

1st call for proposals,
2nd call for proposals,
3rd call for proposals,
4th call for proposals,
Priority 3 Better network of harbours

version 17.12.2018

Annex 6. Guidelines to Financial Corrections¹

Introduction

The objective of the Guidelines to Financial Corrections is to establish the decision-making principles and to describe relevant legal framework and tasks of the programme authorities as well as to highlight responsibilities of the beneficiaries of the projects in case irregularities are discovered in their projects.

The Guidelines to Financial Corrections have been made in accordance with Regulation (EU) No 1303/2013 of the European Parliament and of the Council (CPR), COCOF “Guidelines for determining financial corrections to be made to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement”² (COCOF Guidelines), Structural Assistance Act 2014-2020 of the Republic of Estonia and national legal acts on public procurement.

'Irregularity' 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.³

1. Principles for making financial correction decision

A financial correction decision is made based on the following principles:

- 1) support has been paid for reimbursement of ineligible cost;
- 2) the beneficiary 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 and or on the achievement of the result planned;
- 3) the beneficiary has not ensured that self-financing is provided to the prescribed extent;
- 4) the beneficiary has not ensured the requirement of durability in the case and within the term specified in Article 71 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council.

¹ These guidelines have been prepared based on the currently valid legal framework. The financial correction decisions of the Estonia-Latvia Programme 2014-2020 are made based on these guidelines. If by the time of the preparation of the financial correction decision the legal framework has changed, then the financial correction decision will be made based on the legal framework that is valid at the time of the preparation of the financial correction decision. The Managing Authority will update the Guidelines to Financial Corrections, if the legal framework changes.

² COMMISSION DECISION in 2013 (C-2013-9527) and its relevant annex (the annex contains the applicable correction rate).

³ Regulation (EU) No 1303/2013.

- 5) national public procurement rules are not followed or are violated;
- 6) in the case of the unlawful state aid;
- 7) in the case when the beneficiary has committed an act with criminal elements due to becoming insolvent and the trustee or the court shall give notification thereof to the prosecutor or the police for deciding on the commencement of criminal proceedings and the beneficiary has not ensured the implementation of the project under the prescribed conditions and the planned results are not achieved within the prescribed term. If a circumstance specified in this section becomes evident, the financial correction decision shall be made with the secondary condition according to which the financial correction decision shall enter into force upon the entry into force of the judgment of conviction;
- 8) in the case when the beneficiary has been punished for employing foreigner, who stays in Estonia illegitimately, on the basis of § 260^l of the Penal Code of the Republic of Estonia. In the case specified in this section the MA 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;
- 9) in the case when the beneficiary earns net revenue which is subject to deduction from the eligible costs for the purposes of Article 61 and Article 65 (8) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council.

2. Financial correction on the basis of a percentage

The following financial corrections on the basis of the percentage can be done by the Financial Control (FC), the Joint Secretariat (JS) and the Managing Authority (MA).

These guidelines set out a range of corrections of up to 5%, 10%, 25% and 100% that are applied to the expenditure of a contract. They take into account the seriousness of the irregularity and the principle of proportionality. These rates of corrections are applied when it is not possible to quantify precisely the financial implications for the contract in question. The seriousness of an irregularity related to non-compliance with the rules on 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 irregularity 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 being 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 Member State 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%).

A financial correction of 100% may be applied in the most serious cases:

- when the irregularity favours certain tenderer(s)/ candidate(s) or if there was a conflict of interests;
- where the irregularity is related to fraud, as established by a competent judicial or administrative body;
- when a procurement exceeds the international procurement threshold and:
 - the contracting authority or the contracting entity has not indicated that the procurement is expected to be equal to or exceeding the threshold of international procurement or that the contract notice must be forwarded to the Publications Office of the European Union;
 - the contracting authority or the contracting entity has divided the public procurement into lots for the purpose of disregarding the rules or requirements established in legal acts for carrying out public procurement, especially if the subject-matter of the public contract is interoperable supplies, services or works, or supplies, services or works that are necessary for the attainment of the same purpose;
- Aid in the amount by which the volume of performance of the contract has been reduced – as a result of the procurement procedure – without reducing the price of the contract.
- Aid in the amount by which an additional contract has been awarded on the basis of a negotiated procedure without prior publication of a contract notice, and the deadlines set by the legislation have not been respected, unless there is an urgent need as a result of unforeseen events that are independent of the contracting authority or contracting entity, and the additional contract is important in comparison with the original contract.

