



EUROPEAN COMMISSION

European Structural and Investment Funds

Guidance for Member States on  
Management verifications

**(Programming period 2014-2020)**

***DISCLAIMER:*** This is a document prepared by the Commission services. On the basis of the applicable EU law, it provides technical guidance to colleagues and other bodies involved in the monitoring, control or implementation of the European Structural and Investment Funds (except for the European Agricultural Fund for Rural Development (EAFRD)) on how to interpret and apply the EU rules in this area. The aim of this document is to provide Commission's services explanations and interpretations of the said rules in order to facilitate the programmes' implementation and to encourage good practice(s). This guidance note is without prejudice to the interpretation of the Court of Justice and the General Court or decisions of the Commission.

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## LIST OF ACRONYMS AND ABBREVIATIONS

AA	Audit authority
CA	Certifying authority
CPR	Common Provisions Regulation (Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17.12.2013
ERDF	European Regional Development Fund - Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17.12.2013
ESF	European Social Fund - Regulation (EU) No 1304/2013 of the European Parliament and of the Council of 17.12.2013
ESIF	ESIF means all European Structural and Investment Funds. This guidance applies to all except for the European Agricultural Fund for Rural Development (EAFRD)
SME	Small and medium-sized enterprise
EGTC	European grouping of territorial cooperation
ETC	European Territorial Cooperation - Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17.12.2013
IB	Intermediate body
JS	Joint secretariat (for ETC programmes)
MA	Managing authority
Management verifications	Verifications pursuant to Article 125(4a) of the CPR, including administrative verifications in respect of each application for reimbursement by beneficiaries and on-the-spot verifications of operations, as set out in Article 125(5) of the CPR.
MCS	Management and control system

## I. BACKGROUND

### 1. Regulatory references

Regulation	Articles
Reg. (EU) No 1303/2013 Common Provisions Regulation ( <i>hereafter CPR</i> )	Article 125 (4, 5 and 7)- Functions of the managing authority
Reg. (EU) No 1299/2013 European Territorial Cooperation ( <i>hereafter ETC</i> )	Article 23 - Functions of the managing authority

Article 125(4)(a) CPR requires the MA to verify that the co-financed products and services have been delivered and that expenditure declared by the beneficiaries has been paid and that it complies with applicable law, the operational programme and the conditions for support of the operation.

Pursuant to Article 125(5) CPR the verifications shall include administrative verifications in respect of each application for reimbursement by beneficiaries and on-the-spot verifications of operations.

Pursuant to Article 125(7) CPR, where the MA is also a beneficiary under the operational programme, arrangements for the verifications (referred to in point (a) of the first subparagraph of paragraph 4 of this Article) shall ensure adequate separation of functions.

Article 23(1) ETC states that the MA of a cooperation programme shall carry out the functions laid down in Article 125(4) CPR. Article 23(4) ETC states that Member States and third countries under certain conditions bear responsibility for management verifications. The specificities relating to verifications in ETC programmes are covered by Article 23 (§3 and §5) ETC.

### 2. Purpose of the guidance

The objective of this document is to provide guidance on certain practical aspects of the application of Article 125(4)(a) and (5)CPR as well as Article 23 ETC. It is intended to serve as a reference document for the Member States for the implementation of those articles. This guidance is applicable to the ESIF, except for the EAFRD. Member States are recommended to follow the guidance, taking account of their own organisational structures and control arrangements. The guidance provides a number of best practices that can be implemented by MA and bodies as indicated in Article 23(4)ETC taking into account specificities of each MCS. Commission audits carried out in the 2000-2006 and 2007-2013 programming periods have shown the potential benefits of such a document.

The guidance 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, e.g. public procurement and aid schemes, which have sometimes been problematic in Member States. It also includes information on management verifications in the areas of financial instruments, revenue generating projects and ETC. 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 a responsibility of the MA when these are carried out under Article 125(4)(a) CPR and under Article 23(3) ETC . The MA has the possibility of delegating tasks to IBs. Accordingly, where reference is made to MA in the note, this may apply to IBs where some or all of the management verification tasks have been delegated by the MA. In the other cases, for ETC programmes, the responsibility for the management verifications is with the Member States, third countries or territories designating the body or person according to Article 23(3) and 23(4) ETC.

In pursuance of the administrative burden reduction for beneficiaries of the ESIF, it is necessary to emphasise that exchange of information between beneficiaries and MA, CA, AA and IBs can be carried out by means of electronic data exchange systems. The rules in the legislative package 2014-2020 linked to e-cohesion initiative are formulated in a way to enable Member States and regions to find solutions according to their organisational and institutional structure and particular needs while defining uniform minimum requirements.

## **II. GUIDANCE**

### **1. Main issues in management verifications**

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 in boxes as examples of best practice.

#### **1.1. General principles and purpose**

Management verifications are part of the internal control<sup>1</sup> 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 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 125(5) CPR are not 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 in case of reimbursement of costs actually incurred and the compliance with the terms of the relevant Commission Decision approving the operational programme and applicable Union law and national law relating to its application. However, while Member States' internal control systems may be adequate for national programmes they may need to be adapted to certain specific requirements of ESIF.

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.

It shall be also stated the each MA is fully responsible to plan, administer and assess its internal capacities to identify the number and value of operations which can be appropriately managed.

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<sup>1</sup> Source: COSO definition of internal control see [www.coso.org](http://www.coso.org)

## 1.2. Responsibilities of managing authorities, intermediate bodies and beneficiaries

**Under Article 125 CPR, the managing authority** is responsible for managing and implementing operational programmes in accordance with the principle of sound financial management, and in particular for:

- drawing up management declaration on accounts covering expenditure incurred and presented to the Commission for reimbursement;
- drawing up the annual summary of the final audit reports and of controls carried out;
- verifying that the co-financed products and services are delivered and that the expenditure declared by the beneficiaries for operations has been paid and that it complies with applicable law, the operational programme and conditions for support of the operation;
- ensure an adequate audit trail;
- establish a system to record and store in computerized form data on operation, including individual participants data, where applicable;
- putting in place effective and proportionate anti-fraud measures taking into account the risks identified;
- ensure that beneficiaries involved in the implementation of operations maintain either a separate accounting system or an adequate accounting code for all transactions.

The MA has overall responsibility for these tasks. It can choose to entrust<sup>2</sup> some or all of these tasks to IBs<sup>3</sup>. However, it cannot delegate the overall responsibility for ensuring that they are properly carried out. Therefore, where certain tasks have been entrusted to IBs, the MA 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,

- prepare guidance notes, manuals of procedures and checklists tailored for and used by IBs;
- obtaining and reviewing relevant reports prepared by IBs;
- receiving audit reports prepared in the context of Article 127(1)CPR, which should incorporate reviews of the verifications under Article 125(5) CPR done by IB; and
- performing quality checks on verifications carried out by IBs.

It shall carry out checks at IB level including a sample of beneficiary's applications for reimbursement so that, as part of its routine supervision or where it has concerns that the tasks are not being properly carried out, 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 judgment.

While designing the management verifications, the MA is to consider fraud risks. Management and staff should have sufficient knowledge of fraud to identify red flags. In principle the presence of more than one indicator at one time increases the probability of fraud. The management verifications shall be carried out with professional scepticism. The MA shall include instructions

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<sup>2</sup> Where one or more tasks of a MA or CA are performed by an IB, the relevant arrangements shall be formally recorded in writing.

<sup>3</sup> IBs are any public or private body which act under the responsibility of a MA or CA, or which carry out duties on behalf of such an authority vis-à-vis beneficiaries implementing operations (Article 2(18) CPR). 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 operational programme and compliance with the relevant Union rules. Where the MA has delegated the tasks set out in Article 125(5) CPR, the system of internal control should include verification by the IB on the applications for reimbursement submitted by the beneficiary.

and information in its guidance manuals to raise awareness of the risk of fraud. In addition, clear procedures shall be in place to ensure any reported cases of fraud or suspected fraud are actioned promptly. Where suspected fraud is detected (e.g. through management verifications), the MA should inform the relevant national authority without delay for further action; this authority would be the one which have to notify the Commission (OLAF) of irregularities and suspected fraud cases in line with the applicable sectoral rules on reporting irregularities. In the first instance, the right people to inform are likely to be those charged with governance of the entity at stake, if there is no reason to think that they are involved in the suspected fraud. Otherwise, the MA must notify the case(s) directly to the judicial authorities, without prejudice to any national legislation relating to the confidentiality of information obtained by the MA. Where feasible under national rules, the MA should be informed of all cases of suspected or definite fraud concerning projects co-financed by ESIF; for this purpose, coordination between national bodies should be promoted.

