



CENTRAL BALTIC
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MA Guidance Note on Preventive and Corrective Actions



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Regional Council of
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Finland

Preventive and corrective actions

The necessary preventive actions as established by the Managing Authority consist of measures taken during the application and assessment phase to ensure the management and implementation of projects in accordance with the Structural Fund and national regulations. The preventive actions taking the form of various instructions and administrative practises are made available for instance in the Programme Manual, instructions on reporting, First Level Control Manual as well as practical procedures during application and reporting phases conducted mainly by the JTS.

Established procedures and practises by the Managing Authority (MA), Certifying Authority (CA) and Audit Authority (AA) and JTS ensures that preventive actions and relevant instructions are applied.

This Guidance Note by the MA in accordance with Article 70 (EC) 1083/2006 addresses corrective actions in case systemic errors are detected by the AA¹ as set out in the Article 62 of the (EC) No 1083/2006 and Article 16 (3) of the EC 1828/2006 and further applied in the Programme taking into account the stipulations of the Multilateral Agreement. Furthermore it also outlines the procedures applied in case the MA/JTS would detect a violation of the Subsidy Contract without the direct involvement of the AA.

In general the EU Structural Fund regulations and relevant national Finnish legislation - defining the position and responsibilities of the MA in relation to the management and implementation of the Programme including the position of the MA as contracting party in Subsidy Contract as well as the legal rights of the Lead Partner (LP) and Project Partners (PPs) – determine the procedural basis for preventive as well as for corrective actions.

The Guidance Note outlines the corrective actions to be implemented and sets out the general phases to be followed in case systemic errors are detected by the AA.

The list of corrective actions are:

- 1) Interruption and termination of the ERDF payments
- 2) Recovery and refunding of the ERDF payments
- 3) Rate of late interest applied in cases of recovery
- 4) Procedure on cases with financial instability or even bankruptcy by the project partners
- 5) Procedure on fraud
- 6) Cancellation of public financing
- 7) Procedure on corrective actions regarding audit findings on systemic structures and practices

Each procedure will first start with exchange of information and depending on the case either between the authorities concerned (MA/JTS, CA and AA) and national authorities and in case of the project between the MA/JTS and the Lead Partner.

In every procedure involving a project, the Lead Partner is always given the possibility to reply in written within a reasonable timeframe (2-4 weeks) by a deadline set and offer arguments from it's own point of view on the case at hand. By that way it is ensured that the legal rights of project partners are respected. However the MA or CA – depending on the

¹ This MA Guidance note has been prepared in close co-operation with the AA and CA due to the interactions in preventive and corrective actions.

applied jurisdiction² - can always solve each case also without any explicit written reply by the project Lead Partner by the deadline set based on the stipulations of the Finnish Administrative Procedure Act (434/2003).

1. Interruption and termination of the ERDF payments

In case the MA based on the relevant information available (e.g. reports by the AA or national FLC) considers that the LP may have violated the subsidy contract and after the consultation process between the authorities concerned has been completed the MA will send to the project LP a written request for corrective actions where the LP is required to propose a set of actions to correct the detected deficiencies. The ERDF payments are kept interrupted by the CA until the LP has responded. After the LP has responded and proposed corrective actions they will be examined by the MA and if positive solution is found the project may continue with financial and/or administrative improvements applied.

However in case no solution is to be found the MA will as a last resort terminate the subsidy contract in accordance with the §10 of the contract. The termination is based on the administrative decision by the MA which is appealable³ as stated in the subsidy contract. After the procedure has been closed and acceptable solution for both parties reached or subsidy contract terminated all the remaining eligible ERDF payments will be conducted. However, in case of ineligible costs are detected concerning already paid out ERDF funds they will be recovered by the CA (see below).

2. Recovery and refunding of the ERDF payments

The instructions on procedures related to irregularities on project level are available in the Programme Manual and related corrective procedures are determined in the Multilateral Agreement (§ 9, 10) and in the Subsidy Contract (§11, 12). Reference is made to the Article 17 of Regulation No 1080/2006, Articles 27, 28, 29, 31 and 36 of Regulation 1828/2006, Article 102 of No 1083/2006 in this regard. The relevant procedures have been described in the Article 71 (EC) 1083/2006 description.

