



EUROPEAN COMMISSION

Brussels, 22.12.2011  
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## COMMISSION DECISION

of 22.12.2011

**on the approval of guidelines on the principles, criteria and indicative scales to be applied in respect of financial corrections made by the Commission under Article 44 of Council Decision 2007/435/EC of 25 June 2007 establishing the European Fund for the Integration of third-country nationals for the period 2007 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows', Article 46 of Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows', Article 48 of Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows' and Article 46 of Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows'**

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to

- Council Decision 2007/435/EC of 25 June 2007 establishing the European Fund for the Integration of third-country nationals for the period 2007 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows'<sup>1</sup>, and in particular Article 44 thereof,
- Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows'<sup>2</sup>, and in particular Article 46 thereof,
- Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows'<sup>3</sup>, and in particular Article 48 thereof,
- Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of

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<sup>1</sup> OJ L 168, 28.6.2007, p. 18.

<sup>2</sup> OJ L 144, 6.6.2007, p. 1.

<sup>3</sup> OJ L 144, 6.6.2007, p. 22.

the General Programme 'Solidarity and Management of Migration Flows'<sup>4</sup>, and in particular Article 46 thereof,

Whereas:

- (1) The purpose of the guidelines is to provide guidance on the principles, criteria and indicative scales to be applied in respect of financial corrections made by the Commission under Article 44 of Council Decision 2007/435/EC of 25 June 2007, Article 46 of Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007, Article 48 of Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 and Article 46 of Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007. Under these Articles, the Commission may make financial corrections by cancelling all or part of the Community contribution to an operational programme.
- (2) The guidelines are based on the ones adopted by the Commission for corrections in the Structural Funds for the 2007-2013 programming period and have been adapted to reflect the regulatory framework applicable to the four Funds under the General programme 'Solidarity and Management of Migration Flows'.
- (3) The guidelines are to be used by the Commission's services to ensure equal treatment between Member States and proportionality when applying financial corrections. The purpose of financial corrections is to restore a situation where all of the expenditure declared for co-financing from the four Funds under the General programme 'Solidarity and Management of Migration Flows' is legal and regular, in line with the applicable rules.

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<sup>4</sup> OJ L 144, 6.6.2007, p. 45.

HAS DECIDED AS FOLLOWS:

*Sole Article*

The Commission guidelines on the principles, criteria and indicative scales to be applied in respect of financial corrections made by the Commission under Article 44 of Council Decision 2007/435/EC of 25 June 2007, Article 46 of Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007, Article 48 of Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 and Article 46 of Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007, as described in the Annex to this Decision, are approved.

Done at Brussels, 22.12.2011.

*For the Commission*  
*Cecilia MALMSTRÖM*  
*Member of the Commission*

**CERTIFIED COPY**  
**For the Secretary - General**

**Jordi AYET PUIGARNAU**  
**Director of the Registry**

## **ANNEX**

### **Guidelines**

**on the principles, criteria and indicative scales to be applied in respect of financial corrections made by the Commission under Article 44 of Council Decision 2007/435/EC of 25 June 2007 establishing the European Fund for the Integration of third-country nationals for the period 2007 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows', Article 46 Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows', Article 48 of Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows' and Article 46 of Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows'**

## INTRODUCTION

The purpose of this document is to provide guidance on the principles, criteria and indicative scales to be applied when determining financial corrections made by the Commission under Article 44 of Council Decision 435/2007/EC<sup>5</sup> of 25 June 2007 establishing the European Fund for the Integration of third-country nationals (EIF), Article 46 of Decision 573/2007/EC<sup>6</sup> of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund (ERFIII), Article 48 of Decision 574/2007/EC<sup>7</sup> of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund (EBF) and Article 46 of Decision 575/2007/EC<sup>8</sup> of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund (RF), (hereinafter the basic acts).

When Member States authorities detect irregularities during their controls, they are required to make the necessary corrections in accordance with Article 44 of the basic acts (ERFIII, RF), Article 46 of the basic act (EBF) and Article 42 of the basic act (EIF). It is recommended that the Member States apply the same criteria and rates when correcting irregularities detected by their own services during the checks and audits carried out in accordance with Articles 27(1)(g), 29(1)(a) and 30(1)(a) and (b) of the basic acts (ERFIII, RF), Articles 25(1)(h), 27(1)(a) and 28(1)(a) and (b) of the basic act (EIF) and Articles 29(1)(g), 31(1)(a) and 32(1)(a) and (b) of the basic act (EBF) and other checks, unless they wish to apply more detailed rules, respecting the principle of proportionality.

