



EUROPEAN  
COMMISSION

Brussels, 5.3.2015  
C(2015) 1423 final

ANNEX 18

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### **GUIDELINES ON APPLYING THE PRINCIPLE OF PROPORTIONALITY TO WAIVING THE RECOVERY OF AMOUNTS RECEIVABLE**

*to the*

#### **COMMISSION DECISION**

**on the Internal Rules on the implementation of the general budget of the  
European Union (European Commission section) for the attention of the  
Commission departments**

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### **GUIDELINES ON APPLYING THE PRINCIPLE OF PROPORTIONALITY TO WAIVING THE RECOVERY OF AMOUNTS RECEIVABLE**

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#### **COMMISSION DECISION**

**on the Internal Rules on the implementation of the general budget of the  
European Union (European Commission section) for the attention of the  
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**Guidelines on applying the principle of proportionality  
to waiving the recovery of amounts receivable**

(Text with EEA relevance)

**A . Introduction**

1. The principle of proportionality is laid down by way of a general principle in the Treaty on European Union:  
*‘Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaty.’ (Article 5(4) of the TEU).*
2. *Article 5 of Protocol 2 (which corresponds to point 9 of the previous Protocol) applies this rule to draft legislation.* The purpose of these Guidelines is to clarify how the Commission intends to ensure that the Union’s financial interests are protected in a clear and transparent manner in cases where considerations of proportionality lead the Commission to contemplate waiving the right to recover an established amount receivable, whether directly, indirectly, wholly or in part, in accordance with Article 80(2) of the Financial Regulation<sup>1</sup> and Article 91(1)(c) of the Commission Delegated Regulation of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union (hereinafter referred to as the ‘Rules of Application’).
- 2.1. The granting of additional time for payment, henceforth governed by Article 89 of the Rules of Application, is a first expression of the principle of proportionality applied to the recovery of amounts receivable.
- 2.2. References in these Guidelines to ‘waiving the right to recover an established amount receivable’ concern waivers within the meaning of Article 80(2) of the Financial Regulation, in the circumstances referred to in point 4 hereunder.
- 2.3. In accordance with Article 17(2) of Regulation 1150/2000,<sup>2</sup> the Member States shall be released from the obligation to place at the disposal of the Commission the amounts corresponding to established entitlements which prove irrecoverable, under certain conditions in accordance with the procedure established for this purpose.
- 2.4. These Guidelines concern all methods of managing the annual budget of the Union (including that of Euratom) provided for in the Financial Regulation, as well as the management of other budgets administered by the Union.
3. As regards the specific matter of managing expenditure, these Guidelines are consistent with the White Paper presented by the Commission in March 2000 on internal reform and, in particular, with Action 96, ‘More Effective Management of the Recovery of Unduly Paid Funds’, and the ensuing communication of 13 December 2000<sup>3</sup>. In these Guidelines the Commission underlines the obligation under the Financial Regulation to establish all amounts receivable that are certain, of a fixed amount, and due, and warns against any failure to establish an amount

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<sup>1</sup> Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council of 25 October 2012, OJ L 298, 26.10.2012, p.1.

<sup>2</sup> Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ L 130, 31.5.2000, p.1).

<sup>3</sup> SEC(2000)2204/3.

receivable, which would be just as harmful to the Union's financial interests as the incorrect or unsubstantiated waiving of the recovery of an established amount receivable, and for which the Authorising Officer may be held responsible, in accordance with the Guidelines adopted by the Commission in the context of its internal administrative reform.

4. Lastly, these Guidelines are intended to serve as a guide for the Commission and its departments without prejudice to the specific provisions of current legislation, which are already aimed at ensuring compliance with the principle of proportionality.

Thus the Commission and its departments will have to hand, depending on the nature of the amount receivable, a number of relevant criteria, on the basis of which they will be able to determine, when faced with exceptional circumstances, whether current legislation makes exhaustive provision for applying the principle of proportionality.