The Commission recommends that MAs adopt a proactive, structured and targeted approach to managing the risk of fraud. For ESIF, the objective should be proactive and proportionate anti-fraud measures with cost-effective means. All programme authorities should be committed to zero tolerance to fraud, starting with the adoption of the right tone from the top. The Commission's *Guidance note on fraud risk assessment and effective and proportionate anti-fraud measures* (EGESIF 14-0021-00 of 16 June 2014) provides assistance to MA for the implementation of Article 125(4)(c), which lays down that the MA shall put in place effective and proportionate anti-fraud measures taking into account the risks identified.

Some Member States decided to use the ARACHNE Risk Scoring Tool. ARACHNE aims at establishing a comprehensive and complete database of projects implemented under the Structural Funds and Cohesion Fund in Europe enriched with the data from the publicly available sources in order to identify, based on a set of more than 100 risk indicators, the most risky projects, beneficiaries, contracts and contractors. The data mining tool ARACHNE is available to MA and might be one part of effective management verifications, including proportionate anti-fraud measures.

**The intermediate body**, i.a. may be responsible for compiling applications for reimbursement received from a number of beneficiaries into one overall expenditure declaration to the MA. In such cases, the MA is responsible to carry out the verifications under Article 125(5) CPR to ensure the accuracy of the compilation of the expenditure by the IB. In case when the IB submits expenditure declarations directly to the CA, verifications carried out in accordance with the Article 125(5) CPR should be done at IB level. In addition, the MA 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 CA.

**Beneficiary** is defined in Article 2(10) CPR. Where the MA or IBs are also beneficiaries a clear separation of functions must be ensured between the recipient role and the supervisory role. Beneficiaries are responsible for ensuring that expenditure which they declare for co-financing is legal and regular and complies with all applicable Union law and national law relating to its application. 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. However, the checks carried out directly by beneficiaries cannot be considered to be the equivalent of the verifications falling under Article 125 CPR. Beneficiaries using e-archiving or image processing systems (meaning that the original documents are scanned and stored in electronic form) are advised to organise their internal control system so that it guarantees that: each e-document scanned is identical to the paper original, it is impossible to scan the same paper document to produce several different e-documents, each e-document remains unique and cannot be re-used for any other than its initial purpose. The approval, accounting and payment process for each e-document should be

unique. It should not be possible to approve, account for or pay the same e-document twice. Once scanned, it should be impossible to amend e-documents or to create altered copies.

### **1.3. Guidance given by Member State**

#### Guidance by Member State to all authorities

Member States should ensure that MA, CA and IBs receive adequate guidance on the provision of MCS necessary to ensure the sound financial management of ESIF and in particular to provide adequate assurance of the correctness, regularity and eligibility of claims on Union assistance.

Best practice in this area would involve guidance being prepared for all levels (i.e. MA, IB 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 MA level and, where necessary, tailored at IB level to meet specific requirements. Such guidance should be incorporated in the procedures manuals of these bodies.

#### Guidance by MA 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 Union requirements and drawing up the first applications for reimbursement. Specific attention should be given to ensuring that the beneficiaries are aware of which costs and outcomes or outputs are eligible for reimbursement.

Particular attention should be paid to raising awareness of beneficiaries on the option offered by Articles 67(1) (b)(c)(d) and 68 CPR, Article 14(2)(3)(4) ESF and Article 19 ETC on the unit costs, lump sums and flat rate financing as well as the reimbursement of expenditure paid by Member States on the basis of unit costs and lump sums defined by the Commission applicable to ESF beneficiaries according to Article 14 ESF.

The MA is responsible for ensuring that operations are selected for funding in accordance with the appropriate selection procedures and criteria that are non-discriminatory and transparent and take into account principles of equality between men and women and sustainable development, that they comply with the Union and national rules and falls within the scope of the Fund(s) 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 as well as the financial and other information to be kept and communicated. The MA must satisfy itself that the applicant has the adequate capacity to fulfil these conditions before the approval decision is taken. It should satisfy itself that the applicant ensures the durability of operations and where the operation has started before the submission of an application for funding to the MA, that the Union law and national law relating to its application have been complied with.

The MA could establish appropriate criteria to assess the operational, technical and administrative capacity of applicants. The criteria may vary depending upon the type of operations but could include, i.a., assessment of the financial standing of the applicant, the qualifications and experience of its staff and its administrative and operational structure.

A strategy should be in place to ensure that beneficiaries have access to information through, i.a., leaflets, booklets, seminars, workshops and websites. This should cover in particular national and Union eligibility rules and other legal requirements including information and publicity requirements.

### **1.4. Capacity of the managing authority and intermediate bodies in the framework**



## **of verifications**

Member States should seek to have adequate human resources with appropriate experience in carrying out verifications for operations co-financed by ESIF. The MA and IBs should clearly identify in the MCS description the units responsible for carrying out verifications indicating the number of human resources allocated. The body responsible for carrying out verifications when the MA and IB are beneficiaries shall be identified. MA and IBs may adopt a centralised or decentralised verification system. Centralised controls offer a better possibility for experience sharing. They also increase the efficiency of the staff carrying out management verification as well as facilitates quality control. Under a decentralised system the MA should ensure that there is a system of quality control in order to ensure the same level of output across different staff carrying out management verifications.

Participating countries in ETC programmes should agree on the management verifications set-up and identify the staff carrying out management verifications, the staffing arrangements, main competencies and responsibilities and ways to ensure coherence among staff carrying out management verifications from all countries participating in the programme.

When technical assistance is used by the MA or IB, it should be ensured that there is guidance given to the external staff carrying out management verifications. Technical assistance should be used, as much as possible, as a mean to provide capacity building for the staff carrying out management verifications of the MA and IB.

MA should provide their staff with training and guidance on the skills required. In particular, the MA staff needs to have both skills as a controller and knowledge of national and EU rules and regulations (amongst others – eligibility rules, state aid rules, public procurement rules, functioning of financial instruments).

### **1.5. Methodology and scope of Article 125 (5) management verifications**

Verifications under the Article 125(5) CPR 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 operations.

All applications for reimbursement by beneficiaries, whether intermediate or final, shall be subject to administrative verifications based on an examination of the claim and relevant supporting documentation such as i.a. invoices, delivery notes, bank statements, progress reports and timesheets. The amount of supporting documents might be reduced when operations are implemented through simplified costs options<sup>4</sup>. The verifications carried out by the MA and IB before expenditure is certified to the Commission should be sufficient to guarantee that the expenditure certified is legal and regular. All irregular expenditure detected during the verifications should be excluded from the expenditure declared to the Commission.

If during on-the-spot verifications, carried out on a sample basis, a material amount of irregular expenditure is detected in expenditure which has already been included in a request for payment submitted to the Commission, then the responsible authority should:

- carry out a quantitative and qualitative assessment of the irregularities detected in order to assess the risk that irregularities exist also in the operations not sampled;
- take the necessary corrective measures to strengthen verifications before the request for

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<sup>4</sup> For simplified cost options, please refer to the Commission's *Guidance on Simplified Cost Options (SCOs)*(EGESIF\_14-0017 of 6/10/2014).

payment to the Commission.

The treatment of the irregular expenditure detected during the verifications under Article 125(5) CPR should be in line with the applicable rules including the Commission's *Guidance note on on accounts* (EGESIF 15\_0017).

The verifications should cover in particular:

- That expenditure relates to the eligible period and has been paid;
- 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 Union eligibility rules;
- Adequacy of supporting documents and existence of an adequate audit trail;
- For simplified cost options: that conditions for payments have been fulfilled;
- Compliance with State aid rules, sustainable development, equal opportunity and non-discrimination requirements;
- Where applicable: compliance with Union and national public procurement rules;
- The respect of EU and national rules on publicity;
- Physical progress of the operation measured by common and programme specific output and, where applicable, result indicators and micro data;
- Delivery of the product or service in full compliance with the terms and conditions of the agreement for individual form of support.

When the same beneficiary implements more than one operation at the same time or an operation receives funding under various forms of support or funds, there shall be a mechanism in place to verify potential double financing of an expenditure item.

Where the beneficiary presents an auditor's certificate in support of expenditure declared this may also be taken into account (see section 1.10).

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 the MA should check that the relevant approvals have been obtained by the beneficiary from these bodies. For verification of compliance with State aid rules, MA may also be able to place reliance on the work of other national authorities with competence in this area.

The methodology used by MA for carrying out verifications under the Article 125(5) CPR 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 different checks.

When a beneficiary or provider has a special status (e.g. an international organization), the Member State concerned should ensure access to documents for verification purposes (e.g. memorandum of understanding), prior to the conclusion of a funding agreement or contract, notwithstanding the provisions of Article 40(1) CPR.

## **1.6. Timing of management verifications**

### **1) Verifications during project selection**

For the purpose of selection and approval of operations the MA must ensure that applicants have the capacity to fulfil a number of conditions before the approval decision is taken (see section 1.3)

#### 2) Administrative verifications during project implementation

Management verifications should be carried out before the related expenditure is declared to the next level above. For example, before an IB forwards either an interim or final payment application to the MA (or a MA to the CA), its administrative verifications should already have been carried out. In any event, all administrative verifications (see section 1.5) in respect of the expenditure in a particular payment application shall be completed before the CA submits the payment application to the Commission.

