

**Guidance document on
management verifications to be carried out by Member States on operations co-financed by
the Structural Funds and the Cohesion Fund for the 2007 – 2013 programming period**

Table of contents

| | |
|---|----|
| Introduction..... | 3 |
| 1. Regulatory requirements | 3 |
| 2. Main issues in management verifications for the Structural and Cohesion Funds ... | 4 |
| 2.1. Management verifications – general principles and purpose | 4 |
| 2.2. Responsibilities of Managing Authorities, Intermediate Bodies and Beneficiaries | 5 |
| 2.3. Guidance in relation to management verifications | 6 |
| 2.4. Timing of management verifications..... | 7 |
| 2.5. Methodology and scope of Article 13(2) management verifications | 8 |
| 2.6. Organisation of on-the-spot verifications | 10 |
| 2.7. Intensity of verifications | 10 |
| 2.8. Documenting management verifications | 11 |
| 2.9. Outsourcing management verifications | 12 |
| 2.10. Auditors' certificates | 13 |
| 2.11. Management verifications / audits under the Audit Authority's responsibility | 14 |
| 3. Specific areas concerning management verifications | 14 |
| 3.1. Management verifications of public procurement..... | 14 |
| 3.2. Environment | 17 |
| 3.3. Management verifications of State aid schemes..... | 19 |
| 3.4. State Aid | 20 |
| 3.5. Financial engineering instruments..... | 21 |
| 3.6. Revenue-generating projects (Article 55 of Regulation No. 1083/2006).. | 23 |
| 3.7. Durability of operations..... | 24 |
| 3.8. Equality and non-discrimination | 24 |
| 3.9. European territorial cooperation objective (ETC) | 25 |

Introduction

The objective of this document is to provide guidance on certain practical aspects of the application of Article 13 of Commission Regulation (EC) No 1828/2006. It is intended to serve as a reference document for the Member States for the implementation of that Article. Member States are recommended to follow the guidance, taking account of their own organisational structures and control arrangements.

Commission audit missions carried out in the 2000 – 2006 programming period have shown the potential benefits of such a document.

It covers the regulatory requirements, general principles and purpose of verifications, the bodies responsible for carrying them out, the timing, scope and intensity of the verifications, the organisation of on-the-spot verifications, the requirement to document the work and outsourcing. More detailed examples of good practice are given in several specific areas, namely public procurement and aid schemes, which have sometimes been problematic in Member States. It also includes information on management verifications in the areas of State aid, financial engineering, revenue generating projects and European Territorial Cooperation. Issues regarding durability of operations, equality and non-discrimination and the environment have also been covered.

Due to the wide variations in terms of organisational structures between Member States, it is not possible to cover every situation in this document. Management verifications are essentially a responsibility of the managing authority, which has the possibility of delegating tasks to intermediate bodies. Accordingly, where reference is made to managing authorities in the note, this may be taken to apply to intermediate bodies where some or all of the management verification tasks have been so delegated by the managing authority.

Reference is made throughout the document to other relevant guidance notes. These can be found at <http://www.cc.cec/vista/latestdocuments.action>

1. Regulatory requirements

Article 13(2) of Regulation (EC) No 1828/2006 requires that the verifications to be carried out by the managing authority under Article 60(b) of Regulation (EC) No 1083/2006 shall cover administrative, financial, technical and physical aspects of operations, as appropriate. Verifications shall ensure that the expenditure declared is real, that the products or services have been delivered in accordance with the approval decision, that the applications for reimbursement by the beneficiary are correct and that the operations and expenditure comply with Community¹ and national rules. They shall include procedures to avoid double-financing of expenditure with other Community or national schemes and with other programming periods. The verifications shall include administrative verifications in respect of each application for reimbursement by beneficiaries and on-the-spot verifications of individual operations.

Article 13(4) of Regulation (EC) No 1828/2006 requires that the managing authority shall establish written standards and procedures for both the administrative and on-the-spot verifications and shall

¹ Including the principle of sound financial management as set out in Article 27 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities

keep records for each verification, stating the work performed, the date and results of the verification, and the measures taken in respect of irregularities detected².

Pursuant to Article 13(4) of Regulation (EC) No 1828/2006, where the managing authority is also a beneficiary under the operational programme, arrangements for the abovementioned verifications shall ensure adequate separation of functions between the section responsible for execution of the operation and the section responsible for the verifications.

The guidance in the note applies both to the Structural Funds and the Cohesion Fund (hereinafter "the Funds") unless otherwise stated.

2. Main issues in management verifications for the Structural and Cohesion Funds

The document provides guidance on particular aspects of management verifications. Practices that are considered to represent particularly good elements of control systems as regards verifications are highlighted as examples of 'best practice'. Where relevant, reference is made to other existing guidance documents and information notes.

2.1. Management verifications – general principles and purpose

Management verifications are part of the internal control³ system of any well managed organisation. They are the normal day to day controls made by management within an organisation to ensure that the processes for which it is responsible are being properly carried out.

A simple example of one such verification in a typical organisation would be to compare goods actually delivered to the related purchase order in terms of quantity of goods, price and condition. This verification ensures that the actual quantity of goods ordered have been received at the agreed price and are of the desired quality.

With more complex processes, the scope of the verifications will obviously increase and might include verifying compliance with relevant rules and regulations. However, the principle remains the same, namely that verifications made by management within an organisation should ensure that the processes for which it is responsible are being properly carried out and are in compliance with the relevant rules and regulations. Management verifications under Article 13 are no different in that they are also the day to day management verifications of processes for which the organisation is responsible, carried out in order to verify the delivery of the co-financed products and services, the reality of expenditure claimed and the compliance with the terms of the relevant

² The wording "irregularity" means 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 Communities by charging an unjustified item of expenditure to the general budget (Article 2(7) of Council Regulation (EC) 1083/2006

³ Internal control is broadly defined as a process, effected by an entity's board of directors, management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- Effectiveness and efficiency of operations.
- Reliability of financial reporting.
- Compliance with applicable laws and regulations.

Source: COSO definition of internal control

Commission Decision approving the operational programme and applicable national and Community rules. However, while Member States' internal control systems may be adequate for national programmes they may need to be adapted to certain specific requirements of the Funds.

Management verifications form an integral part of the internal control system of all organisations and, where properly implemented also contribute to the prevention and detection of fraud.

2.2. Responsibilities of Managing Authorities, Intermediate Bodies and Beneficiaries

Reference

Guidance document on the functions of the certifying authority for the 2007-2013 programming period (Draft)

Managing authorities⁴ are responsible for managing and implementing operational programmes in accordance with the principle of sound financial management, and in particular for:

- ensuring that operations are selected for funding in accordance with the criteria applicable to the operational programme and that they comply with the applicable Community and national rules for the whole of the implementation period;
- verifying that the co-financed products and services are delivered and that the expenditure declared by the beneficiaries for operations has actually been incurred and complies with Community and national rules;
- ensuring that the certifying authority receives all necessary information on the procedures and verifications carried out in relation to expenditure for the purpose of certification;
- ensuring compliance with the obligations concerning information and publicity.

