



# **ESF MANAGING AUTHORITY**

## **Guidelines on Management Verification and Compliance with ESF Requirements**

**July 2012**



Ireland's EU Structural Funds  
Programmes 2007 - 2013

Co-funded by the Irish Government  
and the European Union



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# 1. INTRODUCTION

The Managing Authority has introduced this guide to assist the various bodies involved in the ESF Cascade (see page 6 below) in the management and verification of the ESF co-financed operations under the HCI OP 2007-2013.

The structure of the management and verification arrangement commences with the HCI OP 2007-2013 itself supported by the following documents:

- **Activity Implementation Plan** (sets out what the Activity's objectives are and the proposed measures planned to meet the objectives)
- **Financial Tables** (sets out the financial allocation and plan for the seven year period of the OP and the annual expenditure by the operations)
- **Administrative Agreements** (sets out the role of the Managing Authority and the Intermediate Body and the functions delegated to the Intermediate Body). This Agreement may be replicated by the Intermediate Body with other Bodies lower down in the ESF Cascade.
- **Progress Reports** (annual reporting requirement by the Intermediate Bodies/ Public Beneficiary Bodies on the physical and financial progress of the Activities operations).
- **Verification checks and Reports** (sets out the checks carried out to verify the eligibility of both the declared expenditure and the operations before a claim for ESF drawdown can be approved for payment).

This guide is intended to support the verification process by explaining the minimum requirements to be completed. However, the Intermediate Bodies may include any additional checks or findings carried out by them in their reports. These reports will be subject to scrutiny by the following bodies – Commission's auditors or auditors appointed by them; ESF Audit Authority; ESF Certifying Authority; ESF Managing Authority and - in the case of PBB's - the Intermediate Bodies as well.

Explanations have been provided for the primary requirements under the Regulations and Circulars governing the ESF co-financing structure, such as the rules for eligibility of expenditure, procedures manuals, retention of documents, etc. Please be aware that the EU Regulations and the Department of Finance Circular 12/2008 and the ESF Certifying Authority Circular 1/2012 remain the primary source of information on the rules and requirements governing the ESF. The latest regulations and circulars are available on the ESF website: [www.esf.ie](http://www.esf.ie)

**ESF Managing Authority**

**July, 2012.**

## 2. EU Regulations governing management verifications

As part of the procedures required by the EU Regulations prior to the approval and submission of claims for ESF drawdown, management verification of the following areas must be completed:

- administrative,
- financial,
- technical and physical aspects of operations

These requirements derive from Article 60 of Regulation 1083/2006 (functions of the managing authorities) and Article 13 (2) of Regulation 1828/2006. The text of these Articles is set out in the boxes here below.

### ***Article 60 of Regulation 1083/2006 – Extract from***

(b) verifying that the co-financed products and services are delivered and that the expenditure declared by the beneficiaries for operations has actually been incurred and complies with Community and national rules; verifications on-the-spot of individual operations may be carried out on a sample basis in accordance with the detailed rules to be adopted by the Commission in accordance with the procedure referred to in Article 103(3);

(c) ensuring that there is a system for recording and storing in computerised form accounting records for each operation under the operational programme and that the data on implementation necessary for financial management, monitoring, verifications, audits and evaluation are collected;

(d) ensuring that beneficiaries and other bodies involved in the implementation of operations maintain either a separate accounting system or an adequate accounting code for all transactions relating to the operation without prejudice to national accounting rules;

(f) setting up procedures to ensure that all documents regarding expenditure and audits required to ensure an adequate audit trail are held in accordance with the requirements of Article 90;

(g) ensuring that the certifying authority receives all necessary information on the procedures and verifications carried out in relation to expenditure for the purpose of certification;

(j) ensuring compliance with the information and publicity requirements laid down in Article 69;

### ***Article 13 (2) of Regulation 1828/2006***

2. The verifications to be carried out by the managing authority under Article 60(b) of Regulation (EC) No 1083/2006 shall cover administrative, financial, technical and physical aspects of operations, as appropriate.

Verifications shall ensure that the expenditure declared is real, that the products or services have been delivered in accordance with the approval decision, that the applications for reimbursement by the beneficiary are correct and that the operations and expenditure comply with Community and national rules. They shall include procedures to avoid double-financing of expenditure with other Community or national schemes and with other programming periods.

Verifications shall include the following procedures:

- (a) administrative verifications in respect of each application for reimbursement by beneficiaries;
- (b) on-the-spot verifications of individual operations.

### **Administrative:**

Administrative refers to confirming the appropriateness of the procedures manuals for the levels/operations in the ESF Cascade (see Section 3 below), administrative agreements with the Intermediate Bodies and other Bodies, maintenance of records in relation to the administration of the operations, retention of records to support all eligible expenditure being declared, etc.

Where one or more tasks of a Managing Authority or Certifying Authority are performed by an Intermediate Body, Article 12 of European Commission Regulation (EC) 1828/2006 governing the Structural Funds for 2007-2013 required that the relevant arrangements must be formally recorded in writing. To comply with this requirement and to ensure there is a clear understanding of responsibilities Administrative Agreements must be prepared between the Managing Authorities and each Intermediate Body for the Operational Programme.

Administrative Agreements were signed with the four Intermediate Bodies within the HCI Operational Programme. They set out the responsibilities of each of the parties to the Agreement. The Agreements will be up-dated from time-to-time as required.

#### ***Article 12 of Regulation 1828/2006***

##### ***Intermediate bodies***

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

The provisions of this Regulation concerning the managing authority and certifying authority shall apply to the intermediate body.

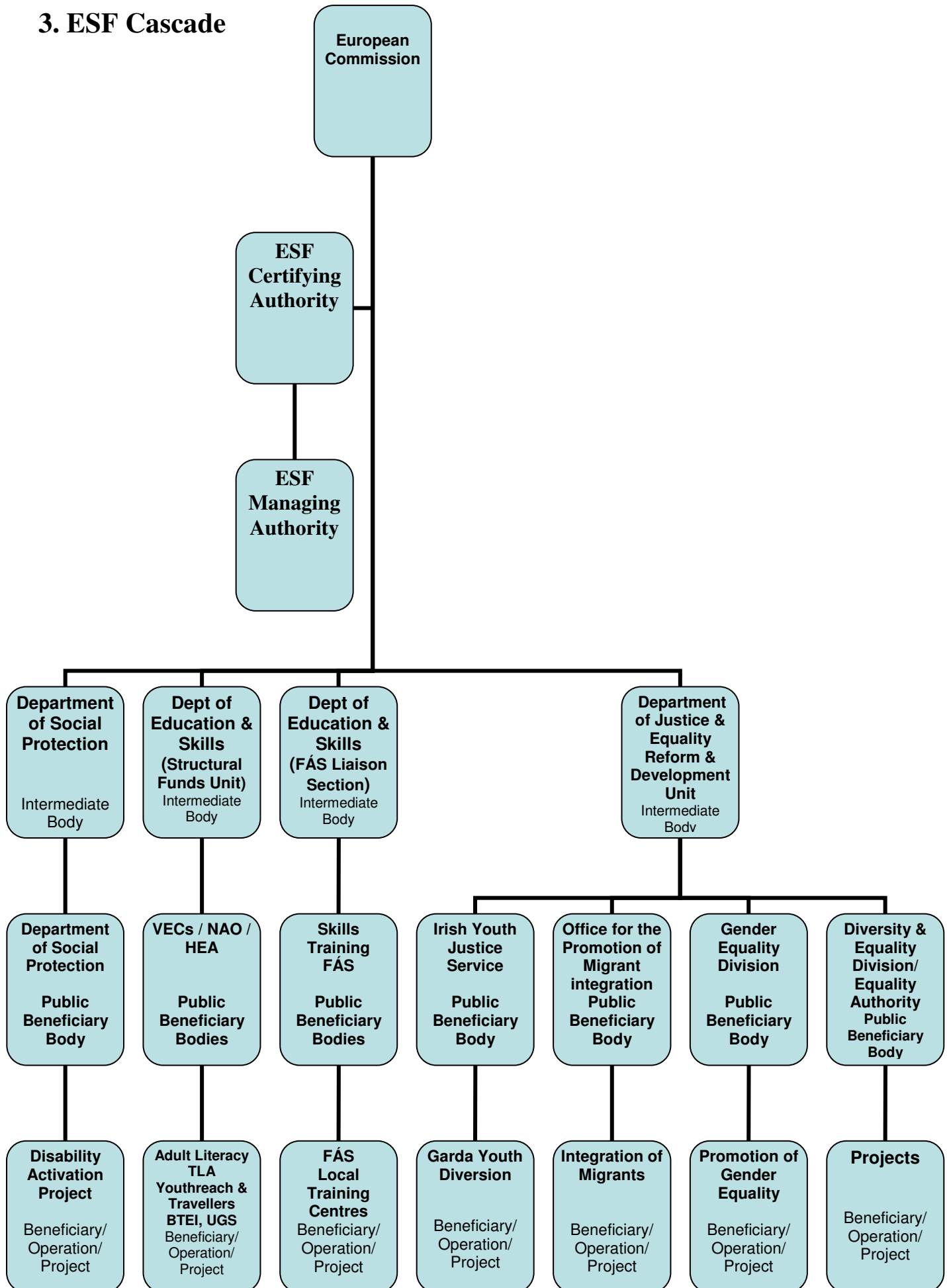
### **Physical or technical aspects of operations:**

This requirement refers to confirmation of the actual existence of the operations being co-financed, e.g. that the project is in operation; where the objective of the project is training, that the training is taking/or has actually taken place; confirming that the numbers being trained are correct, that attendance sheets are signed by the trainees and retained by the project, that time sheets are kept by the trainers, lecturers, etc.