- 4.1. If so, the legislation in force will have to be applied in full; however where it allows sufficient scope for interpretation, it should be construed in the light of these Guidelines.
- 4.2. If not, i.e. in cases where, in particular circumstances not foreseen by the legislation, application of the rules would run counter to the principle of proportionality, the Commission will examine ways in which the rules might be amended. Should such a generally-applicable amendment not be possible for objective reasons, the Commission will examine whether, exceptionally, and in accordance with the same procedure, the problem can be solved by an individual ad hoc measure.
- 4.3. In cases which cannot be settled by an amendment of the rules, and only in such cases, the Commission will examine the possibility of taking an ad hoc decision to waive recovery under Article 80(2) of the Financial Regulation on the basis of these Guidelines. Such a decision would be taken in accordance with the relevant procedures, or, where none exist, in accordance with the procedure set out in point D hereunder. In this case, the Commission will examine all possibilities for making the necessary changes to the rules in question for the future.

## **B. Scope**

### *5. Nature of the amounts receivable*

- 5.1. Taking point 4 into account, these Guidelines cover all debts owing to the annual budget of the Union, and to budgets managed by the Union, namely:

- amounts receivable under direct and indirect management of EU funds; and
- amounts receivable under shared management with the Member States.

- 5.2. These Guidelines only cover cases where the right to recover an amount receivable is waived for reasons connected with the application of the principle of proportionality in accordance with Article 91(1)(c) of the Rules of Application.

### *6. Type of proportionality measures covered*

'Decisions', for the purposes of these Guidelines, are formal decisions within the meaning of Article 288 of the TFEU regarding the waiving of established amounts receivable pursuant to Article 80 of the Financial Regulation, as well as any opinion to such effect issued by the Commission.

## **C. Application of the proportionality principle**

### **7. *Relevant criteria***

Within the current system of financial management, in which the responsibility of the Authorising Officer is a key element, it is the Authorising Officer's duty to ensure that his decisions to waive the recovery of established amounts receivable, or his proposals for decisions to such effect, are based on solid grounds.

In considering the application of the principle of proportionality, the Authorising Officer must take into account, in a manner appropriate to the nature of the amount receivable, the criteria laid down in Article 91(1)(c) of the Rules of Application.

### **8. *Application of the principle of proportionality depending on the nature of the amount to be recovered***

Where recovery of an amount receivable is waived for reasons of proportionality, the waiver must first cover the recovery of costs payable by the debtor, then any late payment interest, then any penalties which may have been imposed and finally, only in the last instance, the principal debt.

## **D. Procedure**

### **9. *Waiving of recovery of an established amount receivable***

9.1. When, pursuant to the first subparagraph of Article 91(4) of the Rules of Application, the decision to waive recovery is a matter for the College alone, the College will waive the established amount receivable on the basis of a proposal by the authorising officer by delegation, following consultation of the Legal Service and the Accounting Officer, and, in all cases relating to debts arising from suspected fraud or other irregularities, after consulting the European Anti-Fraud Office (OLAF).

9.2. For all waivers below the thresholds laid down in the first subparagraph of Article 91(4) of the Rules of Application, the decision to waive the recovery of the established amount receivable is the responsibility of the authorising officer by delegation, following consultation of the Legal Service and the Accounting Officer, and, in all cases relating to debts arising from suspected fraud or other irregularities, after consulting OLAF.

However the authorising officer by delegation may, depending on the circumstances, submit a proposal for the waiving of the amount receivable to the College.

9.3. Obligation to substantiate all proposals to waive the recovery of established amounts receivable, in accordance with Article 91(2) of the Rules of Application.

Any draft decision or decision to waive the recovery of an amount receivable on the basis of the principle of proportionality must state the elements of fact and of law on which it is based, and the documents setting out those grounds, in accordance with the model provided in the Annex, must be appended to the decision. It is on the basis of this documentation that the authorising officer by delegation will assume responsibility for his decision.

**GROUND<sup>5</sup>S FOR THE DRAFT DECISION****or decision<sup>6</sup> to waive the recovery of an established amount receivable**

*(in accordance with the Guidelines on applying the principle of proportionality to waiving the recovery of amounts receivable).*

**Authorising department submitting the draft decision or decision to the College:**

.....

.....

**A. Details of the established amount receivable.**

(1) Recovery order No: .....

(2) Exact amount due denominated in euros: €.....

(3) Deadline: .....

(4) Budget item or 'non budget' account against which the amount is entered:

.....

