



TESIM

Technical support to the implementation
and management of ENI CBC programmes

Recovery procedures in CBC Partner Countries

A case study: Ukraine

August 2020

DISCLAIMER

This **non-binding document** has been developed by the TESIM project. It does not necessarily reflect the views of the European Commission on the topic, and is presented to programme and project practitioners **for illustrative purposes only**.

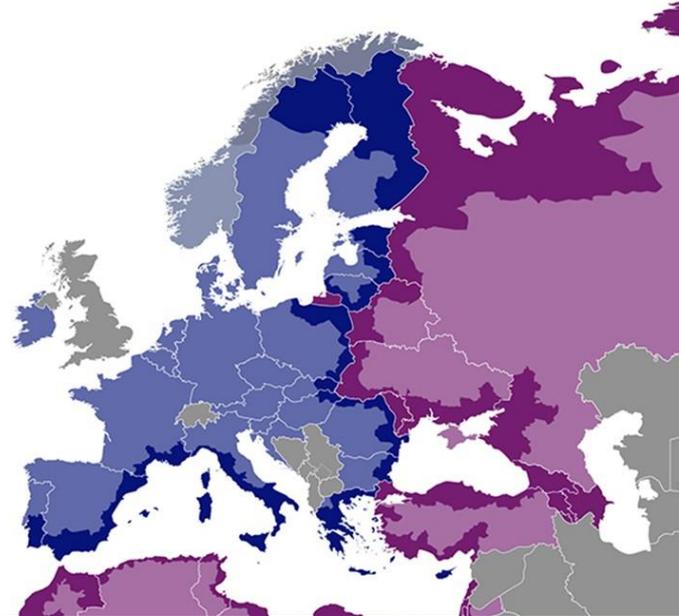


Table of contents

| | |
|--|---|
| Aim of the document | 2 |
| Ukrainian procedure for recoveries | 3 |
| Text of the Resolution on recoveries | 5 |



Aim of the document

One of the challenges of the ENI CBC programmes 2014-2020 compared with the previous programming period has been the need to develop the so-called “Description of Management and Control Systems (DMCS)”. This description includes, inter alia, the procedures set by the programme bodies and national authorities for programme implementation.

Among these procedures, the Financing Agreements signed between the European Commission and the CBC Partner Countries stipulate two very important and new provisions:

Article 14.2 The CBC Partner Country shall ensure and check regularly through appropriate national procedures that the operations financed with the Union funds have been properly implemented It shall take appropriate measures to prevent irregularities and fraud and, upon request of the Managing Authority or the Commission, bring prosecutions to recover funds unduly paid.

Article 15.2 Where the recovery relates to a claim against a beneficiary established in the CBC Partner Country, which is a public entity in accordance with its national legislation, and the Managing Authority is unable to recover the debt, the Managing Authority shall recover the due amounts directly from the CBC Partner Country.

The most difficult procedure has been so far the one concerning the recoveries.

This document showcases the solution found by Ukraine in the framework of its national budgetary legislation, which is applicable to public beneficiaries, in the situation when the beneficiary agrees to pay a debt.

The solution does not stipulate though how the Ukrainian government will refund the MA in those cases where the beneficiary does not pay and, as a result, is included in the list of debtors. Nevertheless, the Resolution has a last clause stipulating the consequences for the beneficiary of not refunding the MA despite the availability of funds.



Ukrainian procedure for recoveries

The procedure of recovery of the inappropriately spent and unused parts of the European Union grant provided for the implementation of projects within the framework of a Joint Operational Programme for cross-border cooperation under the European Neighbourhood Instrument 2014-2020 was approved by the [Resolution of the Cabinet of Ministers of Ukraine No. 497 of 17 June 2020](#)¹. The procedure applies only if a lead beneficiary/project beneficiary **is a public entity**.

The resolution is structured in three parts:

- **General part** (articles 1 and 2), defining the scope of the resolution and identifying the legal framework,
- **Grants recovery procedure** (articles 3 to 20), describing the standard procedure applicable for any ENI CBC beneficiary, as stipulated in the ENI CBC Implementing Rules², the Financing Agreements and the grant contracts,
- **Grant recovery mechanism** (articles 21 to 24), stipulating the specific procedures to be applied in Ukraine, according to the national legislation.