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<sup>5</sup> OJ L 168, 28.6.2007, p. 18.

<sup>6</sup> OJ L 144, 6.6.2007, p. 1.

<sup>7</sup> OJ L 144, 6.6.2007, p. 22.

<sup>8</sup> OJ L 144, 6.6.2007, p. 45.

## 1. DEFINITIONS AND PRINCIPLES

- 1.1. In accordance with Article 46 of the basic acts (ERFIII, RF), Article 48 of the basic act (EBF) and Article 44 of the basic act (EIF) the Commission may make financial corrections by cancelling all or part of the Union contribution to an annual programme.
- 1.2. The purpose of financial corrections is to restore a situation where all of the expenditure declared for co-financing from the four Funds under the General Programme 'Solidarity and Management of Migration Flows' is in line with the applicable rules and ensuring, inter alia, respect of the principles of equal treatment and proportionality.
- 1.3. When deciding upon the amount of a correction on the basis of Article 46 of the basic acts (ERFIII, RF), Article 48 of the basic act (EBF) and Article 44 of the basic act (EIF), the Commission takes into account the nature and gravity of the irregularity/ies<sup>9</sup> and the extent and financial impact of the identified deficiencies. In this regard, the following should apply:
  - if the applicable rules are respected, and all reasonable measures are taken to prevent, detect, report and correct fraud and irregularities, no financial corrections will be required.
  - if the applicable rules are respected but the management and control systems need only minor improvement, there should be pertinent recommendations, but no financial corrections need be envisaged.
  - if an irregularity is established in an individual operation a financial correction should always be made;
  - if there are serious deficiencies in the management or control systems which led or could lead to systemic irregularities, in particular, failures to respect the applicable rules, financial corrections should always be made.
- 1.4. An irregularity is defined in Article 2 of the Implementing Rules as: *"any infringement of a provision of Community law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the European Union by charging an unjustified item of expenditure to the general budget."*

Irregularities can be of an individual nature or of a systemic nature.

An **individual irregularity** is a one-off error which is independent of other errors in the population or deficiencies in the systems.

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<sup>9</sup> Defined in Article 2 of Commission Decision 2008/22/EC of 19 December 2007 for ERFIII, Commission Decision 2008/457/EC of 5 March 2008 for EIF, Commission Decision 2008/456/EC of 5 March 2008 for EBF and Commission Decision 2008/458/EC of 5 March 2008 for RF (hereafter Implementing Rules).

A **systemic irregularity** is an error, repeated or not, resulting from the existence of serious deficiencies in the management and control systems for which requirements are set out in Chapters V, VI and IX of the basic acts (ERFIII, RF, EB, EIF).

**System deficiencies** are weaknesses in the management and control systems (see sub-section 2.2).

The amount of the financial correction is assessed, wherever possible, on the basis of individual cases and is equal to the exact amount of expenditure wrongly charged to the EU budget. However, precisely quantified corrections are not always possible or cost effective if extensive additional verification work is needed. In such cases a flat-rate correction, proportionate to the seriousness of the **irregularity** or the **system deficiency**, should be made.

#### 1.4.1. *Quantifiable corrections*

The financial impact of an **irregularity** is quantifiable precisely when it is possible, on the basis of an examination of the individual cases, to calculate the exact amount of expenditure wrongly declared to the Commission (e.g. ineligible expenditure). In such cases the financial correction should be calculated exactly.

#### 1.4.2. *Non-quantifiable corrections*

In other cases, due to the nature of the **irregularity** or **system deficiency**, it may not be possible to quantify precisely the financial impact (e.g. public procurement or publicity rules not complied with). In these cases, a flat-rate correction should be applied to the individual operation based upon the seriousness of the **irregularity** or **deficiency** identified. The criteria and scales to be used for flat-rate corrections are set out at section 2.

In the case of a serious **deficiency in the management and control system** (e.g. ineffective management verifications or audits - see sub-section 2.2), but where it is not possible to quantify the financial correction precisely, a flat-rate correction should be applied to the expenditure declared for the part of the system affected in accordance with the indicative criteria and scales set out in section 2.

#### 1.4.3. *Extrapolated corrections*

Where irregularities have occurred in a great number of operations, but it is not cost-effective to verify the regularity of operations not included in the audit sample, the financial correction may be based on extrapolation.