(5) Debit note, invoice or evidence of any other means by which the debt was communicated to the debtor (copy to be attached to the 'grounds' file, together with any related correspondence):

- Date sent: .....

- Date received by the debtor (if known): .....

(6) Name and position of the case-handler:

☐ in the authorising department:

☐ within the entity  
managing the funds  
on behalf of the Union:

- Person in charge of the  
file:.....

- Code of the Finance Unit:.....

- File reference:.....

(7) Particulars of the debtor:

- Name.....

- Address.....

<sup>4</sup> **Adopted by the Commission on 21 November 2001 – PO O/374/2001 – SEC(2001)1857/6.**

<sup>5</sup> Signed – and initialled on each page – by the authorising officer by delegation.

<sup>6</sup> Formal decision under Article 288 of the TFEU, or any other position taken or opinion expressed by the Commission.

(8) Grounds for establishment of the amount receivable:

- date of receipt of the request (by the entity managing the funds on behalf of the Union, or by the Commission): .....

- main grounds in support of the debtor's request:

**B. History of the recovery procedure, for information purposes** (to be completed in accordance with the specific characteristics of the relevant legislation).

(1) Reminder sent by the Accounting Officer<sup>\*\*</sup> :

- yes - no

- if yes, date sent: .....

(2) Letter of formal notice sent by the Accounting Officer<sup>\*\*</sup>

- yes - no

- if yes, date of 'acknowledgement of receipt': .....

(3) Certification as enforceable (where an enforceable decision has been adopted within the meaning of Article 79(2) of the FR)<sup>\*\*</sup>

- request made: yes - no

- if yes, date sent: .....

- granting of the enforcement order: yes - no

- if yes, date granted: .....

(4) Other measures taken, in accordance with the legislation applicable, or on account of the nature of the entity managing the revenue and expenditure on behalf of the Union:

(5) Possibility of effecting recovery:

♦ by offsetting<sup>\*\*</sup> : yes - no

- if yes, on which budget line: .....

♦ by calling in an advance guarantee<sup>\*\*</sup> : yes - no

- if yes, reference and expiry date of the guarantee: .....

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<sup>\*\*</sup> Delete where applicable.



**C. Amount of the proposed waiver.**

- amount of the proposed waiver:

- absolute value:            .....**euros**

- as a percentage of the initial amount receivable:  
.....%

- as a percentage of the total debt (including late payment interest):  
.....%

- amount still to be recovered following the proposed  
waiver:.....euros

**D. Justification for the proposed waiver and for the amount proposed**

(in the light of the list of relevant criteria set out in the Guidelines on applying the principle of proportionality to waiving the recovery of amounts receivable) **together with numbered and referenced supporting documentation** \*\*\*.

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Attach, number and initial any extra sheets used to provide the information required under point D.

**E. (Opinions required from the services under point 9 of the Guidelines on applying the principle of proportionality to waiving the recovery of amounts receivable).**

**(1) Opinion of the Legal Service:**

Agreement / Favourable opinion subject to comments being taken into account /  
Negative opinion\*\*.

given on (date): .....in note No.....(copy to be attached to the 'grounds' file).

Justification given by the service consulted in support of its reply:

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.....

**(2) Opinion of the Commission's Accounting Officer:**

Agreement / Favourable opinion subject to comments being taken into account /  
Negative opinion\*\*.

given on (date): .....in note No.....(copy to be attached to the 'grounds' file).

Justification given by the service consulted in support of its reply:

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\*\* Delete where applicable.

**(3) Opinion of OLAF in all cases relating to debts arising from suspected fraud or other irregularities:**

Agreement / Favourable opinion subject to comments being taken into account / Negative opinion\*\*.

given on (date): .....in note No.....(copy to be attached to the 'grounds' file).

Justification given by the service consulted in support of its reply:

.....  
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- Grounds in support of the decision or proposal for a decision to waive the recovery of an amount receivable in accordance with the second subparagraph of Article 91(4) of the Rules of Application:
- Grounds in support of the proposal for a decision to waive the recovery of an amount receivable in accordance with the first subparagraph of Article 91(4) of the Rules of Application:

Done at ....., [date] ..... Signature of the authorising officer by delegation: