

## Annex : Procedure for making financial correction decisions

### Introduction

The procedure is applied by the Control Bodies, Joint Secretariat and Managing Authority when making financial corrections to all projects financed by Estonia - Latvia Programme 2021-2027.

The procedure is established on the basis of Article 43(1) of the Structural Assistance Act 2021-2027 of the Republic of Estonia and made in accordance with Regulation (EU) No 2021/1060 of the European Parliament and of the Council (CPR), “Guidelines for determining financial corrections to be made to expenditure financed by the Union for non-compliance with the applicable rules on public procurement”<sup>1</sup> (EC Guidelines), and national legal acts.

The procedure establishes the decision-making principles, legal basis, the procedure and requirements for formalization of the financial correction decision, the conditions and extent of financial correction expressed in percentages and the procedure for postponement of the repayment of support.

### Definitions

‘beneficiary’ (hereafter *project partner*):

- a public or private body, an entity with or without legal personality, or a natural person, responsible for initiating or both initiating and implementing project(s);
- in the context of State aid schemes, the undertaking which receives the aid.

‘contracting authority’:

- 1) the state or a state authority;
- 2) a local authority, a local authority agency or an association of local authorities;
- 3) another public legal person or an agency of a public legal person;
- 4) a foundation where the state is one of the founders or where more than half of the founders are

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<sup>1</sup> COMMISSION DECISION in 2019 (C(2019) 3452) and its relevant annex (the annex contains the applicable correction rate).

contracting authorities specified in point 2 or 3 of this definition or where more than half of the members of the supervisory board are appointed by the contracting authorities specified in points 1–3;

5) a private legal person established for the purpose of performing, as a principal or ancillary activity, in the public interests a function that does not have an industrial or commercial character and mainly financed by or where more than half of the members of the management body, administrative body or supervisory body are appointed by or where the management is otherwise jointly or severally controlled by the contracting authorities specified in points 1–4 of this subsection or by the contracting authorities of another contracting state of the European Economic Area or by other private legal persons that have the characteristics specified in this clause.

‘contracting entity’ means, upon operating in a network sector:

1) a contracting authority;

2) a person who, by a legal act, administrative decision or public law contract, has been granted a special or exclusive right to operate in a network sector as a result of which the ability of other economic operators to operate in the field is substantially limited;

3) an undertaking in which contracting authorities or contracting authorities jointly with relevant persons of another Member State of the European Union hold the majority of the share capital of the undertaking or control the majority of the votes attaching to the shares of the undertaking or can, directly or indirectly, appoint more than half of the members of the management board or supervisory board of the undertaking.

‘a financial error’: ineligible cost that is raised as a result of any violation of legal acts. It does not mean that funds have disappeared, been lost, or wasted. Usually, financial errors are detected and corrected by programme authorities when controlling partner and progress reports, before the costs are paid out to the lead partner;

‘an irregularity’: any violation of legal acts, resulting from an act or omission when implementing the programme funds, which has, or would have, the effect of prejudicing the budget of the Union by

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<sup>2</sup> For the purposes of point 2 this definition, a right granted as a result of a procurement procedure with a call for competition or a procedure carried out in accordance with objective criteria based on a legal act specified in Annex II to Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.03.2014, pp 243–374) is not deemed to be a special or exclusive right.

## Estonia – Latvia

charging unjustified expenditure. Often, irregularities are detected after the costs are paid out to the lead partner by the programme. Not following legal acts about procurement is always irregularity because it cannot be remedied retrospectively.

‘systemic irregularity’: any irregularity, which may be of a recurring nature, with a high probability of occurrence in similar types of projects, which results from a serious deficiency, including a failure to establish appropriate procedures in accordance with the legal framework;

‘suspected fraud’: an irregularity that gives rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud;

‘recovery’: proceedings to recover the unduly paid grant from the lead partner. Recovery can be done in 2 ways:

- lead partner pays back an unduly received amount to the programme;
- the programme deducts an unduly paid amount from the next payment to the lead partner – this is called ‘offsetting’.

### 1. Principles for correcting financial errors and irregularities

The procedure describes the most frequently found types of violations of legal acts. All other violations are dealt with in accordance with the principle of proportionality and, by analogy to the types of violations identified in this document.

Controllers, Joint Secretariat and Managing Authority exclude the costs that are related to violation of legal acts. Cases, when it is not possible to correct the mistake, are always considered irregularities even when they are discovered before the costs are paid out to the lead partner. Violation of public procurement rules falls under this category. When irregularities are discovered and require correction either during the project implementation or after the end of the project, the Managing Authority deducts all or part of the ERDF and the project application form is updated in the Jems by the Managing Authority or Joint Secretariat.