#### 3) On the spot verifications during project implementation

On-the-spot verifications should be planned in advance to ensure that they are effective, in particular in view of the certification that the expenditure entered in the accounts complies with applicable law (Article 133(c) CPR). Generally, notification of the on-the-spot verifications should be given in order to ensure that the relevant staff (e.g. project manager, engineer, accountant) 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 operation may be difficult 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 to the beneficiary.

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 would be too late to effect any corrective action in case problems are identified and in the meantime, irregular expenditure have been certified. Visits of operations as a preventive measure to verify the capacity of an applicant do not replace the on-the-spot verifications of operations selected for funding.

The nature, specific characteristics of an operation, amount of public support, risk level and the extent of administrative verifications, 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 forms of support are awarded following an annual call for expressions of interest, on-the-spot verifications carried out in the first year should help to prevent recurrence of problems in later years .

#### 4) On the spot verifications after operation implementation

Agreements for individual form of support 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 conditions continue to be observed.

Where operations are intangible in nature and where little or no physical evidence remains after their completion, when on-the-spot verifications are carried out, a good practice would be to undertake them during the implementation (i.e. before completion). These on-the-spot verifications are useful in order to check the reality of such operations.

5) All management verifications should be finalized in due time in order to enable Member State authorities for a timely transmission of the documents listed in Article 138 CPR i.e. accounts, the

management declaration and the annual control report or the audit opinion. MA is recommended to set internal deadlines for the completion of all management verifications in order to enable both CA to certify the accounts as required by the Article 126(c) CPR, MA to issue the management declaration in line with Article 125(4) and (10) CPR and AA to draw up audit opinion and annual control report as required by the Article 127(5) CPR.

No expenditure shall be included in the certified accounts submitted to the Commission if the planned management verifications are not fully completed and the expenditure is not confirmed as legal and regular<sup>5</sup>. If the MA decides to perform on the spot verifications (e.g. further to the ones that it may have already been carried out) in a subsequent accounting year, any irregularities detected should be treated in line with applicable rules and the Commission's *Guidance note on accounts*.

### **1.7. Intensity of management verifications**

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

The Commission services recommend as best practice that the documents to be submitted with each application for reimbursement by beneficiaries are comprehensive to enable the MA to verify the legality and regularity of the expenditure in compliance with national and Union rules. Administrative verifications should thereby comprise a complete review of the supporting documents (such as invoices, proofs of payment, timesheets, presence lists, proofs of delivery, others) to each application for reimbursement.

Although management verifications of 100% of the applications for reimbursement submitted by beneficiaries are required by the regulation, verification of each individual expenditure item against source documentation within each application sent for reimbursement 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 within each application for reimbursement, 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 to ensure that all items have probability to be selected. The value of checked expenditure is the amount tested to source documentation. The sampling methodology used shall be established ex-ante by the MA and it is recommended to establish parameters in order that the results of the random sample checked can be used to project the errors in the unchecked population. In case that material errors are found in the sample tested, it is recommended to extend the testing to determine whether the errors have a common feature (i.a. type of transaction, location, product, period of time) and then either extend the verifications to 100% of the application for reimbursement or project the error in the sample to the unchecked population. The total error is calculated by adding the errors from the risk based sample to the projected error from the random sample.

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

<sup>5</sup> According to Article 126 (c) CPR, when the CA submits the accounts to the Commission it certifies that the expenditure declared is legal and regular, as follows from Annex VII of Regulation (EU) No 1011/2014 which requires the CA to certify that: (i) the accounts are complete, accurate and true and that the expenditure entered into the accounts complies with applicable law and has been incurred in respect of operations selected for funding in accordance with the criteria applicable to the operational programme and complying with applicable law; (ii) that the provisions in the Fund-specific Regulations, Article 59(5) of Regulation (EU, Euratom) No 966/2012 and in points (d) and (f) of Article 126 CPR are respected; that the provisions in Article 140 CPR with regard to the availability of documents are respected.

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 and list of contracts signed. Moreover, ideally, electronic invoices and payments or 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 application for reimbursement, claim processing 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.

It is also recommended as best practice to verify compliance with national and Union rules including public procurement procedures during the administrative verifications. Whilst it is best practice to verify all public procurement procedures, this might not be practicable due to a significant number of contracts signed. In this case, the MA should develop a procedure to verify a sample of contracts selected on a risk basis. As best practice, it is recommended, to verify all contracts above the EU thresholds and a sample of contracts below the EU threshold which are sampled using a risk based approach. Article 122(3) CPR introduces a new provision for e-Cohesion. The concept of electronic exchange between beneficiaries and relevant bodies involved in the implementation of cohesion policy is intended to support the reduction of administrative burden. A good practice is establishing a computerised systems allowing 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**

Where administrative verifications are exhaustive and detailed, there are still some elements concerning the legality and regularity of expenditure that cannot be verified through an administrative verification. 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 or service in full compliance with the terms and conditions of the agreement, physical progress, respect for Union rules on publicity. 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. Progress reports prepared by beneficiaries, or engineers' reports in the case of larger infrastructure operations, can be used as the basis for both administrative and on-the-spot verifications.

The MA, when determining the extent of verifications to be carried out under the Article 125(5)(b) CPR may take account of the internal control procedures of the beneficiary where this is justified. For example, where the beneficiary is a government ministry and checks on the expenditure have already been carried out by a separate part of the ministry as part of their own control procedures (i.e. with appropriate segregation of functions), the MA may treat them as contributing to the assurance to be obtained under Article 125(5) CPR, whilst still being responsible for carrying out verifications under this same article. The checks carried out directly by the beneficiaries cannot be

considered to be the equivalent of the verifications falling under Article 125 CPR.

On-the-spot verifications may be carried out on a sample basis. Where sampling is used for the selection of operations for on-the-spot verifications, the MA shall keep records describing and justifying the sampling method and a record of operations selected for verification. It shall review the sampling method each year. Where a particular beneficiary is responsible for an operation made up of a group of projects, the MA should put in place a procedure for determining which projects within this operation will be subject to the on-the-spot verification.

No operation shall 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 MA and where reliable documentary evidence of the reality of the operation 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. For infrastructure operations implemented over several years, several verifications are likely to be required during implementation and at completion.

The intensity, frequency and coverage of on-the-spot verifications is dependent upon the complexity of the operation, the amount of public support to an operation, the level of risk identified by management verifications, the extent of detailed checks during the administrative verifications and audits of the AA for the MCS as a whole as well as the type of documentation that is forwarded by the beneficiary.

The sample could focus on high 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-based selection). A random sample should be selected as a complement.

As mentioned in section 1.2, Member States can opt for the ARACHNE Risk Scoring Tool that can identify more than 100 risks associated with risk indicators, such as procurement, contract management, eligibility, performance, concentration as well as reputational and fraud alerts. This programme enables and aids the MA in identifying most risky projects, contracts, contractors and beneficiaries and helps to gear its administrative capacity to the most risky cases while planning on-the-spot visits. Additionally the systematic risk identification might support the MA to supervise the tasks delegated to the IBs such as the first level control. The interested Member States may receive training on how to use the tool.

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

For the selection of the expenditure items to be verified within each operation the same rules apply as for administrative verifications. If following the conduct of on-the-spot verifications, it results that a material amount of expenditure which was already included in a request for payment submitted to the Commission is irregular then the MA or IB should take the necessary corrective measures to strengthen verifications before the next certification to the Commission. This may be achieved by either strengthening the administrative verifications or by carrying out the on-the-spot checks before the expenditure is certified to the Commission.

The MA shall 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.

Best practice for the MA for the on-the-spot verification of measures that include construction works is to carry out additional checks on the quantity and quality of the material used. Normally the contractor and the supervising engineer are responsible to ensure that the investment strictly complies with the conditions laid out in the technical specification. They are carrying out checks on the quantity and quality of the material built in. However in some cases the material used for construction does not comply with the requirements set out in the technical specification even though the checks were carried out by the contractor or the supervising engineer. The consequences are serious and it is very costly to repair the damages once the investment is finalised. Examples for possible risks:

- The surface of roads needs to be repaired soon after completion because the layers are too thin or the surface does not meet the quality set out in the technical specification, or
- The quality of concrete used for buildings such as wastewater treatment plants is insufficient or does not meet the standards. There is a risk that the building becomes useless or costly works to repair the damages will be required. Additional checks on the quantity and quality of the material used carried out by the MA or an independent expert that is contracted by the MA help preventing severe damages during and after construction, improve the assurance that only regular expenditure are certified to the Commission and, in addition, help preventing corruption practices.