2.1 Financial correction on the basis of a percentage in case of failure to comply with the notification requirements

If a beneficiary has failed to comply with the notification requirements and it is impossible to comply with said requirements later on, the support shall be reduced by up to 5 percent of the expenditure of the activities.

2.2 Financial correction in case of support paid based on a flat rate

If support has been paid based on a flat rate and a financial correction is made with regard to direct and actual costs that are used for calculating flat rate, the support paid on the basis of the flat rate shall also be proportionally reduced.

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

2.3.1 General principles of procurement

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

General principles of procurement are following:

- 1) the contracting authority or the contracting entity uses funds economically and purposefully, 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 and proportionately upon carrying out procurement;
- 3) the contracting authority or the contracting entity treats all persons whose place of residence or seat is in Estonia, 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 interests distorting the competition;
- 6) if possible, the contracting authority or the contracting entity prefers green solutions.

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

If Estonian beneficiary or 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, the support paid for the expenditure of the contract shall be reduced by 10 percent. Depending on the severity of the violation, the financial correction rate of up to 5, 25 or 100 percent may be applied.

2.3.3 Financial correction in case of irregularity related to non-compliance with the general rules on procurement when the Estonian partner is a contracting authority for the purposes of the procurement

If Estonian beneficiary or partner is a contracting authority for the purposes of the procurement and the estimated value of a service, goods or building works is below simple procurement threshold 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 percent. Depending on the severity of the violation, the financial correction rate of up to 5, 25 or 100 percent may be applied.

If Estonian beneficiary or partner is a contracting authority for the purposes of the public procurement, and the estimated value of a service, goods or building works is equal to or in excess of simple procurement threshold has violated the obligation to comply with the general principles of procurement, the financial correction rate of 5, 10, 25 or 100 percent may be applied depending on the severity of the violation by using the financial correction principles according to the COCOF Guidelines.

2.3.4 Financial correction in case of irregularity to non-compliance with the general rules on procurement for Latvian partners

Persons who are not subjects of the Public Procurement Law (PL) and the Law on the Procurement of

Public Service Providers in the Republic of Latvia (LPPSP) should act according to the Rules of the Cabinet of Ministers of the Republic of Latvia No. 104 of 28 February 2017 (Rules).

If Latvian beneficiary or 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 it 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 percent. Depending on the severity of the violation, the financial correction rate of up to 5, 25 or 100 percent may be applied.

If Latvian beneficiary or partner is not a contracting authority for the purposes of the procurement, and the contracts are above the thresholds of contract prices mentioned in the Rules and it has violated the obligation to comply with the general principles of procurement, the financial corrections should be determined in accordance with the COCOF Guidelines. In cases where the financial correction rate is not determined by COCOF Guidelines, the support to be paid for the expenditure of the contract shall be reduced by 10 percent. Depending on the severity of the violation, the financial correction rate of up to 5, 25 or 100 percent may be applied.

When Latvian project partner is obliged to follow the Procurement Guidelines for the Public Service Providers and it has violated the obligation to comply with the Guidelines for Public Service Providers, the financial corrections rates according to the COCOF Guidelines are applied, taking into account the severity of the violation.

Latvian project partners who are contracting authorities for the purposes of the public procurement have to follow Latvian national public procurement rules: they have to follow the PL and LPPSP.

If Latvian beneficiary or partner is a contracting authority for the purposes of the public procurement, and the estimated value of a service, goods or building works is below procurement threshold provided by Latvian national public procurement rules and it 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 percent. Depending on the severity of the violation, the financial correction rate of up to 5, 25 or 100 percent may be applied.

If Latvian beneficiary or partner is a contracting authority for the purposes of the public procurement, and the estimated value of a service, goods or building works is equal or above the procurement threshold provided by Latvian national public procurement rules and if it has violated the obligation to comply with the general principles of procurement the financial corrections rates according to the COCOF Guidelines are applied, in accordance with the severity of the violation.