A financial correction decision is based on the following:

- 1) support has been paid for the reimbursement of ineligible cost;
- 2) the project partner has failed to comply, partially or wholly, with the obligation or requirement to ensure the implementation of the project under the prescribed conditions and this has had an impact on the eligibility of the cost or on the achievement of the result planned;
- 3) the project partner has not ensured that self-financing is provided to the prescribed extent;
- 4) the project partner has not ensured the requirement of durability, and falls under any of the cases within the terms specified in Article 65 of Regulation (EU) No 2021/1060 of the European Parliament and of the Council;

## Estonia – Latvia

- 5) national public procurement rules are not followed or are violated;
- 6) in case of unlawful state aid;
- 7) when project partner has committed an act with criminal elements due to becoming insolvent and the trustee or the court gives notification thereof to the prosecutor or the police for deciding on the commencement of criminal proceedings, and the project partner has not ensured the implementation of the project in accordance with the project application, subsidy contract and partnership agreement and the planned results are not achieved within the prescribed term. If a circumstance specified in this section becomes evident, the financial correction decision must be made with the secondary condition, according to which the financial correction decision enters into force upon the entry into force of the judgement of conviction;
- 8) when the project partner has been punished for employing foreigner, who stays in Estonia illegitimately, on the basis of § 260<sup>1</sup> of the Penal Code of the Republic of Estonia. In the case specified in this section the Managing Authority reclaims the support which has been assigned within 12 months before illegal employment has been detected or which is planned to be paid in the course of five years as of the detection of illegal employment.

Financial corrections can fall into the following categories:

- **specifically quantified corrections of costs declared as real costs:** a quantifiable error in individual expenditure items composed of an exact and easily identifiable amount, for example, an ineligible invoice;
- **proportional corrections of costs declared as real costs:** an error that reoccurs in other expenditures of the same type, the same cost category, the same project partner, or within the same type of project, organisation or measure. Proportionally extrapolating errors to larger populations of items involves making assumptions on the magnitude of error and frequency of occurrence;
- **corrections of costs declared as flat rate:** individual violations or systematic failures that are not quantifiable; for example, from procurement or publicity errors. If support has been paid based on a flat rate and a financial correction is made with regard to direct<sup>3</sup> and actual costs that are used for calculating flat rate, the support paid on the basis of the flat rate must also be proportionally reduced;
- **correction of costs declared as lump sum:** when eligibility criteria are not met; lump sum is 100% ineligible. Lump sum correction does not require financial correction decision, when the correction is made during the control of partner or progress report.

## 2. Deduction and financial correction decisions on the basis of a percentage

The deductions based on percentage can be done by the Control Bodies, the Joint Secretariat, and the Managing Authority. Where the amount of ineligible expenditure can be accurately identified, no

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<sup>3</sup> Personnel costs that are based on hourly rate are direct and actual costs.

percentage correction is applied.

If it becomes evident that the project partner has neglected its obligations or requirements established in the Estonia-Latvia Programme 2021-2027 and upon the making of a financial correction decision it is impossible to assess the size of the financial impact due to the nature of a failure to perform the obligation or claim, but there is a well-founded risk that the failure to comply brings about the financial impact, the support must be reduced.

The project must be developed and implemented in accordance with the principles of sound financial management and transparency in the use of funds must be obeyed.

This document sets out a range of corrections of up to 5, 10, 25 and 100 % that are applied to the expenditure either during the verification process or retrospectively to the expenditure that has been previously verified as eligible.

Financial correction decision takes into account the seriousness of the violation of the legal act(s) and the principle of proportionality. These rates of corrections are applied when it is not possible to precisely quantify the financial damage.

The seriousness of a violation of the legal act(s) related to non-compliance with the rules on general public procurement and the related financial impact to the Union budget is assessed taking into account the following factors: level of competition, transparency and equal treatment. When the non-compliance at stake has a deterrent effect to potential tenderers or when the non-compliance leads to the award of a contract to a tender other than the one that should have been awarded, this is a strong indicator that the irregularity is serious.

When the violation of the legal act(s) is only of a formal nature without any actual or potential financial impact, no correction is made.

Where a number of irregularities are detected in the same tender procedure, the rates of correction are not cumulated, the most serious irregularity is taken as an indication to decide the rate of correction (up to 5 %, 10%, 25% or 100%).

After a correction of a certain type of irregularities has been implemented and the project partner does not take the appropriate corrective measures in regard to other tender procedures affected by the same type of irregularities, the rates of financial corrections may be increased to a higher level of correction (i.e., 10%, 25% or 100%).

When Lead Partner fails to meet the obligation to report on data and evidence on the fulfilment of the result indicators as specified in Chapter 3 in the Programme Manual, the MA may apply a financial correction 5% from the project's certified expenditure.

## **2.1 Financial correction on the basis of a percentage in case of failure to comply with the requirements related to visibility**

If a project partner has failed to comply with the visibility requirements and it is impossible to comply with those requirements later, the support shall be reduced by up to 2 % of the expenditure of the activities.

## **2.2 Financial correction in case of irregularity related to non-compliance with the rules on procurement**

### **2.2.1 General principles of procurement**

All Estonian and Latvian project partners are required to comply with the following general principles of procurement:

- 1) the contracting authority or the contracting entity uses funds economically, purposefully and effectively, awards the contract based on the best price-quality ratio, and carries out the procurement within a reasonable time;
- 2) the contracting authority or the contracting entity acts transparently, verifiably, proportionately, ensures cross-border involvement, free competition, and equal treatment upon carrying out procurement;
- 3) the contracting authority or the contracting entity treats all persons whose place of residence or seat is in Estonia or Latvia or in another Member State of the European Union, in another contracting state of the European Economic Area or in a country that has joined the Government Procurement Agreement of the World Trade Organization equally; and the contracting authority or the contracting entity makes certain that all restrictions and criteria imposed on the persons are proportional, relevant and reasoned in relation to the purpose of the procurement;
- 4) the contracting authority or the contracting entity must ensure effective use of the existing competition in procurement, whereby the participation of a public legal person or a private legal person using public funds in the procurement must not distort competition due to its use of public funds;
- 5) the contracting authority or the contracting entity must avoid a conflict of interest distorting the competition;
- 6) if possible, the contracting authority or the contracting entity prefers green solutions.