### **1.8. Documenting management verifications**

All management verifications (both administrative and on-the-spot) shall be documented in the project's file and results be available to all concerned staff and bodies. The records should state the work performed, the date when the work was carried out, details of the application for reimbursement reviewed, amount of expenditure tested, 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 Union or national rules infringed and the corrective measures taken. Follow up action might include the submission of an irregularity report and a procedure for recovery of the funding.

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). In the case of public procurement it is recommended to have detailed checklists which cover the key risks in the procurement procedure (see section 2.1 below).

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 may be used to provide evidence of the verification of compliance with publicity requirements.

A system for recording and storing in computerized form data on each operation for and from verifications carried out should be maintained for each programme. Records are kept in computerized monitoring information systems in Member States. This facilitates the planning of verifications, helps avoid unnecessary duplication of work and provides useful information for other bodies (i.e. AA, CA). Moreover the Member States should maintain a register of management verifications where at least following data are kept with the link to relevant verification: value of an

irregularity(ies) detected, amount affected, type of the irregularity or finding and measures taken. This register should be maintained for purposes of the management declaration and relevant statistics should be regularly communicated to other bodies (i.e. AA, CA).

The details (i.a. the date of on-the-spot verifications of individual operations) should be recorded in the computerised monitoring system.

### **1.9. Outsourcing management verifications**

As a general principle, management verifications are to be carried out under the responsibility of the MA by the body directly responsible for the management of the programme or priority axis. Sufficient staff resources shall be allocated to these verifications in order to ensure that they are carried out properly and in a timely way (see section 1.4).

However, in situations where, due to the high volume or technical complexity of the operations to be verified, MA finds that it does not have sufficient staff or expertise to carry out the verifications itself, 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 and a wording of the opinion are set out clearly in the terms of reference. Therefore, the consequences of any delays in carrying out this work may have an impact on the threshold of eligible expenditure to declare in order to avoid N+3 decommitment. In order to avoid this risk, the MA is recommended to implement procedures ensuring timely processing of reports by external firms. 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 e.g. by reviewing a number of applications for reimbursement. This will usually involve assigning additional staff to this function. Accordingly, before a decision to outsource management verifications is taken, all of these factors should be taken into consideration.

### **1.10. Auditors' certificates**

The terms of agreements for individual form of support may include a requirement for beneficiaries to provide an auditor's certificate with applications for reimbursement they submit. These certificates vary 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 agreement, that the terms of the agreement for individual form of support have been complied with and that adequate supporting documentation, including accounting records, exists. Although the assurance under Article 125(5) CPR 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 relying on the certificates, it is essential that the MA provides guidance for use by the beneficiaries' auditors on the scope of the work to be done and the report or 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.

The International Federation of Accountants (IFAC) has issued an International Standard on Related Services (ISRS) 4400 entitled ' 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 application for reimbursement.



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 annually audited financial statement of a beneficiary company cannot replace a specific auditor's certificate for each application for reimbursement made by that beneficiary.

To ensure the quality and reliability of auditors' certificates, the MA shall review a number of auditors' certificates.

### **1.11. Segregation of duties**

In order to ensure compliance with the principle of separation of functions (cf. Article 72(b) CPR) and avoid risks arising where a MA (or the IB) is responsible for (i) selection and approval of operations, (ii) management verifications and (iii) payments, adequate segregation of duties shall be ensured between these three functions.

As indicated above where the MA (or the IB) is also a beneficiary, an appropriate segregation of functions for the verifications under Article 125(5) CPR shall be ensured. Adequate segregation may be achieved, e.g. 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 127 CPR.

The staff performing verifications under the Article 125(5) CPR shall not be involved in systems audits or audits of operations carried out under the responsibility of the AA (Article 127 CPR) and vice versa. The objectives of management verifications are different from those of audits carried out under the responsibility of the AA, the latter being carried out ex-post (i.e. after the payment application has been submitted 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 AA shall be separated, exchange of information between the MA, CA and AA services 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 AA for advice while the latter should take account of the results of management verifications in its risk analysis and audit strategy.

## 2. Specific areas concerning management verifications<sup>6</sup>

### 2.1. 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/C179/02);*
- (iv) *Commission Interpretative Communication on the application of Community law on Public Procurement and Concessions to Institutionalised Public-Private Partnerships (2007/C 6661);*
- (v) *"Identifying conflicts of interests in public procurement procedures for structural actions. A practical guide for managers."*<sup>7</sup>;
- (vi) *"Detection of forged documents in the field of structural action. A practical guide for managing authorities."*<sup>8</sup>;
- (vii) *New procurement directives:*
  - *Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contract;*
  - *Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC;*
  - *Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC;*
- (viii) *Commission Decision C(2013) 9527 of 19.12.2013 on the setting out and approval of the guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement.*
- (ix) *"Guidance for practitioners on the avoidance of the most common errors in public procurement of projects funded by the European Structural and Investment Funds"*

Verifications in relation to public procurement should aim to ensure that Union public procurement rules and related national rules are complied with and that the principles of equal treatment, non-

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<sup>6</sup> The references made in this section to EU legislation are indicative, i.e. they are non-exhaustive. The national authorities concerned are responsible to ensure compliance with all relevant EU and national legislation, including the one not explicitly quoted in this guidance.

<sup>7</sup> Working document drafted by a group of Member States' experts with support from OLAF. It is intended to facilitate the implementation of operational programmes and to encourage good practice. It is not legally binding on the Member States but provides general guidelines with recommendations and reflects best practices

<sup>8</sup> Working document drafted by a group of Member States' experts with support from OLAF. It is intended to facilitate the implementation of operational programmes and to encourage good practice. It is not legally binding on the Member States but provides general guidelines with recommendations and reflects best practice

discrimination, transparency, free movement and competition have been respected throughout the entire process. Verifications should be carried out as soon as possible<sup>9</sup> 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 has received relevant training. Some Member States have prepared specific guidance on or even templates for the public procurement procedures 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 Commission and provide useful information and explanations ([http://ec.europa.eu/internal\\_market/publicprocurement/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/index_en.htm)). DG Regional and Urban Policy has also recently finalized the "Guidance for practitioners on the avoidance of the most common errors in public procurement of projects funded by the European Structural and Investment Funds"<sup>10</sup>.

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.

The MA is strongly recommended to prepare already for the implementation of public procurement directives published in the Official Journal L94 of 28 March 2014 with a deadline of transposition until 18 April 2016.

#### Intensity of verifications of public procurement

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

In case the public procurement was already verified by other competent national institution, the results may be taken into consideration for the purpose of management verification provided that the MA takes the responsibility for those checks and their scope is at least the same as the scope of the review that would be carried out by the MA.

#### Planning

Beneficiaries are responsible for ensuring the quality of the initial studies, the design and the accuracy of the project costing. Where the MA considers that there is a risk, it should verify ex-ante these elements as a preventive measure and also check that cost estimates are up-to-date. A prudent approach should be taken in cases where the estimated costs are close to the EU-threshold. In such cases it is advised to consider a decision for EU-wide tender due to:

- The requirements to the MA to check during management verifications the way the cost estimation was done. In particular in the cases described above, it should be ensured that the cost estimation is not unduly reducing the price in order to avoid EU wide tender. Being close to the threshold is a risk factor;
- The addenda. It may happen that the tender specification omitted some elements later contracted as addenda, and with these addenda the contract amount exceeds the EU threshold.

This should ensure that problems with the initial tendering as well as additional works or supplementary contracts during project implementation are avoided.

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<sup>9</sup> For public procurement in case of simplified cost options, please refer to the Guidance on Simplified Cost Options (SCO)s, EGESIF\_14-0017.

<sup>10</sup> To be published in [http://ec.europa.eu/regional\\_policy](http://ec.europa.eu/regional_policy).

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, the MA is recommended to 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 set by EU public procurement rules, the MA should also be aware of the need to verify that, even where contracts fall below the EU thresholds or where services are subject only to a limited application of Directive 2004/18/EC (i.e. Annex II B) 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 contract<sup>11</sup>) level of advertising of the contract should have been made in order to ensure that the Treaty's general principles of equal treatment and transparency are respected. This is particularly relevant for public procurement with cross border interest. This can be achieved by requesting beneficiaries to provide a copy of the relevant publications when submitting applications for reimbursement. Evidence of dispatch of contract award notices should also be requested, particularly for services listed in Annex II B 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 EU and national public procurement rules, the MA should obtain and review the tender evaluation reports prepared by evaluation committees. In addition, the MA or constituted bodies as applicable should review any complaints submitted to the contracting authority or constituted bodies by tenderers. During management verifications the MA should ensure itself that the complaint procedure was correctly followed. These complaints may highlight possible weaknesses in the tender award procedure.

For contracts that exceed the thresholds set in the EU public procurement directives, the MA 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.