If any expenditure is considered ineligible by the CA as such regardless of the actual amount after ERDF payments to the LP have been conducted according to regulatory framework applied and based on the reports by the AA, a two stage-procedure will apply in accordance of the article 17 of the (EC) 1080/2006. The first phase consists of amicable process and in case amicable process proves to be ineffective a administrative and even judicial procedure follows in accordance of the Multilateral Agreement (§9). The recovery procedure is also explicitly described in the Subsidy Contract between the MA and the Lead Partner.

The amicable phase is initiated - after exchange of information and consultation with MA/JTS and other relevant bodies – by the CA based on available financial information of the project by sending out to LP an official letter asking for written response on the case giving the LP the possibility to clarify open questions and in relevant cases provide argumentation on it's own behalf. After the LP has responded and provided relevant information it will be examined by the CA.

²This guidance note is also applicable to the procedural practises of the CA which acts under the same legal framework as the MA. The necessary separation of functions is ensured in accordance with Structural Fund regulations.

³ All the administrative decisions made by the MA and CA are appealable

Unless no relevant new information is provided by the LP the official recovery procedure will be launched - after exchange of information and consultation with MA/JTS and other relevant bodies - by the CA with registered letter ("Order of Recovery" based on the administrative decision including the appeal instructions) addressed to the Lead Partner organisation informing the Lead Partner on the arguments on which the repayment claim is based and requesting the 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 letter by the CA has been received by the Lead Partner organisation; the due repayment date will be stated explicitly in the order for recovery. The Lead Partner is obliged to notify the approval/non-approval of the repayment in written without any delay after receiving the letter from the CA and inform clearly whether Lead Partner is appealing against the administrative decision by the CA in accordance with the appeal instructions.

In case the Lead Partner either refuses or is unable to start the repayment process by the deadline set by the CA **without any reply and justification in written** the CA will issue another official letter (a reminder) claiming the funds. In this case the repayment is due immediately after officially receiving the second CA letter; the due date will be stated explicitly in the order for recovery. The Lead Partner is again obliged to notify the approval/non-approval of the repayment in written without any delay after receiving the second letter by the CA.

In case the Lead Partner does not conduct repayment by the deadline(s) set by the CA and has provided appropriate arguments as well as appealed against the decision by the CA within the set timeframe the both parties aim to find a mutual consent on the repayment procedure before the case is brought to the Board of the Regional Council. This procedure aims to find a suitable refunding schedule for the LP or - in case the CA detects a need to correct it's own administrative decision on the recovery based on new information and after consultation with the MA and AA - to find sufficient grounds for compromise solution for instance taking the form of curtailed recovery order.

In case the LP has originally appealed against the administrative decision of the CA in accordance with the appeal instructions the case will be first handled by the Board of the Regional Council and then in relevant cases the judicial phase will take place in the competent jurisdiction in Turku, Finland in accordance with the Finnish legal framework.

In case the LP has refused to refund in accordance with valid recovery order the procedure will continue in the competent jurisdiction of the first instance in Turku, Finland in accordance with the Finnish legal framework initiated by the CA.

In case the factors behind the recovery procedure show violation of the subsidy contract (§10), the MA will consider the termination of the contract as a last resort as described in (1).

In case the Lead Partner in any case fails in succeeding the repayment the Member State/Åland on whose territory the beneficiary concerned is located shall reimburse the CA for the amount unduly paid to the Lead Partner in accordance with Article 17 of the (EC) 1080/2006.