### **2.2.2 Financial correction in case of irregularity related to non-compliance with the general rules on procurement when the project partner is not a contracting authority for the purposes of the public procurement**

For an Estonian project partner, who is not a contracting authority within the meaning of the Public Procurement Act, does not follow the general procurement principles and the estimated value of a service, goods or building works is equal to or in excess of 10,000 euros without VAT, the financial correction rate of up to 5, 10, 25 or 50 may be applied, depending on the severity of the violation.

**Estonia – Latvia**

If Estonian project partner is not a contracting authority for the purposes of the public procurement and it has violated the obligation to comply with the general principles of procurement and the estimated value of a service, goods or building works is below of 10 000 euros without VAT, the support paid for the expenditure of the contract shall be reduced by 10 %.

Persons who are not subjects of the Public Procurement Law and the Law on the Procurement of Public Service Providers in the Republic of Latvia should act according to the Rules of the Cabinet of Ministers of the Republic of Latvia No 104 of 28 February 2017.

For a Latvian project partner, who is not contracting authority and does not follow Rules of the Cabinet of Ministers of the Republic of Latvia No 104 adopted on 28 February 2017, meaning the general procurement principles and the estimated value of a service, goods or building works, the financial correction rate of up to 5, 10, 25 or 50 may be applied, depending on the severity of the violation.

If Latvian project partner is not a contracting authority for the purposes of the procurement, and the contracts are below the thresholds of contract prices mentioned in the Rules and the contracting authority has violated the obligation to comply with the general principles of procurement, the support to be paid for the expenditure of the contract shall be reduced by 10 %.

When project partner does not comply with the general principles of procurement, the financial corrections are determined in accordance with the EC Guidelines. In cases where the financial correction rate is not determined by EC Guidelines, the support to be paid for the expenditure of the contract shall be reduced by 10 %.

**2.2.3 Financial correction in case of irregularity related to non-compliance with the applicable rules on public procurement when the project partner is a contracting authority for the purposes of the procurement**

Where the Programme Authorities detect irregularities related to non-compliance with public procurement rules, the Managing Authority determines the amount of the financial correction applicable in accordance with this document. The same correction rate is applied to any future expenditure affected by the irregularity related to the same affected contract or part of it.

The following tables lays down the rates of financial corrections that are made to expenditure when there is non-compliance with the applicable rules on public procurement.

**Contract notice and tender specifications**

No	Type of irregularity	Description of the irregularity	Rate of correction
1.	Lack of publication of contract notice or unjustified direct award (i.e., unlawful negotiated procedure without prior publication of a contract notice)	<p>The contract notice was not published in accordance with the relevant rules (e.g. publication in the Official Journal of the European Union ('OJ') where the Directives require this.</p> <p>This also applies to direct awards or negotiated procedures without prior publication of a contract notice, if criteria for using them are not fulfilled.</p>	100%

		Same as above, except for the fact that publicity was made by other adequate <sup>4</sup> means.	25%
2.	Artificial splitting of works/services/supplies contracts	A works project or proposed purchase of a certain quantity of supplies and/or services is artificially subdivided into several contracts. As a result, each contract for the part of the works/supplies/services is below the threshold of the Directives, thus preventing its publication in the OJ for the whole set of works, services or supplies at stake.	100% (this correction applies if the contract notice covering the works/supplies/services at stake was not published in OJ, although required by the Directives)

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<sup>4</sup> Adequate means of publicity means that the contract notice was published in a way that ensures that an undertaking located in another Member State has access to appropriate information regarding the public procurement before it is awarded, so that it would be in a position to submit a tender or express its interest to participate in obtaining that contract. In practice, this is the case when the contract notice was published at national level (following the national legislation or rules in that regard) and/or the basic standards for the advertising of contracts were respected. See more details on these standards in section 2.1 of the Commission interpretative communication no 2006/C 179/02.