### **Financial:**

The financial verification of declared expenditure is set out in the EU Regulations, in the D/Finance Circular 12/2008 and in the Certifying Authority's Circular on Eligibility Rules for ESF – Circular 1/2012. These are set out in Annex 1 of these Verification Guidelines.

### 3. ESF Cascade



## **4. Minimum requirements for Article 13 Verification checks and reports**

The minimum areas required for completion of a verification check at the next level on the ESF Cascade are set out below in **ANNEX 1** of this document. Note, however, that these are minimum requirements and therefore additional material or checks can be included in the Report of the visit.

The minimum requirements are founded on the questions set out in the EUSF IT system for declaration/submission of a claim for ESF drawdown. These are as follows:

### **Form B1 Checklist**

1. Expenditure on the project/operation is consistent with the provisions of the National Eligibility Rules.
2. The intended purpose of the project/operation is consistent with the objectives of the OP Priority
3. The payment application for EU recoupment is based on eligible expenditure actually paid out by the Public Beneficiary Body and/or the Body that is implementing the operation with supporting documentation available. However, where EU state aid rules apply the amount has been restricted to the lower of these paid out amounts
4. The expenditure for which recoupment is sought has been paid within the eligibility period
5. EU State Aids; EU and National public procurement; Horizontal principles of sustainable development, equality between men and women and non-discrimination in accordance with Articles 16 and 17 of the General Regulation and social inclusion in accordance with the NSRF; and Regional aid rates, have been observed as appropriate
6. EU information and publicity requirements are being observed, i.e. in conformity with Regulation EC) 1828/2006 (information & publicity)
7. Physical and financial progress is being monitored and documented including on the spot site inspection where appropriate, in accordance with Article 13 of the Implementation regulation
8. There has been no overlapping of EU aid for the project/operation
9. A separate accounting system or an adequate accounting code is being maintained for all transactions relating to the operation
10. Evidence of receipt of funding by the beneficiary of the grant is available where the EU's State Aid rules apply

11. Details of the underlying transactions are recorded, where possible, on computer files and are available on request to the Commission Services responsible and national authorities
12. Accounting records and an adequate audit trail exists i.e. in conformity with Article 14 and 15 of Commission Regulation (EC) 1828/2006.
13. All original supporting documentation will be retained in accordance with Article 90 of Council Regulation (EC) 1083/2006 and Article 19 of Council Regulation EC 1828/2006 i.e. for three years after the closure of the programme
14. Expenditure has been reconciled between the administrative unit and the accounts/finance unit and any differences explained and a print-out from the financial management system & copy of reconciliation has been supplied
15. Operations have been selected in accordance with the criteria approved by the Monitoring Committee

**N.B. These 15 questions are dealt with in detail in Annex 1 to the Guidelines.**

#### **Commission's Best Practice on Management Verifications**

The Commission produced a best practice guide on management verifications by the Member States entitled "Guidance document on management verifications to be carried out by Member States on operations co-financed by the Structural Funds and the Cohesion fund 2007-2013 programming period" and is appendiced at **Annex 5** of this document. The document sets out at Section 2.7, page 10, the minimum documentation required for supporting a claim in relation to eligible expenditure submitted for reimbursement, as follows (box):

##### ***Section 2.7***

*"Best practice would require all relevant documentation to be submitted with the beneficiary's application for reimbursement.*

*This would allow for all documentary checks to be carried out during the verifications, thus reducing the need to verify these documents on the spot.*

*The supporting documentation should, at a minimum, include a schedule of the individual expenditure items, totalled and showing the expenditure amount, the references of the related invoices, the date of payment and the payment reference number.*

*Ideally, copies of invoices and proof of payment should be provided for all expenditure items.*

*However, where this would involve an inordinately large volume of documentation being submitted by beneficiaries, an alternative approach might involve requesting only the supporting documentation in respect of the sample of expenditure items selected for verification. This approach has the advantage of reducing the volume of documentation to be submitted by beneficiaries. ...."*



## 5. EUSF IT System Requirements

Regulation 1083/2006 and Regulation 1828/2006 required Member States to establish a computer system for the management of the Structural Funds for the period 2007-2013. In compliance with this requirement, the 2007-2013 EU Structural Funds I.T. System (EUSF) was set up. As described in the DoF Circular 12/2008, the EUSF consisted of a centralised database containing the accounting records for each project/operation as set out in Article 14 and annex (iii) of the Implementing Regulation 1828/2006 with appropriate internet access for all bodies with the functionality to create the B1, B2 and B3 forms and, subsequently, propose them to the body immediately above them in the cascade for approval.

While overall responsibility for ensuring data input and data accuracy lay with the Managing Authorities, all of the Users have a role to play in ensuring the accuracy of the data on the system since the integrity of the system depended on accuracy of the data.

As outlined in DoF Circular 12/2008, all expenditure reported must be verified on the EUSF (via Forms B1, B2, B3) as eligible before the Certifying Authority can make an expenditure declaration and application for payment to the European Commission.

The Bodies involved in the day to day management of projects/operations will be responsible, in the first instance, for the declaration process. The reporting format provides for confirmation that sound and efficient financial management and control procedures are in place and that an adequate audit trail exists. There are three function levels involved in this process:

1. The Public Beneficiary Body – The Body responsible for initiating and/or implementing the project/operation (Level 1);
2. Intermediate Bodies (all public bodies or agencies acting under the responsibility of Managing or Certifying Authorities or performing tasks on their behalf in relation to Beneficiaries or the bodies or firms carrying out projects/operations (Level 2); and
3. Managing Authorities (Level 3).

The administrative unit responsible for the relevant areas of projects/operations should in all cases reconcile its expenditure records with financial records that are held in electronic and hard copy. Each of these levels will fulfill its responsibilities in a timely manner in accordance with the requirements of this circular, the applicable eligibility circular, the Administrative Agreements and the relevant EU regulations to enable the Certifying Authority to draw up and submit to the European Commission certified statements of eligible expenditure and applications for payment.

EUSF IT user manuals (not ESF specific) were produced by Dept of Finance for the Intermediate Body Level (B2) and the Public Beneficiary Level (B1) and circulated to all the IB/PBBs.

## ANNEX 1

### Minimum requirements for management verification

#### 1. Expenditure on the project/operation is consistent with the provisions of the National Eligibility Rules.

- Q. Has a sample of transactions been selected for checks against ESF Eligibility Rules (and specifically against areas where errors have been detected before during control checks and audits performed)? If no, justification is required on how assurance of eligibility has been achieved in this area. If yes, details of transactions checked must be maintained on files and the amounts entered in the EU Expenditure Declaration on the EUSF system.
- Q. Have all audit findings and recommendations for the Activity concerned been fully addressed and implemented? This includes both financial adjustments to remove ineligible expenditure detected and procedures changes to controls. If not, justification for continuing to process current ESF claim is required.
- Q. Has a summary table of all negative adjustments been completed and submitted to the next level? *See below for more on entering negative adjustments on the EUSF IT system.* See **Annex 6** for Negative Adjustment Schedule Table.
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### Eligibility of Expenditure

The Dept of Finance Circular 12/2008 states that Regulation 1083/2006, Article 56.4, requires the eligibility rules (for ESF and ERDF) be drawn up at the national level. The Circular defines the core criteria for eligibility as follows:

- Expenditure actually paid between 1<sup>st</sup> January 2007 and 31<sup>st</sup> December 2015;
- Expenditure incurred by projects/operations approved by the Managing Authority in accordance with the criteria adopted by the Monitoring Committee;
- All expenditure must be supported by appropriate documents to ensure an adequate audit trail;
- All EU publicity and information requirements must be adhered to; and
- EU procurement guidelines must be adhered to stringently.

The primary source for ESF Eligibility Rules for Expenditure are contained in the ESF Certifying Authority's (revised) Circular 1/2012, *Eligibility Rules for the European Social Fund 2007-2013*, which outlines the criteria for eligibility of expenditure under the ESF. Circular 1/2012 can be found below at **Annex 3** and on the ESF website at [http://www.esf.ie/en/circulars\\_2007-2013.aspx](http://www.esf.ie/en/circulars_2007-2013.aspx)

**Article 56 (4) of Regulation 1083/2006****Eligibility of expenditure**

4. The rules on the eligibility of expenditure shall be laid down at national level subject to the exceptions provided for in the specific Regulations for each Fund. They shall cover the entirety of the expenditure declared under the operational programme.

**Article 11 of 1081/2006****Eligibility of expenditure**

1. The ESF shall provide support towards eligible expenditure which, notwithstanding Article 53(1) (b) of Regulation (EC) No 1083/2006 may include any financial resources collectively contributed by employers and workers. The assistance shall take the form of non-reimbursable individual or global grants, reimbursable grants, loan interest rebates, micro-credits, guarantee funds and the purchase of goods and services in compliance with public procurement rules.

2. The following expenditure shall not be eligible for a contribution from the ESF:

(a) recoverable value added tax;

(b) interest on debt;

(c) purchase of furniture, equipment, vehicles, infrastructure, real estate and land.