2.4 Formalization of the financial correction decision

If the ineligible costs are found before the payment, the ineligible costs will be deducted whether by the FC, the JS or the MA. In this case the ineligible cost is deducted from the project payment in the relevant reporting period without reducing the project budget, the situation and reasoning for that decision are described in the eMS.

Financial correction decision regarding ineligible costs already paid to the Lead Partner (LP) shall be drafted by the MA in cooperation with the JS and the lawyer of the State Shared Service Centre (SSSC). The MA is independent in and solely responsible for making the recovery decisions. The MA can ask additional information and explanations about recovery from the LP, FC and the National Responsible Authorities (NRAs). In case of need the MA can ask the NRAs to comment and give opinion on the draft financial correction decision.

In case of a recovery, the Chief Specialist of the MA prepares a recovery decision in cooperation with the JS, stating the amount of and reason for the recovery.

If the violation exceeds 10 000 euros, the MA will send draft financial correction to the NRAs for commenting. The NRAs have at least 10 working days for commenting draft financial correction decision. The MA amends the financial correction decision on the basis of the comments of the NRAs. In case of need the MA organizes a meeting⁴ with the NRAs and lawyers for discussing the financial correction decision.

The MA gives opportunity to LP for commenting the draft financial correction decision before sending the signed financial correction decision to the LP officially. The LP 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 LP can clarify open questions and provide argumentation on its own behalf. After the LP has responded and Chief Specialist of the MA has examined the answer, a final financial correction decision is made by the MA.

A financial correction decision shall set out:

- 1) the name and position of the decision-maker;
- 2) the name of the beneficiary;
- 3) the name and number of the project;
- 4) date of the financial correction decision;
- 5) the facts and legal basis of the financial correction facts and the considerations on which the making of the decision was 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 subject to return 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 beneficiary has the obligation to pay a fine for delay;
- 12) the obligation to pay interest where the beneficiary has received state aid or the repayment of the support is postponed and where the beneficiary has the obligation to pay interest;
- 13) 13) the possibility, place, term and procedure for contesting the decision where the beneficiary has the right to submit a challenge or a right of 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

⁴ The meeting may take place via Skype.

contract, the subsidy contract shall be revoked. The financial correction decision sets out the amount of support to be refunded.

The financial correction decision informs the LP on the arguments on which the repayment claim is based and requests repayment of the necessary amount of funds already paid out to the LP. The LP 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 MA submit a financial correction decision to the LP in accordance with the provisions of the Subsidy Contract and other programme documents and demand repayment of subsidy already transferred, every partner concerned is obliged to transfer its portion of the repayment amount to the LP. According to Article 27 of Regulation (EU) No 1299/2013 beneficiaries shall repay to the LP any amounts unduly paid.

The LP shall, without delay, submit the financial correction decision to the project partners and notify every partner of the amount repayable.

As a rule the financial correction decision shall be sent to the LP through the electronic monitoring system (eMS). In case it is impossible to deliver the financial correction decision through the eMS, the financial correction decision shall be sent electronically by email or by registered mail with advice of delivery and shall be uploaded in the eMS within ten working days as of the date of making the financial correction decision. The financial correction decision shall be deemed to be serviced on the beneficiary if it has been sent to the beneficiary in an aforementioned manner. The MA sends all signed financial correction decisions to the LP, the JS, the FC, the Audit Authority, NRAs and Financial Department of the SSSC. Once the funds are paid back to the programme, the Financial Department informs the Chief Specialist of the MA about it. The Chief Specialist keeps a debtor's ledger and is responsible for the correctness of the financial information sent to the Commission about irregularities and recoveries.

The financial correction decision may be made within one year as of the termination of the performance of the last obligation of the beneficiary unless otherwise provided for by the legal acts regulating the provision of state aid. Upon violation of the obligation, arising from Article 71 (2) of Regulation (EU) No 1303/2013⁵ of the European Parliament and of the Council the financial correction may be made within ten years as of the final payment to the LP. 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 LP:

⁵ According to article 71 (2) of Regulation (EU) No 1303/2013 an operation comprising investment in infrastructure or productive investment shall repay the contribution from the ERDF if within 10 years of the final payment to the beneficiary the productive activity is subject to relocation outside the Union, except where the beneficiary is an SME. 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.

- 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;
- 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 complaint procedure described in the Estonia - Latvia Programme manual Annex 4.