		Same as above, except for the fact that publicity was made by other adequate means, in the same conditions as set out in point 1 above.	25%
3.	Lack of justification for not subdividing contract into lots	The contracting authority does not provide an indication of the main reasons for its decision not to subdivide into lots.	5%
4.	Non-compliance with time limits for receipt of tenders or time limits for receipt of requests to participate.  or  Failure to extend time limits for receipt of tenders where significant changes are made to the procurement documents	The reduction of the time limits set in the Directives is more than or equal to 85% or the time limit is equal to/less than 5 days.	100%
		The reduction of the time limits set in the Directives is more than or equal to 50% (but below 85%).	25%
		The reduction of the time limits set in the Directives is more than or equal to 30% (but below 50%).  or  The time limits were not extended where significant changes are made to the procurement documents.	10%
		The reduction of the time limits set in the Directives is less than 30%.	5%
5.	Insufficient time for potential tenderers/candidates to obtain tender	Time for economic operators (i.e., potential tenderers/candidates) to obtain tender documentation is too short (i.e., less than or equal to 50% of the time limits for receipt of tenders set in the tender documents, in line with relevant provisions), thus creating	10%

	documentation	unjustified obstacles to the opening up of public procurement to competition.	
	or	Time for economic operators (i.e., potential tenderers/candidates) to obtain tender documentation is reduced but the reduction is less than 80% of the time limits for receipt of tenders, in line with relevant provisions.	5%
	Restrictions to obtain tender documentation	Time for economic operators (i.e., potential tenderers/candidates) to obtain tender documentation is equal to or less than 5 days.	25%
		or	
		Where the contracting authority has not offered at all, by electronic means, unrestricted and full direct access free of charge to the procurement documents, as established by Article 53(1) of Directive 2014/24/EU, this is a serious irregularity.	
6.	Lack of publication of extended time limits for receipt of tenders	The initial time limits for receipt of tenders (or receipt of requests to participate) were correct according to the applicable provisions, but were extended without appropriate publication in accordance with the relevant rules (i.e. publication in the OJEU), but publicity (of the extended limits) was made by other means (see conditions in point 1 above).	5%
	or		
	Failure to extend time limits for receipt of tenders	Same as above and no publicity (of the extended time limits) was made by other means (see conditions in point 1 above).	10%
		or	
		Failure to extend time limits for receipt of tenders where, for whatever reason, additional information, although requested by the economic operator in good time, is not supplied at the latest six days before the time limit fixed for the receipt of tenders.	
7.	Cases not justifying the use of a competitive	Contracting authority awards a public contract by a competitive procedure with	25%

	<p>procedure with negotiation or a competitive dialogue</p> <p>Unjustified selection of public procurement procedure</p>	<p>negotiation or a competitive dialogue in situations not foreseen by the Directive.</p> <p>or</p> <p>When in the public procurement the obligation to use the open or restricted procedure in accordance with the Public Procurement Act has not been applied.</p>	
		<p>Cases in which the contracting authority ensured full transparency including a justification of the use of these procedures in the procurement documents, did not limit the number of suitable candidates to submit an initial tender and equal treatment of all tenderers was ensured during the tender negotiations.</p>	10%
8.	<p>Non-compliance with the procedure established in the Directive for electronic and aggregated procurement<sup>5</sup></p>	<p>The specific procedures for electronic and aggregated procurement have not been followed as established in the applicable Directive and the non-compliance could have had a deterrent effect to potential tenderers.</p>	10%
		<p>Where the non-compliance led to the award of a contract to a tender other than the one that should have been awarded, this is considered a serious irregularity.</p>	25%

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<sup>5</sup> Except for the cases where the irregularity is already covered by other types of irregularities set out in these guidelines.



<p>9.</p>	<p>Failure to publish in the contract notice the selection and/or award criteria (and their weighting), or conditions for performance of contracts or technical specifications.</p> <p>or</p> <p>Failure to describe in sufficient detail the award criteria and their weighting.</p> <p>or</p>	<p>a) Failure to publish in the contract notice the selection and/or award criteria (and their weighting).</p> <p>or</p> <p>when upon organizing of the procurement procedure, the contracting authority has not notified all interested parties, tenderers or interested applicants about the amendment of the contract notice or contract documents or has materially violated the procedures for giving explanations, which has not allowed all the interested parties, tenderers or interested applicants to submit proper tender or documents proving qualification.</p>	<p>25%</p>
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	<p>Failure to communicate/publish clarifications/additional information.</p>	<p>b) Failure to publish in the contract notice the conditions for performance of contracts or technical specifications.</p> <p>c) Neither the published contract notice nor the tender specifications describe in sufficient detail the award criteria and their weighting, with the effect of unduly restricting the competition (i.e. the lack of sufficient detail could have had a deterrent effect to potential tenderers).</p> <p>d) The clarifications or additional information (in relation to selection/award criteria) provided by the contracting authority were not communicated to all tenderers or published.</p>	<p>10%</p>
<p>10.</p>	<p>Use of</p> <ul style="list-style-type: none"> <li>- criteria for exclusion, selection, award or</li> <li>- conditions for performance of contracts or</li> <li>- technical specifications</li> </ul> <p>that are discriminatory on the basis of</p>	<p>Cases in which economic operators could have been deterred from tendering because of exclusion, selection and/or award criteria or conditions for performance of contracts that include unjustified national, regional or local preferences.</p> <p>This is for example the case when there is a requirement to have, at the time of submission of the tender:</p> <ul style="list-style-type: none"> <li>(i) an establishment or representative in the country or region;</li> </ul>	<p>25%</p>

