

**COMMISSION REGULATION (EC) No 448/2001  
of 2 March 2001**

**laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the procedure for making financial corrections to assistance granted under the Structural Funds**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds <sup>(1)</sup>, and in particular Article 53(2) thereof,

After consulting the Committee set up pursuant to Article 147 of the Treaty,

After consulting the Committee on Agricultural Structures and Rural Development,

After consulting the Committee on Structures for Fisheries and Aquaculture,

Whereas:

- (1) Article 39(1) of Regulation (EC) No 1260/1999 requires the Member States to make financial corrections in connection with individual or systemic irregularities, by cancelling all or part of the Community contribution.
- (2) In order to ensure a uniform application of this provision throughout the Community, provisions should be laid down for determining such corrections and for reporting to the Commission.
- (3) Provisions should be laid down concerning the amount of the financial corrections the Commission may make under Article 39(3) of Regulation (EC) No 1260/1999 in cases where a Member State has failed to comply with its obligations under Article 39(1) or Article 38.
- (4) Detailed provisions concerning the procedure under Article 39(2) of Regulation (EC) No 1260/1999 should be laid down and the same procedure should be applied in the cases referred to in Article 38(5) of the Regulation.
- (5) Commission Regulation (EEC) No 1865/90 of 2 July 1990 concerning interest on account of late payment to be charged in the event of late repayment of assistance from the Structural Funds <sup>(2)</sup> should be replaced. However, the provisions of Regulation (EEC) No 1865/

90 should continue to apply to assistance granted for the programme period 1994-99 under Council Regulation (EEC) No 2052/88 <sup>(3)</sup>, as last amended by Regulation (EC) No 3193/94 <sup>(4)</sup>.

- (6) This Regulation should be without prejudice to the provisions regarding the recovery of State aid laid down in Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty <sup>(5)</sup>.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Development and Conversion of Regions,

HAS ADOPTED THIS REGULATION:

CHAPTER I

**Scope**

*Article 1*

This Regulation lays down detailed rules for the implementation of Regulation (EC) No 1260/1999 as regards the procedure for making financial corrections to assistance granted under the Structural Funds that is administered by the Member States.

CHAPTER II

**Financial corrections by Member States**

*Article 2*

1. In the case of systemic irregularities, enquiries under Article 39(1) of Regulation (EC) No 1260/1999 shall cover all the operations liable to be affected.
2. When cancelling all or part of the Community contribution, Member States shall take into account the nature and gravity of the irregularities and the financial loss to the Funds.
3. Member States shall send to the Commission, as an annex to the last quarterly report of each year supplied under Commission Regulation (EC) No 1681/94 <sup>(6)</sup>, a list of cancellation proceedings initiated in the past year, together with information on the steps already taken or still required, where appropriate, to adjust the management and control systems.

*Article 3*

1. When amounts are to be recovered following a cancellation under Article 39(1) of Regulation (EC) No 1260/1999, the competent service or body shall initiate recovery proceedings

<sup>(1)</sup> OJ L 161, 26.6.1999, p. 1.

<sup>(2)</sup> OJ L 170, 3.7.1990, p. 35.

<sup>(3)</sup> OJ L 185, 15.7.1988, p. 9.

<sup>(4)</sup> OJ L 337, 24.12.1994, p. 11.

<sup>(5)</sup> OJ L 83, 27.3.1999, p. 1.

<sup>(6)</sup> OJ L 178, 12.7.1994, p. 43.

and notify the paying and managing authorities thereof. Recoveries shall be reported and accounted for in accordance with Article 8 of Commission Regulation (EC) No 438/2001<sup>(1)</sup>.

2. The contribution of the Funds cancelled in accordance with paragraph 1 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 error, for operations where this systemic error occurred. Member States shall inform the Commission in the report referred to in Article 2(3) of how they have decided or propose to re-use the funds cancelled and, if appropriate, to amend the financial plan for the assistance.

### CHAPTER III

#### Financial corrections by the Commission

##### Article 4

1. The amount of financial corrections made by the Commission under Article 39(3) of Regulation (EC) No 1260/1999 for individual or systemic irregularities shall be assessed wherever possible and practicable on the basis of individual files and be equal to the amount of expenditure wrongly charged to the Funds, having regard to the principle of proportionality.

2. When it is not possible or practicable to quantify the amount of irregular expenditure precisely, or when it would be disproportionate to cancel the expenditure in question entirely, and the Commission therefore bases its financial corrections on extrapolation or a flat rate, it shall proceed as follows:

- (a) in the case of extrapolation, it shall use a representative sample of transactions with like characteristics;
- (b) in the case of a flat rate, it shall assess the importance of the infringement of rules and the extent and financial implications of the irregularity established.

3. 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 39(1) of Regulation (EC) No 1260/1999, the reports supplied under Regulation (EC) No 1681/94, and any replies from the Member State.

##### Article 5

1. The period of time within which the Member State concerned may respond to a request under the first subparagraph of Article 39(2) of Regulation (EC) No 1260/1999 to submit its comments and, where appropriate, make corrections, shall be two months, except in duly justified cases where a longer period may be agreed by the Commission.

2. Where the Commission proposes financial corrections 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 files 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 files 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 paragraph 1. The results of such examination shall be examined in the manner specified in the second subparagraph of Article 39(2) of Regulation (EC) No 1260/1999. The Commission shall take account of any evidence supplied by the Member State within the time limits.

3. Whenever the Member State objects to the observations made by the Commission and a hearing takes place under the second subparagraph of Article 39(2) of Regulation (EC) No 1260/1999, the three-month period within which the Commission may take a decision under Article 39(3) of that Regulation shall begin to run from the date of the hearing.

##### Article 6

In cases in which the Commission has suspended payments under Article 38(5) of Regulation (EC) No 1260/1999, the Commission and the Member State concerned shall endeavour to reach agreement within the five-month period referred to in Article 38(5) of Regulation (EC) No 1260/1999 in accordance with the procedure and time limits set out in Article 5(1) and (2). If no agreement is reached, Article 5(3) shall apply.

##### Article 7

1. Any repayment due to be made to the Commission pursuant to Article 39(4) of Regulation (EC) No 1260/1999 shall be effected before the due date indicated in the order for recovery drawn up in accordance with Article 28 of the Financial Regulation applicable to the general budget of the European Communities. This due date shall be the last day of the second month following the issuing of the order.

2. Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date referred to in paragraph 1 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.

3. A financial correction under Article 39(3) of Regulation (EC) No 1260/1999 shall not prejudice the Member State's obligation to pursue recoveries under Article 38(1)(h) of Regulation (EC) No 1260/1999 and Article 3(1) of this Regulation and to recover state aid under Article 14 of Regulation (EC) No 659/1999.

<sup>(1)</sup> OJ L 63, 3.3.2001, p. 21.

## CHAPTER IV

**Final provisions***Article 8*

Regulation (EEC) No 1865/90 is hereby repealed.

Its provisions shall however continue to apply to assistance granted for the programme period 1994-99 under Regulation (EEC) No 2052/88.

*Article 9*

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 2 March 2001.

*For the Commission*  
Michel BARNIER  
*Member of the Commission*

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