2.5 Repayment to the Managing Authority

The LP 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 in the indicated amount and date. The concerned partners shall repay the LP the amounts unduly paid in accordance with the partnership agreement signed between them.

If the LP does not succeed in securing repayment from the concerned partner by deadline, then the LP informs the MA about it via eMS as soon as possible, but no later than during 7 calendar days. The MA shall formally notify the latter to repay to the LP. The MA shall ask the concerned partner to repay to the LP as soon as possible, but not later than in 14 calendar days. If the partner repays to the LP, then the LP must repay the amounts to the MA within 7 calendar days. If the concerned partner does not repay by deadline, then the LP informs the MA that it did not succeed in securing repayment via eMS as soon as possible, but not later than in 7 calendar days.

If the financial correction decision concerns only the LP and if the LP does not repay by deadline, the MA shall formally notify the LP to repay to the MA. The MA shall ask the LP to repay to the MA as soon as possible, but not later than in 14 calendar days.

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 LP 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 MA may suspend the payment of assistance to the LP in the part of the project connected to the repayment or in the part of all the projects of the LP until the reclaimed amount has been paid back in full.

2.6 Interest

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

The state authority⁶, JS, a ministry or the Government Office being the 1st level intermediate body is not required to pay interest, except where the European Commission demands payment of the interest from the state. In such case the state claims interest to the extent of the amount of interest paid by the state to the European Commission.

⁶ Estonian state authorities are registered in the state register of state and local governmental authorities: <http://register.fin.ee/register/index.php>.

2.6.1 Postponement of repayment of support

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

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

2.6.2 Interest in the case of the unlawful state aid

In case of unlawful state aid the support shall be recovered together with the interest. Repayment of the unlawful state aid shall be guided by this section unless otherwise provided for in the EU law.

2.6.3 The interest rate

The interest rate on the remainder of the amount of support to be refunded shall be six months Euribor interest rate plus an annual rate of three per cent. The six months Euribor shall be taken as of the banking day preceding the making of the financial correction decision. The basis for interest calculation shall be a period of 360 days.

Interest table

	PP EE public	PP EE state institution	PP EE private	PP LV public	PP LV state institution	PP LV private
LP EE public	I*	N/A	I	I	N/A	I
LP EE state institution	N/A	N/A	N/A	N/A	N/A	N/A
LP EE private	I	N/A	I	I	N/A	I
LP LV public	I	N/A	I	I	N/A	I

LP LV state institution	N/A	N/A	N/A	N/A	N/A	N/A
LP LV private	I	N/A	I	I	N/A	I

I*- interest ;N/A – Not applicable

2.7 Fine for delay

The state authority⁷, JS, a ministry or the Government Office being the 1st level intermediate body is not required to pay a fine for delay, except where the European Commission demands payment of the fine for delay from the state. In such case, the state claims a fine for delay to the extent of the amount of fine paid by the state to the European Commission.

If the support is not repaid by the due term for repayment of support, the LP shall pay a fine for delay in the amount of 0.1 per cent for each calendar day by which repayment of support is delayed.

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.

Fine for delay table

	PP EE public	PP EE state institution	PP EE private	PP LV public	PP LV state institution	PP LV private
LP EE public	F	N/A	F	F	N/A	F
LP EE state institution	N/A	N/A	N/A	N/A	N/A	N/A
LP EE private	F	N/A	F	F	N/A	F
LP LV public	F	N/A	F	F	N/A	F
LP LV state institution	N/A	N/A	N/A	N/A	N/A	N/A
LP LV private	F	N/A	F	F	N/A	F

F*- fine for delay; N/A- Not applicable

2.8 Cases, when financial correction decisions are not be made

Financial correction decisions are not be made if:

- 1) it is possible to eliminate the deficiency or comply with the obligation or requirement by complying with the precept;
- 2) the beneficiary has detected that ineligible costs have been reimbursed, has notified the JS and MA at the first opportunity and has returned the support with the approval of the MA within ten working days after receiving receipt with repayment information;
- 3) when the irregularity is only of a formal nature without any actual or potential financial impact, no financial correction is made.

⁷ Estonian state authorities are registered in the state register of state and local governmental authorities: <http://register.fin.ee/register/index.php>.