The focus of this document is the last part, which takes advantage of the national legislation on public budget to ensure that funds for payment are available. In the previous programming period, the main difficulty of the public bodies to refund to the MA the unduly received funds was usually the lack of a legal mechanism for relocation of budget funds for this purpose, and that's why the resolution finds a specific solution to this obstacle.

The **procedure** stipulated in the resolution to ensure budget availability is as follows (see also a chart below):

1. If a lead beneficiary/ beneficiary which holds the function of “*administrator of budgetary funds*”³ has funds, it shall redistribute budget appropriations in accordance to the procedure approved by the [Resolution of Cabinet of Ministers of Ukraine № 18 of 12 January 2011](#), and pay a debt to the MA;
2. In case the lead beneficiary/beneficiary has no funds in the current budget, the funds shall be included into the budget of the lead beneficiary/beneficiary for the next year according to the procedure determined by the Budget Code of Ukraine (including but not limited to a loan) and transferred to the MA directly by a “*main administrator of budgetary funds*”⁴;
3. If a beneficiary has not paid the agreed debt, and regardless of the reasons for failure to pay, it will be included in the list of debtors, posted in the website of the National Authority. Institutions included in this list will not be eligible to participate in the competitive selection of projects under future cross-border cooperation programmes after 2020, as stipulated in

¹ The link connects with the text of the resolution in Ukrainian. You can find an unofficial translation to English in the last section of this document.

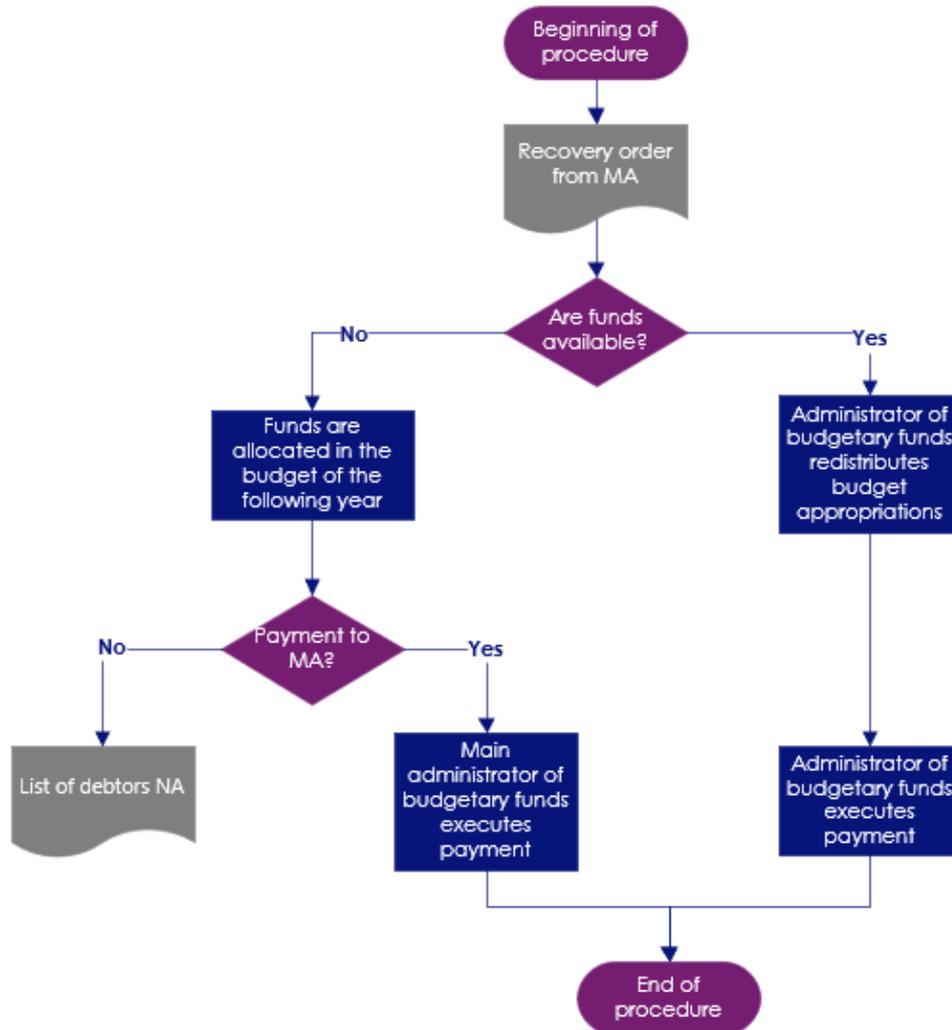
² Regulation EC 897/2014.

