

Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006

## **PART FOUR**

### **GENERAL PROVISIONS APPLICABLE TO THE FUNDS AND THE EMFF**

#### **TITLE II**

#### **[<sup>XI</sup>FINANCIAL MANAGEMENT, PREPARATION, EXAMINATION AND ACCEPTANCE OF ACCOUNTS AND FINANCIAL CORRECTIONS]**

#### *CHAPTER III*

#### *Financial corrections*

#### *Section I*

#### *Financial corrections by Member States*

#### *Article 143*

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

1 The Member States shall in the first instance be responsible for investigating irregularities and for making the financial corrections required and pursuing recoveries. In the case of a systemic irregularity, the Member State shall extend its investigation to cover all operations potentially affected.

2 Member States shall make the financial corrections required in connection with individual or systemic irregularities detected in operations or operational programmes. Financial corrections shall consist of cancelling all or part of the public contribution to an operation or operational programme. The Member States shall take into account the nature and gravity of the irregularities and the financial loss to the Funds or the EMFF and shall apply a proportionate correction. [<sup>XI</sup>Financial corrections shall be recorded in the accounts for the accounting year in which the cancellation is decided.]

3 The contribution from the Funds or the EMFF cancelled in accordance with paragraph 2 may be reused by the Member State within the operational programme concerned, subject to paragraph 4.

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4 The contribution cancelled in accordance with paragraph 2 may not be reused for any operation that was the subject of the correction or, where a financial correction is made for a systemic irregularity, for any operation affected by the systemic irregularity.

5 The Fund-specific rules for the EMFF may lay down specific bases for financial corrections by the Member States linked to non-compliance with rules applicable under the Common Fisheries Policy, which shall be proportionate, having regard to the nature, gravity, duration and recurrence of the non-compliance.

#### **Editorial Information**

**X1** Substituted by [Corrigendum to Regulation \(EU\) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation \(EC\) No 1083/2006 \(Official Journal of the European Union L 347 of 20 December 2013\)](#).

## *Section II*

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

#### *Article 144*

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

1 The Commission shall make financial corrections, by means of implementing acts, by cancelling all or part of the Union contribution to an operational programme in accordance with Article 85, where, after carrying out the necessary examination, it concludes that:

- a there is a serious deficiency in the effective functioning of the management and control system of the operational programme which has put at risk the Union contribution already paid to the operational programme;
- b the Member State has not complied with its obligations under Article 143 prior to the opening of the correction procedure under this paragraph;
- c expenditure contained in a payment application is irregular and has not been corrected by the Member State prior to the opening of the correction procedure under this paragraph.

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

2 The Commission shall, when deciding on a correction under paragraph 1, respect the principle of proportionality by taking account of the nature and gravity of the irregularity and the extent and financial implications of the deficiencies in management and control systems found in the operational programme.

3 Where the Commission bases its position on reports of auditors other than those of its own services, it shall draw its own conclusions regarding the financial consequences

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after examining the measures taken by the Member State concerned under Article 143(2), the notifications sent under Article 122(2), and any replies from the Member State.

4 In accordance with Article 22(7), where the Commission, based on the examination of the final implementation report of the operational programme for the Funds or the last annual implementation report for the EMFF, establishes a serious failure to achieve the targets set out in the performance framework, it may apply financial corrections in respect of the priorities concerned, by means of implementing acts.

[<sup>X15</sup> When a Member State does not comply with its obligations under Article 95, the Commission may, in relation to the degree of non-compliance with those obligations, make a financial correction by cancelling all or part of the contribution from the Funds or the EMFF to the Member State concerned.]

6 The Commission shall be empowered to adopt delegated acts in accordance with Article 149, laying down detailed rules concerning the criteria for determining serious deficiencies in the effective functioning of management and control systems, including the main types of such deficiencies, the criteria for establishing the level of financial correction to be applied and the criteria for applying flat rates or extrapolated financial corrections.

7 The Fund-specific rules for the EMFF may lay down specific bases for financial corrections by the Commission linked to non-compliance with rules applicable under the Common Fisheries Policy which shall be proportionate having regard to the nature, gravity, duration and recurrence of the non-compliance.