	<p>unjustified national, regional or local preferences</p>	<p>or</p> <p>(ii) tenderers' possession of experience and/or qualification in the country or region;</p> <p>(iii) tenderers' possession of equipment in the country or region.</p>	
		<p>Same as above except for the fact that a minimum level of competition was still ensured, i.e., a number of economic operators submitted tenders that were accepted and fulfilled the selection criteria.</p>	<p>10%</p>
<p>11.</p>	<p>Use of</p> <ul style="list-style-type: none"> <li>- criteria for exclusion, selection, award or</li> <li>- conditions for performance of contracts or</li> <li>- technical specifications</li> </ul> <p>that are not discriminatory in the sense of the previous type of irregularity but still restrict access for economic operators</p>	<p>This refers to criteria or conditions that, despite not being discriminatory on the basis of national/regional/local preferences, still lead to restricting access for economic operators to the specific public procurement procedure, as exemplified in the following cases.</p> <ol style="list-style-type: none"> <li>1) cases in which the minimum capacity levels of ability for a specific contract are related but not proportionate to the subject matter of the contract.</li> <li>2) cases where, during the evaluation of tenderers/candidates, the selection criteria were used as award criteria.</li> <li>3) cases where specific trademarks/brands/standards are required, except where such requirements relate to an ancillary part of the contract and the potential impact on the EU budget is only formal (cf. Section 1.4).</li> </ol>	<p>10%</p>
		<p>Cases in which restrictive criteria/conditions/specifications were applied but still a minimum level of competition was ensured, i.e., a number of economic operators submitted tenders that were accepted and fulfilled the selection criteria.</p>	<p>5%</p>

		<p>Cases in which the minimum capacity levels of ability for a specific contract are manifestly not related to the subject matter of the contract.</p> <p>or</p> <p>Cases where the exclusion, selection and/or award criteria or conditions for performance of contracts led to a situation where only one economic operator could submit a tender and this outcome cannot be justified by the technical specificity of the contract in question.</p>	25%
12.	Insufficient or imprecise definition of the subject-matter of the contract	The description in the contract notices and/or the tender specifications is insufficient or imprecise in a way that may not allow potential tenderers/candidates to fully determine the subject matter of the contract, causing deterrent effect potentially restricting the competition.	10%
13.	Unjustified limitation of sub-contracting	The tender documentation (e.g., technical specifications) imposes limitations on the use of subcontractors for a share of the contract fixed in abstract terms as a certain percentage of that contract, and irrespective of the possibility of verifying the capacities of potential subcontractors and without any mention of the essential character of the tasks that would be concerned.	5%

**Tenderers and evaluation of tenders**

No	Type of irregularity	Description of the irregularity	Rate of correction
14.	Selection criteria or technical specifications were modified after opening of tenders or were incorrectly applied	The selection criteria (or technical specifications) were modified during the selection phase or were incorrectly applied during the selection phase, resulting in acceptance of winning tenders that should not have been accepted (or rejection of tenders that should have been accepted) if the published selection criteria had been followed.	25%

15.	Wrong use of qualification requirements	The qualification requirements have been used as prerequisites for declaring admissible.	25%
16.	Evaluation of tenders using award criteria that are different from the ones stated in the contract notice or tender specifications  or  Evaluation using additional award criteria that were not published	The award criteria (or respective sub-criteria or weightings) stated in the contract notice or tender specifications (1) were not followed during the evaluation of tenders, or (2) additional award criteria not published were used in that evaluation.	10%
		Where the two cases above-mentioned had a discriminatory effect (on the basis of unjustified national/regional/local preferences), this is a serious irregularity.	25%
17.	Insufficient audit trail for the award of the contract	The relevant documentation (set out in applicable provisions of the Directives) is insufficient to justify the award of the contract, resulting in a lack of transparency.	25%
		Refusing access to the relevant documentation is a critical irregularity, since the contracting authority does not provide the evidence that the procurement procedure complied with the applicable rules.	100 %
18.	Negotiation during award procedure, including modification of the winning tender during evaluation	The contracting authority allowed a tenderer/candidate to modify its tender during evaluation of offers, where the modification leads to the award of the contract to that tenderer/candidate.  or  In the context of an open or restricted procedure, the contracting authority negotiates with any tenderer(s) during the evaluation stage, leading to a substantially modified contract in relation to the initial conditions set out in the contract notice or tender specifications.  or	25%

		In concessions, the contracting authority allows a tenderer/candidate to change the subject matter, award criteria and the minimum requirements during negotiations, where the modification leads to the award of the contract to that tenderer/candidate.	
19.	Irregular prior involvement of candidates/tenderers towards the contracting authority	Where the prior advice of a tenderer to the contracting authority leads to a distortion of the competition or results in a violation of the principles of non-discrimination, equal treatment and transparency, in the conditions indicated in Articles 40 and 41 of Directive 2014/24/EU.	25%
20.	Competitive procedure with negotiation, with substantial modification of the conditions set out in the contract notice or tender specifications	In the context of a competitive procedure with negotiation, the initial conditions of the contract were substantially altered, thus requiring the publication of a new tender.	25%
21.	Unjustified rejection of abnormally low tenders	Tenders that appeared to be abnormally low in relation to the works/supplies/services were rejected but the contracting authority, before rejecting those tenders, did not question in writing the respective tenderers (e.g. requesting details of the constituent elements of the tender, which it considers relevant), or where such questioning exists but the contracting authority is not able to evidence that it has assessed the replies provided by the tenderers at stake.	25%
22.	Conflict of interest or unjustified favouring with impact on the outcome of the procurement procedure	Whenever an undisclosed or inadequately mitigated conflict of interest has been identified, and the tenderer concerned was successful in securing the contract(s) in question.  or  when the contracting authority favours certain tenderer(s) and the tenderer concerned was successful in securing the contract(s) in question.	100%
23.		Case 1a: The bid-rigging tenderers operated without either the assistance of a person within the management and control system or the contracting authority and a bid-	10%