Extrapolation should only be used for operations subject to a common management and control system as referred to in Article 20 of the Implementing Rules. In this case, the results of a thorough examination of a representative sample of the individual cases concerned are extrapolated to all the expenditure in the population, in accordance with generally accepted auditing standards.

- 1.5. Before taking a decision on a financial correction, the Commission services 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. The Member State is always given the opportunity to demonstrate, through an



examination of the documentation concerned, that the actual extent or gravity of the irregularity and therefore the real loss or risk to the EU budget was less than that assessed by the Commission. In other shared management Funds the Court of Justice has held that the burden of proof in such cases falls on the Member State<sup>10</sup>. 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.

- 1.6. Where the Commission bases its position on facts established by auditors other than those of its own services, it draws its own conclusions regarding the financial consequences after examining the measures taken by the Member State concerned under Article 44 of the basic acts (ERFIII, RF), Article 46 of the basic act (EBF) and Article 42 of the basic act (EIF), the reports supplied under Article 31(3) of the basic acts (ERFIII, RF), Article 33(3) of the basic act (EBF) and Article 29 of the basic act (EIF) and any replies from the Member State.
- 1.7. Before taking any decision, the Commission will give careful consideration to the proportionality of the correction rates proposed in order to ensure equal treatment both between and within Member States.

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<sup>10</sup> See Case C-54/95, Germany v. Commission, para. 35.

## 2. CRITERIA AND SCALES FOR FLAT-RATE CORRECTIONS

### 2.1. Criteria

As noted in sub-section 1.4., flat-rate corrections may be envisaged when the information resulting from the enquiry does not permit the financial impact of an **irregularity** to be quantified precisely either by statistical means or by reference to other verifiable data.

Flat-rate corrections should be considered when the Commission identifies a failure to adequately carry out any control explicitly required by regulations applicable to the four Funds under the General Programme 'Solidarity and Management of Migration Flows'. They should also be considered where the Commission identifies **serious deficiencies in management and control systems** resulting from breaches of the applicable rules or from a breach of the principle of sound financial management. Flat-rate corrections can also be appropriate when the Member States' authorities discover such **irregularities** or **deficiencies** but the Member State fails to take appropriate and timely corrective action (e.g. a failure to implement financial corrections).

In addition, flat-rate corrections can also be applied in respect of **individual irregularities**.

In determining whether a flat-rate financial correction should be applied and, if so, at what rate, the assessment of the degree of risk of loss to which the EU budget was exposed due to the control deficiency should be taken into consideration. Thus, the correction should be in compliance with the principle of proportionality. The specific elements to be taken into account should include the following:

- whether the **irregularity** is related to an individual or multiple cases;
- whether the **deficiency** is a **serious deficiency** in the overall management and control system or relates to a particular element of the system (i.e. to the operation of particular functions necessary to ensure the legality and regularity of expenditure declared for co-financing from the Funds under the applicable rules) - see sub-section 2.2.;
- the importance of the **serious deficiency** within the totality of the administrative, physical and other controls foreseen;
- the vulnerability to fraud of the systems.

### 2.2. Identified deficiencies in management and control systems

Management and control systems consist of various elements or functions for ensuring the legality, regularity and eligibility of expenditure declared for co-financing. For the purpose of determining flat-rate corrections for serious deficiencies in such systems, it is useful to identify the key elements of the management and control systems and to provide the related regulatory references.

The key elements are those which have been designed for and are essential in ensuring the legality and regularity of expenditure and the reality of operations.

A list of the key elements by authority is set out below.

- **Responsible authority / Delegated authority/ies**

- (1) Clear definition, allocation and separation of functions between and within the Responsible authority / delegated authority/ies

ERFIII	EIF	EBF	RF
<u>Basic act:</u> Art.24 (a), (b), (c), (f) and (g), Art.25(1) and 25(2), Art.26(1) and 26(2), Art.27(1)	Art.22 (a), (b), (c), (f) and (g), Art. 23(1) and 23(2), Art. 24(1) and Art. 24(2), Art. 25(1)	Art. 26 (a), (b), (c), (f) and (g), Art.27(1) and 27(2), Art.28(1) and 28(2), Art.29(1)	Art. 24 (a), (b), (c), (f) and (g), Art.25(1) and 25(2), Art.26(1) and 26(2), Art.27(1)
<u>Implementing Rules</u> Art.4, Art.5, Art.6 and Art.8	Art.4, Art.5, Art.6 and Art.8	Art.4, Art.5, Art.6 and Art.8	Art.4, Art.5, Art.6 and Art.8