3. The following costs shall be expenditure eligible for a contribution from the ESF as defined in paragraph 1 provided that they are incurred in accordance with national rules, including accountancy rules, and under the specific conditions provided for below:

(a) the allowances or salaries disbursed by a third party for the benefit of the participants in an operation and certified to the beneficiary;

(b) in the case of grants, indirect costs declared on a flat-rate basis, up to 20 % of the direct costs of an operation; \*

(c) the depreciation costs of depreciable assets listed under paragraph 2(c), allocated exclusively for the duration of an operation, to the extent that public grants have not contributed towards the acquisition of those assets.

4. The eligibility rules set out in Article 7 of Regulation (EC) No 1080/2006 shall apply to actions co-financed by the ESF which fall within the scope of Article 3 of that Regulation.

\* See Certifying Authority's (revised) Circular 1/2012, *Eligibility Rules for the European Social Fund 2007-2013* below at Annex 3.

## **Entering Negative Adjustments on the EUSF IT system**

The Managing Authority issued a notice on behalf of the Certifying Authority in relation to entering Negative Adjustments on the EUSF IT system. The text of the notice is as follows:

*The Certifying Authority has requested that when Users are entering details of Negative Adjustments on the EUSF IT system, the Negative Adjustment reports should include a concise but meaningful description of the reason for the adjustment and stating by whom the ineligible expenditure was detected. It is not sufficient to simply declare that it is "ineligible expenditure".*

*Furthermore, the National (IAU, ESF FCU, Audit Authority) and the EU Auditors require confirmation that all ineligible expenditure and/or irregularities have been 'adjusted out' of the claims. Therefore, to enable the Managing and Certifying Authorities to confirm that all adjustments have been completed, it is essential to detail both the reason for the Negative Adjustments and the number and date of the relevant Auditor report(s), if applicable.*

*The Commission can refuse to accept any further claim from Ireland if there is ineligible expenditure not corrected on the system.*

## **2. The intended purpose of the project/operation is consistent with the objectives of the OP Priority**

Q: Can the IB/PBB confirm that the project/operation is complying with the criteria set out in the relevant Priority of the HCI OP and the Activity Implementation Plan (AIP) approved by the Monitoring Committee?

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### **OP PRIORITY OBJECTIVES**

The objectives for the two main priorities, as set out in the Operational Programme, are listed here below:

#### **PRIORITY 1 – Increasing Activation of the Labour Force – Objective:**

*“To contribute to increased skill levels in the workforce and to enhancing the productivity of the workforce”*

#### **PRIORITY 2 – Increasing Participation and Reducing Inequality of the Labour Force – Objective:**

*“To contribute to addressing labour market gaps for specific groups that are experiencing barriers to participation and employment including those created by gender inequality and wider inequalities”*

## **3. The payment application for EU recoupment is based on eligible expenditure actually paid out by the Public Beneficiary Body and/or the Body that is implementing the operation with supporting documentation available. However, where EU state aid rules apply the amount has been restricted to the lower of these paid out amounts**

Q. Has the IB/PBB established that the eligible expenditure was actually paid out by the Public Beneficiary Body and/or the Body that is implementing the operation and is supporting documentation available?

Q. Did transaction checked under point 1 check payments to bank statements (or equivalent supporting documents) to confirm expenditure paid out before Form B1 is certified and to invoice for link to ESF co-financed operation/project (see Section 3.1 of Circular 1/2012 details on pages 11-12 of this document).

#### **4. The expenditure for which recoupment is sought has been paid within the eligibility period**

Q: Can the IB/PBB confirm that the expenditure which is being submitted for ESF co-funding relates to the period of eligibility for the HCI Operational Programme (1<sup>st</sup> January 2007 to 31<sup>st</sup> December 2015\*)?

*[\*Please be aware that the date for final expenditure may be brought forward as part of management of the OP and all bodies will be informed if this instance arises]*

Q: For transactions checked under Point 1 (above), check dates of payments to bank statements (or equivalent supporting documents) to confirm expenditure paid out before Form B1 is certified and dates of invoices to ensure expenditure is incurred within the eligibility period linked to ESF co-financed operation/project (see Section 3.1 of Circular 1/2012 details on pages 11-12 of this document).

#### **5. EU State Aids; EU and National public procurement; Horizontal principles of sustainable development, equality between men and women and non-discrimination in accordance with Articles 16 and 17 of the General Regulation and social inclusion in accordance with the NSRF; and Regional aid rates, have been observed as appropriate**

##### **State Aid**

Q: Does the IB or PBB have adequate systems in place to verify whether state aid has been provided?

Q: Are conditions of State Aid laws applicable?  
*See below for information on State Aids*

##### **Public Procurement**

Q: Where applicable, are EU and Irish regulations relating to Public Procurement being adhered to?

Q: Provide evidence that national and/or EU Procurement procedures were followed when seeking tenders for projects/services etc.  
*See below for more on procurement*

## **Horizontal Principles**

- Q: Does the Activity/project, to which the claim relates, promote (and submit appropriate data) in relation to the horizontal principles contained in the HCI OP?
- social inclusion and
  - gender and wider equal opportunities
- 

## **State Aid rules**

Section 3.1 of the D/Finance Circular 12/2008 states that “Managing Authorities and Intermediate Bodies should ensure that projects/operations are in conformity with the relevant State Aids regulations consistent with the Operational Programmes and Administrative Agreements. Managing Authorities should ensure that the State Aid procedures laid down in relation to the Operational Programme are carried through in full.”

Further information on the definition of State Aid Rules can be found on the website of the Department of Jobs, Enterprise and Innovation, which also has a publication entitled “State Aid Guide 2007” at the following link:

<http://www.djei.ie/enterprise/stateaid/whatistateaid.htm>

## **Public Procurement**

Section 3.2 of the D/Finance Circular 12/2008 outlines the definition for Public Procurement as the acquisition, whether under formal contract or not, of works, supplies and services by public bodies. It ranges from the purchase of routine supplies or services to formal tendering and placing contracts for large infrastructural projects by a wide and diverse range of contracting authorities.

The main source for information and guidelines on procurement can be found on the website: <http://www.procurement.ie>. The 2009 Guidelines are available at:

<http://www.procurement.ie/publications/public-procurement-guidelines-competitive-process> . The website also has a Public Procurement Checklist issued in 2009, which is available at: <http://www.procurement.ie/publications/public-procurement-checklist>

A new circular was published in 2011 on the procurement website as follows: - [Circular 1/11: Model Tender and Contract Documents for Public Service and Supplies Contracts](#)

The Circular further points out that *“compliance with public procurement provisions will be examined during all audits of EU Structural Funds co-financed expenditure and that failure to comply with the provisions may lead to financial corrections under Article 99 of Regulation (EC) 1083/2006 and a loss to the Exchequer for which the relevant Bodies in the Financial Management Cascade will have to account.”*

The Circular also states that: “Managing Authorities, Intermediate Bodies, Public Beneficiary Bodies and other Implementing Departments/Bodies shall ensure that projects/operations are in compliance with all national and EU public procurement

requirements. *Failure to comply with National or EU Public Procurement rules will lead to a financial correction and may make a project ineligible to receive EU Structural Funds, for which the relevant bodies in the financial management cascade will have to account.*”

Please see D/Finance Circular 12/2008 (page 12) for more details on the *Key Principles of Public Procurement*.

**6. EU information and publicity requirements are being observed, i.e., in conformity with Regulation EC 1828/2006 (information & publicity)**

- Q. How are EU publicity requirements (e.g. signage) being adhered to (*for IB, PBB and Beneficiaries*)?
- Q. How are the beneficiaries and recipients made aware of the ESF contribution to their activities?
- Q. Do the application forms, brochures, websites, etc contain required references to the funding source and the logos? *Seek examples/samples of these items.*

### **ESF Information and Publicity requirements**

Section 3.3 of D/Finance Circular 12/2008 stated that each Member State was required to draw up a Communication Plan for each Fund. The aims of the Communication Plans were to increase public awareness, transparency and visibility of the Operational Programmes and of EU Cohesion and Regional Policy at national, regional and operation levels. As a result, each level of the financial management and control cascade must take responsibility for ensuring that the requirements relating to ESF information and publicity are adhered to at their own levels.

The ESF Managing Authority issued Information and Publicity Guidelines on promoting the ESF under the HCI OP 2007-2013. These Guidelines can be found on the ESF website at [http://www.esf.ie/en/publicity\\_info\\_guidelines.aspx](http://www.esf.ie/en/publicity_info_guidelines.aspx).

The overall aims of information and publicity actions with regard to ESF funding are:

- To recognise the role and support provided by the European Social Fund
- To promote an understanding of the objectives and achievements of funds/activities supported by the European Social Fund
- To provide information on the availability of the European Social Fund for applicants, beneficiaries and the general public

Ireland's EU Structural Funds logo and the ESF logo should be used for any projects which have an EU co-funded element; failure to acknowledge and publicise the EU Structural/Social Fund's contribution can lead to a 100% financial correction being applied by the Commission. It is in Ireland's interests to adhere stringently to the information and publicity regulations to ensure no financial corrections are applied. Management verifications carried out by Managing Authorities and Intermediate Bodies will include checks on compliance with these guidelines.