	Bid-rigging  (established by a competition / anti-cartel office, a court or other competent body)	rigging company was successful in securing the contract(s) in question.	
		Case 1b: If only colluding companies participated in the procurement procedure, competition is seriously impeded.	25%
		Case 2: A person within the management and control system or the contracting authority participated in the bid-rigging by assisting the bid-rigging tenderers and a bid-rigging company was successful in securing the contract(s) in question.  In this case, there is a conduct of fraud/conflict of interest on the part of the person within the management and control system assisting the bid-rigging companies or the contracting authority.	100%
24.	Fraud	Where the procurement process or implementation is related to fraud, as established by a competent judicial or administrative body.	100%

### Contract implementation

No	Type of irregularity	Description of the irregularity	Rate of correction
25.	Modifications of the contract elements set out in the contract notice or tender specifications, not in compliance with the Directives	(1) There are modifications to contract (including reduction in the scope of the contract);  However, modifications to contract elements will not be considered as an irregularity subject to a financial correction where conditions of Article 72 of Directive 2014/24/EU are respected, i.e.:  a) the value of the modifications is below both of the following values:	25% of the initial contract and the new works/supplies/services (if any) resulting from the



		<p>(i) the thresholds set out in Article 4 of Directive 2014/24/EU46; and</p> <p>(ii) 10 % of the initial contract value for service and supply contracts and below 15 % of the initial contract value for works contracts, and</p> <p>b) the modification does not alter the overall nature of the contract or framework agreement.</p> <p>(2) There is a substantial modification of the contract elements (such as the price, nature of the works, the completion period, the terms of payment, the materials used) if the modification renders the implemented contract materially different in character from the one initially concluded. All these cases are considered as modifications.</p>	<p>modifications</p>
26.	<p>Modifications of the contract elements related to the volume of the performance</p>	<p>Any increase in price exceeding 50 % of the value of the original contract.</p>	<p>25% of the initial contract and 100% of related contract modifications (price increase)</p>
27.	<p>Non – compliance with applicable construction regulation</p>	<p>Non – compliance with applicable national construction acts.</p>	<p>5 or 10% of the contract</p>

### 2.3 Formalization of the financial correction decision

If the ineligible costs are found before the payment, the ineligible costs related to the financial error will be deducted whether by the controllers, the Joint Secretariat or the Managing Authority. In this case the ineligible cost is deducted from the project payment in the relevant reporting period without reducing the project budget,<sup>6</sup> the situation and reasoning for that decision are described in the Jems.

If the ineligible costs are found after the payment to the lead partner, the ineligible costs related to the irregularity will be deducted from the project budget. If possible, ineligible ERDF share can be offset with the next payment to the project.

Financial correction decision regarding ineligible costs already paid to the lead partner shall be drafted by the Managing Authority in cooperation with the Joint Secretariat and the lawyer of the State Shared Service Centre. The Managing Authority is independent in and solely responsible for making the financial correction decisions. The Managing Authority can ask additional information and explanations about disputable expenditure from the lead partner, Control Body and the National Authorities. In case of need the Managing Authority can ask the National Authorities to comment and give opinion on the draft financial correction decision.

If the violation exceeds 10 000 euros, the Managing Authority will send draft financial correction decision to the National Authorities for commenting. The National Authorities have at least 10 working days for commenting draft financial correction decision. The Managing Authority amends the financial correction decision on the basis of the comments of the National Authorities. In case of need the Managing Authority organizes a meeting<sup>7</sup> with the NAs and lawyers for discussing the financial correction decision.

The Managing Authority gives opportunity to the lead partner for reviewing and commenting the draft financial correction decision before sending the signed financial correction decision to the lead partner officially. The lead partner is responsible for the overall coordination, management, and implementation of the project, including the management of the funds in accordance with the Partnership Agreement, the approved application and the Subsidy Contract. Thus, the lead partner can provide argumentation as the representative of the project. The lead partner has 10 working days for reviewing and commenting draft financial correction decision. A final financial correction decision is made by the Managing Authority and shall set out:

- 1) the name and position of the decision-maker;
- 2) the name of the project partner;

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<sup>6</sup> Exceptions to this rule are irregularities related to public procurements, in these cases the Managing Authority reduces the budget with its administrative decision.

<sup>7</sup> The meeting may take place electronically.