The recovered amounts are documented in the monitoring system CBMS2007 (Debtor's Ledger) first on Debet side and after successful recovery on the Credit side by the CA. The recovered amounts are documented by the CA and taken into account in statements of expenditure in accordance with Structural Fund regulations. The CA sends to the

Commission a statement identifying the amounts withdrawn and recovered for each priority axis of the operational programme. The amounts withdrawn from statements of expenditure submitted during the preceding year following cancellation of all or part of the public contribution for an operation. The statement consists of:

- The amounts recovered which have been deducted from those statements of expenditure.
- A statement of amounts recovered as at 31 December of the preceding year, classified by the year in which recovery orders were issued.

A statement has to be sent by 31 March each year as from 2008 onwards and even if there has not been any withdrawn or recovered amounts. The obligation to report withdrawals, recoveries and pending recoveries only applies to expenditure that has already been declared to Commission. Adjustments made because of clerical or technical errors are not included in the report. This report is additional to the quarterly reporting on new irregularities, their follow-up and irrecoverable amounts.

3. Late interest applied in cases of recovery

The rate of the late interest applied to the amount to be recovered will be calculated in accordance with Council Regulation (EC) No 1083/2006, Article 102(2) taking into account the relevant national regulations and instructions.

4. Procedure on cases of financial instability or even bankruptcy of the project partners

In case the MA based on the relevant information available (e.g. reports by the AA or national FLC) considers that the LP/PPs financial stability as required for the successful implementation and management of a project has seriously deteriorated the procedure is similar to the one described in (1). The recovery procedure as described in (2) is also applied in relevant cases. The decisions by the MA and CA are appealable.

However in cases where the respective partner is in a state of bankruptcy or is otherwise unable to refund the claimed ERDF financing the Member State on whose territory the beneficiary concerned is located shall reimburse the CA for the amount unduly paid (Article 17 (EC) 1080/2006).

5. Procedure on fraud

In case the MA based on the relevant information available (e.g. reports by the AA or national FLC) considers that the LP may have violated the subsidy contract in such a way which fulfils the characteristics of a fraud in a judicial criminal sense the case will be handed over to the relevant national law enforcement agency by the relevant national authority after all the available means for the MA and CA have been applied (see above). The refunding process as such is conducted as described in (2) and the subsidy contract is terminated as described in (1).

However in cases where the respective partner is unable to refund the claimed ERDF financing due to the fraud the Member State on whose territory the partner

concerned is located shall reimburse the CA for the amount unduly paid (Article 17 (EC) 1080/2006).

6. Cancellation of public financing

The cancellation – different case from the (1), (4) and (5) - will be applied in cases where the already paid out ERDF funding cannot be recovered due to the legal flaw/deficiency by the public authorities concerned (e.g. MA, CA) in accordance with Article 98 of the (EC) 1083/2006. **The administrative flaw however has to be legally relevant from the point of view of the recovery process to take effect.** In a cases like these the already paid out ERDF financing cannot be recovered regardless of the problems detected in the financial implementation and management of the project in question. The unrecovered amounts are documented by the CA and taken into account in statements of expenditure in accordance with Structural Fund regulations.

7. The procedure on corrective actions regarding audit findings on systemic structures and practices

After receiving information on any systemic error from the AA the MA will document the case and inform the body in question in written (“Request for corrections”) on detected deficiencies by the AA and in addition requests to correct them in order to fulfill the relevant requirements. The MA will set a deadline by which the body in question must both implement the corrections as well report the corrections made in written to the MA. If necessary and depending on the case at hand, the MA and the body in question will convene to clarify open issues and agree on necessary details. The MA will in return confirm the fulfillment of the required corrections in written and informs the AA on the outcome. In case the body in question represents a national organisation (e.g. FLC organisation) of one of the Member States/Åland the respective responsible national authority (the responsible ministry) will also be informed and consulted in relevant cases.

In case a common understanding on the needed corrections are not achieved between the MA and the body in question, the MA will inform the AA in written on the state of play regarding the case at hand. Further steps are to be taken in accordance with the recommendations received from the AA. In case the detected cases lie within the direct responsibility of the MA/JTS, the procedure follows similar path. The deficiencies detected are documented and required corrections are implemented as requested by the AA within a set deadline. The AA is in return informed in written on the corrections made within reasonable timeframe.