Ireland's Structural Funds logo and the ESF logo are available to download from the Managing Authority website at: <http://www.esf.ie/en/logos.aspx>

### **Promoting the support role of the EU**

The means of providing information and promoting the role of the European Social Fund can include

- Information and communication material such as publications, newsletters, brochures and pamphlets which must contain a clear indication on the title page of the EU's participation i.e., the ESF logo. The ESF logo must be the same size as the national and regional logo used. Publications should include references to the body responsible for the information content and to the Managing Authority designated to implement the assistance package in question.
- Notification of grants by the Intermediate or Public Beneficiary Body to Beneficiaries, which must indicate that the grant is co-financed by the EU and must specify the fund – ESF.
- Posters displayed on the premises of Managing Authorities, Intermediate Bodies, Public Beneficiary Bodies or Beneficiaries e.g., employment agencies, vocational training centres, chambers of commerce and industry, regional development agencies. Posters should indicate the EU's contribution and the fund concerned i.e., ESF.
- Websites concerning the Social Fund should include both Ireland's EU Structural Funds logo (see section 7 for more details) and the ESF logo, should mention the EU Fund contribution - on the home page, at least - as well as including a hyperlink to the other Commission websites concerning the Social Funds.
- Information events such as conferences, seminars and exhibitions on EU co-financed programmes, should include Ireland's EU Structural Funds logo (see section 7 for more details), should clearly indicate the EU contribution and also use the ESF logo on documentation and display the EU flag in meeting rooms.
- Press Releases and information directed at the national or local media (press, radio and television) with appropriate references to the ESF contribution are useful ways of reaching the general public.

**Intermediate Bodies and Public Beneficiary Bodies are requested to liaise with the relevant Managing Authority in relation to launches and associated publicity events for the co-financed programmes delivered by them.**

See the full text of the *ESF Information and Publicity Guidelines* at **Annex 4** below for further information and the correct use of the logos.



**7. Physical and financial progress is being monitored and documented  
- including on the spot site inspection where appropriate - in  
accordance with Article 13 of the Implementation regulation**

- Q: How can the IB/PBB confirm that physical and financial progress is being monitored and documented including on the spot site inspections?
- Q: Can the IB confirm that the latest Form A has been forwarded to the Dept of Public Expenditure Reform and a copy forwarded to the ESF Managing Authority also?  
*See information below on Form A*
- Q: Can the IB/PBB state whether written Administrative Agreements are in place at each stage of the ESF Cascade?  
*See information below on Administrative Agreements*
- Q: Can the IB/PBB confirm that all levels of the ESF Cascade for their Activity have an up-to date Procedures Manual in place, which includes the latest Organisation Chart, Regulations, Circulars, etc?  
*See information below on Procedures Manuals*
- Q: How can the IB/PBB demonstrate that the Beneficiaries have been kept up to date on the latest circulars, regulations, etc?
- Q: Have attendance sheets been signed by the participants (trainees/students, etc) and retained by the Project as required?
- Q: Have timesheets been completed, signed and retained in relation to declared salary expenditure for staff (trainers, other support staff, etc.) not working full-time on the Project?
- Q: Can the IB/PBB supply its selection criteria for the current year's Article 13 transaction checks?  
*See information below on Selection Criteria*
- Q: Has the IB/PBB carried out Article 13 transaction checks on the levels below it on the ESF Cascade?
- Q: Is the Intermediate Body satisfied that there are no financial control weaknesses, risks or irregularity in the execution of the project to which the claim relates?
- Q: What steps had the IB/PBB taken to satisfy itself in this regard?
- Q: Have copies of the completed Article 13 verification checks been provided to the levels above on the ESF Cascade and to the Managing Authority?  
*See below for information on completion of Article 13 reports*

## Form A

The Department of Finance Circular 12/2008 states that the Secretary General of each Department, involved in the implementation of EU Structural Funds co-funded projects/operations 2007-2013, must sign a declaration annually and return it to the Department of Finance (now Department of Public Expenditure & Reform) to confirm that his/her Department and all bodies/agencies under its aegis involved in EU Structural Funds co-financed activities are bound by this circular, the applicable eligibility circular, the Administrative Agreement with Managing Authorities, Statutory Instrument (SI 264 of 2008) - European Communities (Financial Checks) Regulations and other relevant EU Regulations. A copy should also be forwarded to the Managing Authority as well for our records.

An amended version of the Form A was circulated to all Intermediate Bodies in October 2011 by the Certifying Authority. The form A will be up-dated as required (e.g., new Regulations issued, etc).

## Administrative Agreements

Section 6.1 of the D/Finance Circular 12/2008 states that under Article 12 of European Commission Regulation (EC) 1828/2006 governing the Structural Funds for 2007-2013, where one or more tasks of a Managing Authority or Certifying Authority are performed by an Intermediate Body, the relevant arrangements must be formally recorded in writing. To comply with this requirement and to ensure there is a clear understanding of responsibilities Administrative Agreements must be prepared between the Managing Authorities and each Intermediate Body for the Operational Programme.

### **Article 12 of Regulation 1828/2006**

#### *Intermediate bodies*

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

The provisions of this Regulation concerning the managing authority and certifying authority shall apply to the intermediate body.

Administrative Agreements were signed with the four Intermediate Bodies within the HCI Operational Programme. They set out the responsibilities of each of the parties to the Agreement. The Agreements will be up-dated from time-to-time as required.

## Procedures Manuals

Section 6.2 of the D/Finance Circular 12/2008 states that detailed Procedures Manuals must be prepared for each level of the financial management and control cascade. The Procedures Manual must provide guidance and give details of responsibilities, tasks and procedures for personnel involved in the implementation of EU co-financed activity. The manual should comply with European Commission requirements as set out in Article 22 of Regulation 1828/2006.

The manuals should be reviewed regularly and must be available for inspection by the Certifying Authority, the Managing Authority, the ESF and ERDF Financial Control Units, the Internal Audit Units, the European Commission or its agents and the European Court of Auditors.

### **Contents of Manual**

- (1) A description of the tasks entrusted to the staff involved at the relevant Body or Project level;
- (2) The organisation chart;
- (3) The procedures for selecting and approving operations (contained in the Activity Implementation Plan);
- (4) The financial tables;
- (5) The procedures by which beneficiaries' applications for reimbursement are received, verified and validated, and in particular the rules and procedures laid down for verification purposes in Article 13, and the procedures by which payments to beneficiaries are authorised, executed and entered in the accounts;
- (6) The procedures by which statements of expenditure are drawn up, certified and submitted to the Commission;
- (7) Eligibility rules laid down by the Member State and applicable to the operational programme (*Circular 1/2012 ESF Eligibility Rules* and the *Dept of Finance Circular 12/2008*);
- (8) ESF Publicity Guidelines
- (9) Procurement Guidelines ([www.procurement.ie](http://www.procurement.ie))
- (10) State Aid Guidelines
- (11) EU Regulations ([www.esf.ie](http://www.esf.ie))

### **Selection Criteria**

The Managing Authority issued a Notice on the 8<sup>th</sup> September in relation to the Criteria for selecting projects for audit or transaction visits and Procedures Manuals, as follows: -

*Further to the recent audits by the IAU, it was recommended that all Intermediate Bodies set down in writing the criteria that are used to select the projects for audit or transaction test visits.*

*(a) In the case of Intermediate Bodies with only one project or a small number of projects, the criterion is straight forward, i.e., carry out an audit or transaction visit every time the project proposes to submit expenditure for drawdown of ESF funds (or prior to that in the case of new projects, according to the Commission's*

*Auditors). This requirement should be set out in the I.B.'s Procedures Manual.*

*(b) In the case of Intermediate Bodies with a very large number of projects and where the Intermediate Body is unable, on every occasion, to visit every project prior to the submission of expenditure for ESF drawdown, the criteria for selecting those projects chosen should be set down in writing each year before commencing such audits or transaction visits. [This exercise is probably carried out by you in any case, just not committed to paper]. For instance, projects may be selected on the basis of the Region in which they are located (BMW and S&E), or county, or size of project, amount of expenditure etc. Projects may also be selected on the basis of previous problems highlighted with them - to ensure that the problems have been addressed or are not re-occurring - or new projects submitting their first expenditure claim to the I.B. (Note: this list is not exhaustive). It is important that a representative spread of the projects (geographic, size, type, etc) is examined during the lifetime of the Programme. These requirements should be set out in the I.B.'s Procedures Manual.*

This requirement is also in compliance with Article 15 (c) of Regulation 1828/2006 above.

## Verification Reports

Section 2.8 of the Commission's "Guidance document on management verifications to be carried out by Member States..." outlines the information that should be included in Verification Reports (page 11 of the Commission's document). See text in the box below.

### **Section 2.8 Documenting Management Verifications**

All management verifications should be documented. The records should state the work performed, the date of any on-the-spot verifications, the results of the verifications, including the overall level and frequency of the errors detected, a full description of irregularities detected with a clear identification of the related EC or national legal rules infringed and the corrective measures taken. Follow up action might include the submission of an irregularity report and / or a procedure for recovery of the grant. Cases of irregularities which are detected and corrected by the managing authority or certifying authority before any payment to the beneficiary of the public contribution and before inclusion of the expenditure concerned in a statement of expenditure submitted to the Commission, do not have to be reported to the Commission. Nonetheless, such irregularities and corrections should be recorded.

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

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

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

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

The date of on-the-spot verifications of individual operations carried out is required<sup>11</sup> to be recorded in the computerised monitoring system.

The Verification Reports should record at least the following information:

- the date of any on-the-spot verifications,
- the percentage of the overall declared expenditure checked,
- full details of the checks carried out, (e.g. eligibility, conformity of supporting documents and bank statements, the level and frequency of the errors detected),
- a description of irregularities detected with a clear identification of the related EC or national legal rules infringed and the corrective measures taken,
- compliance with publicity requirements and supporting documentation,
- compliance with procurement, state aids, horizontal principles, procedures manuals and organisation charts (supporting documentation, where required),
- measures taken for retention of documentation until the end of 2022 minimum,
- avoidance of double funding (no over-lapping of ESF, EGF, ERDF, etc.)

**Note that the date of the on-the-spot verifications and the amount of expenditure checked should also be entered on the EUSF IT system (on the Expenditure Declaration).**

## **8. There has been no overlapping of EU aid for the project/operation**

Q: How has the IB/PBB determined that there is no overlap of funding between the **ESF** and **EGF** or any other funds?

Q. Describe the procedures in place to ensure such double funding does not occur.

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### **Avoidance of Double Funding**

The Managing Authority issued a Notice on the 8<sup>th</sup> October 2011 in relation to a requirement from the European Commission concerning the avoidance of double funding, as follows:

*You will be aware under the Article 13 checks undertaken as part of the claims process for the ESF that you are required to certify that “8. There has been no overlapping of EU aid for the project/operation”.*

*However, with the advent of the European Globalisation Adjustment Fund (EGF) and due to the consequent increased potential for possible overlapping of EU aid, you are reminded of the requirement to put in place measures to ensure that no overlapping of EU aid occurs at project/operation level and are now requested to provide to the Managing Authority a description of the mechanisms by which you will ensure that the specific actions receiving a contribution under the ESF shall not also receive assistance from other Community financial instruments, particularly the EGF.*

**9. A separate accounting system or an adequate accounting code is being maintained for all transactions relating to the operation**

Q: How has the IB/PBB established that the Bodies/Projects/Operations are using a separate accounting system or that they are maintaining an adequate accounting code to record all transactions in relation to the project?

See also Point 12 below in relation to this question.

**10. Evidence of receipt of funding by the beneficiary of the grant is available where the EU's State Aid rules apply**

Q: Has the IB/PBB confirmed if the EU's State Aid rules apply to the project/operation?

Q: Where a project is in receipt of State Aid, then evidence of receipt of the grant should be provided.

See also Point 5 above in relation to this question.

**11. Details of the underlying transactions are recorded, where possible, on computer files and are available on request to the Commission Services responsible and national authorities.**

Q: Can the OB/PBB confirm that all the transactions relating to the declared eligible expenditure are recorded on a computer system? If not, details of hard copy records seen and location thereof is needed.

Q: Has the IB/PBB established (tested) that the supporting documentation is/will be available for inspection by the IB, PBB, the ESF MA, the ESF CA and by the EU Commission and the Court of Auditors?

Q: Records available for inspection for the required duration? See below.

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**AVAILABILITY OF DOCUMENTS**

Article 90 of Regulation 1083/2006 requires that all supporting documentation for the declared eligible expenditure must be available for inspection by the EU Commission and

by the EU Court of Auditors. See the text of Article 90 in the box below. Failure to make the records available at the time of the inspection could result in the loss of ESF co-funding for the project, for the Activity and to the State.

Note that the minimum date for retention of supporting documentation is currently 31 December 2022. See Question 13 below for more detailed information.

**Article 90 of Regulation 1083/2006**

**Availability of documents**

1. Without prejudice to the rules governing State aid under Article 87 of the Treaty, the managing authority shall ensure that all the supporting documents regarding expenditure and audits on the operational programme concerned are kept available for the Commission and the Court of Auditors for:

(a) a period of three years following the closure of an operational programme as defined in Article 89(3);

(b) a period of three years following the year in which partial closure took place, in the case of documents regarding expenditure and audits on operations referred to in paragraph 2.

These periods shall be interrupted either in the case of legal proceedings or at the duly motivated request of the Commission.

2. The managing authority shall make available to the Commission on request a list of completed operations which have been subject to partial closure under Article 88.

3. The documents shall be kept either in the form of the originals or in versions certified to be in conformity with the originals on commonly accepted data carriers.

**12. Accounting records and an adequate audit trail exists i.e., in conformity with Article 14 and 15 of Commission Regulation (EC) 1828/2006.**

Q: How has the IB/PBB established that the declared expenditure amount, submitted for ESF co-financing to the ESF Managing Authority, can be reconciled with the individual expenditure records and supporting documents held by the project?

Q. See also questions under Point 1 above.

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## **Ensuring an Adequate Audit Trail**

Section 7 of the DoF Circular 12/2008 stated, in relation to maintaining and ensuring an adequate audit trail that Managing Authorities, Intermediate Bodies, Public Beneficiary Bodies and other Implementing Departments/Bodies must ensure that an audit trail is adequate. In order to maintain an adequate audit trail, Article 15 of the Implementing Regulation EC 1828/2006 required compliance with the following criteria:

- It permits the aggregate amounts certified to the European Commission to be reconciled with the detailed accounting records and supporting documents held by the Certifying Authority, Managing Authority, Intermediate Bodies and Public

Beneficiary Bodies as regards operations co-financed under the Operational Programme;

- It permits verification of payment of the public contribution to the Public Beneficiary Body;
- It permits verification of application of the selection criteria established by the Monitoring Committee for the Operational Programme;
- It contains, in respect of each operation, as appropriate, the technical specifications and financing plan, documents concerning the grant approval, documents relating to public procurement procedures, progress reports and reports on verifications and audits carried out; and
- It complies with Article 90 of the General Regulation 1083/2006, Articles 14 and 19 of Implementing Regulation 1828/2006, the Administrative Agreements and the Electronic Commerce Act 2000 with regard to electronic storage and location of documents.

The Circular also stated that failure to comply with these procedures may lead to the suspension of financial assistance and/or loss to the Exchequer for which the relevant Bodies in the Financial Management Cascade will have to account.

***Commission Regulation (EC) 1828/2006 – Extract from***

***Article 14***

*Accounting records*

1. The accounting records of operations and the data on implementation referred to in Article 60(c) of Regulation (EC) No 1083/2006 shall include the information set out in Annex III to this Regulation. The managing, certifying and audit authorities and the bodies referred to in Article 62(3) of Regulation (EC) No 1083/2006 shall have access to that information.
2. At the written request of the Commission, the Member State shall provide the Commission with the information referred to in paragraph 1 within fifteen working days of receipt of the request, or any other agreed period, for the purpose of carrying out documentary and on-the-spot checks.

***Article 15***

*Audit trail*

For the purposes of Article 60(f) of Regulation (EC) No 1083/2006, an audit trail shall be considered adequate where, for the operational programme concerned, it complies with the following criteria:

- (a) it permits the aggregate amounts certified to the Commission to be reconciled with the detailed accounting records and supporting documents held by the certifying authority, managing authority, intermediate bodies and beneficiaries as regards operations co-financed under the operational programme;
- (b) it permits verification of payment of the public contribution to the beneficiary;
- (c) it permits verification of application of the selection criteria established by the monitoring committee for the operational programme;
- (d) it contains in respect of each operation, as appropriate, the technical specifications and financing plan, documents concerning the grant approval, documents relating to public procurement procedures, progress reports and reports on verifications and audits carried out.

***Article 78 2 (c) of Regulation 1083/2006***

***Statement of expenditure***



2. (c) they shall be covered by expenditure paid by beneficiaries in implementing the project and supported by receipted invoices or accounting documents of equivalent probative value at the latest three years after the year of the payment of the advance or on 31 December 2015, whichever earlier; if they are not, the next statement of expenditure shall be corrected accordingly.

**13. All original supporting documentation will be retained in accordance with Article 90 of Council Regulation (EC) 1083/2006 and Article 19 of Council Regulation EC 1828/2006 i.e., for three years after the closure of the programme.**

Q: What provisions have been put in place to ensure that the relevant, i.e. the original supporting documentation for the declared expenditure, are retained at least for the minimum required period?

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### **Retention of supporting documentation**

Section 7 of the D/Finance Circular 12/2008 stated, in relation to the retention of records, that all original supporting documentation must be retained in accordance with Article 90 of Council Regulation (EC) 1083/2006 and Article 19 of Council Regulation EC 1828/2006 i.e. for three years after the closure of the programme. In compliance with Article 78(2) (c) of Regulation 1083/2006, receipted invoices or accounting documents of equivalent probative value shall also be retained for at the least three years after the year of the payment.

Article 19 (5) of Regulation 1828/2006 states that “*the procedure for certification of conformity of documents held on commonly accepted data carriers with the original document shall be laid down by the national authorities and shall ensure that the versions held comply with national legal requirements and can be relied on for audit purposes*”. Note that the Department of Finance Circular 12/2008 states that all original supporting documentation must be retained (Section 7).

Further to the above, in response to audit requirements in 2011 (IAU), the Managing Authority issued a notice on the 3<sup>rd</sup> May 2011 in relation to the Retention of Supporting Documentation for Eligible Expenditure, as follows:

*Regulation 1083/2006, Article 90, requires that all supporting documentation for eligible expenditure submitted for ESF funding must be retained for a certain period up to and after the closure of the current HCIOP 2007-2013.*

*The Managing Authority therefore requests the Intermediate Bodies, for the purpose of consistency across the OP, that they:*

- inform all the Public Beneficiary Bodies and Final Beneficiaries to retain all supporting documentation, at a minimum, to the **31st December 2022***
- after that date, no documents should be disposed of without the agreement of the Managing Authority*

*- update all Procedures Manuals to reflect this position.*

**14. Expenditure has been reconciled between the administrative unit and the accounts/finance unit and any differences explained and a print-out from the financial management system & copy of reconciliation has been supplied**

Q: Can the IB/PBB demonstrate that the declared expenditure has been reconciled between the administrative unit and the accounts/finance unit and any differences explained and a print-out from the financial management system & copy of reconciliation has been supplied?