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<sup>11</sup> 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)

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 and confusion of selection criteria and award criteria;
- Selection criteria incorrectly used during the award phase;
- Selection and award criteria not being published in the tender notice or tender specifications;
- Use of discriminatory technical specifications or national permits requested at tendering stage;
- Selection and award criteria other than those published being used during the evaluation;
- Criteria used not being in compliance with the fundamental principles of the Treaty (transparency, non-discrimination, equal treatment);
- Inadequate documentation of decisions taken by the evaluation committee;
- Too dissuasive selection criteria not linked to the subject matter of the contract.

Some Member States have established an independent public procurement verification unit which is empowered to carry out checks of all stages of tender procedures, up to contract signature stage. In respect of both nationally funded and EU funded contracts, its staff can attend tender evaluations in the capacity of observer. In case of concerns regarding any elements of the procedure, they report these concerns to both the contracting authority and to the MA. In this way, the MA is made aware of any potential problems regarding the contract and, before approving any expenditure declared by the beneficiary in respect of the affected contract, it can request information from both the beneficiary and the public procurement verification unit to ensure that the problems identified have been adequately addressed. An agreement between the MA and the public procurement verification unit could be used to specify the scope and coverage of the checks of EU funded contracts.

#### Contract implementation phase

Particular areas of the contract implementation phase which Commission audits have identified as being problematic include:

- Supplementary or complementary works awarded directly without being re-tendered;
- Substantial amendment of essential conditions of the contract at implementation stage.

For contracts exceeding the threshold in the EU public procurement directives, best practice would include a procedure to ensure that all significant supplementary or complementary contracts or substantial amendments of contracts are notified to a public procurement verification unit or the MA 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<sup>12</sup>.

Examples of the most common issues identified in the past by the Commission in the area of public

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<sup>12</sup> Court cases T-540/10 and T-235/11 from 21/01/2013 on the interpretation of unforeseen circumstance concerning addenda to contracts.

procurement:

- Additional works – direct award in the absence of circumstances which a diligent contracting authority could not foresee;
- Unlawful award criteria;
- Splitting of a project to avoid tender procedures on EU level;
- Unlawful selection criteria;
- Too restrictive time limits for tendering;
- Direct award of contract;
- Non-compliance with advertising procedures;
- Weaknesses in tender clarification;
- Failure to provide an adequate audit trail;
- Unjustified use of negotiated and accelerated procedures;
- Deficiencies in the case of contract value calculation;
- Deficiencies in respecting the established delivery deadline;
- Works started before the tender procedure was completed.

## 2.2. 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 ESIF the following thematic areas are of particular relevance:

- The **Environmental Impact Assessment (EIA) Directive**<sup>13</sup> requires Member States to carry out an assessment on certain public and private projects likely to have a significant impact on the environment prior to project approval or authorization. Although not yet explicitly included in the formal requirements of the EIA, impacts of climate on the project, referred to as climate change adaptation, have also to be addressed during the design process of some projects<sup>14</sup>. 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) of the Directive). Recent guidance emphasizes the exceptional nature of the circumstances in which this provision might be used (in line with the European Court of Justice's standard approach to interpreting derogations).
- The **Strategic Environmental Assessment (SEA) Directive**<sup>15</sup> - Environmental assessment can be undertaken for individual projects on the basis of the above-mentioned EIA Directive or for public plans or programmes on the basis of the SEA Directive. In addition to requiring Member States to make an assessment before an operational programme is approved, the SEA Directive provides for monitoring indicators to identify, at an early stage, unforeseen adverse effects and to undertake appropriate remedial action. If appropriate, existing monitoring arrangements may

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<sup>13</sup> Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment. The EIA Directive of 1985 and its three amendments have been codified by Directive 2011/92/EU of 13 December 2011. Directive 2011/92/EU has been amended by Directive of the European Parliament and of the Council 2014/52/EU of 16 April 2014. The deadline for transposing Directive 2014/52/EU is 16 May 2017.

<sup>14</sup> See *Guidance on Integrating Climate Change and Biodiversity into Environmental Impact Assessment*, European Commission, DG Environment, 2013. This obligation should apply to projects for which the EIA procedure begins after the transposition of the Directive 2014/52/EU into national law (16 May 2017 at the latest).

<sup>15</sup> Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment, as last amended by Directive 2014/52/EU.

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.

- **Environmental Information** - The freedom of access to information on the environment Directive<sup>16</sup> 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 Directives<sup>17</sup>, 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 Directive<sup>18</sup> 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 Directive<sup>19</sup> lays down basic requirements regarding the handling of waste and establishes the hierarchy for waste management options (in decreasing order of preference: prevention, recovery, reuse, material recycling, energy recovery, disposal). In order for a waste management infrastructure project to be co-financed by the ERDF or the Cohesion Fund, it must be part of a coherent waste management plan. The Landfill Directive<sup>20</sup> 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 Directive<sup>21</sup> 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.

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<sup>16</sup> Council Directive 90/313/EEC, as amended by 2003/4/EC

<sup>17</sup> Council Directive 2009/147/EC of the European Parliament and of the Council (codified version of directive 79/409/EEC) as last amended by Directive 2013/17/EU on the conservation of wild birds; Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, as last amended by Directive 2013/17/EU.

<sup>18</sup> Directive 2000/60/EC establishing a framework for Community action in the field of water policy, as last amended by Directive 2008/32/EC

<sup>19</sup> Council Directive 2006/12/EC of the European Parliament and the Council on waste as last amended by Directive 2011/97/EU.

<sup>20</sup> Council Directive 1999/31/EC on the landfill of waste, as last amended by Directive 2011/97/EU.

<sup>21</sup> Council Directive 2000/76/EC on the incineration of waste, as last amended by Regulation (EC) No 1137/2008

A number of Directives aimed at improving recycling, 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 state 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 applicable Directives by checking whether the relevant consents have been obtained from the competent national authorities in accordance with the procedures. The competent national authorities are responsible for ensuring that EU 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 125(3) CPR during the selection and approval of operations, the MA should ensure that it has access to appropriate in-house or external expertise to assist it in identifying all relevant environmental issues related to the particular type of operation being approved. Close working relationships with the national environmental agencies could be established to assist the MA in this regard.

Similarly, for the purpose of management verifications defined in the Article 125(5) CPR, the MA should ensure that it has access to relevant expertise in verifying continuing compliance of operations with the environmental rules.

### **2.3. State aid**

Member States need to comply with the rules on State aid. State aid is present if the provisions of Article 107 (1) of the Treaty are fulfilled: any aid granted by a Member State or through State resources which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods in so far as it affects trade between Member States.

To the extent that State aid is present, Member States are required to notify State aid to the Commission and may not implement the State aid until the Commission has approved the aid. However, certain measures are exempted from notification because they are compatible with the Treaty when they fulfil certain conditions (block exemptions) or they do not constitute State aid (*de minimis*).

Although the selection process is crucial to assess the compliance with the State aid rules, the objective of the management verifications is also to verify whether an operation contains a State aid element and then to ensure that the provisions laid down in the relevant legal basis are adhered to.

The following State aid regulations and guidelines are typically relevant for the assessment<sup>22</sup>:

- *De minimis* rules - Regulation No 1407/2013 or possibly preceding regulations. There is also a specific *de minimis* regulation for Services of General Economic Interest (Commission Regulation (EU) No 360/2012);
- Block exemption rules - Commission Regulation (EU) No 651/2014, the former block exemption regulation (EC) No 800/2008 was repealed by Article 57 of Commission Regulation (EU) No 651/2014, subject to transitional provisions laid down in Article 58 of that Regulation;
- Notified aid (individual or schemes) - See DG Competition website:

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<sup>22</sup> In this guidance document it is not possible to give a full overview over the whole State aid legal acquis. The State aid acquis is listed on DG Competition website: [http://ec.europa.eu/competition/state\\_aid/overview/index\\_en.html](http://ec.europa.eu/competition/state_aid/overview/index_en.html)  
The website is regularly updated.



[http://ec.europa.eu/competition/state\\_aid/register](http://ec.europa.eu/competition/state_aid/register) .

List of State aid regulations and guidelines is available on the following website:  
[http://ec.europa.eu/competition/state\\_aid/legislation/legislation.html](http://ec.europa.eu/competition/state_aid/legislation/legislation.html)

As regards financial instruments, the verification should also take into account the following documents:

- Risk finance: Guidelines on State aid to promote risk finance investments 2014/C 19/04;
- Guarantee: Commission notice 2008/C155/02 on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees;
- Loan: Commission communication 2008/C14/02 on the revision of the method for setting the reference and discount rates.

Moreover, as stated in the relevant guidance<sup>23</sup>: *"For financial instruments, State aid has to be complied with by all three levels: MA, Fund of Funds and the Financial Intermediary. Aid should be considered at different levels: the fund manager (who is remunerated), the private investor (who is co-investing and may receive aid) and the final recipient"*. For the ESIF, Article 37(12) CPR clarifies the relevant applicability: *"For the purposes of the application of this Article, the applicable Union State aid rules shall be those in force at the time when the MA or the body that implements the fund of funds contractually commits programme contributions to a financial instrument, or when the financial instrument contractually commits programme contributions to final recipients, as applicable"*.