## Estonia – Latvia

- 3) the name and number of the project;
- 4) date of the financial correction decision;
- 5) the facts, legal basis of the financial correction facts and the considerations on which the making of the decision is based;
- 6) the reduced or cancelled support subject to return, including bringing out separately the amounts of ineligible support and self-financing;
- 7) the reference to the obligation for repayment and the amount of support to be repaid, if the support is subject to repayment;
- 8) that the eligible costs of the project budget are reduced by the amounts of ineligible support that consist of programme funds and self-financing;
- 9) the time limit for repayment of the repayable support;
- 10) the bank account number where the repayable support shall be transferred, the reference number and recipient's name of the income account of repayment of the institution, except if the amount to be repaid shall be offset by the amount of support to be paid in the financial correction decision;
- 11) the reference to the basis of the obligation to pay a fine for delay where the project partner has the obligation to pay a fine for delay;
- 12) the obligation to pay interest where the project partner has received state aid or the repayment of the support is postponed and where the project partner has the obligation to pay interest;
- 13) the possibility, place, term and procedure for contesting the decision where the project partner has the right to submit a challenge or a right to appeal;
- 14) other necessary information related to the reduction or cancellation and repayment of the support. If the financial correction decision cancels the whole support specified in the subsidy contract, the subsidy contract shall be revoked. The financial correction decision sets out the amount of support to be refunded.

Legal disputes between governmental authorities and other state authorities in Estonia shall be settled by way of subordination. Legal disputes of state authorities within different areas of government shall be settled by the appropriate ministers. If no agreement is reached, the dispute shall be settled by the Government of the Republic of Estonia.

The financial correction decision informs the lead partner on the arguments on which the repayment claim is based and requests repayment of the necessary amount of funds already paid out to the lead partner. The lead partner is obliged to conduct the repayment without any delay after the financial correction decision has been received; the due repayment date is stated explicitly in the financial correction decision.

Should the Managing Authority submit a financial correction decision to the lead partner in accordance with the provisions of the Subsidy Contract and other programme documents and demand repayment of subsidy already transferred, every project partner concerned is obliged to transfer its portion of the repayment amount to the lead partner. According to Article 26 (1) a of Regulation (EU) No 2021/1059 project partner shall repay to the Lead partner any amounts unduly paid.

The lead partner shall, without delay, submit the financial correction decision to the project partners and notify every project partner of the amount repayable. When ineligible expenditure is identified

then the respective irregularity is corrected in the Jems by the Managing Authority. The Managing Authority corrects the project budget and inserts data about ineligible expenditures in Jems.

The financial correction decision shall be sent to the lead partner electronically and shall be uploaded in the Jems within ten working days as of the date of making the financial correction decision. The financial correction decision shall be deemed to be delivered to the project partner, if it is sent to the project partner in an aforementioned manner.

The financial correction decision may be made within one year as of the termination of the performance of the last obligation of the project partner unless otherwise provided for by the legal acts regulating the provision of state aid. Upon violation of the obligation, arising from Article 65 of Regulation (EU) No 2021/1060<sup>8</sup> of the European Parliament and of the Council, the financial correction may be made within ten years as of the final payment to the lead partner. Upon making the financial correction decision, the support and self-financing shall be reduced correspondingly in accordance with the percentage valid during the making of the decision in the grant decision. If the support has been paid out to cover the costs forming a basis for the reduction, the amount of the support subject to return and the amount of self-financing shall be set out in the decision. If the financial correction decision cancels the whole support specified in the grant decision, the grant decision shall be revoked.

The lead partner:

- 1) has the right to ask for explanations related to the financial correction decision;
- 2) has the right to get access to all documents that are related to the financial correction decision, except the documents that are classified as confidential documents for the internal usage in the organisation;

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<sup>8</sup> According to the article (1) of the Regulation (EU) No 2021/1060 the Member State shall repay the contribution from the Funds to an operation comprising investment in infrastructure or productive investment, if within 5 years of the final payment to the beneficiary or within the period of time set out in State aid rules, where applicable, that operation is subject to any of the following:

- (a) a cessation or transfer of a productive activity outside the NUTS level 2 region in which it received support;
- (b) a change in ownership of an item of infrastructure which gives to a firm or a public body an undue advantage;
- (c) a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives.

The Member State may reduce the time limit set out in the first subparagraph to 3 years in cases concerning the maintenance of investments or jobs created by SMEs.

Repayment by the Member State due to non-compliance with this Article shall be made in proportion to the period of non-compliance. Where the contribution from the ERDF takes the form of State aid, the period of 10 years shall be replaced by the deadline applicable under State aid rules.

- 3) has the right to give explanations related to the financial correction decision case;
- 4) has the right to challenge the financial correction decision according to the Programme Manual Chapter 7.15.

## 2.4 Repayment to the Managing Authority

When the Managing Authority, the Joint Secretariat, the Control Bodies detect an error in expenditure that has already been paid out to the project, the programme can deduct the amount from the next project progress report. In cases where the amount cannot be corrected by deducting it from the next project progress report, lead partner has to repay the amount to the programme.

The lead partner is required to repay the support to be refunded, as specified in the financial correction decision, within 60 calendar days as of the date of entry into force of the financial correction decision. The concerned project partner shall repay the lead partner the amounts unduly paid in accordance with the partnership agreement signed between them.

If the lead partner does not succeed in securing repayment from the concerned project partner by deadline, then the lead partner informs the Managing Authority about it electronically as soon as possible, but no later than during 5 working days. The Managing Authority shall formally notify the project partner to repay to the lead partner. The Managing Authority shall ask the concerned partner to repay to the lead partner as soon as possible, but not later than in 10 working days. If the partner repays to the lead partner, then the lead partner must repay the amounts to the Managing Authority within 5 working days. If the concerned project partner does not repay by deadline, then the lead partner informs the Managing Authority about that via Jems as soon as possible, but not later than in 5 working days.