**15. Operations have been selected in accordance with the criteria approved by the Monitoring Committee.**

Q: Has the IB/PBB established that the projects/operations being funded comply with the criteria set out in the Activity Implementation Plan (AIP) for the Activity, which was approved by the Monitoring Committee?

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### **The Activity Implementation Plans**

The Activity Implementation Plans for all the Activities under the HCI OP can be found on the ESF website at the following location: <http://www.esf.ie/en/hci-implementation-programming.aspx>

All proposed changes to the Activity Implementation Plans must be submitted to the Managing Authority for consideration and approval by the Monitoring Committee.

## ANNEX 2



An Roinn Airgeadais  
Sráid Mhuirfean Uacht,  
Baile Átha Cliath 2,  
Éire

Department of Finance  
Upper Merrion Street,  
Dublin 2,  
Ireland

### **CIRCULAR 12/2008: FINANCIAL MANAGEMENT AND CONTROL PROCEDURES FOR THE EU STRUCTURAL FUNDS PROGRAMMES 2007-2013.**

Secretary General,

1. I am directed by the Minister for Finance to advise Managing Authorities, Intermediate Bodies, Public Beneficiary Bodies and other Implementing Departments/Bodies of their financial management and control responsibilities relating to the implementation of the EU Structural Funds Programmes 2007-2013 under Ireland's National Strategic Reference Framework (NSRF).
2. This Circular sets out how the requirements of the relevant Structural Funds Regulations are to be implemented in Ireland. All relevant bodies in the financial management and control cascade have been thoroughly consulted and actively involved in the finalisation of this Circular.
3. It also sets out the roles and responsibilities of Managing Authorities, Intermediate Bodies, Public Beneficiary Bodies and other Implementing Departments/Bodies involved in the financial management and control of EU Structural Funds. For queries or for additional copies of this Circular please see section 8 for more information.
4. The Department of Finance, as Member State Authority, has overall policy responsibility for the Structural Funds and has primary responsibility for the European Regional Development Fund (ERDF).
5. The Department of Enterprise, Trade and Employment has primary responsibility for the European Social Fund (ESF).
6. In particular, this Circular sets out the mandatory procedures to be followed by Managing Authorities, Intermediate Bodies, Public Beneficiary Bodies and other Implementing Departments/Bodies in relation to
  - Implementation and monitoring of required financial management and control systems; and
  - Processing and certification of expenditure claims for payments.
7. **Failure to comply with the procedures outlined in this Circular may lead to the suspension of financial assistance and/or loss to the Exchequer for which the relevant Bodies in the Financial Management Cascade will have to account.**

8. Circulars dealing with the rules of eligibility of EU Structural Funds co-financed expenditure will be issued by the Department of Finance in the case of the ERDF and by the Department of Enterprise, Trade and Employment in the case of the ESF.
9. Each Secretary General of Government Departments involved in the implementation of EU Structural Funds co-funded projects/operations 2007-2013, is required to complete Form A and return it to the Department of Finance, by 30<sup>th</sup> of September 2008.

Pat Casey  
Principal Officer  
31st of July 2008.

## Section 1 Overview

Over the period to 2013, Ireland has been allocated in total **€901m** in European Union Structural Funds. Of that amount, €750m is earmarked for the two Regional programmes and the national Social Fund programme. The regional breakdown of this sum is €458m for the BMW Region and €292m for the S&E region. The Regulations governing the Structural Funds require Member States to prepare Operational Programmes (OPs) to implement the strategic priorities set out in the NSRF. Each Operational Programme should include the rationale for the priorities chosen, a financial plan and indicators for monitoring progress.

As was the case in the previous round, 50% of the funding is to be allocated to labour market activity funded by the European Social Fund (ESF) and 50% to the European Regional Development Fund (ERDF). The balance of €151m is for smaller Territorial Co-operation programmes, including the PEACE and European Territorial Co-operation programmes.

The total programme amounts to **€2.6 billion** of which the **EU Structural Funds contribution is €750 million**.

In order to avail of the EU Structural Funds, each Member State was required to prepare a national strategy document outlining the strategic priorities for the use of the EU Funds. This document is known as a National Strategic Reference Framework (NSRF). The strategic objective of Ireland's NSRF is to complement the investment priorities being pursued under the NDP 2007-2013.

The strategic focus of the NSRF is on the following themes;

*European Social Fund (ESF);*

- Human Capital Investment – Up-skilling the workforce and increasing the participation and activation of groups outside the workforce.

*European Regional Development Fund (ERDF);*

- innovation, knowledge and entrepreneurship; and
- strengthening the competitiveness and connectivity of the NSS Gateways and Hubs through improved access to quality infrastructure and environmental and sustainable development.

### 1.1 Regulatory Framework

Articles 158-162 of the Treaty establishing the European Communities lay down that the European Union should promote an overall harmonious development and strengthen economic and social cohesion by reducing development disparities between the regions.

The instruments to pursue these objectives, for the 2007-2013 period, have their legal basis in a package of regulations adopted by the Council and the European Parliament in July 2006.

The Regulations are the General Regulation (EC 1083/2006), the ERDF Regulation (EC 1080/2006), the ESF Regulation (EC 1081/2006) and the Implementing Regulation (EC 1828/2006).

The **General Regulation** (1083/2006) defines common principles, rules and standards for the implementation of the three cohesion instruments, the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund. Based on the principle of shared management between the Union and the Member States and regions, this regulation sets out a renewed programming process, based on Community Strategic Guidelines for Cohesion and their follow-up, as well as common standards for financial management, control and evaluation.

The regulation on the **European Regional Development Fund** (ERDF) (1080/2006) defines its role and fields of interventions such as the promotion of public and private investments helping to reduce regional disparities across the Union. The ERDF will support programmes addressing regional development, economic change, enhanced competitiveness and territorial cooperation throughout the EU. Funding priorities include research, innovation, environmental protection and risk prevention, while infrastructure investment retains an important role, especially in the least developed regions.

The **European Social Fund** (ESF) (1081/2006) will be implemented in line with the European Employment Strategy and it will focus on four key areas: increasing adaptability of workers and enterprises, enhancing access to employment and participation in the labour market, reinforcing social inclusion by combating discrimination and facilitating access to the labour market for disadvantaged people, and promoting partnership for reform in the fields of employment and inclusion.

The European Commission's **implementing regulation for the Structural and Cohesion Funds** 2007-2013 (1828/2006) represents one set of detailed rules on the management of cohesion policy's financial instruments.

The Regulations can be found on the web site [www.eustructuralfunds.ie](http://www.eustructuralfunds.ie) or [http://ec.europa.eu/regional\\_policy/sources/docoffic/official/regulation/newregl0713\\_en.htm](http://ec.europa.eu/regional_policy/sources/docoffic/official/regulation/newregl0713_en.htm)

The Regulations outlined above impose financial management and control requirements relating to the implementation of Structural Fund co-funded assistance. They set out mandatory procedures to be followed by the Operational Programme Managing Authorities and by Intermediate Bodies in relation to the processing and certification of claims for Structural Fund co-financing.

The regulatory framework for Member States management and control systems is laid down in Regulation (EC) 1083/2006 (Articles 58-62 and 70-71 in particular). Article 70.1 states that,

*“Member States shall be responsible for the management and control systems for operational programmes, in particular through the following measures:*

- *Ensuring that management and control systems for operational programmes are set up in accordance with article 58-62 and function effectively; and*
- *Preventing, detecting and correcting irregularities and recovering amounts unduly paid.....”*

## **1.2 Roles and Responsibilities of Departments**

The Management and Control system for EU Structural Funds co-financed activities in Ireland is based on the principle of shared responsibilities based on delegation and Administrative Agreements. Each level of the financial management and control cascade

must therefore take responsibility for ensuring that the requirements of the management and control system are adhered to at their own levels and that EU and National rules are complied with.

Appendix 1 contains a flowchart of the Financial Management and Cascade System which operates for Ireland's EU Structural Funds programmes 2007-2013.

However, the day-to-day responsibility for the implementation of co-financed activities rests with the appropriate statutory bodies i.e. Government Departments, Agencies and Authorities. These bodies are also accountable both to the Oireachtas and to the Comptroller & Auditor General for the National/Exchequer contribution of the co-financed activities.

The Secretary General of each Department, involved in the implementation of EU Structural Funds co-funded projects/operations 2007-2013, must sign a declaration annually and return it to the Department of Finance (Form A in Appendix 2) to confirm that his/her Department and all bodies/agencies under its aegis involved in EU Structural Funds co-financed activities are bound by this circular, the applicable eligibility circular, the Administrative Agreement with Managing Authorities, Statutory Instrument (SI 264 of 2008) - European Communities (Financial Checks) Regulations and other relevant EU Regulations. These documents are available on various websites connected to EU Structural Funds in Ireland such as

[www.eustructuralfunds.ie](http://www.eustructuralfunds.ie);

[www.finance.gov.ie](http://www.finance.gov.ie);

[www.esf.ie](http://www.esf.ie);

[www.bmwassembly.ie](http://www.bmwassembly.ie);

[www.seregassembly.ie](http://www.seregassembly.ie); and

[http://ec.europa.eu/index\\_en.htm](http://ec.europa.eu/index_en.htm).