The managing authority has overall responsibility for these tasks. It can choose to entrust⁵ some or all of these tasks to intermediate bodies⁶. However, it cannot delegate the overall responsibility for ensuring that they are properly carried out. Therefore, where certain tasks have been entrusted to other bodies, the managing authority should, in its supervisory capacity, obtain assurance that the tasks have been properly carried out. It can do this in a number of ways such as,

- obtaining and reviewing relevant reports prepared by intermediate bodies;
- receiving audit reports prepared in the context of Article 62.1 (a) and (b) of Council Regulation (EC) No 1083/2006, which should incorporate reviews of the Article 13(2) verifications done at intermediate body level; and
- performing quality checks on verifications carried out by intermediate bodies.

It should also reserve the right to carry out some controls at intermediate body level so that, as part of its routine supervision or where it has concerns that the tasks are not being properly carried out,

⁴ Article 60 (a), (b), (g) and (j) of Council Regulation (EC) No 1083/2006

⁵ Where one or more tasks of a managing or certifying authority are performed by an intermediate body, the relevant arrangements shall be formally recorded in writing.

⁶ Intermediate bodies are any public or private body or service which act under the responsibility of a managing or certifying authority, or which carry out duties on behalf of such an authority vis-à-vis beneficiaries implementing operations (Article 2(6) of Council Regulation (EC) No 1083/2006). They are responsible for establishing a system of internal control to guarantee the regularity and legality of the operations, their conformity with the terms of the Commission Decision and compliance with the relevant Community rules. Where the managing authority has delegated Article 13(2) tasks, the system of internal control should include verification checks by the intermediate body on the expenditure declarations submitted by the beneficiary.

it can assess how the verifications have been performed. This should include an examination of a limited sample of files selected on the basis of professional judgement.

In order to avoid risks arising where a managing authority is responsible for (i) selection and approval of operations and (ii) management verifications, adequate segregation of duties should be ensured between these two functions.

Intermediate bodies may be responsible for compiling expenditure declarations received from a number of beneficiaries into one overall expenditure declaration which it submits to the managing authority. In such cases, the managing authority should carry out verifications to ensure the accuracy of the compilation of the expenditure by the intermediate body. These verifications can be carried out on a sample basis based on risk analysis. In cases where the intermediate body submits expenditure declarations directly to the certifying authority, then Article 13(2) verifications should have been done at intermediate body level. In addition, the managing authority should be informed of each transmission in order to allow it to carry out verifications on the accuracy of the expenditure compilation and in order to be able to provide any required assurance to the certifying authority.

Beneficiaries⁷ are operators, bodies or firms, whether public or private, responsible for initiating or initiating and implementing operations. Where they are public bodies, they may also be the same body as that which has been designated as managing authority or intermediate body. In that case a clear separation of functions must be ensured⁸. Beneficiaries are responsible for ensuring that expenditure which they declare for co-financing is legal and regular and complies with all applicable Community and national rules. They should therefore have their own internal control procedures, proportionate to the size of the body and the nature of the operation, for providing this assurance.

2.3. Guidance in relation to management verifications

Guidance by Member State to all authorities

Member States should ensure that managing and certifying authorities and intermediate bodies receive adequate guidance on the provision of management and control systems necessary to ensure the sound financial management of the Funds and in particular to provide adequate assurance of the correctness, regularity and eligibility of claims on Community assistance.

Best practice in this area would involve guidance being prepared for all levels (i.e. managing authority and intermediate body level) in order to ensure that a consistent methodology is applied across all bodies as regards carrying out management verifications. Overall guidance could be prepared at managing authority level and, where necessary, tailored at intermediate body level to meet specific requirements. Such guidance should be incorporated in the procedures manuals of these bodies.

⁷ Article 2(4) of Council Regulation (EC) N°1083/2006

⁸ Article 13(5) of Commission Regulation (EC) N°1828/2006

Managing authorities should provide their staff with training and guidance on the skills required. In particular, the managing authority staff need to have the skills to review contracting procedures to be able to assess whether contracts are being awarded in line with the relevant national and EU rules.

Guidance by managing authority to beneficiaries

Member State authorities should seek to prevent errors from occurring by working with beneficiaries at the start of each operation. They should provide the beneficiaries with training and guidance on setting up the systems to meet Community requirements and drawing up the first expenditure declarations. Specific attention should be given to ensuring that the beneficiaries are aware of which costs are eligible for reimbursement and of the need to keep records to demonstrate how overheads are calculated and allocated.

Particular attention should be paid to raising awareness of ESF grant beneficiaries on the option offered by Article 11.3(b) of Regulation (EC) 1081/2006 to declare indirect costs on a flat rate basis in conformity with the scheme adopted at national level and communicated to the Commission.

The managing authority is responsible for ensuring that operations are selected for funding in accordance with the criteria applicable to the operational programme and that they comply with the applicable Community and national rules, in particular, the Community and national eligibility rules, for the whole of the implementation period. In this regard, it must ensure that beneficiaries are informed of the specific conditions concerning the products or services to be delivered under the operation, the financing plan, the time-limit for execution and the financial and other information to be kept and communicated. The managing authority must satisfy itself that the beneficiary has the capacity to fulfil these conditions before the approval decision is taken.

A strategy should be in place to ensure that beneficiaries have access to all of the necessary information through, inter alia, leaflets, booklets, seminars, workshops and websites. This should cover in particular all applicable national and Community eligibility rules and other legal requirements including information and publicity requirements.

The managing authority could establish appropriate criteria to assess the capacity of beneficiaries. The criteria may vary depending upon the type of operations but could include, inter alia, an assessment of the financial standing of the beneficiary, the qualifications and experience of its staff and its administrative and operational structure.

2.4. Timing of management verifications

Management verifications should be carried out before the related expenditure is declared to the next level above. For example, before an intermediate body forwards either an interim or final expenditure declaration to the managing authority (or a managing authority to the certifying authority), its administrative management verifications should already have been carried out. In any event, all administrative verifications (see section 2.5) in respect of the expenditure in a

particular statement of expenditure should be completed before the certifying authority⁹ submits the statement to the Commission.

For the purpose of selection and approval of operations the managing authority must ensure that beneficiaries have the capacity to fulfil a number of conditions before the approval decision is taken (see section 2.3). An on-the-spot verification immediately after commencement of the operation may therefore not be necessary as a preventive measure.

On-the-spot verifications should usually be undertaken when the operation is well under way, both in terms of physical and financial progress. It is not recommended that on-the-spot verifications are carried out only when the operation has been completed as it will be too late to effect any corrective action where problems are identified and in the meantime, irregular expenditure will have been certified.

The nature and specific characteristics of an operation will often influence the timing of on-the-spot verifications. For large infrastructure projects with an implementation period over a number of years, best practice would involve a number of on-the-spot verifications being made over this period, including one at completion to verify the reality of the operation. Where the same type of grants are awarded following an annual call for expressions of interest, on-the-spot verifications carried out in the first year should help to prevent the recurrence in later years of any problems identified.

Grant agreements involving the construction or purchase of an asset often impose ongoing conditions (e.g. retention of ownership, number of new employees) on beneficiaries after completion of the operation or acquisition of the asset. In such cases, a further on-the-spot verification may be required during the operational phase to ensure that the relevant grant conditions continue to be observed.

Where operations are intangible in nature and where little or no physical evidence remains after their completion (e.g. ESF operations: training courses, employment schemes), when on-the-spot verifications are carried out, they should be undertaken during the implementation (i.e. before completion). These on-the-spot verifications are crucial in order to check the reality of such operations.

2.5. Methodology and scope of Article 13(2) management verifications

Article 13(2) verifications comprise two key elements namely, administrative verifications (i.e. desk-based verifications) in respect of each application for reimbursement by beneficiaries and on-the-spot verifications of individual operations.