- (2) Adequate procedures for the selection of operations

ERFIII	EIF	EBF	RF
<u>Basic act:</u> Art.27(1)(c) and (d)	Art.25(1)(c) and (d)	Art.29(1)(c) and (d)	Art.27(1)(c) and (d)
<u>Implementing Rules</u> Art.9, Art.10, Art.11 and Art.31	Art.9, Art.10, Art.11 and Art.31	Art.9, Art.10, Art.11 and Art.31	Art.9, Art.10, Art.11 and Art.31

- (3) Adequate information and strategy to provide guidance to beneficiaries

ERFIII	EIF	EBF	RF
<u>Basic act:</u> Art.27(1)(h), (i) and (k), and Art.35	Art.25(1)(i), (j) and (l) and Art. 33	Art.29(1)(h), (i) and (k), and Art.37	Art.27(1)(h), (i) and (k), and Art.35
<u>Implementing Rules</u> Art.9 and Art.39	Art.9 and Art. 39	Art.9 and Art.39	Art.9 and Art.39

(4) Adequate management verifications

ERFIII	EIF	EBF	RF
<u>Basic act:</u> Art. 27(1)(g), (l) and (m)	Art. 25(1)(h), (m) and (n)	Art. 29(1)(g), (l) and (m)	Art. 27(1)(g), (l) and (m)
<u>Implementing Rules</u> Art.12 and Art.15	Art.12 and Art.15	Art.12 and Art.15	Art.12 and Art.15

(5) Adequate audit trail

ERFIII	EIF	EBF	RF
<u>Basic act:</u> Art.27(1)(h), (i), (k) and Art.43	Art.25(1), (i), (j) and (l) and Art. 41	Art.29(1)(h), (i), (k) and Art.45	Art.27(1)(h), (i), (k) and Art.43
<u>Implementing Rules</u> Art.16	Art.16	Art.16	Art.16

(6) Reliable accounting, monitoring and financial reporting systems in computerised form

ERFIII	EIF	EBF	RF
<u>Basic act:</u> Art.24(e) and Art.27(1)(h)	Art.22(e) and Art. 25(1)(i)	Art.26(e) and Art.29(1)(h)	Art.24(e) and Art.27(1)(h)

(7) Necessary preventive and corrective action where systemic errors are detected by the audit

ERFIII	EIF	EBF	RF
<u>Basic act:</u> Art.44(1)	Art. 42(1)	Art.46(1)	Art.44(1)
<u>Implementing Rules</u> Art.17(5)	Art.17(5)	Art.17(5)	Art.17(5)

**Certifying authority / Intermediate body/ies**

(8) Clear definition, allocation and separation of functions

ERFIII	EIF	EBF	RF
<u>Basic act:</u> Art.24(a), (b), (c) and (g), and Art.29(1)	Art.22(a), (b), (c) and (g) and Art. 27(1)	Art.26(a), (b), (c) and (g), and Art.31(1)	Art.24(a), (b), (c) and (g), and Art.29(1)
<u>Implementing Rules</u> Art.5 and Art.6	Art.5 and Art.6	Art.5 and Art.6	Art.5 and Art.6

(9) Adequate audit trail and computerised system

ERFIII	EIF	EBF	RF
<u>Basic act:</u> Art.29(1)(a) and (d)	Art. 27(1)(a) and (d)	Art.31(1)(a) and (d)	Art.29(1)(a) and (d)
<u>Implementing Rules</u> Art.16(1)	Art.16(1)	Art.16(1)	Art.16(1)

(10) Adequate arrangements for the certification of expenditure to be reliable and soundly based

ERFIII	EIF	EBF	RF
<u>Basic act:</u> Art.29(1)(a), (b) and (c)	Art.27(1)(a), (b) and (c)	Art.31(1)(a), (b) and (c)	Art.29(1)(a), (b) and (c)
<u>Implementing Rules</u> Art. 18	Art. 18	Art. 18	Art. 18

(11) Satisfactory arrangements for keeping an account of amounts recoverable and for recovery of undue payments

ERFIII	EIF	EBF	RF
<u>Basic act:</u> Art.29(1)(f)	Art.27(1)(f)	Art.31(1)(f)	Art.29(1)(f)
<u>Implementing Rules</u> Art.26(2)	Art.26(2)	Art.26(2)	Art.26(2)