## Section 2 Management and Control Framework

*Table 1 Designated Authorities for Ireland's EU Structural Funds Programmes 2007-2013*

<b>Operational Programme</b>	<b>Managing Authority</b>	<b>Certifying Authority</b>	<b>Audit Authority</b>
Human Capital Investment Operational Programme	Dept. of Enterprise, Trade and Employment	Dept. of Enterprise, Trade and Employment	ESF Financial Control Unit, Department of Enterprise, Trade and Employment
BMW Operational Programme	BMW Regional Assembly	Dept. of Finance	ERDF Financial Control Unit, Department of Finance
S&E Operational Programme	S&E Regional Assembly	Dept. of Finance	ERDF Financial Control Unit, Department of Finance

Table 1 outlines the designated authorities for Ireland's EU Structural Funds Programmes 2007-2013. This is to comply with EU regulations which require the assignment of specific responsibilities for the management and control of the co-financed operations to the Member State and to the designated Managing Authority, Certifying Authority and Audit Authority.

The Structural Funds regulations require each Member State to ensure that management and control systems for Operational Programmes are set up in accordance with Articles 58 – 62 of Regulation (EC) 1083/2006 and that they function effectively. These systems should prevent, or, detect and correct irregularities and recover amounts unduly paid. If such amounts cannot be recovered, the Member State shall be responsible for reimbursing the European Union if the loss has been incurred as a result of fault and negligence on its part.

Appendix 3 sets out the general principles of the management and control systems.

### **2.1 Fulfilling the requirement for systems descriptions**

The Managing Authorities, Certifying Authorities, Intermediate Bodies and Level 1 Public Beneficiary Bodies<sup>1</sup> must provide systems descriptions as set out in Article 22 of the Implementing Regulation 1828/2006.

Before the submission of the first interim application for payment or at the latest, within twelve months of the approval of each European Regional Development Fund (ERDF) Operational Programme, the Department of Finance shall submit to the European Commission a description of the systems as set out in Article 21 of the Implementing Regulations 1828/2006, covering in particular the organisation and procedures of the Managing Authorities, Certifying Authorities, Intermediate Bodies, the Audit Authorities and any other bodies carrying out audits under its responsibility.

A similar requirement will have to be undertaken by the Department of Enterprise, Trade and Employment in respect of the European Social Fund.

<sup>1</sup> The General Regulations 1083/2006 Article 2 (4) define a Beneficiary as “an operator, body or firm, whether public or private, responsible for initiating or initiating and implementing operations”. In the Irish context, the Department is making the distinction that the Level 1 Reporting Body will be the Public Beneficiary Body in the Financial Management and Control Cascade System completing the Form B1.



The description referred to above shall be accompanied by a report setting out the results of an assessment of the systems set up and giving an opinion on their compliance with Articles 58 to 62 of Regulation (EC) 1083/2006. If the opinion contains reservations, the report shall indicate the seriousness of the shortcomings and, where the shortcomings do not concern the whole Operational Programme, the priorities concerned. In relation to the European Regional Development Fund, (ERDF) the Department of Finance shall inform the European Commission of the corrective measures to be taken and the timetable for their implementation and subsequently provide confirmation of the implementation of the measures and the withdrawal of the corresponding reservations.

A similar requirement will have to be undertaken by the Department of Enterprise, Trade and Employment in respect of the European Social Fund.

The report and the opinion shall be drawn up by the ERDF Audit Authority for the European Regional Development Fund and by the ESF Audit Authority for the European Social Fund. The Audit Authorities shall carry out their work taking account of internationally accepted auditing standards. In Ireland, the ERDF and ESF Financial Control Units are the designated Compliance Assessment Bodies for the ERDF/ESF co-financed Operational Programmes and Initiatives.

## **2.2 General Responsibilities of bodies in financial management cascade**

The following section sets out the main responsibilities of the Managing Authorities, Intermediate Bodies, Public Beneficiary Bodies, Beneficiaries, Certifying Authorities and Audit Authorities.

### **2.2.1 Responsibilities of the Managing Authorities**

The Managing Authorities shall ensure that all bodies involved in the implementation of the Structural Funds within their Operational Programmes are aware of this circular and the EU Regulations governing the Structural Funds.

Under Article 60 of Regulation (EC) 1083/2006, Managing Authorities have responsibility for managing and implementing the Operational Programme in accordance with the principle of sound financial management. A full list of the Managing Authorities' responsibilities are contained in Appendix 4.

Managing Authorities are required to

- Ensure that systems are in place to implement the statutory financial management and control obligations relating to Structural Funds expenditure;
- Submit eligible expenditure declarations in the required format to the Certifying Authority to facilitate the drawdown of EU Structural Funds and ensuring that an adequate audit trail exists (See appendix 5 for more detail); and
- Provide guidelines/training on financial management and controls.

While Managing Authorities retain overall responsibility for their functions under Article 60 of the General Regulation (1083/2006) the execution of some tasks in whole or in part may be delegated to the Intermediate Bodies and or to the Public Beneficiary Bodies. The arrangements for the exercise of the delegated functions will be detailed in the Administrative Agreements. The roles of the Administrative Agreements are set out in Section 6.1.

### **2.2.2 Responsibilities of Intermediate Bodies**

The Intermediate Bodies shall be responsible for submitting eligible expenditure declarations in the format required by the Certifying Authority, to the Managing Authority to facilitate the drawdown of EU Structural Funds.

The Intermediate Bodies will be responsible for

- Ensuring that all payment claims for Structural Fund expenditure, submitted by Public Beneficiary Bodies are supported by original receipted invoices or, where this cannot be done, by accounting documents of equivalent probative value and audit documents, and that a clear audit trail exists;
- Ensuring in respect of co-financed projects/operations that only eligible expenditure actually incurred is submitted to the Managing Authority; and
- The recorded verification of expenditure incurred and declared by Public Beneficiaries Bodies.

The detail in relation to the responsibilities of the Intermediate Bodies will be set out in the specific Administrative Agreements agreed between the Managing Authorities and each individual Intermediate Body.

### **2.2.3 Responsibilities of Public Beneficiary Bodies<sup>2</sup>**

The Public Beneficiary Bodies will be responsible for ensuring that only eligible expenditure actually incurred, and expenditure which comes under the terms of the project/operation as approved by the Intermediate Body, is declared.

They will be required to ensure that a clear audit trail exists in relation to EU Structural Funds and that all claims are supported by receipted invoices or, where this cannot be done, by accounting documents of equivalent probative value.

The detail in relation to the responsibilities of the Beneficiary Bodies may be set out in the Administrative Agreements or formal grant agreements, as appropriate, with the Intermediate Bodies/Managing Authorities.

### **2.2.4 Responsibilities of Beneficiaries**

The Beneficiary will be responsible for ensuring that only eligible expenditure actually incurred, and expenditure which comes under the terms of the project/operation as approved by the Public Beneficiary Body, is declared. They will be required to ensure that a clear audit trail exists in relation to EU Structural Funds and that all claims are supported by receipted invoices or, where this cannot be done, by accounting documents of equivalent probative value.

### **2.2.5 Responsibilities of the Certifying Authority**

The Department of Finance has been designated as the Certifying Authority for the ERDF co-financed programmes.

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<sup>2</sup> The General Regulations 1083/2006 Article 2 (4) define a Beneficiary as “an operator, body or firm, whether public or private, responsible for initiating or initiating and implementing operations”. In the Irish context, the Department is making the distinction that the Level 1 Reporting Body will be the Public Beneficiary Body in the Financial Management and Control Cascade System completing the Form B1. There may be other Beneficiary Bodies at a level below; their responsibilities are set out at 2.2.4.

The Department of Enterprise, Trade and Employment has been designated as the Certifying Authority for the ESF co-financed programmes.

The Certifying Authorities are responsible for

- Certifying declarations of expenditure and applications for payment before they are sent to the European Commission.
- Certifying that:
  - (i) the statement of expenditure is accurate, results from reliable accounting systems and is based on verifiable supporting documents,
  - (ii) the expenditure declared complies with applicable European Commission and National rules and has been incurred in respect of projects/operations selected for funding in accordance with the criteria applicable to the programme and complying with European Commission and National rules; and
- Ensuring for the purposes of certification that it has received adequate information from the Managing Authority on the procedures and verifications carried out in relation to expenditure included in statements of expenditure

A full list of the Certifying Authorities' responsibilities is contained at Appendix 5.

#### **2.2.6 Responsibilities of the Audit Authorities**

The ERDF Financial Control Unit, Department of Finance, is the designated Audit Authority for the ERDF co-financed programmes.

The ESF Financial Control Unit, Department of Enterprise, Trade and Employment, is the designated Audit Authority for the ESF co-financed programmes.

The Audit Authorities are primarily responsible for

- Ensuring that audits are carried out to verify the effective functioning of the management and control system of the Operational Programme; and
- Ensuring that audits are carried out on projects/operations on the basis of an appropriate sample to verify expenditure declared;

A full list of the Audit Authorities responsibilities is contained in Appendix 6.

#### ***Requirement for an audit strategy***

EU Regulations require that the Audit Authority present an audit strategy to the European Commission within nine months of the approval of the Operational Programme. The main requirements of the strategy are to outline the bodies which will perform the audits, the method to be used, the sampling method for audits on projects/operations and the indicative planning of audits to ensure that the main bodies are audited and that audits are spread evenly throughout the programming period. Where a common system applies to several Operational Programmes, a single audit strategy may be submitted.