³ See definition of this function in box below

⁴ See definition of this function in box below.



the [Resolution № 554 on the national management and control systems approved by the Cabinet of Ministers of Ukraine on July 2018.](#)



A key role in this procedure corresponds to the administrators of budgetary funds and the main administrators of the budgetary funds. In the table below we provide a short description of their role and hierarchical dependency in accordance with Ukrainian national legislation:

| | |
|---|--|
| <p>Administrator of budgetary funds</p> | <p>A budget institution represented by its head, authorized to receive budget allocations, take budget liabilities, long-term obligations on energy service and execution of budget expenditures. An “administrator of budgetary funds” is accountable to a “main administrator of budgetary funds”.</p> |
| <p>Main administrator of budgetary funds</p> | <p>A budgetary institution represented by its head who, in accordance with the Budget Code, is empowered to establish budgetary appropriations.</p> |

Text of the Resolution on recoveries

UKRAINIAN CABINET OF MINISTERS RESOLUTION

No. 497 of 17 June 2020

Kyiv

On approval of the Procedure for recovery of inappropriately spent and unused part of the European Union grant provided for the implementation of projects within the framework of the Joint Operational Programme for Cross-Border Cooperation of the European Neighbourhood Instrument 2014-2020

In order to fulfil Ukraine's obligations on the recovery of funds arising from the provisions of agreements on financing joint operational programmes of cross-border cooperation of the European Neighbourhood Instrument 2014-2020, and to determine the mechanism of their implementation, the Cabinet of Ministers of Ukraine decides:

To approve the Procedure for the recovery of inappropriately spent and unused part of the European Union grant provided for the implementation of projects within the framework of the Joint Operational Programme for Cross-Border Cooperation of the European Neighbourhood Instrument 2014-2020, which is attached.

Prime Minister of Ukraine

D. Shmyhal

Approved by
the resolution of the Cabinet of Ministers of Ukraine
No. 497 of 17 June 2020

PROCEDURE

recovery of inappropriately spent and unused part of the European Union grant provided for the implementation of projects within the framework of the Joint Operational Programme for Cross-Border Cooperation of the European Neighbourhood Instrument 2014-2020

General part

1. These Resolution define the procedure for the recovery of improperly spent funds and the unused part of a European Union grant to the lead partner and/or partner(s) having the status of budgetary institutions (hereinafter referred to as grants) for the implementation of projects under the Joint Operational Programme for Cross-Border Cooperation in the European Neighbourhood Instrument 2014-2020 (hereinafter referred to as programmes).



2. In this Resolution, the term "financial correction" means the amount of funds by which the financing of a project financed under the programmes will be reduced due to the identification of single or systemic irregularities during its implementation.

Other terms in this Resolution are used in the meaning defined in the order of functioning of the national system of management and control over the implementation of joint operational programmes of cross-border cooperation of the European Neighbourhood Instrument 2014-2020, approved by the Resolution of the Cabinet of Ministers of Ukraine dated July 11, 2018 No. 554 "On the Introduction of a National System of Management and Control of Joint Operational Programmes of Cross-Border Cooperation of the European Neighbourhood Instrument 2014-2020" (Official Bulletin, 2018, No61).

Grants recovery procedure

3. The Lead Partner / Partner / National Authority is sent a request (application) with the claim to return the transferred part of a grant in accordance with the provisions of program financing agreements in case:

the use of grant funds for purposes other than those intended or in violation of procedures that are used for the implementation of programs and cannot be deducted from the following payments from the grant.

failure to use grant funds during the project implementation period and if their use is not confirmed by project implementation reports.

occurrence of violations through the fault of the lead partner and/or project partner.

4. The lead partner is responsible for returning the grant funds to the Managing Authority in accordance with the provisions of the grant contract. The lead partner may, if necessary, define in the partnership agreement the procedure of interaction between the lead partner and project partner(s) on the return of grant funds.