In practical terms, the management verifications on State aid should complement the checks carried out during the selection of operation process:

(1) They shall verify whether the operation includes State aid. It should be noted that State aid is not excluded if the recipient is a non-profit organisation or a public body. For this purpose, it shall be considered whether the beneficiary is engaged in an economic activity (i.e. offering goods and services on a market open to competition) regardless of its legal status.

(2) The legal basis (usually on the basis of the selection documentation of the operation) should be clearly identified.

(3) The use of a specific checklist for each type of State aid measure is highly recommended to ensure that all relevant provisions are tested. Such a checklist will be used as an aide-memoire and an audit trail of the checks carried out.

Although the main compliance tests should have been carried out during the selection process, complementary tests should be carried out during the management verifications. For instance:

- in respect of the *de minimis* rule, it is possible to check the beneficiary's accounts to ensure that the *de minimis* threshold is not exceeded and to verify that it is respected for all undertakings belonging to the same group (at least through a declaration as laid down in the *de minimis* Regulations or through means allowed by national rules);
- in respect of block exemptions, particular attention should be paid to the definition of the SMEs, to the common provisions applicable to all kind of measures (incentive effect, transparency, etc.) and the specific provisions for the different categories of aid (i.a. maximum amounts, maximum intensity, eligible costs.);

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<sup>23</sup> Cf. section 7.7. of the "Financial instruments in ESIF programmes 2014-2020 - A short reference guide for managing authorities" (EGESIF\_14\_0038-03 of 10 December 2014), available on [http://ec.europa.eu/regional\\_policy/thefunds/fin\\_inst/pdf/fi\\_esif\\_2014\\_2020.pdf](http://ec.europa.eu/regional_policy/thefunds/fin_inst/pdf/fi_esif_2014_2020.pdf)

- in respect of notified aid, the conditions laid down in the approved aid should be tested.

It is essential to ensure a sound verification on State aid, based on specific checklists for each measure that will be used as an aide-memoire and an audit trail of the checks carried out.

Examples of the most common issues identified in the past by the Commission in the area of State aid:

- Lack of verification of *de-minimis* rule;
- Exceeding of permissible aid ceilings due to the fact that a company does not qualify as SME and therefore is not entitled to an SME bonus;
- Early start of works (before application for aid) was made or before granting authority has given approval;
- Insufficient checks of ‘incentive effect’ for the aid.

#### 2.4. Financial instruments

##### Reference:

- (i) *Articles 40 and 125(9) CPR*
- (ii) *Annex IV CPR (minimum requirements of funding agreements or strategy documents);*
- (iii) *Articles 9 and 25 of Delegated Regulation (EU) No 480/2014<sup>24</sup>;*
- (iv) *Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15/11/2006 on information on the payer accompanying transfers of fund;*
- (v) *Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26/10/2005 on controls of cash entering or leaving the Community;*
- (vi) *Directive 2001/97/EC of the European Parliament and of the Council of 4/12/2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering;*
- (vii) *Directive 2005/60/EC of the European Parliament and of the Council of 26/10/2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;*
- (viii) *"Financial instruments in ESIF programmes 2014-2020 - A short reference guide for managing authorities" (EGESIF\_14\_0038-03 of 10 December 2014)<sup>25</sup>, to be supplemented with more detailed specific guidance as relevant, including in complementarity with fi-compass, the unique platform for advisory services on financial instruments under the ESIF (<http://www.fi-compass.eu/>)<sup>26</sup>.*

Management verifications in relation to financial instruments should aim to ensure the compliance with applicable laws and regulations, the sound financial management of ESIF, the safeguarding of assets and the reliable financial monitoring and reporting by the bodies that implement the funds of funds or the financial instrument, as appropriate.

In case of financial instruments operations, the MA shall carry out administrative verifications on each application for payment submitted by the beneficiary. A financial intermediary can also be a beneficiary in case it manages a fund of funds or the financial instrument directly. The body that

<sup>24</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.138.01.0005.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.138.01.0005.01.ENG)

<sup>25</sup> [http://ec.europa.eu/regional\\_policy/thefunds/fin\\_inst/pdf/fi\\_esif\\_2014\\_2020.pdf](http://ec.europa.eu/regional_policy/thefunds/fin_inst/pdf/fi_esif_2014_2020.pdf)

<sup>26</sup> The final version of the detailed guidance and interpretation fiches on financial instruments will be made available on INFOREGIO in a first stage and later in the <http://www.fi-compass.eu/>, which will centralize all material on financial instruments.

implements the financial instrument reports to the body that implements the fund of funds (if any) which reports to MA.

Concerning financial instruments implemented by the EIB pursuant to Article 38(4)(b)(i) CPR and as established by Article 9(3) of the Commission Delegated Regulation (EU) No 480/2014, the MA shall mandate a firm which shall operate under a common framework established by the Commission to carry out on-the-spot verifications on the operation within the meaning of Article 125(5)(b) CPR. The current common audit framework is being updated by the Commission and will be discussed with the Member States. In the meantime, the MA is invited to consult the Commission to seek advice on the methodology in this regard, without prejudice of Article 9(4) of the said Regulation.

It should be ensured that the set-up of the financial instrument as well as its implementation are in accordance with applicable law, including rules covering the ESI Funds, State aid, public procurement and relevant standards and applicable legislation on the prevention of money laundering, the fight against terrorism and tax fraud. The set up should be verified with the first application for payment and the implementation with each subsequent application.

As regards the set-up, among others, the following aspects should be verified:

- ex-ante assessment under Article 37(2) CPR;
- implementation option under Article 38 CPR;
- design of the financial instrument (with or without funds of funds): e.g. financial products to be offered, final recipients targeted, envisaged combination with grant support as appropriate);
- content of the funding agreement(s) or strategy document (minimum requirements established in Annex IV CPR);
- selection and agreements with fund of funds or financial intermediaries;
- fiduciary accounts or separate block of finance (only for option under Article 38(4)(b) CPR);
- national co-financing (Article 38(9) CPR) i.e. to trace the national contributions provided at various levels;
- State aid (i.a. rules on risk-finance, General Block Exemption Regulation, de minimis - cf. point 2.3)

As regards the implementation, among others, the following aspects should be verified:

- Compliance with the elements of the funding agreements (regardless of the level at which they are signed), including:
- Implementation of the investment strategy (e.g. products, final recipients, combination with grants);
- Implementation of business plan including leverage;
- Calculation and payment of management costs;
- Monitoring and reporting of the investments implementation including also at the level of final recipients, audit requirements and audit trail;
- Selection and agreements with financial intermediaries if there are changes compared to the set-up.

For financial instruments managed under Article 38(4)(c), compliance with the strategy document referred to in Article 38(8) should be verified.

Compliance with legislation on the prevention of money laundering and the fight against terrorism can be based on assurance provided by national body entrusted by law with inspection powers in this field and competences to check the body implementing the fund of funds and body implementing the financial instrument. The main applicable legislation is listed above.

For on-the-spot verifications, there is a difference between:

- the financial instruments set up at Union level managed directly or indirectly by the Commission where the MA will not carry out on-the-spot verifications (Article 40 (1) and (2) CPR) but they shall receive regular control reports from the bodies entrusted with the implementation of those financial instruments, and
- the financial instruments set up at national, regional, transnational or cross-border level managed by or under the responsibility of the MA, where the MA shall carry out the on-the-spot verifications.

On-the-spot verifications should take place in the first instance at financial instrument level. They should also be carried out at final recipient level (e.g. on a sample basis) if the MA estimates that this is justified given the level of risk identified.

It should also be noticed that the eligibility aspects should be looked at, including:

- Conditions related to the stage of investment: generally the investments to be supported by financial instruments shall not be physically completed or fully implemented at the date of the investment decision (Article 37(5) CPR; there is however a derogation from this rule under Article 37(6) CPR);
- Combination of financial instruments with other types of support within the same operation (Article 37(7)) or as a separate operation (Article 37(8) CPR). Conditions under Article 37(9) CPR have to be complied with;
- Limitations for contributions in kind (Article 37(10) CPR);
- VAT treatment (in case grants and financial instruments are combined within one operation, Article 37(11) CPR);
- Working capital;
- Undertakings in difficulty (limitation under Article 3(3)(d) ERDF and State aid rules).

Requirements for audit trail: The beneficiary shall be responsible for ensuring that supporting documents are available and shall not impose on final recipients record-keeping requirements that go beyond what is necessary to enable them to fulfil this reasonably (Article 40(5) CPR). Separate records must be maintained for each form of support in case one operation combines financial instruments with grants, interest rate subsidies and/or guarantee fee subsidies and when a final recipient supported by financial instrument receives also assistance from other Union-funded source (Articles 37(7) and (8) CPR).

