

Council Regulation (EC) No 1198/2006 of 27 July
2006 on the European Fisheries Fund (repealed)

TITLE VIII

FINANCIAL MANAGEMENT

CHAPTER I

Financial management

Section 1

Budget commitments

Article 74

Budget commitments

The Community budget commitments in respect of the operational programmes (hereinafter referred to as budget commitments) shall be effected annually and separately for the Convergence and Non-Convergence objectives during the period between 1 January 2007 and 31 December 2013. The first budget commitment shall be made before the adoption by the Commission of the decision approving the operational programme. Each subsequent commitment shall be made by the Commission, as a general rule by 30 April each year, on the basis of the decision to grant a contribution from the EFF referred to in Article 17.

Section 2

Payments

Article 75

Common rules for payments

- 1 Payments by the Commission of the contribution from the EFF shall be made in accordance with the budget appropriations. Each payment shall be posted to the earliest open budget commitment.
- 2 Payments shall take the form of pre-financing, interim payments and payment of the balance. They shall be made to the body designated by the Member State.
- 3 At the latest by 30 April each year, Member States shall send the Commission a provisional forecast of their likely applications for payment for the current financial year and the subsequent financial year.

4 All exchanges concerning financial transactions between the Commission and the authorities and bodies designated by the Member States shall be made by electronic means, in accordance with the implementing rules referred to in Article 102. In cases of *force majeure*, and in particular of malfunction of the common computerised system or a lack of a lasting connection, the Member State may forward the statement of expenditure and the application for payment in hard copy.

Article 76

Rules for calculating interim payments

1 Interim payments shall be calculated by applying to the public contribution declared in the statement of expenditure certified by the certifying authority under each priority axis and under each Convergence/Non-Convergence objective, the rate of Community co-financing established under the current financing plan for that priority axis and that objective.

2 By way of derogation from paragraph 1, in response to a specific and properly grounded request by the Member State, an interim payment shall be the amount of Community assistance paid or due to be paid to the beneficiaries in respect of the priority axis and of the objective. This amount must be specified by the Member State in the statement of expenditure.

Article 77

Rules for calculating payments of the balance

Payment of the balance shall be limited to whichever of the following two amounts is smaller:

- (a) the amount calculated by applying to the public contribution declared in the final statement of expenditure certified by the certifying authority under each priority axis and under each Convergence/Non-Convergence objective, the rate of Community co-financing established under the current financing plan for that priority axis and that objective;
- (b) the amount of Community assistance paid or due to be paid to the beneficiaries in respect of each priority axis and for each objective. The latter amount must be specified by the Member State in the last statement of expenditure certified by the certifying authority in respect of each priority axis and for each objective.

Article 78

Statement of expenditure

1 All statements of expenditure shall include, for each priority axis and for each objective, the total amount of eligible expenditure paid by beneficiaries in implementing the operations and the corresponding public contribution paid or due to be paid to the beneficiaries, according to the conditions governing the public contribution. Expenditure paid by beneficiaries shall be supported by receipted invoices or accounting documents of equivalent probative value. As regards operations not involving expenditure by the beneficiary, the expenditure certified by the certifying authority and submitted to the Commission shall be the public aid paid to the beneficiary.

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2 With regard to Articles 76(2) and 77(b), the statements of expenditure shall also highlight the total amount of Community assistance paid or due to be paid to the beneficiaries.

Article 79

Accumulation of pre-financing and interim payments

1 The cumulative total of pre-financing and interim payments made shall not exceed 95 % of the contribution from the EFF to the operational programme.

2 When this ceiling is reached, the certifying authority shall continue transmitting to the Commission any certified statement of expenditure on the 31 December of year *n*, as well as the amounts recovered during the year for the EFF, at the latest by the end of February of year *n*+1.