### **Audit authority**

#### (12) Clear definition, allocation and separation of functions

ERFIII	EIF	EBF	RF
<u>Basic act:</u> Art.24 (a), (b), (c), (g)	Art.22 (a), (b), (c), (g)	Art.26 (a), (b), (c), (g)	Art.24 (a), (b), (c), (g)
<u>Implementing Rules</u> Art.5 and Art.6	Art.5 and Art.6	Art.5 and Art.6	Art.5 and Art.6

#### (13) Adequate systems audits

ERFIII	EIF	EBF	RF
<u>Basic act:</u> Art.30(1)(a)	Art.28(1)(a)	Art.32(1)(a)	Art.30(1)(a)
<u>Implementing Rules</u> Art.17(2)	Art.17(2)	Art.17(2)	Art.17(2)

#### (14) Adequate audits of operations

ERFIII	EIF	EBF	RF
<u>Basic act:</u> Art.30(1)(b) and Art.44(3)	Art.28(1)(b) and Art.42(3)	Art.32(1)(b) and Art.44(3)	Art.30(1)(b) and Art.44(3)
<u>Implementing Rules</u> Art.17(1), 17(3), 17(4), 17(5) and 17(6)	Art.17(1), 17(3), 17(4), 17(5) and 17(6)	Art.17(1), 17(3), 17(4), 17(5) and 17(6)	Art.17(1), 17(3), 17(4), 17(5) and 17(6)

#### (15) Adequate annual control report and audit opinion

ERFIII	EIF	EBF	RF
<u>Basic act:</u> Art.30(3)	Art.28(3)	Art.32(3)	Art.30(3)
<u>Implementing Rules</u> Art.25(3)	Art.25(3)	Art.25(3)	Art.25(3)

### 2.3. Indicative scales of flat-rate corrections

#### 100% correction

The rate of correction may be fixed at 100% when the **deficiencies** in the Member State's management and control system are, or an **irregularity** is, so serious as to constitute a complete failure to comply with the rules, so rendering all the relevant payments irregular. In the case of fraud and where the Member State has been negligent, the Commission may apply a net financial correction of 100%.

#### 25% correction

When the management and control **system** is **gravely deficient**, and there is evidence of widespread irregularity and negligence in countering irregular or fraudulent practices, a correction of 25% is justified, as it can then reasonably be assumed that the freedom to submit irregular claims with impunity will result in exceptionally high losses to the EU budget.

A correction at this rate is also appropriate for **irregularities** in an individual case which are serious but do not invalidate the whole operation.

#### 10% correction

When the management and control **system does not function or functions so poorly or so infrequently** that they are completely ineffective in determining the eligibility of the claim or preventing irregularity, a correction of 10% is justified, as it can reasonably be concluded that there was a high risk of widespread loss to the EU budget.

This rate of correction is also appropriate for individual or systemic **irregularities** of moderate seriousness.

#### 5% correction

When the management and control system functions, **but not with the consistency, frequency, or depth required** by the EU regulations, then a correction of 5% is justified, as it can reasonably be concluded that it does not provide a sufficient level of assurance of the regularity of claims, and that the risk to the EU budget was significant.

A 5% correction can also be appropriate for less serious individual or systemic **irregularities**.

The fact that the way in which a system operates is perfectible is not in itself sufficient grounds for a financial correction. There must be a serious deficiency of compliance with the EU rules and the deficiency must expose the EU budget to a real risk of loss or irregularity.

In accordance with the principle of proportionality, the correction rate may be reduced to between 2% and 5% where the nature and gravity of the deficiency, either individual or systemic, although serious, is not considered to justify a 5% correction rate.

#### 2.4. Repeated breaches

Flat-rate corrections can be increased if the same deficiency is established in relation to expenditure after the date of the first correction imposed and the Member State has failed to take adequate corrective measures for the part of the system at fault after the first correction.

#### 2.5. Borderline cases

Where the correction resulting from a strict application of the rates of 100%, 25% or 10% set out at section 2.3 would be clearly disproportionate, a lower rate of correction may be proposed. Careful consideration should be given to the proportionality of corrections.

#### 2.6. Basis of assessment

Whenever the situation in other Member States is known, a comparison between them should be made to ensure equal treatment in the assessment of the rates of correction.

The rate of correction should be applied to that part of the expenditure placed at risk, taking full account of the proportionality principle.

The correction should be applied to the expenditure placed at risk and for the period affected.

When several deficiencies are found in the same system, the flat-rates of correction are not cumulated, the **most serious deficiency** being taken as an indication of the risk presented by the management and control system as a whole.

They are applied to the expenditure remaining after the deduction of the amounts corrected with regard to individual cases.