All applications for reimbursement by beneficiaries, whether intermediate or final applications, should be subject to administrative verifications based on an examination of the claim and relevant supporting documentation such as invoices, delivery notes, bank statements, progress reports and timesheets. Verification of the supporting documents can, where justified, be carried out on a sample basis (see section 2.7). The nature of the documents to be submitted should be determined by the managing authority taking account of the overall control system and in particular the level of on-the-spot verifications. It is recommended to include at least a list and description of the invoices which support the claim, and a list of the contracts awarded. Depending upon the documentation supplied, the administrative verifications should check:

⁹ Article 61 of Council Regulation (EC) No 1083/2006

- The correctness of the application for reimbursement
- That expenditure relates to the eligible period;
- That the expenditure relates to an approved operation;
- Compliance with programme conditions including, where applicable, compliance with the approved financing rate;
- Compliance with national and Community eligibility rules;
- Adequacy of supporting documents and of the existence of an adequate audit trail;
- Compliance with State aid rules, environmental rules and equal opportunity and non discrimination requirements;
- Compliance with EC and national public procurement rules;
- The respect of EC and national rules on publicity.

Administrative verifications are not sufficient on their own to give assurance on all elements concerning the legality and regularity of expenditure and it is therefore essential that on-the-spot verifications are carried out in order to check in particular the reality of the operation, delivery of the product/service in full compliance with the terms and conditions of the grant agreement, physical progress, respect for Community rules on publicity, and fully compliant public procurement procedures. On-the-spot verifications can also be used to check that the beneficiary is providing accurate information regarding the physical and financial implementation of the operation. When on-the-spot verifications and administrative verifications are carried out by different persons, the procedures should ensure that both receive relevant and timely information on the results of the verifications carried out. Project progress reports prepared by beneficiaries, or engineers' reports in the case of larger infrastructure projects, can be used as the basis for both administrative verifications and on-the-spot verifications.

The managing authority, when determining the extent of Article 13(2) verifications to carry out, may take account of the control procedures of the beneficiary where this is justified. For example, where the beneficiary is a government ministry and controls on the expenditure have been carried out by a separate part of the ministry (i.e. with appropriate segregation of functions in accordance with Article 58(b) of Council Regulation (EC) No 1083/2006), the managing authority may treat them as contributing to the assurance to be obtained under Article 13(2), whilst still being responsible for carrying out verifications under Article 13(2) to ensure their reliability.

Where the beneficiary presents an auditor's certificate in support of expenditure declared this may also be taken into account (see section 2.10).

Where the managing authority is also a beneficiary, an appropriate segregation of functions for the verifications under Article 13(2) should be ensured. Adequate segregation may be achieved, for example, by using a separate department within the same organisation, independent of the department where the beneficiary is located, to carry out the management verifications. This could be the finance department or the internal audit unit, where neither of these bodies is the beneficiary and where the latter does not perform any audit work under Article 62 of Council Regulation (EC) No. 1083/2006.

In technical areas such as compliance with environmental rules, there may be competent national authorities responsible for checking compliance and issuing the relevant consents. In such cases managing authorities should check that the relevant approvals have been obtained by the

beneficiary from these bodies. For verification of compliance with state aid rules, managing authorities may also be able to place reliance on the work of other national authorities with competence in this area.

The methodology used by managing authorities for carrying out Article 13(2) verifications should be set out in the procedures manuals of each body identifying which points are checked in the administrative verifications and in the on-the-spot verifications respectively and referring to the checklists to be used for the different checks executed.

2.6. Organisation of on-the-spot verifications

On-the-spot verifications should be planned in advance to ensure that they are effective. Generally, notification of the on-the-spot verifications should be given in order to ensure that the relevant staff (e.g. project manager, engineer, accounting staff) and documentation (in particular, financial records including bank statements and invoices) are made available by the beneficiary during the verification. However, in some cases, where the reality of the project may be impossible to determine after the project has been completed, it may be appropriate to carry out on-the-spot verifications during implementation and without prior notice (e.g. ESF funded training courses, where timesheets for participants and teaching staff should also be verified).

2.7. Intensity of verifications

Administrative verifications must be carried out in respect of all intermediate and final applications for reimbursement by beneficiaries.

Although management verifications of 100% of the applications for reimbursement submitted by beneficiaries are required by the Regulation, verification of each individual expenditure item and the related proof of delivery included in an application, although desirable, may not be practical. Therefore, selection of the expenditure items to be verified, where justified, may be done on a sample of transactions, selected taking account of risk factors (value of items, type of beneficiary, past experience), and complemented by a random sample where considered necessary.

Best practice would require all relevant documentation to be submitted with the beneficiary's application for reimbursement. This would allow for all documentary checks to be carried out during the verifications, thus reducing the need to verify these documents on-the-spot. The supporting documentation should, at a minimum, include a schedule of the individual expenditure items, totalled and showing the expenditure amount, the references of the related invoices, the date of payment and the payment reference number. Ideally, copies of invoices and proof of payment should be provided for all expenditure items. However, where this would involve an inordinately large volume of documentation being submitted by beneficiaries, an alternative approach might involve requesting only the supporting documentation in respect of the sample of expenditure items selected for verification. This approach has the advantage of reducing the volume of documentation to be submitted by beneficiaries. However, as the selection of the required supporting documentation can only be made on receipt of the beneficiary's reimbursement claim, processing of the claim may be delayed pending receipt of the requested documentation. There is also a potentially higher risk for the conservation of documents if the beneficiary ceases operations before the end of the period.

Computerised systems in some Member States allow for all supporting documentation, including expenditure schedules, copies of invoices and proof of payment to be input to the system at local level by the beneficiary and submitted electronically. This allows for verifications of all documents as part of the administrative verifications.

On-the-spot verifications may be carried out on a sample basis. Where sampling is used for the selection of individual transactions from reimbursement claims or for the selection of operations for on-the-spot verifications, the managing authority shall keep records describing and justifying the sampling method and a record of the transactions or operations selected for verification.

The managing authority shall determine the size of the sample in order to achieve reasonable assurance as to the legality and regularity of the underlying transactions, having regard to the level of risk identified by the managing authority for the type of beneficiaries and operations concerned. It shall review the sampling method each year.

No operation should be excluded from the possibility of being subject to an on-the-spot verification. However, in practice, for programmes or priority axes having a large number of small operations, administrative verifications may provide a high level of assurance (e.g. where the beneficiary sends all relevant documentation to the managing authority and where reliable documentary evidence of the reality of the project is provided). The administrative verifications can then be complemented by on-the-spot visits to a sample of these operations to provide confirmation of the assurance.

The intensity of on-the-spot verifications is dependent upon the nature of the operations in the programme (or priority) and the type of documentation that is forwarded by the beneficiary. The sample could focus on large value operations, operations where problems or irregularities have been identified previously or where particular transactions have been identified during the administrative verifications that appear unusual and require further examination (i.e. risk oriented). A random sample could be selected as a complement or as an alternative. For large infrastructure projects implemented over several years, three or more on-the-spot verifications are likely to be required during implementation and at completion. Where a particular beneficiary is responsible for a number of operations, at least one should be subject to on-the-spot verification.

Where problems are identified in the verifications carried out on the sample, the size of the sample should be increased in order to determine whether similar problems exist in the unchecked operations.