As it is possible to have contributions from more than one operational programme to the same financial instrument, in such cases, the fund of funds or the financial intermediary must keep separate accounts or maintain an adequate accounting code for the contribution from each operational programme, for reporting, audit and verification purposes. An examination of the audit trail should form part of the Article 125(5) verification.

Management verifications should focus on checking the supporting documents attesting observance of the funding conditions. The documentation may include application forms, business plans, annual accounts, checklists and reports of the financial instrument 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 incurring expenditure on particular goods or services. However, in all cases, there must be proof of the transfer of the capital or loan by the venture capital fund or loan intermediary to the enterprise and evidence that the support provided through the financial instrument was used for its intended purpose.

Management verifications of financial instruments are quite specific and require adequate knowledge in this respect. Attention should be given to the adherence of the financial instruments to the State aid rules (which can be present at the different levels of implementation for example private co-investors, fund of funds, financial intermediaries and final recipients), to the rules on selection of bodies (for e.g. public procurement rules if applicable), in respect of the selection of the fund of funds and financial intermediaries and to the level of the management costs.

Examples of the most common issues identified in the past by the Commission in the area of financial instruments<sup>27</sup> (2007-2013 financial perspective):

- Guarantees issued by the FEI constituted collaterals of loans that had been provided from another FEI under the same OP;
- Unlawful capital rebates when the principal of the loan is not fully reimbursed;
- Loans provided to finance exclusively working capital before 1/12/2011;
- Management costs not based on evidence;
- Failure to provide an adequate audit trail;
- Slow project implementation and potentially ineffective countermeasures allowing to improve the performance;
- Inadequate management verifications;
- Missing compulsory elements in the funding agreement;
- Audit of operations not performed because of limitation to scope.

## **2.5. Revenue-generating operations**

### Reference

- (i) *Articles 61 and 65(8) and Annex V CPR;*
- (ii) *Articles 15 to 19 of Delegated Regulation (EU) No 480/2014;*
- (iii) *Guide to Cost-benefit Analysis of Investment Projects Economic appraisal tool for Cohesion Policy 2014-2020.*

The CPR makes a distinction between operations generating net revenue after completion (and possibly during implementation as well), which are covered by Article 61, and operations generating net revenue during their implementation and to which paragraphs 1 to 6 of Article 61 do

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<sup>27</sup> The legal provisions relate to past periods and at present are no longer in force

not apply, which are covered by Article 65(8).

### Operations generating net revenue after their completion

Paragraph 1 of Article 61 CPR defines 'net revenue'.

The MA, as part of its management verifications, should firstly check whether an operation falls within the scope of Article 61(1) CPR. Where cash in-flows can be expected after operation completion, the MA should in particular examine whether the cash in-flows will be directly paid by the users or whether they can be classified as 'other cash in-flows', such as other private or public contributions or other financial gains.

The MA should ensure that the cash in-flows have been determined on the basis of the incremental approach (i.e. by difference between the situations with and without operation), which can involve cost savings. In case expected cost-savings have not been considered as net revenue by the beneficiary, the management verifications should obtain evidence that they will be offset by an equal reduction in operating subsidies.

Where the operation is part of a larger project, it may be irrelevant to carry out the financial analysis on the sole operation. The MA should verify that the analysis was done on a self-sufficient unit of analysis, and that the project net revenue was allocated to the operation pro rata to the eligible cost of the operation in the project investment cost.

In line with paragraphs Article 61(2)-(5) CPR, the eligible expenditure of the operation shall be reduced in advance taking into account the potential net revenue of the operation, which shall be determined by one of the following methods:

- Application of a flat rate net revenue percentage for the sector or subsector;
- Calculation of discounted net revenue of the operation;
- Decrease of maximum co-financing rate for all operations of the corresponding programme priority or measure.

The choice of the method shall be made in accordance with national rules.

Where the second method is applied, the net revenue generated during operation implementation, resulting from sources of revenue not taken into account in determining the potential net revenue of the operation, shall be deducted no later than in the final payment claim submitted by the beneficiary.

The MA should provide adequate guidance to beneficiaries. In particular, the MA should give indications about the methodology to be applied by the beneficiaries for the forecast of future net revenue. The guidance should also clarify the rules on the choice of the method for determining the potential net revenue. Where the chosen method is the calculation of the discounted net revenue, the guidance should provide detailed information on the parameters applicable in the calculation, such as the length of the reference period, the discount rate, the calculation of the residual value, etc.

The MA, as part of its management verifications, should check that the rules and guidelines have been followed, and that the assessment of revenue-generating operation has been carried out properly and is fully documented. When assessing the accuracy of net revenue calculation, the MA should verify in particular:

- the reasonableness and disclosure of any assumptions made regarding the forecast revenue and cost in the situations with and without operation, considering any available historical data, the category of investment concerned, the type of project, the profitability normally expected from this type of investment, the application of the polluter-pays principle;

- the direct link between the assessment and above assumptions;
- the application of the recommended calculation parameters (length of the reference period, etc.);
- the correctness of the calculations.

Where the chosen method is the calculation of the discounted net revenue, the MA should check in particular during the management verifications that any revenue generated before operation completion was taken into account as a source of revenue in the calculation of the discounted net revenue, or that it is (or will be) deducted from the total eligible expenditure declared by the beneficiary. In general, proportionate procedures depending on the size of the financial assistance granted to the operation may be adopted for the forecast and the verification of the net revenue generated.

Pursuant to Article 61(6) CPR, where it is objectively not possible to estimate the revenue in advance, the net revenue generated within three years of the completion of the operation or by the programme closure deadline, whichever is earlier, must be deducted from the expenditure declared to the Commission.

A system should be established to allow the MA to flag those operations that fall under Article 61(6) CPR, and to monitor and quantify their net revenue at the latest before programme's closure. As part of its on-the spot management verifications and after the operation's completion, the MA should set up procedures to verify the accuracy of the net revenue that beneficiaries have reported.

Article 61(7) CPR stipulates among others in point b) that Article 61 is not applicable to operations whose total eligible cost does not exceed EUR 1 000 000. Therefore, the MA should ensure that any operation that gets an increase of its total eligible cost from below to above the EUR 1 000 000 threshold after its initial recording in the information system of the MA shall be subject to the requirements of the said Article 61. Article 61 (1) to (6) does not apply to operations supported solely by the ESF either.

#### Operations generating revenue during their implementation and to which paragraphs 1 to 6 of Article 61 CPR do not apply

In accordance with Article 65(8) CPR, the eligible expenditure of the operation shall be reduced by the net revenue not taken into account at the time of approval of the operation and directly generated only during its implementation, no later than at the final payment claim submitted by the beneficiary. Where not all the costs are eligible for co-financing, the net revenue shall be allocated pro rata to the eligible and non-eligible parts of the cost. This provision shall not apply to operations for which the total eligible cost does not exceed EUR 50 000.

Based on this Article, the MA should extend the verification of revenue generation aspect to all operations with total eligible cost exceeding EUR 50 000 and which do not fall under the other exceptions mentioned at Article 65(8) CPR. This includes in general the operations that do not fall under Article 61 CPR.

Concerning the use of simplified costs in operations generating net revenue, please refer to section 7.4 of the Commission's Guidance on Simplified Cost Options (SCOs) (EGESIF\_14-0017).

## **2.6. Durability of operations**

Pursuant to Article 71 CPR, the MA must ensure that an operation retains the contribution from ESIF only if that operation does not, within five years from the final payment to the beneficiary or the period applicable to State aid, undergo a substantial modification defined in Art 71.1 a-c).

Period of ten years is set for cases when the productive activity is relocated outside the EU. Specific conditions apply to SME, financial instruments, natural persons subsequently receiving support from EGF and operations that are not investment in infrastructure or productive investment.

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

## **2.7. Equality and non-discrimination**

Pursuant to Article 7 CPR 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 ESIF. 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 women, and should be able to demonstrate the impact in this respect, prior to, during and after implementation. Management verifications should comply with the Charter of Fundamental Rights.

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 ESIF 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. The MA should check that appropriate steps have been taken during the implementation of the operation to comply with the relevant conditions set out in the contract. Accessibility for disabled people is one of the criteria to be observed in defining operations co-financed by ESIF and to be taken into account during the various stages of implementation.

Accessibility should be a characteristic of all products and services that are offered to the public and financed through the ESIF. In particular, the Member State is to use all possible means to ensure accessibility to buildings, transport, information and communication technologies which are essential for inclusion of people with disabilities. Therefore accessibility of venues, logistics, information and material (e.g. training material used, created products) should be taken into account to endeavour that persons with disabilities benefit from the outcome of the project on equal terms with other persons. It is to be taken into account whenever services or products are to be bought, developed, maintained or renewed.

Provisions on accessibility for disabled persons are mentioned in the EU public procurement Directives and they state 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 set in the contract documentation to ensure accessibility have been adequately implemented.



## **2.8. European territorial cooperation goal (ETC)**

Under the ETC, the ERDF 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.