#### *Article 145*

#### **Procedure**

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

2 Where the Commission proposes a financial correction on the basis of extrapolation or a flat rate, the Member State shall be given the opportunity to demonstrate, through an examination of the documentation concerned, that the actual extent of irregularity is less than the Commission's assessment. In agreement with the Commission, the Member State may limit the scope of this examination to an appropriate proportion or sample of the documentation concerned. Except in duly justified cases, the time allowed for that examination shall not exceed a further period of two months after the two-month period referred to in paragraph 1.

3 The Commission shall take account of any evidence provided by the Member State within the time limits set out in paragraphs 1 and 2.

4 Where the Member State does not accept the provisional conclusions of the Commission, the Member State shall be invited to a hearing by the Commission, in order to ensure that all relevant information and observations are available as a basis for conclusions by the Commission on the application of the financial correction.

[<sup>X15</sup> In the event of an agreement, and without prejudice to paragraph 7 of this Article, the Member State may reuse the Funds concerned or the EMFF in accordance with Article 143(3).]

6 In order to apply financial corrections the Commission shall take a decision, by means of implementing acts, within six months of the date of the hearing, or of the date of receipt of additional information where the Member State agrees to submit such additional information

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following the hearing. The Commission shall take account of all information and observations submitted during the course of the procedure. If no hearing takes place, the six month period shall begin to run two months after the date of the letter of invitation to the hearing sent by the Commission.

[<sup>X17</sup> Where the Commission in carrying out its responsibilities under Article 75, or the European Court of Auditors, detects irregularities demonstrating a serious deficiency in the effective functioning of the management and control systems, the resulting financial correction shall reduce support from the Funds or the EMFF to the operational programme.]

The first subparagraph shall not apply in the case of a serious deficiency in the effective functioning of a management and control system which, prior to the date of detection by the Commission or the European Court of Auditors:

- a had been identified in the management declaration, annual control report or the audit opinion submitted to the Commission in accordance with [<sup>F1</sup>Article 63(5), (6) and (7) of the Financial Regulation], or in other audit reports of the audit authority submitted to the Commission and appropriate measures taken; or
- b had been the subject of appropriate remedial measures by the Member State.

The assessment of serious deficiencies in the effective functioning of management and control systems shall be based on the applicable law when the relevant management declarations, annual control reports and audit opinions were submitted.

When deciding on a financial correction the Commission shall:

- a respect the principle of proportionality by taking account of the nature and gravity of the serious deficiency in the effective functioning of a management and control system and its financial implications for the budget of the Union;
- b for the purpose of applying a flat rate or extrapolated correction, exclude irregular expenditure previously detected by the Member State which has been the subject of an adjustment in the accounts in accordance with Article 139(10), and expenditure subject to an ongoing assessment of its legality and regularity under Article 137(2);
- c take into account flat rate or extrapolated corrections applied to the expenditure by the Member State for other serious deficiencies detected by the Member State when determining the residual risk for the budget of the Union.

8 The Fund-specific rules for the EMFF may lay down additional rules of procedure for financial corrections referred to in Article 144(7).

#### **Textual Amendments**

- F1** Substituted by [Regulation \(EU, Euratom\) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations \(EU\) No 1296/2013, \(EU\) No 1301/2013, \(EU\) No 1303/2013, \(EU\) No 1304/2013, \(EU\) No 1309/2013, \(EU\) No 1316/2013, \(EU\) No 223/2014, \(EU\) No 283/2014, and Decision No 541/2014/EU and repealing Regulation \(EU, Euratom\) No 966/2012.](#)

### *Article 146*

#### **Obligations of Member States**

A financial correction by the Commission shall not prejudice the Member State's obligation to pursue recoveries under Article 143(2) of this Regulation and to recover

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State aid within the meaning of Article 107(1) TFEU and under Article 14 of Council Regulation (EC) No 659/1999<sup>(1)</sup>.

#### *Article 147*

### **Repayment**

[<sup>X1</sup>1. Any repayment due to be made to the budget of the Union shall be effected before the due date indicated in the order for recovery drawn up in accordance with [<sup>F1</sup>Article 98 of the Financial Regulation]. The due date shall be the last day of the second month following the issuing of the order.]

2 Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate of such interest shall be one-and-a-half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls.

#### **Textual Amendments**

- F1** Substituted by Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012.

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- (1) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([OJ L 83, 27.3.1999, p. 1](#)).

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