Article 80

Wholeness of payment to beneficiaries

Member States shall satisfy themselves that the bodies responsible for making the payments ensure that the beneficiaries receive the total amount of the public contribution as quickly as possible and in full. No amounts shall be deducted or withheld, nor shall any further specific charge or other charge with equivalent effect be levied that would reduce these amounts for the beneficiaries.

Section 3

Pre-financing

Article 81

Payment

1 Following the Commission decision approving a contribution from the EFF to an operational programme, a single pre-financing amount for the period 2007 to 2013 shall be paid by the Commission to the body designated by the Member State. This pre-financing amount shall represent 7 % of the contribution from the EFF to that operational programme. It may be spread to two financial years in accordance with the available budget of the EFF.

2 The total amount paid as pre-financing shall be reimbursed to the Commission by the body designated by the Member State if no application for payment under the operational programme is sent within 24 months from the date on which the Commission paid the first instalment of the pre-financing amount.

3 Any interest generated by the pre-financing shall be posted to the operational programme, being regarded as a resource for the Member State in the form of national public contribution and shall be declared to the Commission at the time of the final closure of the operational programme.

4 The amount paid as pre-financing shall be totally cleared from the Commission accounts when the operational programme is closed in accordance with Article 86.

Section 4

Interim payments

Article 82

Interim payments

Interim payments shall be made for the operational programme. The first interim payment shall be made in accordance with the provisions of Article 71(2).

Article 83

Acceptability of applications for payment

1 Each interim payment made by the Commission shall be subject to the following conditions being met:

- a the Commission must have been sent an application for payment and a statement of expenditure, in accordance with Article 78;
- b no more than the maximum amount of assistance from the EFF, as laid down in the current financing plan, has been paid by the Commission during the whole period for each priority axis and for each objective;
- c the managing authority must have sent the Commission the most recent annual report on implementation, in accordance with Article 67(1) and (3);
- d there is no reasoned opinion by the Commission in respect of an infringement under Article 226 of the Treaty, as regards the operation(s) for which the expenditure is declared in the application for payment in question.

2 If one or more of the conditions referred to in paragraph 1 are not met, the Member State and the certifying authority shall be informed by the Commission within a deadline of one month, so that the necessary steps can be taken to remedy the situation.

Article 84

Procedure for payment

1 The certifying authority shall ensure that requests for interim payments for the operational programme are grouped together and sent to the Commission, as far as possible, on three separate occasions a year. For a payment to be made by the Commission in the current year, the latest date on which an application for payment shall be submitted is 31 October.

2 Subject to available funding and the absence of the interruption of the payment deadline or suspension of payments in accordance with Articles 88 and 89 respectively, the Commission shall make the interim payment no later than two months after the date on which an application for payment meeting the conditions referred to in Article 83 is registered with the Commission.

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Section 5

Payment of the balance and programme closure

Article 85

Partial closure

1 Partial closure of the operational programme may be made at periods to be determined by the Member State.

Partial closure shall relate to operations completed during the period up to 31 December of the previous year. For the purpose of this Regulation, an operation shall be deemed completed where the activities under it have been actually carried out and for which all expenditure by the beneficiaries and the corresponding public contribution have been paid.

2 Partial closure shall be made on condition that the Member State sends the following to the Commission by 31 December of a given year:

- a a statement of expenditure relating to operations referred to in paragraph 1;
- b a declaration for partial closure in accordance with Article 61(1)(e)(iii).

3 Any financial corrections made in accordance with Articles 96 and 97 concerning operations subject to a partial closure shall be net financial corrections.

Article 86

Conditions for the payment of the balance

1 The Commission shall pay the balance, provided that:

- a the Member State has sent an application for payment comprising the following documents by 31 March 2017:
 - (i) an application for payment of the balance and a statement of expenditure in accordance with Article 78;
 - (ii) the final report on implementation for the operational programme, including the information set out in Article 67;
 - (iii) a closure declaration in accordance with Article 61(1)(f);and
- b there is no reasoned opinion by the Commission in respect of an infringement under Article 226 of the Treaty, as regards the operation(s) for which the expenditure is declared in the application for payment in question.

