



**European Union**  
European  
Social Fund

# 2014-2020 ESF Programme

## Action Note

<b>Reference Number:</b>	<b>039/19</b>
<b>Date Issued:</b>	<b>15 August 2019</b>
<b>Review date:</b>	<b>15 August 2020</b>

## Revised Commission Decision on financial corrections for Procurement Breaches

### Who

All ESF beneficiary organisations, European Social Fund Division & Greater London Authority.

### What

This Action Note is to notify all existing ESF beneficiary organisations, new applicants for ESF funding, European Social Fund Division & Greater London Authority that the European Commission has revised the guidelines for determining financial corrections for non-compliance with Procurement regulations.

An updated version of the ESIF National Procurement Requirements will be published [here](#) on GOV.UK reflecting the revised EU guidance.

### Cleared

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# Background

## Purpose of the guidelines

The general purpose of the revised Commission Decision on financial corrections for Procurement breaches is two-fold:

- to increase **legal certainty** for the Member States.  
It is important to clarify the circumstances under which breaches of applicable Union law on public procurement, or national law related to its application, can lead to financial corrections by the Commission.
- to ensure **proportionality**.  
It is important that the Commission considers the nature and the gravity of the irregularity and the related financial implications for the budget of the Union when deciding on a financial correction.

The Commission Decision and annex outlining revised financial corrections can be found here:

[https://ec.europa.eu/regional\\_policy/sources/docgener/informat/2014/GL\\_corrections\\_pp\\_irregularities\\_annex\\_EN.pdf](https://ec.europa.eu/regional_policy/sources/docgener/informat/2014/GL_corrections_pp_irregularities_annex_EN.pdf)

These guidelines will be used to determine the amount of the financial corrections to be applied to expenditure in cases of irregularities that constitute breaches of public procurement rules.

The revised EU guidelines will be applied to Irregularities detected in relation to public contracts and to contracting authorities as defined in the Directives and will be used in by the Managing Authority, the Audit Authority, DG Emploi Audit Service and the European Court of Auditors when carrying out Article 125, Article 127 and other audit activities.

Please note these revised corrections are in force from the **14<sup>th</sup> May 2019** and apply to **both contracting and non-contracting authorities**.

The revised guidelines place greater emphasis on:

- Timescale for receipt of tenders or Expressions of Interest - if restricted to 5 days or less, 100% penalty applies.
- If the audit trail is insufficiently robust to demonstrate the fair award of the contract, 25% penalty applies.
- If a body letting a contract refuses to provide the relevant documentation to demonstrate a compliant audit trail, 100% penalty applies.
- Any increase in price exceeding 50% of the value of the original contract will attract a penalty 25% of the original contract plus 100% of the increase

The revised guidelines also reduce the level of penalty for some infringements including; not subdividing a contract into lots (5%); minor reductions in the regulatory

timescales to receive tender documents (10%); lack of publication on OJEU of extended timescales for tenders as long as notice has been posted elsewhere (5%); use of criteria which limits competition i.e. trademarks, standards (10%).

**Non-contracting authorities** e.g. (SMEs, other private sector organisations, third sector organisations, research organisations, and universities whose income is more than 50% private) should note that the revised guidance will apply. Particular attention is drawn to:

- **Advertising.** If a Non contracting authority does not advertise a contract opportunity with a value over £25,000 in an openly accessible manner (such as website advertisement) 100% correction applies
- **Direct awards to linked organisations,** i.e. conflict of interest with related parties, whether organisations, or individuals involved in the process (Guidance on Identifying, Managing and Monitoring Conflicts of Interest within ERDF and ESF ESIF-GN-1-027 refers). 100% penalty applies
- **Discriminatory tender conditions** which prevent competition. 100% penalty.
- **Artificial splitting of contracts** to avoid advertising thresholds. 100% penalty.
- **Modification of contracts** i.e. if originally below an advertising threshold and extended to a value which would have required advertising penalty 25% of the original contract plus 100% of the increase
- Any **increase in price** exceeding 50% of the value of the original contract. 25% of the original contract + 100% of the increase applies
- **Non advertising extension of tender submission deadlines** 10% penalty applies

The above is an indicative list only, for further information, please read the full EC guidelines and Commission Decision (see hyperlink at the start of this Action Note).

## Action

ESF beneficiary organisations, European Social Fund Division & Greater London Authority to note these revised corrections and ensure all those involved in delivery of the ESF 2014-2020 Programme are made aware.

New applicants for ESF Funding to ensure they consider the revised [European Structural and Investment Funds national procurement requirements](#) and ensure any procurement exercises relevant to their ESF Project application are compliant.

## Contact

If you have any questions, please contact your ESF Contract Manager or email [esf.2014-2020@dwg.gov.uk](mailto:esf.2014-2020@dwg.gov.uk)