The managing authority should be in a position to demonstrate, through adequate documentation of the management verifications carried out, that the overall intensity of verifications, both administrative and on-the-spot, is sufficient to give reasonable assurance of the legality and regularity of the expenditure co-financed under the programme.

2.8. Documenting management verifications

All management verifications should be documented. The records should state the work performed, the date of any on-the-spot verifications, the results of the verifications, including the overall level and frequency of the errors detected, a full description of irregularities detected with a clear identification of the related EC or national legal rules infringed and the corrective measures taken. Follow up action might include the submission of an irregularity report and / or a procedure for recovery of the grant. Cases of irregularities which are detected and corrected by the managing authority or certifying authority before any payment to the beneficiary of the public contribution

and before inclusion of the expenditure concerned in a statement of expenditure submitted to the Commission, do not have to be reported to the Commission¹⁰. Nonetheless, such irregularities and corrections should be recorded.

Checklists, which act as a guide for carrying out the verifications, are often used to record each of the actions performed together with the results. These should be sufficiently detailed. For example, when recording verifications on the eligibility of the expenditure, it is not sufficient to have one box on the checklist stating that the eligibility of the expenditure in the declaration has been verified. Instead, a list of each of the eligibility points verified should be detailed with reference to the related legal basis (e.g. expenditure paid within the eligibility period, conformity of supporting documents and bank statements, appropriate and reasonable allocation of overheads to the operation).

For more straightforward verifications such as checking the sum of a list of transactions, a simple tick beside the total figure would suffice to record the work done. The name and position of the person performing the verifications and the date they were carried out should always be recorded.

Photographs of billboards, copies of promotional brochures, training course materials and diplomas provide may be used to provide evidence of the verification of compliance with publicity requirements.

An overall recording system for verifications carried out should be maintained for each programme. Records are kept in computerised monitoring information systems in a number of Member States. This facilitates the planning of verifications, helps avoid unnecessary duplication of work and provides useful information for other bodies (i.e. audit authority, certifying authority).

The date of on-the-spot verifications of individual operations carried out is required¹¹ to be recorded in the computerised monitoring system.

2.9. Outsourcing management verifications

As a general principle, management verifications are to be carried out under the responsibility of the managing authority by the body directly responsible for the management of the programme or priority axis. Sufficient staff resources should be allocated to these verifications in order to ensure that they are carried out properly and in a timely way.

However, in situations where, due to the high volume or technical complexity of the operations to be verified, managing authorities find that they do not have sufficient staff resources or expertise to carry out the verifications themselves, outsourcing of some or all elements of the verifications to external firms may be appropriate. Where the option of outsourcing is used, it is essential that the scope of the work to be carried out is set out clearly in the terms of reference. Therefore, the consequences of any delays in carrying out this work, such as compliance with N+2 / N+3 rules, should be recognised. This is particularly relevant in the case of public sector bodies where delays can be experienced in the award of contracts for this type of work. There is also an onus on the contracting authority to assess the quality of the outsourced work. This will usually involve assigning additional staff resources to this function. Accordingly, before a decision to outsource management verifications is taken, all of these factors should be taken into consideration.

¹⁰ Article 28(2) of Commission Regulation (EC) No.1828/2006

¹¹ Article 60(c) of Council Regulation (EC) No.1083/2006 and Article 14(1) and Annex III of Commission Regulation (EC) No.1828/2006

2.10. Auditors' certificates

The terms of grant agreements may include a requirement for beneficiaries to provide an auditor's certificate with expenditure declarations they submit for payment. These certificates vary depending upon the scope of the work carried out by the auditor but generally cover basic requirements such as confirmation that the expenditure has been paid within the eligible period, that it relates to items approved under the grant agreement, that the terms of the grant agreement have been complied with and that adequate supporting documentation, including accounting records, exists. Although the assurance under Article 13(2) cannot be obtained solely by checks carried out by beneficiaries themselves or by third parties (e.g. auditors) on their behalf, auditors' certificates may, provided the work carried out is of satisfactory quality, justify limiting the management verifications to a sufficient sample taking account of known risks, including the risk of a lack of independence of the body providing the certificate. However, in order for reliance to be placed on the certificates, it is essential that the managing authority provides guidance for use by the beneficiaries' auditors on the scope of the work to be done and the report / certificate to be presented. This should not be simply a one sentence certificate on the regularity of the beneficiary's claim, but should describe the work carried out and the results.

IFAC has issued an International Standard on Related Services (ISRS) 4400 entitled 'Engagements to Perform Agreed-upon Procedures Regarding Financial Information' which establishes standards and provide guidance on the auditor's professional responsibilities when an engagement to perform agreed-upon procedures regarding financial information is undertaken and on the form and content of the report that the auditor issues in connection with such an engagement. This type of agreed-upon procedure could be used for the provision of an auditor's certificate accompanying a beneficiary's reimbursement claim.

The objective of an agreed-upon procedures engagement is for the auditor to carry out procedures of an audit nature to which the auditor and the entity and any appropriate third parties have agreed and to report on factual findings. Matters to be agreed include:

- The nature of the engagement;
- The purpose of the engagement;
- The identification of the financial information to which the agreed-upon procedures will be applied;
- The nature, timing and extent of the specific procedures to be applied;
- The anticipated form of the report of factual findings.

The report should describe the purpose and the agreed-upon procedures of the engagement in sufficient detail to enable the reader to understand the nature and the extent of the work performed. ISRS 4400 also sets out useful templates for engagement letters and for reports on factual findings.

The annual audited financial statements of a beneficiary company cannot replace a specific auditor's certificate for each claim made by that beneficiary.

2.11. Management verifications / audits under the Audit Authority's responsibility

The staff performing Article 13 verifications should not be involved in systems audits or audits of expenditure carried out under the responsibility of the Audit Authority (Article 62 of Council Regulation (EC) No 1083/2006) and vice versa. The objectives of management verifications are different from those of audits carried out under the responsibility of the Audit Authority, the latter being carried out ex-post (i.e. after the expenditure declaration has been made to the Commission). The objective of these audits is to assess whether the internal controls are operating effectively whereas management verifications form part of the internal controls. The two types of work must therefore be clearly distinguished in their planning, organisation, execution, content and documentation.

Although management verifications and audits under the responsibility of the Audit Authority should be separated, exchange of information between the staff carrying out these separate controls is desirable. For example, the staff involved in management verifications should be kept informed of the results of audits and may well look to the Audit Authority for advice while the latter should take account of the results of management verifications in its risk analysis and audit strategy.

3. Specific areas concerning management verifications

3.1. Management verifications of public procurement

Reference

(i) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

(ii) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors

(iii) Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives (2006/C 179/02)

(iv) Commission Interpretative Communication on the application of Community law on Public Procurement and Concessions to Institutionalised Public-Private Partnerships (2007/C 666/1)

General

Verifications in relation to public procurement should aim to ensure that EC public procurement rules and related national rules are complied with and that the principles of equal treatment, non-discrimination, transparency, free movement and competition have been respected throughout the entire process.

Verifications should be carried out as soon as possible after the particular process has occurred as it is often difficult to take corrective action at a later date.

At award of funding stage, it should be ensured that beneficiaries are aware of their obligations in this area and that staff have received relevant training. Some Member States have prepared specific guidance on public procurement to be used by beneficiaries. This is particularly useful where beneficiaries are involved in 'one-off' contracts and lack relevant experience. Guides and

explanatory notes on the Community rules for public procurement have been produced by the European Commission and provide useful information and explanations. (http://ec.europa.eu/internal_market/publicprocurement/index_en.htm)

It is essential that suitably experienced and qualified staff should be used to carry out these verifications and that detailed checklists are available for use by the staff.

Intensity of verifications of public procurement

The intensity of management verifications should be determined by the managing authority according to the value and type of the contracts.

In at least one Member State, compliance with public procurement rules for all contracts that exceed either the thresholds set in the EC public procurement directives, or national thresholds where these are lower, are checked. This approach may not be practical where the number of contracts exceeding the thresholds is high, but is particularly recommended where the contracting authority is known to lack relevant experience.

Planning

Beneficiaries are responsible for ensuring the quality of the initial studies, the design and the accuracy of the project costing. Where managing authorities consider that there is a risk they should verify these elements as a preventive measure and also check that cost estimates are up-to-date. This should ensure that problems with the initial tendering as well as additional works / supplementary contracts during project implementation are avoided.

Particular attention should be paid to checking:

- The appropriateness of the procurement method being used;
- The interdependence between the different contract phases (land acquisitions, site preparation, utilities connections etc);
- Financing plans and the availability of national co-financing.

Tendering

For high value contracts or where beneficiaries are presumed to be inexperienced in the area of public procurement, managing authorities should ensure, prior to advertising the contract, that the quality of the tender documents (including the terms of reference) have been verified either by their own experts or by an external expert. Particular attention should be given to verifying that the specifications are well-defined as regards technical, economic and financial capabilities and that appropriate selection and award criteria are to be used.

Although there are specific advertising requirements required by EC public procurement rules, managing authorities should also be aware of the need to verify that, even where contracts fall below the EC thresholds or where services are subject only to a limited application of Directive 2004/18/EC (i.e. Annex IIB) or of Directive 2004/17/EC (i.e. Annex XVII B), an adequate (i.e. in the context of the size and nature of the contract¹²) level of advertising of the contract should have

¹² Case C-324/98 Telaustria [2000] ECR I-10745 and Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives (2006/C 179/02)

been made in order to ensure that the Treaty's general principles of equal treatment and transparency are respected. This can be achieved by requesting beneficiaries to provide a copy of the relevant publications when submitting expenditure declarations. Evidence of dispatch of post-award contract notices should also be requested, particularly for services listed in Annex IIB of Directive 2004/18/EC or in Annex XVII B of Directive 2004/17/EC.

Selection and award criteria

In order to properly verify that tender selection and award procedures have been carried out in accordance with the EC and national public procurement rules, managing authorities should obtain and review the tender evaluation reports prepared by evaluation committees. In addition, they should review any complaints submitted to the contracting authority by tenderers. These complaints may highlight possible weaknesses in the tender award procedure.

For contracts that exceed the thresholds set in the EC public procurement directives, managing authorities in some Member States send an observer to tender evaluations. A report setting out the observer's conclusions regarding the tender evaluation is then prepared. The observer verifies that a sufficiently detailed tender evaluation report has been prepared showing how the evaluation committee has reached its conclusions.

This approach may not be practical where the number of contracts exceeding the thresholds is high, but is recommended where the contracting authority is known to lack relevant experience. It could also be used on a limited sample basis to obtain assurance that better established contracting authorities, that are responsible for a large number of contracts which exceed the thresholds, are complying with the relevant procurement rules.

Particular areas of the tender evaluation and award procedures which Commission audits have identified as being problematic include:

- no separation between the selection phase and award phase of the procedure and confusion of selection criteria and award criteria;
- selection criteria incorrectly used during the award phase;
- the selection and award criteria not being published in the tender notice or tender specifications;
- use of discriminatory technical specifications;
- selection and award criteria other than those published being used during the evaluation;
- the criteria used not being in compliance with the fundamental principles of the EC Treaty (transparency, non-discrimination, equal treatment);
- inadequate documentation of decisions taken by the evaluation committee;
- supplementary / complementary works awarded directly without being re-tendered;
- amendment of essential conditions of the contract award at performance stage.

Some Member States have established an independent public procurement control unit which is empowered to carry out controls of all stages of tender procedures, up to contract signature stage. In respect of both nationally funded and EC funded contracts, it can attend tender evaluations in the capacity of observer. Where it has concerns regarding any elements of the procedure, it will report these concerns to both the contracting authority and to the managing authority. In this way, the managing authority is made aware of any potential problems regarding the contract and, before

approving any expenditure declared to it by the beneficiary in respect of the affected contract, it can request information from both the beneficiary and the public procurement control unit to ensure that the problems identified have been adequately addressed. An agreement between the managing authority and the public procurement control unit could be used to specify the scope and coverage of the controls of EC funded contracts.

Contract implementation phase

For contracts exceeding the threshold in the EC public procurement directives, best practice would include a procedure to ensure that all significant supplementary / complementary contracts or substantial amendments of contracts are notified to a public procurement control unit / managing authority before being signed by the contracting authority. This will allow for any verifications considered necessary to ensure that the relevant public procurement rules have been complied with to be carried out before the related contracts or amendments have been signed.

3.2. Environment

Community law incorporates over 200 legal acts in the environmental field. These legislative measures cover all environmental sectors, including water, air, nature, waste, and chemicals while others deal with cross-cutting issues such as access to environmental information and public participation in environmental decision-making. Whilst all the environmental *acquis* applies to co-financed actions, in the context of the Funds the following thematic areas are of particular relevance:

- The **Environmental Impact Assessment** or EIA Directive¹³ as amended requires Member States to carry out an assessment on certain public and private projects likely to have a significant impact on the environment before they are authorised. This is a procedural directive requiring the evaluation of a wide range of environmental impacts and consultation with environmental authorities and the public (including trans-border consultations). The Directive takes account of the provisions of the Aarhus Convention on public participation and access to justice in environmental matters. The EIA Directive contains a provision dealing with exceptional cases (Article 2.3). Recent guidance emphasises the exceptional nature of the circumstances in which this provision might be used (in line with the European Court of Justice's normal approach to interpreting derogations).
- The **Strategic Environmental Assessment** (SEA) Directive, in addition to requiring Member States to make an assessment before an Operational Programme is approved, includes provisions for monitoring indicators to identify, at an early stage, unforeseen adverse effects and to undertake appropriate remedial action. If appropriate, existing monitoring arrangements may be used to avoid duplication. In addition, the SEA process already carried out may need to be updated if there are significant changes to the Operational Programme. If the Operational Programmes lead themselves to further plans and programmes, then it must be assessed if these too require an SEA process. Finally, it should be noted that Waste Management Plans required under the Waste Framework Directive require a mandatory SEA. Only those interventions and infrastructure works that are in conformity with Waste Plans notified to the Commission are admissible for financing.

¹³ Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as last amended by Directive 2003/35/EC

- **Environmental Information** - The freedom of access to information on the environment Directive¹⁴ aims to make information held by public authorities on the environment more accessible to the public and to ensure that fair standards of access to information are applied across the Community.
- **Nature** is covered by the Birds and Habitats Directives¹⁵, in particular in relation to impacts on the network of Natura 2000 sites. Together, these Directives provide a comprehensive protection scheme for a range of animals and plants as well as for the selection of habitat types. In order to restore or maintain a favourable conservation status for natural habitats and species of Community interest, the Habitats Directive set up the Natura 2000 ecological network of protected areas, which has become the centrepiece of EC nature and biodiversity policy. The Habitats Directive (in Article 6) contains specific provisions for an appropriate assessment of impacts and mitigation and compensation measures.
- **Water** – The Water Framework Directive¹⁶ establishes a framework for the protection of all water bodies (i.e. rivers, lakes, transitional waters, coastal waters, canals and groundwater) in the European Union. Its central objective is to achieve good quality status for water resources by 2015 through integrated management based on river basin districts. It contains specific provisions (in Article 4.7) for the assessment of infrastructures with potential risks of water resources deterioration, for example related to inland waterway projects.
- **Waste** - The Waste Framework Directive¹⁷ lays down basic requirements regarding the handling of waste (that waste disposal and recovery should not present a risk to the environment or health; on the prohibition of dumping or uncontrolled disposal; on the creation of a network of waste disposal plants; on the elaboration of waste management plans; on establishing permitting for waste treatment operations), and establishes the hierarchy for waste management options (in order of decreasing preference: prevention, recovery (reuse, material recycling, energy recovery, disposal). In order for a waste management infrastructure project to be co-financed with ERDF or the Cohesion Fund, it must be part of a coherent waste management plan. The Landfill Directive¹⁸ establishes a set of detailed rules in order to prevent or minimise the negative effects that landfill sites for waste can have, including pollution of soil, air and water and risks to human health and to reduce the quantities of biodegradable waste going to landfills. The Incineration Directive¹⁹ aims to prevent or limit as far as practicable the negative effects on the environment and the resulting risks to human health, from the incineration of waste. It imposes stringent operational conditions and technical requirements and sets emission limit values for waste incineration plants within the EU.

A number of "recycling" Directives, such as those on waste from packaging, electrical and electronic equipment, vehicles and batteries, set binding targets for recycling of waste or specific materials contained therein. Most of them explicitly foresee that the producers of the products are financially responsible for the proper treatment of waste.

Management verifications in the environment area should verify that the beneficiary has complied with the relevant Directives by checking whether the relevant consents have been obtained from the competent national authorities in accordance with the applicable procedures. The competent

¹⁴ Council Directive 90/313/EEC, as amended by 2003/4/EC

¹⁵ Council Directive 79/409/EEC on the conservation of wild birds; Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora

¹⁶ Directive 2000/60/EC establishing a framework for Community action in the field of water policy, as last amended by Directive 2008/32/EC

¹⁷ Council Directive 2006/12/EC of the European Parliament and the Council on waste

¹⁸ Council Directive 1999/31/EC on the landfill of waste

¹⁹ Council Directive 2000/76/EC on the incineration of waste

national authorities are responsible for ensuring that EC environmental legislation is correctly applied, and for taking appropriate steps if this is not the case.

In order to carry out its responsibilities under Article 13(1), during the selection and approval of operations, managing authorities should ensure that they have access to appropriate in-house or external expertise to assist them in identifying all relevant environmental issues related to the particular type of operations being approved. Close working relationships with the relevant national environmental agencies could be established to assist managing authorities in this regard.

Similarly, for the purpose of Article 13(2) management verifications, managing authorities should ensure that they have access to relevant expertise in verifying continuing compliance of operations with the relevant environmental rules.

3.3. Management verifications of State aid schemes

Aid schemes may pose problems for Member States as regards management verifications due to the following:

- increased control risk (i.e. the inherent complexity of the rules governing the aid scheme, the nature of those recipients – i.e. SMEs – with the risk of a potentially weaker control environment, etc.);
- specific eligibility criteria;
- specific provisions concerning the final date of eligibility of expenditure.

For the purposes of establishing a satisfactory approach to management verifications, two types of aid scheme arrangements should be distinguished:

1) When the role of the body granting the aid in the context of the aid scheme is merely an administrative/managerial one (i.e. involving the selection of recipients, the allocation and administration of individual grants provided, etc.) and where it holds no direct financial interest in the scheme itself. This may be the case when the body granting the aid is a public administration body.

2) When the body granting the aid has a financial interest in the scheme or the project (i.e. it provides part of the equity or provides loan funding to the recipient that uses it to finance the operation). This is usually the case when the body is a financial institution.

For both cases, best practice would include a detailed definition of eligible investments in the grant decision for each individual operation or in the aid scheme itself. This is particularly important when the body granting the aid relies on auditors' certificates, in order to clarify the scope of the verifications required.

The issue that may arise concerns the nature and extent of the verifications by the managing authority within the context of Article 13 in order to obtain assurance that the verifications done at the level of the body granting the aid have been properly carried out. In case 1), the body granting the aid is performing its functions as an intermediate body. The managing authority may carry out limited verifications itself to obtain assurance concerning the regularity of expenditure from the verifications carried out at the level of the body granting the aid.

Depending upon the managing authority's judgement concerning the level of risk in the management and control systems of both the body granting the aid and the beneficiaries, this assurance could be provided by regular reporting by the body granting the aid, including statistics of the results of the verifications and information on who carried them out, the methodology applied and the scope, in particular regarding the respect of the eligibility rules. This reporting could be combined with verifications by the body granting the aid.

In case 2), where the body granting the aid has a direct financial interest in the operation, it may not be regarded as being entirely independent. The reliance placed by the managing authority on the work of the body granting the aid should be supported by its own on-the-spot verifications to the beneficiary.

Depending upon the control measures taken by the body granting the aid in response to this higher apparent risk, the control arrangements to be organised by the managing authority will involve a regular reporting mechanism (including the same information mentioned for case 1) combined with on-the-spot verifications at the level of the beneficiary, the frequency of which should be established with reference to 2.7 of this guidance note.

3.4. State Aid

Reference

(i) *Vademecum Community rules on State Aid dated 15 February 2007*

(ii) *Guidelines on national regional aid for 2007-2013(OJ C 54, 4.3.2006)*

State aid rules apply only to measures that satisfy all of the criteria listed in Article 87(1) of the Treaty, namely that the measure involves a transfer of State resources; it creates an economic advantage that the undertaking would not have received in the normal course of business; the aid must be selective and thus affect the balance between certain firms and their competitors; and it must have a potential effect on competition and trade between Member States.

Member States are required to inform the Commission of any plan to grant or alter State aid and they are not allowed to put such aid into effect before it has been authorised by the Commission. The Commission determines whether or not the notified aid measure constitutes State aid and, if it does, whether or not it qualifies for exemption under Article 87(2) or (3) of the Treaty.

Certain measures may also be exempted from notification on the basis of a block exemption regulation for State aid. Under these regulations the Commission can declare certain categories of State aid compatible with the Treaty if they fulfil certain conditions, thus exempting them from the requirement of prior notification. At present there are five block exemption regulations, three of which create exemptions for aid to small and medium-sized enterprises, employment aid and training aid, allowing Member States to grant aid that meets the conditions laid down in these three regulations without the need for notification and agreement of the Commission. A fourth regulation exempts transparent regional investment aid schemes and applies from 2007 to 2013. A fifth regulation deals with the *de minimis* rule and establishes that aid to an enterprise that is below the relevant threshold (for most sectors, the applicable amount is of €200,000) over a period of three fiscal years and that respects certain conditions, does not constitute State aid. Such aid does therefore not need to be notified. A general block exemption regulation, due to enter into force in 2008, will bring together these existing instruments.

There are several key risk areas which should be checked by management verifications in the area of State aid, namely:

- that the aid scheme has been notified to and approved by the Commission or that it is covered by either a block exemption or satisfies the *de minimis* rules²⁰ whereby the aid scheme does not need to be notified;
- that the undertakings in receipt of the aid satisfy the conditions of the aid scheme as approved by the Commission or that the nature of the operations covered by a block exemption satisfy the particular exemption conditions;
- that there is no overlapping of aid from different sources which could breach the *de minimis* rule or the applicable rules on the cumulation of aid.

Best practice for management verifications to ensure compliance with the *de minimis* rule would include checking, on a sample basis, that the aid to an undertaking over the period of three fiscal years has not exceeded the relevant threshold.

The Directorate General for Competition has issued a useful guide²¹ and factsheets on the Community rules on State Aid.

3.5. Financial engineering instruments

Reference

Note of the Commission services on Financial Engineering in the 2007-2013 programming period DOC COCOF/07/0018/01-EN FINAL 16 July 2007 Final version

Financial engineering instruments²² (FEIs) under Article 44 of Council Regulation No1083/2006 include venture capital funds, guarantee funds, loan funds and urban development funds.

FEIs can be funded directly by one or more operational programmes or via a holding fund. They involve the provision of assistance to enterprises or urban projects by way of equity investment, loans and guarantees. The provision of assistance involves two stages namely, the contribution from the operational programme to the FEI and the subsequent investment by that FEI in enterprises or urban projects.

The business plan of candidate FEIs must be submitted and evaluated, either by the managing authority or by the holding fund who should then select the FEIs and sign funding agreements with them. A transparent procedure for the selection of FEIs and for taking decisions on contributions from operational programmes to them should be applied. The selection procedure should be based on specific and appropriate selection criteria linked to the objectives of the operational programme.

Management verifications should therefore include an examination of the transparency of the selection procedure used.

²⁰ The ceiling for the aid covered by the *de minimis* rule is in general €200,000 over any 3 year fiscal year period.

²¹ Vademecum Community rules on State Aid dated 15 February 2007 and Guidelines on national regional aid for 2007-2013 (OJ C 54, 4.3.2006)

²² The implementing rules for these funds are set out in Articles 43 to 46 of Commission Regulation (EC) No 1828/06.

As it is possible to have contributions from more than one operational programme to the same FEI, in such cases, the holding fund and the FEI must keep separate accounts or maintain an adequate accounting code for the contribution from each operational programme, for reporting and audit purposes. An examination of the audit trail should form part of the Article 13(2) verification.

The beneficiary²³ is either the holding fund or, if no holding fund exists, it is the FEI itself. However, by way of derogation²⁴ from the general rule that statements of expenditure should only include expenditure actually paid by beneficiaries, the statements of expenditure for FEIs may include the total expenditure paid from the operational programme in establishing or contributing to such funds or holding funds. However, the eligible expenditure at closure will be the final amount paid out by the holding fund or FEI which has been invested, provided or committed as a guarantee, or paid in management costs, and not the expenditure paid from the operational programme.

Management verifications of FEIs should nonetheless be carried out throughout the programming period in order to monitor the investments made and to ensure that the funds are being invested in accordance with the objectives of the priority axis. They should also check that the thresholds²⁵ for management costs are not exceeded. Front-loaded payment of management costs may be justified in certain cases where fund managers incur significant upfront costs prior to the investments taking place.

Where contributions from operational programmes to FEIs are invested, loaned or committed for guarantees in enterprises or urban projects, State aid may be present. Management verifications should therefore check that State aid rules are respected.

Article 45 of Regulation (EC) No 1828/2006 requires that FEI investments in SMEs may only be made at the establishment, early stages or expansion of these enterprises, and only in activities which the FEI managers judge potentially economically viable. They shall not invest in firms in difficulty²⁶.

In the majority of cases, it is not a condition that SMEs must incur expenditure on particular goods or services. Capital, loans or guarantees are often given for the development or expansion of SMEs' general business activities, including working capital. In these cases, management verifications should focus on checking the supporting documents attesting to observance of the funding conditions. The documentation may include application forms, business plans, annual accounts, checklists and reports of the venture capital fund assessing the application, the signed investment, loan or guarantee agreement, reports by the enterprise, reports on visits and board meetings, reports by the loan intermediary to the guarantee fund supporting claims, environmental approvals, equal opportunities reports and declarations made in connection with receipt of *de minimis* aid.

Evidence of expenditure in the form of receipted invoices and proof of payment for goods and services by SMEs is only required as part of the audit trail where the capital, loan or guarantee to the SME is conditional on it incurring expenditure on particular goods or services. However, in all

²³ Article 2(4) of Regulation No. 1083/2006 defines beneficiary as an operator, body or firm, whether public or private, responsible for initiating or initiating and implementing operations.

²⁴ Article 78 (6) of Council Regulation (EC) No.1083/2006

²⁵ Thresholds set out in Article 43(4) of Commission Regulation No. 1828/2006

²⁶ Within the meaning of the Community Guidelines on State Aid for rescuing and restructuring firms in difficulty

cases, there must be proof of the transfer of the capital or loan by the venture capital fund or loan intermediary to the enterprise.

3.6. Revenue-generating projects (Article 55 of Regulation No. 1083/2006)

Reference

(i) (Draft) Directorate General for Regional Policy Guidance note on Article 55 of Council Regulation (EC) No. 1083/2006

(ii) (Draft) Directorate General for Regional Policy Information note on Article 55(6) of Council Regulation (EC) No. 1083/2006

A revenue-generating project is any operation involving an investment in infrastructure the use of which is subject to charges borne directly by users or any operation involving the sale or rent of land or buildings or any other provision of services against payment. When an operation is expected to generate revenue, this revenue should be taken into account in the calculation of the eligible expenditure²⁷. The eligible expenditure shall not exceed the current value of the investment cost less the current value of the net revenue from the investment over the specific reference period for investments in infrastructure or other projects where it is possible to objectively estimate the revenues in advance.

The 'funding gap method', which is used to determine the contribution from the funds to revenue generating projects, is based on the difference between the current value of the investment costs and net revenue of the operation. It is the part of the project investment cost which needs to be financed. The overall aim is to ensure that an operation has sufficient resources to be implemented and at the same time to avoid over-financing.

In the assessment of the accuracy of the net revenues, the managing authority shall take account of the reference period appropriate to the category of investment concerned, the type of project, the profitability normally expected of the type of investment concerned, the principle of polluter-pays and, if necessary, considerations of equity. It should also assess the reasonableness of any assumptions made regarding the forecast revenue and expenditure of the operation.

Since it is the responsibility of the managing authority to ensure that operations comply with the Community rules, it should provide adequate guidance to beneficiaries for preparing their financial analysis. The managing authority, as part of its management verifications, should check that the assessments of revenue-generating operations have been carried out properly, that they have examined the financial analysis in detail and that the assessments are fully documented.

In addition, the managing authority has to ensure that in the case of an operation where it is objectively not possible to estimate the revenue in advance, the revenue generated within five years of the completion of that operation must be deducted from the expenditure declared to the Commission²⁸.

Where, at the latest three years after closure of the operational programme, it is established that an operation has generated revenue that has not been taken into account (i.e. where the actual revenue is higher than the estimated revenue and this additional revenue has not been deducted from

²⁷ Article 55 of Council Regulation No. 1083/2006

²⁸ Article 55(3) of Council Regulation No. 1083/2006

declared expenditure), such revenue shall be refunded to the general budget of the European Union in proportion to the contribution of the Funds²⁹.