2 Failure to send any of the documents referred to in paragraph 1 to the Commission shall automatically result in the decommitment of the balance, in accordance with Article 90.

3 The Commission shall inform the Member State of its opinion on the content of the closure declaration referred to in paragraph 1(a)(iii) within five months of the date of its receipt. The closure declaration shall be deemed to be accepted in the absence of observations by the Commission within that five-month period.

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4 Subject to available funding, the Commission shall pay the balance within no more than 45 days from the later of the following dates:

- a the date on which it accepts the final report in accordance with Article 67(4);
- or
- b the date on which it accepts the closure declaration referred to in paragraph 1(a)(iii).

5 Without prejudice to paragraph 6, the balance of the budgetary commitment shall be decommitted 12 months after the payment has been made.

The Commission shall inform the Member States about the date of the closure of the operational programme within a deadline of two months.

6 Notwithstanding the results of any audits performed by the Commission or the European Court of Auditors, the balance paid by the Commission for the operational programme may be amended within nine months of the date on which it is paid or, where there is a negative balance to be reimbursed by the Member State, within nine months of the date on which the debit note is issued. Such amendment of the balance shall not change the date of the closure of the operational programme communicated in accordance with paragraph 5.

Article 87

Availability of documents

1 The managing authority shall ensure that all the supporting documents regarding expenditure and audits on the operational programme concerned are kept available for the Commission and the European Court of Auditors for:

- a a period of three years following the closure of an operational programme;
- b a period of three years following the year in which partial closure took place, in the case of documents regarding expenditure and audits on the operations referred to in paragraph 2.

These periods shall be interrupted either in the case of legal proceedings or at the request duly motivated of the Commission.

2 The managing authority shall make available to the Commission, on request, a list of completed operations which have been subject to partial closure under Article 85.

3 The documents shall be kept either in the form of the originals or in versions certified to be in conformity with the originals on commonly accepted data carriers.

Section 6

Interruption of the payment deadline and suspension of payments

Article 88

Interruption of the payment deadline

1 The payment deadline may be interrupted by the authorising officer by delegation within the meaning of Regulation (EC, Euratom) No 1605/2002 for a maximum period of six months if:

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- a in a report of a national or Community audit body there is evidence to suggest significant deficiency in the functioning of the management and control systems;
 - or
 - b the authorising officer by delegation has to carry out additional verifications following information coming to his attention which alerted him that expenditure in a certified statement of expenditure is linked to a serious irregularity which has not been corrected.
- 2 The Member State and the certifying authority shall be informed immediately of the reasons for the interruption. The interruption shall be ended as soon as the necessary measures have been taken by the Member State.

Article 89

Suspension of payments

- 1 All or part of the interim payments at the level of priority axes or the operational programme may be suspended by the Commission where:
- a there is a serious deficiency in the management and control system of the operational programme which affects the reliability of the procedure for certification of payments and for which corrective measures have not been taken;
 - or
 - b expenditure in a certified statement of expenditure is linked to a serious irregularity which has not been corrected;
 - or
 - c there is a serious breach by a Member State of its obligations under Article 70.
- 2 The Commission may decide to suspend all or part of interim payments after having given the Member State the opportunity to present its observations within a period of two months.
- 3 The Commission shall end suspension of all or part of interim payments where the Member State has taken the necessary measures to enable the suspension to be lifted. Where the required measures are not taken by the Member State, the Commission may adopt a decision to cancel all or part of the Community contribution to the operational programme in accordance with Article 97.

Section 7

Automatic decommitment

Article 90

Principles

- 1 The Commission shall automatically decommit any part of a budget commitment in an operational programme that has not been used for payment of the pre-financing or interim payments, or for which an application for payment has not been sent in conformity with Article 83, by 31 December of the second year following the year of the budget commitment under the operational programme.

2 The part of budget commitment still open on 31 December 2015 shall be automatically decommitted if the Commission has not received an acceptable application for payment for it by 31 March 2017.

3 If this Regulation enters into force after 1 January 2007, the period after which the first automatic decommitment as referred to in paragraph 1 may be made shall be extended, for the first commitment, by the number of months between 1 January 2007 and the date of the first budget commitment.

Article 91

Exceptions for time limits on decommitment

If a Commission decision subsequent to the decision approving the operational programme is needed for authorisation of assistance or of an aid scheme, the period leading to automatic decommitment shall run from the date of that subsequent decision. The amounts in question shall be established on the basis of a schedule provided by the Member State.

Article 92

Period of interruption for legal proceedings and administrative appeals

The amount potentially concerned by automatic decommitment shall be reduced by the amounts that the certifying authority has not been able to declare to the Commission because of operations suspended by legal proceedings or an administrative appeal having suspensory effect, on condition that the Member State sends the Commission information stating the reasons by 31 December of the second year following the year of the budget commitment as laid down in Article 90.

For that part of commitments still open on 31 December 2015, the time limit referred to in Article 90(2) shall be interrupted under these same conditions in respect of the amount relating to the operations concerned.

The abovementioned reduction may be requested once if the suspension has lasted up to one year or several times for the number of years between the legal or administrative decision suspending the implementation of the operation and the date of the final legal or administrative decision.

Article 93

Exceptions to the automatic decommitment

The following shall be disregarded in calculating the automatic decommitment:

- (a) that part of the budget commitment for which an application for payment has been made but whose reimbursement has been interrupted or suspended by the Commission on 31 December of the second year following the year of the budget commitment pursuant to Article 90 and in accordance with Articles 88 and 89. When the problem resulting in the interruption or suspension has been resolved, the automatic decommitment rule shall be applied to that part of the budget commitment which is concerned;

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- (b) that part of the budget commitment for which an application for payment has been made but whose reimbursement has been capped in particular due to a lack of budget resources;
- (c) that part of the budget commitment for which it has not been possible to make an acceptable application for payment for reasons of *force majeure* seriously affecting implementation of the operational programme. The national authorities claiming *force majeure* must demonstrate its direct consequences on the implementation of all or part of the operational programme.

Article 94

Procedure

1 The Commission shall inform the Member State and the authorities concerned in good time whenever there is a risk of application of automatic decommitment under Article 90.

2 The Commission shall inform the Member State and the authorities concerned of the amount of the automatic decommitment resulting from the information in its possession.

3 The Member State shall have two months from the date of receipt of that information to agree to the amount or submit its observations. The Commission shall carry out the automatic decommitment not later than nine months after the time limit referred to in Article 90.

4 The contribution from the EFF to the operational programme shall be reduced, for the year concerned, by the amount automatically decommitted. The Member State shall produce within two months of the date of decommitment a revised financing plan reflecting the reduced amount of assistance over one or several of the priority axes of the operational programme. Failing this, the Commission shall reduce the amounts allocated to each priority axis proportionately.

Section 8

Use of the euro

Article 95

Use of the euro

1 Amounts set out in the operational programme submitted by the Member State, certified statements of expenditure, applications for payment and expenditure mentioned in the annual and final reports of implementation shall be denominated in euro.

2 Commission decisions on operational programmes and Commission commitments and payments, shall be denominated and carried out in euro.

3 Member States which have not adopted the euro as their currency on the date of an application for payment shall convert into euro the amounts of expenditure incurred in national currency.

These amounts shall be converted in euro using the monthly accounting rate of the Commission in the month during which the expenditure was registered in the accounts

of the certifying authority of the operational programme concerned. This rate shall be published electronically by the Commission each month.

4 When the euro becomes the currency of a Member State, the conversion procedure set out in the preceding paragraph shall continue to apply to all expenditure recorded in the accounts by the certifying authority before the date of entry into force of the fixed conversion rate between the national currency and the euro.