If the financial correction decision concerns only the lead partner and if the lead partner does not repay by deadline, the Managing Authority shall request the lead partner to repay to the Managing Authority as soon as possible, but not later than in 10 working days.

If Estonian lead partner fails to pay the recoverable amount to comply with a decision made, the Managing Authority will submit the decision made regarding the obligation to pay the recovery and the amount of the recovery for compulsory enforcement in accordance with the Code of Enforcement Procedure of Estonia to the bailiff.

If the Latvian lead partner does not succeed in securing repayment from other project partners or if the Managing Authority does not succeed in securing repayment from the lead partner, the Member State on whose territory the beneficiary concerned is located or, is registered shall reimburse the Managing Authority any amounts unduly paid to that project partner. The financial obligation of the lead partner and project partner(s) to the respective Member States remains.

The payment of the support to be refunded shall be considered to have been made in the following order: the fine for delay shall be the first, and then the interest and the last shall be the recoverable support.

If the lead partner is required to repay a part of the assistance, the next amount of assistance payable within the framework of the project may be reduced by the amount, which must be repaid.

The Managing Authority may suspend the payment of assistance to the lead partner in the part of the project connected to the repayment or in the part of all the projects of the lead partner until the reclaimed amount has been paid back in full.

## 2.5 Interest

The Managing Authority may postpone the repayable support on the basis of a reasoned request of the project partner, if the simultaneous payment puts the project partner in significant payment difficulties, except in the case of recovery of unlawful and misused State aid.

The interest rate on the balance of the refund is 6 months Euribor plus 3 % per annum. Six-months Euribor is charged as of the banking day preceding the decision to reschedule. The interest calculation is based on a 360-day period. In the case of a negative Euribor, aggregated percentages of less than one shall not apply.

The Managing Authority will charge interest, if the repayment of the support to be refunded is postponed and in case of unlawful state aid.

Interest on arrears shall not be charged to the public authority, the implementing entity and the person authorized to perform the administrative task of the state in using or mediating the grant, unless the European Commission requires the state to pay default interest. In such a case, the state shall charge interest on arrears in the amount of interest paid to the European Commission.

## 2.6 Postponement of repayment of support

The repayment of the support to be refunded may be postponed based on the reasoned application of the lead partner, if the one-time payment puts the lead partner to substantial payment difficulties.

In order to postpone the repayment of the support, the lead partner shall, within ten working days of the receipt of the financial correction decision, file an application with the Managing Authority, including reasons for the need for the postponement and a proposal of the postponement schedule (hereinafter: postponement application). The lead partner shall attach to the postponement application documents reflecting their financial status in accordance with the requirements of the Managing Authority. The Managing Authority may request that the lead partner provides a security.

A decision on the satisfaction or denial of the postponement application is made within ten working days of the receipt of the postponement application. In justified cases the term for making the decision may be extended by a reasonable period and the lead partner shall be notified thereof.

The repayment of support may be postponed by up to 12 calendar months as of the date of satisfaction of the postponement application. In the event of a justified need, the Managing Authority may decide on a longer repayment term. The decision on the satisfaction or denial of the postponement

application may be made simultaneously with the financial correction decision.

The lead partner is required to pay interest as from the following day of entry into force of the decision on postponement of support, but for no longer than the due term of repayment specified in the decision on postponement of support.

If the lead partner fails to repay the support pursuant to the schedule for postponement, the decision on postponement may be revoked. In the case of the revocation of the decision on postponement, the lead partner is required to repay the support within 30 calendar days as of the entry into force of the decision on revocation of the decision on postponement.

## 2.7 Fine for delay

Interest shall not be charged to the public authority, the implementing entity and the person authorized to perform the administrative task of the state in using or mediating the grant, unless the European Commission requires the state to pay default interest. In such a case, the state shall charge interest on arrears in the amount of interest paid to the European Commission.

If the support is not repaid by the due date, the project partner must pay fine at the rate of 0.06% for each calendar day of delay in repayment. Fine on arrears shall cease to accrue if the amount of interest on arrears exceeds the amount of the refund to be recovered.

In duly justified exceptional cases, with the agreement of the Managing Authority, fine on arrears may be reduced by up to 50 % from the due date.

The payment of the support to be refunded shall be considered to have been made in the following order: the recoverable support shall be the first, and then the interest and the last shall be the fine for delay.

## 2.8 Cases, when financial correction decisions are not made

Financial correction decisions are not made, if:

- 1) it is possible to eliminate the deficiency or comply with the obligation or requirement by complying with the precept;
- 2) the project partner has noticed ineligible costs among reimbursed costs, has notified the Joint Secretariat and Managing Authority about it at the first opportunity and has returned the support with the approval of the Managing Authority within ten working days after receiving receipt with repayment information;
- 3) the irregularity is only of a formal nature without any actual or potential financial impact;
- 4) the Member States decide not to recover the amount unduly paid, and the amount to be recovered from the project partner, not including interest, does not exceed EUR 250 in contribution from the programme.