A system should be established to allow the managing authority to monitor and quantify such revenues. As part of its on-the spot management verification and after the completion operations, the managing authority should check, on a sample basis, the accuracy of the revenues that beneficiaries have reported.

Proportionate procedures may be adopted for monitoring revenues generated by operations with a total cost below €200,000. Projects subject to the rules on State aid are not subject to the rules on revenue generation laid down by Article 55(1) to Article 55(5).

The Directorate General for Regional Policy has issued separate detailed guidance on the implementation of Article 55 on revenue generating projects³⁰ (Draft) together with an information note on Article 55(6)³¹ (Draft).

3.7. Durability of operations

Pursuant to Article 57 of Regulation (EC) No 1083/2006 the managing authority must ensure that an operation retains the contribution from the Funds only if that operation does not, within five years³² from its completion, undergo a substantial modification: (a) affecting its nature or its implementation conditions or giving to a firm or a public body an undue advantage; and (b) resulting either from a change in the nature of ownership of an item of infrastructure or the cessation of a productive activity.

As part of its verifications and after the completion of operations, the managing authority should check compliance with these conditions, including by on-the-spot verifications on a sample basis. Any amounts identified as having been unduly paid should be recovered.

3.8. Equality and non-discrimination

Reference

(Draft) Directorate General for Regional Policy Information Note on Article 16 of Council Regulation (EC) No. 1083/2006

Pursuant to Article 16 of Regulation (EC) No 1083/2006 management verifications should check that operations respect and promote equality between men and women and that the integration of the gender perspective has been applied during the various stages of implementation of the Funds. This involves a gender mainstreaming approach ensuring that all operations openly and actively take into account their effects on the respective situation of women and men, with a view to overcoming inequalities. All programmes should contribute to improved equality between men and

²⁹ Article 55(4) of Council Regulation No. 1083/2006

³⁰ (Draft) Guidance note on Article 55 of Council Regulation (EC) No. 1083/2006

³¹ (Draft) Information note on Article 55(6) of Council Regulation (EC) No. 1083/2006

³² Or three years from the completion of the operation in Member States which have exercised the option of reducing that time limit for the maintenance of an investment or jobs created by SMEs

women, and should be able to demonstrate the impact in this respect, prior to, during and after implementation.

In addition, verifications should also check that appropriate steps have been taken to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the various stages of implementation of the Funds and, in particular, in the access to them.

Checklists used for management verifications should therefore, where relevant, include questions dealing with the respect of the principles of equality and non-discrimination. Management verifications should check the actual performance of co-financed programmes and operations against the target indicators throughout the programming period. Managing Authorities should check that appropriate steps have been taken during the implementation of the operation to comply with the relevant conditions set out in the grant contract. A good practice would be to verify from the attendance sheet of a training programme that the participation rate of men and women corresponds to that foreseen in the project proposal and to obtain explanations for any significant differences. Accessibility for disabled people is one of the criteria to be observed in defining operations co-financed by the Funds and to be taken into account during the various stages of implementation.

Provisions on accessibility for disabled persons are mentioned in the EU public procurement Directives and they foresee that, whenever possible, the technical specifications set out in the contract documentation, such as contract notices, contract documents or additional documents should be defined so as to take into account accessibility criteria for people with disabilities or design for all users. Management verifications should check that operations respect these provisions regarding accessibility. In particular, on the spot verifications should check whether the technical specifications or any other provisions foreseen in the contract documentation to ensure accessibility have been adequately implemented.

Directorate General for Regional Policy has issued an Information Note on Article 16 (*Draft to be prepared for COCOF June 2008*).

3.9. European territorial cooperation objective (ETC)

Under the European territorial cooperation objective (ETC), the European Regional Development Fund focuses its assistance on the development of cross-border economic, social and environmental activities, the establishment and development of trans-national cooperation and the reinforcement of the effectiveness of regional policy. The structure of ETC Programmes can be complex and may involve co-operation between different combinations of Member States/Regions and non-Member States. Due to this complexity it is considered appropriate to provide guidance on verifications in this area.

By virtue of Article 15 of Regulation (EC) No 1080/2006 and by way of derogation from the general provisions for the management of mainstream programmes where the managing authority is responsible for verifying the legality and regularity of the expenditure, under ETC this responsibility lies with the participating Member States. They must set up control systems and designate controllers who in turn carry out the verification of the legality and regularity of the

expenditure declared by each beneficiary participating in the operation. The managing authority shall satisfy itself that the expenditure of each beneficiary participating in an operation has been validated by the controller referred to in Article 16(1) of Regulation (EC) No 1080/2006.

In order to validate the expenditure, pursuant to Article 16 of Regulation (EC) No 1080/2006, each Member State shall set up a control system making it possible to verify the delivery of the products and services co-financed, the soundness of the expenditure declared for operations or parts of operations implemented on its territory, and the compliance of such expenditure and of related operations, or parts of those operations, with Community rules and its national rules.

For this purpose each Member State shall designate the controllers responsible for verifying the legality and regularity of the expenditure declared by each beneficiary participating in the operation. Member States may decide to designate a single controller for the whole programme area. Where the delivery of the products and services co-financed can be verified only in respect of the entire operation, the verification shall be performed by the controller of the Member State where the lead beneficiary is located or by the managing authority.

The content and scope of the verifications by the controllers is identical to that of a managing authority for the Competitiveness and Convergence programmes³³. Controllers must verify that the co-financed products and services have been delivered and that the expenditure declared by beneficiaries for operations has actually been incurred and complies with Community and national rules. For this purpose they have to perform administrative verifications in respect of each application for reimbursement by beneficiaries and on-the-spot verifications of individual operations, which could be carried out on a sample basis.

The general principles outlined earlier in this document regarding the timing, scope and intensity of the verifications, the organisation of on-the-spot verifications, the requirement to document the work done and the functional segregation of duties as regards verification and audit work are also applicable to the work of controllers. Furthermore, the controllers should verify that beneficiaries and other bodies involved in the implementation of operations maintain either a separate accounting system or accounting code for all transactions relating to the operation.

Under the ETC Objective, Article 20 of Regulation (EC) No 1080/2006 requires that a lead beneficiary be appointed for each operation. The lead beneficiary should ensure that both the expenditure presented by each of the beneficiaries participating in the operation has been incurred for the purpose of implementing the operation and corresponds to the activities agreed between those beneficiaries, and that the expenditure presented by each of the beneficiaries participating in the operation has been validated by the controllers. The scope of the work of the controller responsible for the lead beneficiary should therefore include a verification of how the lead beneficiary complies with these obligations. As regards the role of the managing authority, it has to satisfy itself that the expenditure of each beneficiary participating in an operation has been validated by the controllers.

Best practice in this area would allow for details of the work done by each of the controllers to be made available to the controller of the lead beneficiary, the lead beneficiary and to the managing authority. This requirement could be included in the terms of reference of the controllers on their appointment.

³³ Article 60(b) of Regulation (EC) No 1083/2006

Where part of an operation is implemented outside the European Community³⁴ and where a controller has not been appointed, specific arrangements should be made in order to define which controller or entity is responsible for verifying the legality and regularity of the expenditure. Similar arrangements should be made for the verification of expenditure made in the European Community when it is outside of the territory of the participating Member States³⁵.

³⁴ See Art. 21(3) of Regulation (EC) No. 1080/2006

³⁵ See Art. 21(1) and (2) of Regulation (EC) No. 1080/2006