CHAPTER II

Financial corrections

Section 1

Financial corrections by Member States

Article 96

Financial corrections by Member States

1 The Member State shall in the first instance bear the responsibility for investigating irregularities, acting upon evidence of any major change affecting the nature of the conditions for the implementation or control of operations or the operational programme and making the financial corrections required.

2 The Member State shall make the financial corrections required in connection with individual or systemic irregularities detected in operations or the operational programme. The corrections made by the Member State shall consist of cancelling all or part of the public contribution to the operational programme. The Member State shall take into account the nature and gravity of the irregularities and the financial loss to the EFF.

Without prejudice to paragraph 3, the resources of the EFF released in this way may be re-used by the Member State until 31 December 2015 for the operational programme.

3 The contribution cancelled in accordance with paragraph 2 may not be re-used for the operation or operations that were the subject of the correction, nor, where a financial correction is made for a systemic irregularity, for existing operations within whole or part of the priority axis where the systemic irregularity occurred.

4 In the case of systemic irregularity, the Member State shall extend its enquiries to cover all operations liable to be affected.

Section 2

Financial corrections by the Commission

Article 97

Criteria for the corrections

1 The Commission may make financial corrections by cancelling all or part of the Community contribution to an operational programme where, after carrying out the necessary examination, it concludes that:

- a there is a serious deficiency in the management and control system of the programme which has put at risk the Community contribution already paid to the programme;
- b expenditure contained in a certified statement of expenditure is irregular and has not been corrected by the Member State prior to the opening of the correction procedure under this paragraph;
- c a Member State has not complied with its obligations under Article 96 prior to the opening of the correction procedure under this paragraph.

2 The Commission shall base its financial corrections on individual cases of irregularity identified, taking account of the systemic nature of the irregularity to determine whether a flat rate or extrapolated correction should be applied.

3 The Commission shall, when deciding the amount of a correction, take account of the nature and gravity of the irregularity and the extent and financial implications of the deficiencies found in the operational programme.

4 Where the Commission bases its position on the facts established by auditors other than those of its own services, it shall draw its own conclusions regarding their financial consequences, after examining the measures taken by the Member State concerned under Article 96(2), the information supplied under Article 70(1)(b) and any replies from the Member State.

Article 98

Procedure

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

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

2 The Commission shall take account of any evidence supplied by the Member State within the time limits referred to in paragraph 1.

3 Where the Member State does not accept the provisional conclusions of the Commission, the Member State shall be invited to a hearing by the Commission, in which both sides in cooperation based on the partnership shall make efforts to reach an agreement concerning the observations and the conclusions to be drawn from them.

4 In case of an agreement, the Member State may re-use the EFF resources concerned in conformity with the second subparagraph of Article 96(2).

5 In the absence of agreement, the Commission shall take a decision on the financial correction within six months of the date of the hearing taking account of all information and observations submitted during the course of the procedure. If no hearing takes place, the six-month period shall begin to run two months after the date of the letter of invitation sent by the Commission.

Article 99

Obligations of Member States

A financial correction by the Commission shall not prejudice the Member State's obligation to pursue recoveries under Article 96(2) and to recover State aid under Article 87 of the Treaty and under Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty⁽¹⁾.

CHAPTER III

Repayment

Article 100

Repayment

1 Any repayment due to be made to the general budget of the European Union shall be effected before the due date indicated in the order for recovery drawn up in accordance with Article 72 of Regulation (EC, Euratom) No 1605/2002. This due date shall be the last day of the second month following the issuing of the recovery order.

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

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- (1) [OJ L 83, 27.3.1999, p. 1](#). Regulation as last amended by the 2003 Act of Accession. (The title of Regulation (EC) No 659/1999 has been adjusted to take account of the renumbering of the Articles of the Treaty establishing the European Community, in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 93 of the Treaty).