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 found to be eligible they can be included in the accounts.
* if the amounts are found not to be eligible, they should be excluded from the accounts and the adjusted amounts should be reported in Appendix 1 of the accounts and will be taken into account for the calculation of the balance of the accounts by the Commission.

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 not be included in the accounts and will therefore not be taken into account for the calculation of the balance of the accounts.

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

* the amounts found to be eligible may be included in an application for interim payment in a subsequent accounting year according to Article 137(2) CPR.
* if the amounts are found to be ineligible, they should not be included in the programme expenditure.

## Withdrawal of amounts which were found to be 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 t the Commission detects the irregularity before the Member State where Articles 144 and 145 on financial corrections will apply.

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 application for interim payment (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 adjustments accordingly (recording of withdrawal of irregular amount 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 7.4.1 a) below.

## Issues related to recovery of amounts which were found to be irregular after the submission of the accounts.

### Example: the corresponding expenditure has been declared under Appendix 1 of accounts (for instance 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 of the accounts 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, despite recovery efforts (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 under the accounts 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 that follows a specific time line (the Commission decision known by October 2019) can be that:

- the irrecoverable amount must not be 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 application for interim 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 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.

# conditions and procedures to be applied to determine whether amounts which are irrecoverable shall be reimbursed by Member States

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 irregular amount 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** in the format set out in the Annex of the aforementioned CDR by 15 February in SFC (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 then review each case in the table, also taking into account any specific circumstances and the institutional and legal framework of the Member State. **The Delegated Regulation 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 Delegated Regulation indicates that other elements which are not listed could be taken into account if they indicate fault or negligence.

Following this assessment, by 31 October 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 their intention to open an enquiry or request that the Member State continue its recovery procedure.

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

For the purpose of calculating an irrecoverable amount to be reimbursed by the Member State, the co-financing rate at priority level, 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 (see also the example under section 8.3.1 above)

# amounts A Member State decides not to recover and which do not exceed EUR 250 in contribution from the Funds

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

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 will be carried out by the Commission under the CDR.

**Amounts below EUR 250 in contribution from the Funds should be included in Appendix 1 of the accounts but need not be reported in Appendix 5 of Annex VII to CIR 1011/2014, since such de minimis amounts which a Member State decided not to recover, are not categorised as irrecoverable amounts per se.**

With regard to programmes under the European territorial cooperation goal as governed by Regulation (EU) No 1299/2013 of the European Parliament and of the Council[[4]](#footnote-5) ('ETC programme'), it is for the Member States and third countries participating in a given ETC programme to decide that neither the lead beneficiary nor the programme's managing authority are obliged to recover an amount unduly paid which does not exceed EUR 250, not including interest, in contribution from the Funds.

1. See the procedure to determine whether an irrecoverable amount shall be reimbursed to the Union budget or borne by the Member State's budget, as set out in Commission Delegated Regulation (EU) No xxx/2015 of xxx 2015. [↑](#footnote-ref-2)
2. 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. [↑](#footnote-ref-3)
3. See also the Guidance note on preparation, examination and acceptance of accounts [↑](#footnote-ref-4)
4. Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal, OJ L 347, 20.12.2013, p. 259. [↑](#footnote-ref-5)