Management verifications are a responsibility of the MA when these are carried out under point Article 125(4) (a) CPR and under Article 23(3) ETC. The MA has the possibility of delegating tasks to IBs. The verifications should cover the expenditure of each beneficiary participating in an operation in a cooperation programme.

In the other cases, the responsibility for the management verifications is with the Member States, third countries or territories designating the body or person responsible for carrying out verifications in relation to beneficiaries on its territory (the 'controller(s)') in line with Article 23(3) and 23(4) ETC. Each Member State or third country or territory 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 Union rules and its national rules. The MA shall satisfy itself that the expenditure of each beneficiary participating in an operation has been validated by a designated controller referred to in Article 23(4) ETC. It is recommended that the MA ensures that the responsible Member States, third countries or territories designating the controllers put in place quality control procedures to verify the quality of the work of the controller(s). For these cases, due to the nature of operations in cooperation programmes, in order for the MA to be able to fulfil its responsibilities it is necessary that it is supported by the Member States, third countries or territories designating the controllers.

Best practice in this area would allow to include in the MCS description the names, addresses and contact of the national authorities and controllers in the participating Member States and third countries or territories.

Pursuant to Article 23(5) ETC, where the delivery of the co-financed products and services can be verified only in respect of an entire operation, the verification shall be performed by the MA or by the controller of the Member State where the lead beneficiary is located.

The content and scope of the verifications by the controllers carrying out management verification is identical to that of a MA for the mainstream operational programmes. Controllers carrying out management verification 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 Union 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 carrying out management verification. Furthermore, the controllers carrying out management verification 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.

The most common issues identified by the Commission services relating to operations co-financed

in ETC programmes during the 2007-2013 programming period were:

- weak audit trail;
- missing staff costs;
- insufficient overheads and general administrative costs justifications;
- weaknesses in public procurement procedures;
- revenue generated by operations not taken into account;
- incomplete verifications checklists.

The audits of the Commission showed that centralized management verifications done by structures subordinated to the MA function more efficiently than other systems. Under the other type of control system the control risk is higher (multiple staff carrying out management verification, no standard quality procedures), verifications focus mainly on financial control and there is difficulty for the MA and the JS to monitor the controls.

Best practice indicates that centralized management verifications system diminishes the control risk, there is better understanding and more familiarity with EU regulations when staff carrying out management verification are also responsible for the mainstream programmes. Article 23(4) ETC states that the controllers carrying out management verification may be the same bodies responsible for carrying out such verifications for the operational programmes under the Structural funds or, in the case of third countries, for carrying out comparable verifications under the external policy instrument of the Union. It is advisable to put in place measures to ensure coherence among controllers carrying out management verification from all countries participating in the programme. In particular, harmonization of the checklists that are used for the management verifications is recommended (such as the HIT – Harmonisation implementation tools prepared by Interact). This facilitates the monitoring by the MA and the JS of the quality of controls carried out for operations co-financed under an ETC operational programme.

Article 13(1) of ETC Regulation requires that where there are two or more beneficiaries of an operation in a cooperation programme a lead beneficiary shall 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 staff carrying out management verification. 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.

Best practice in this area would allow for details of the work done by each of the controller carrying out management verification are made available to the controller of the lead beneficiary, to the MA and, where applicable, to the Member State, third country or territory responsible for designating the controllers. This requirement could be included in the terms of reference of the controllers carrying out management verification on their appointment.

Where part of an operation is implemented outside the European Union 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 Union when it is outside of the territory of the participating Member States.

The MA and the JS should ensure the independence and the separation of the first level controller

function from the statutory audit function and/or from any other role the appointed first level controller might hold within the beneficiary (consultancy work, accountancy work, payroll preparation work, etc.). The first level controller organisation structure should be fully independent from the statutory auditor function or any other role held within the beneficiary.

## **2.9. Youth Employment Initiative (YEI)**

The additional specific requirements to verify consist in checking whether participants are eligible for the YEI (age group, status, place of residence) and that the beneficiary ensured that those taking part in an operation are specifically informed of the YEI support provided through the ESF funding, as well as about the specific YEI allocation. Any document relating to the implementation of an operation which is used for the public or for participants, including an attendance or other certificate shall include a statement to the effect that the operation was supported under the YEI.

## **2.10. Simplified costs options**

*Reference:*

- (i) Guidance on Simplified Costs Options (SCOs)(EGESIF\_14-0017 of 6/10/2014);*
- (ii) Articles 67 and 68 CPR, Article 14 ESF and Article 19 ETC*

For the unit costs and lump sums the management verifications will check whether the conditions for reimbursement set in the agreement between the beneficiary and MA have been met and that the agreed methodology has been correctly applied<sup>28</sup>. In addition the management verification should verify that the operation or the project is not implemented exclusively through public procurement<sup>29</sup>. The supporting documents will be required to justify the quantities declared by the beneficiary. In particular for "intangible" operations, the focus will move towards technical and physical aspects of operations, with a particular importance of on-the-spot verifications during the implementation period.

In case of flat rate financing, where applicable, the verification should also check whether:

- costs have been correctly allocated to a given category,
- there is no double declaration of the same cost item,
- the flat rate has been correctly applied,
- the amount charged based on flat rate has been proportionally adjusted if the value of the category of costs to which it was applied had been modified, and
- if applicable, that outsourcing has been taken into account (e.g. the flat rate is mitigated in case that part of the operation or project is outsourced).

## **2.11. Indicators**

*Reference:*

- (i) Article 50(2) CPR about implementation reports*
- (ii) Article 125 CPR about the functions of the managing authority*
- (iii) Article 25(1)i of Delegated Regulation (EU) No 480/2014*

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<sup>28</sup> Please note that it is not applicable to Article 14(1) ESF

<sup>29</sup> Please note that it not applicable to Article 14(1) ESF and to projects supported within the framework of a Joint Action Plan.

- (iv) *Guidance on Monitoring and Evaluation – European Regional Development Fund and Cohesion Fund – January 2014*
- (v) *Guidance on Monitoring and Evaluation – European Social Fund, May 2014*

Article 50(2) CPR stipulates that annual implementation reports shall set out key information on programme implementation by reference to common and programme-specific indicators and quantified target values. The data transmitted shall relate to values for indicators for fully implemented operations and also, where possible, for selected operations. In ESF, data transmitted for output and result indicators shall relate to values for partially and fully implemented operations. Reporting on selected operations is not required for the ESF.

Article 125(2)(a) CPR requires that the MA provides the monitoring committee with data relating to the progress of the operational programme in achieving its objectives, financial data and data relating to indicators and milestones.

Article 125(2)(d) CPR requires that the MA records and stores in computerized form data on each operation necessary for monitoring, evaluation, including data on individual participants in operations, where applicable. For the ESF, the data shall be recorded and stored in a way that allow the MA to perform the tasks related to monitoring and evaluation in conformity with the requirements set out in Article 56 CPR and Articles 5 and 19 as well as Annexes I and II ESF.

Article 125(3)(a) CPR sets out that the MA should apply operation selection procedures that ensure the contribution of the selected operations to the achievement of the specific objectives and results of the relevant priority.

Article 25(1)(i) of Commission Delegated Regulation (EU) No 480/2014 requires that the audit trail shall allow data in relation to output indicators for the operation to be reconciled with targets and reported data and result for the programme.

The management verifications should ensure, on the basis of the data reported by the beneficiaries at operation level, that the data, aggregated or micro data, related to indicators and target values at investment priority, priority or programme level is timely, complete and reliable.

The verifications should check key requirements concerning data collection, storage and quality. The lack of data quality and consequently, the reliability of the monitoring system, is subject to suspension of payments. In particular, the MA is required to ensure data quality through checking their completeness and consistency.<sup>30</sup>

Monitoring of the progress in operation's implementation through review of indicators (and micro-data for the ESF operations) shall be incorporated in the administrative verification of application for reimbursement made by a beneficiary. During the verification of an application for reimbursement, where appropriate, the MA should check progress in the attainment of indicators. At the stage of final application for reimbursement, the MA should verify whether the relevant information is provided by the beneficiary, i.e. information on the actual contribution to the output and results indicator(s), whether all agreed indicators have been attained and, where applicable, justification of the difference between the committed and the actual contribution. The MA shall adjust beneficiaries' application for reimbursement templates in order to enable for timely and correct reporting on indicators. The management verification checklist should include appropriate questions.

On-the-spot verifications should verify the correctness of the data communicated by the

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<sup>30</sup> Guidance document on Monitoring and Evaluation, European Social Fund, chapter 2 of Annex D.

beneficiaries in relation to the indicators. The correct understanding of the indicator by the beneficiary and the values reported should be checked. If the beneficiary was responsible for inputting information on indicators into the IT system, the correctness of this process should be subject to verifications at least on the spot.

Each participant shall be registered only once within one operation (e.g. one trainee shall be registered only once although s/he can participate on several different activities within one operation).