5. In case the reasons for transfer of the request (application) for return of grant funds by the Managing Authority are caused by the project partner, the lead partner shall send such request (application) to the project partner in accordance with the provisions of the partnership agreement.

6. The partner returns to the lead partner the amount of grant funds specified in the request (application) of the Managing Authority, together with interest, in case of failure to return the grant funds within the period specified by the Managing Authority.

7. In case of non-repayment of grant funds by a partner to the lead partner in accordance with the provisions of the partnership agreement, the lead partner immediately informs the Managing Authority of such fact.

8. Recovery of grant funds must be made before the deadline specified in the request (application) of the Managing Authority on return of grant funds.

9. The deadline for recovery of grant funds is 45 days from the date of receipt by the lead partner of the request (application) from the Managing Authority for recovery of grant funds.



10. The lead Partner / partner / National Authority has the right to request the Managing Authority to extend the deadline for the recovery of grant funds with appropriate justification.

11. The lead partner/partners may be subject to the financial corrections of the Managing Authority that are required due to individual or systemic irregularities identified during project implementation within the programmes. The grant amount to be recovered due to the financial corrections cannot be reused in the project that was subject to the financial correction.

12. In case of application of financial corrections by the Managing Authority, the amount of funds to be returned to the Managing Authority's account by the lead partner/partner may be increased.

13. Any delay in recovering the grant funds is the basis for charging a late payment penalty. The late payment interest shall be calculated by the Managing Authority in the amount of 3.5 per cent over the rate of the European Central Bank applied in the principal refinance activity in the euro currency for payments made in euro, the first working day of the month on which the deadline for recovery falls.

14. The interest shall be charged for the period from the maturity date determined by the Management Authority until the date of actual payment.

15. All programme recoveries are in euros. Expenditure incurred in a currency other than the euro is translated using the monthly conversion rate of the European Commission.

16. Transactions on recovery of grant funds between the partner and the lead partner, conducted on the territory of Ukraine, are performed in the national currency. The lead partner buys the euro in order to return the grant funds and transfers the required amount to the Managing Authority.

17. Risks on exchange rate differences and bank charges related to the recovery of grant funds to the Managing Authority / lead partner are assigned to the lead partner / partners, respectively.

18. In case of non-repayment by the lead partner/partner of grant funds, the National authority on the territory of which the legal address of the lead partner/partners is located receives a notification from the management authority. In case of receipt of the notification, the National Authority will request the lead partner/partner - legal entity (resident) to suspend the project until the National Authority receives the documents confirming the recovery of funds to the Managing Authority. The National Authority shall inform the Management Authority about the decision to suspend the project implementation.

19. Grant funds to be returned in compliance with the budget legislation may be paid from the funds owned by the lead partner / partner / Ukraine as a member country of the program, does not affect the right of the parties to agree on payment in instalments.

20. The recovery procedure directly from the Lead Partner/Partner/Ukraine as a participating country may be initiated by the European Commission at any time.

Grant recovery mechanism

21. If there is an unused part of the grant in foreign and national currency, the lead partner / partner – administrator of budgetary funds shall make transfers to the account of the management authority / lead partner in accordance with the established procedure.



22. In case there are no funds in the respective accounts of budgetary funds administrator to cover the liabilities under grant contracts and partnership agreements, the lead partner / partner – administrator of budgetary funds shall redistribute budget expenditures in accordance with the provisions of the Procedure for transfer of budget appointments, redistribution of budget expenditures and provision of loans from the budget, approved by Cabinet of Ministers of Ukraine on January 12, 2011 № 18 (Official Bulletin of Ukraine, 2011, № 2, Art. 114; 2012, № 22, Art. 837).

23. In the case of non-compliance with paragraph 19 of this Resolution, the funds shall be transferred to the Managing Authority by the main administrator of budgetary funds.

24. Lead partners/partners legal entities (residents), which have not ensured the recovery of funds in the presence of the reasons defined in paragraph 3 of this Resolution, will be included in the list of debtors, posted on the website of the National Authority, to which the restrictions defined in paragraph 22 of the Resolution on the functioning of the National system of management and control over the implementation of joint operational programmes of cross-border cooperation of the European Neighbourhood Instrument 2014-2020, approved by the Resolution of the Cabinet of Ministers of Ukraine dated July 11, 2018 No. 554.