#### ***Requirement for an annual control report***

Each year from 2008 to 2015 the Audit Authority must submit an Annual Control Report to the European Commission. This report will set out the findings of the audits carried out during the previous 12 month-period ending on 30<sup>th</sup> June of the year concerned in accordance with the audit strategy of the Operational Programme and report on any shortcomings found in the systems for the management and control of the programme.

The report will include an opinion, based on the audits that have been carried out under its responsibility, as to whether the management and control system functions effectively, so as to provide a reasonable assurance that statements of expenditure presented to the European Commission are correct and as a consequence reasonable assurance that the underlying transactions are legal and regular.

The Annual Control Report must also be made available to the relevant Operational Programme Managing Authorities for the information of the Monitoring Committee in accordance with Article 65 (e) of Regulation (EC) 1083/2006.

***The role of audits in the effective functioning of the management and control system***

The Audit Authority of an Operational Programme shall be responsible for ensuring that audits are carried out to verify the effective functioning of the management and control system of the Operational Programme. Where these audits are carried out by a body other than the Audit Authority, the Audit Authority shall ensure that such bodies have the necessary functional independence.

The draft audit reports will be conveyed to the Managing Authority and Certifying Authority for the Operational Programme concerned for comment before the final report is forwarded to the European Commission. The European Court of Auditors will also have access to these results. (See appendices 4 and 5 for more detail).

Any systems deficiencies identified during audits will require urgent remedial action. The onus for the introduction, maintenance and operation of satisfactory control procedures for co-financed activity under each Operational Programme is, however, the absolute responsibility of the Managing Authority and there can be no derogation from this responsibility.

The Audit Authority will also be responsible for submitting a closure declaration for the relevant operational programme by 31 March 2017. The declaration shall summarise the conclusions of the audits carried out during the programming period. The declaration will also assess the validity of the application for payment of the final balance and the legality and regularity of the transactions covered by the final certificate of expenditure. Further guidelines on this matter will issue nearer the time.

**2.2.7 Committee on the Co-ordination of EU funds**

In accordance with Article 27(5)(b) of the Council Regulation 1083/2006 each Member State, in their NSRF, may indicate the mechanisms for ensuring co-ordination between ERDF, ESF, European Agricultural Fund for Rural Development (EAFRD), the European Fisheries Fund (EFF) and other financial instruments. Ireland is to put in place appropriate mechanisms that will ensure appropriate demarcation and that there is no duplication of interventions among the different funds.

At the National level, a Committee on the Co-ordination of EU Funds was established to address co-operation and demarcation issues between ERDF/ESF, EFF and EAFRD. The role of the Committee is to put in place, where necessary, appropriate systems to address these issues in the Operational Programmes, and address any implementation issues that may warrant demarcation in the Operational Programmes and any plans for new programmes to ensure that the Funds are not overlapping

### Section 3 Eligibility of Expenditure/Expenditure Declarations

European Union regulations state<sup>3</sup> that eligibility rules shall be laid down at the national level. In order to comply with this requirement, Department of Finance Circular 16/2008, *Eligibility Rules for the European Regional Development Fund 2007-2013*, will outline the criteria for eligibility of expenditure under the ERDF.

The Department of Enterprise, Trade and Employment Circular, *Eligibility Rules for the European Social Fund 2007-2013*, will outline the criteria for eligibility of expenditure under the ESF.

The main criteria for eligibility are as follows:

- Expenditure actually paid between 1<sup>st</sup> January 2007 and 31<sup>st</sup> December 2015;
- Expenditure incurred by projects/operations approved by the Managing Authority in accordance with the criteria adopted by the Monitoring Committee;
- All expenditure must be supported by appropriate documents to ensure an adequate audit trail;
- All EU publicity and information requirements must be adhered to; and
- EU procurement guidelines must be stringently adhered to.

#### 3.1 State Aids

Managing Authorities and Intermediate Bodies should ensure that projects/operations are in conformity with the relevant State Aids regulations consistent with the Operational Programmes and Administrative Agreements.

Managing Authorities should ensure that the State Aid procedures laid down in relation to the Operational Programme are carried through in full.

#### 3.2 Public Procurement

Public Procurement can be defined as the acquisition, whether under formal contract or not, of works, supplies and services by public bodies. It ranges from the purchase of routine supplies or services to formal tendering and placing contracts for large infrastructural projects by a wide and diverse range of contracting authorities.

The October 2001 *Code of Practice for the Governance of State Bodies*<sup>4</sup>, published by the Department of Finance, identifies procurement as one of a number of activities requiring special attention in promoting good corporate governance. Managing Authorities, Intermediate Bodies, Public Beneficiary Bodies and other Implementing Departments/Bodies should refer to the 2004 *Public Procurement Guidelines – Competitive Process*<sup>5</sup> document published by the National Public Procurement Policy Unit (NPPPU) of the Department of Finance.

It should be noted that compliance with public procurement provisions will be examined during all audits of EU Structural Funds co-financed expenditure and that failure to comply with the provisions may lead to financial corrections under Article 99 of Regulation (EC) 1083/2006 and a loss to the Exchequer for which the relevant Bodies in the Financial Management Cascade will have to account.

<sup>3</sup> General Regulation 1083/2006 - Article 56.4

<sup>4</sup> <http://www.finance.gov.ie/documents/publications/other/codeofpractice.pdf>

<sup>5</sup> <http://www.finance.gov.ie/documents/publications/other/pubprocguidejuly04.pdf>

***Key Principles of Public Procurement*** (extracted from 2004 *Public Procurement Guidelines – Competitive Process* published by the NPPPU).

It is very important that the public procurement function is discharged honestly, fairly, and in a manner that secures best value for public money. Contracting Authorities must be cost effective and efficient in the use of resources while upholding the highest standards of probity and integrity. Procurement practices are subject to audit and scrutiny under the Comptroller and Auditor General (Amendment) Act 1993 and Accounting Officers are publicly accountable for expenditure incurred. Management in Government Departments and Offices should ensure that there is an appropriate focus on good practice in purchasing and, where there is a significant procurement function that procedures are in place to ensure compliance with all relevant guidelines and procedures.

In general, a competitive process carried out in an open, objective and transparent manner can achieve best value for money in public procurement. This is in line with EU Treaty principles and EU Directives on public procurement. Essential principles to be observed in conducting the procurement function include non-discrimination, equal treatment, transparency, mutual recognition, proportionality, freedom to provide service and freedom of establishment. The Directives impose legal obligations on public bodies in regard to advertising and the use of objective tendering procedures for contracts above certain value thresholds.

Even in the case of procurement which might not be subject to the full scope of the Directives, such as “non-priority” services or service concessions, the European Commission and European Court of Justice (ECJ) have ruled that the Treaty principles of non-discrimination, transparency, freedom of movement, freedom to provide goods and services must be observed. ECJ case law implies a requirement to publicise and advertise such contracts of significant value to a degree which allows parties in other Member States the opportunity to express an interest or to submit tenders.

Managing Authorities, Intermediate Bodies, Public Beneficiary Bodies and other Implementing Departments/Bodies shall ensure that projects/operations are in compliance with all national and EU public procurement requirements. **Failure to comply with National or EU Public Procurement rules will lead to a financial correction and may make a project ineligible to receive EU Structural Funds, for which the relevant bodies in the financial management cascade will have to account.**

Public procurement guidelines are available on the public sector procurement website: “[www.e-tenders.gov.ie](http://www.e-tenders.gov.ie)”. EU Procurement Directives can be accessed under the Rules and Guidelines on the EU procurement website: “[www.simap.eu.int](http://www.simap.eu.int)” linked to the public sector website.

### **3.3 Information and Publicity**

Each Member State was required to draw up and submit a Communication Plan for each Fund to the European Commission. Ireland’s NSRF and ERDF Communication plan sets out the information and publicity strategy for Ireland’s National Strategic Reference Framework (NSRF) and for the two Regional Operational Programmes. The ESF Communication Plan for the Human Capital Investment Operational Programme is consistent with these.

The aims of the Communication Plans are to increase public awareness, transparency and visibility of the Operational Programmes and of EU Cohesion and Regional Policy at national, regional and operation levels. Both Communication Plans have been accepted and adopted by the European Commission and are available on the Managing Authorities websites as laid out in Section 1.2.

Each level of the financial management and control cascade must therefore take responsibility for ensuring that the requirements relating to the information and publicity are adhered to at their own levels. However, it will be the responsibility of each Managing Authority to ensure that the information and publicity requirements of Regulation (EC) 1828/2006 are met.

In general terms, the National Strategic Reference Framework and EU logos must be displayed on all publicity material, application forms, letters of offer or grant approval as well as on signs for projects/operations, as required under the Regulations. In addition, where appropriate, publicity material should include the required text references and logo acknowledging the role of the Exchequer and EU Structural Funds in the funding of the project/operation. Advice in implementation can be obtained from the Managing Authorities and/or the EU Structural Funds Unit of the Department of Finance. Information and publicity costs are eligible for ESF/ ERDF co-financing and can be charged to the relevant project/operation allocation.

Each Operational Programme includes a budget to cover costs of information and publicity at the Operational Programme level in the cascade system in its Technical Assistance priority.

It should be noted that compliance with information and publicity measures will be examined during all audits of co-financed expenditure and that failure to comply with the provisions of this Regulation may lead to financial corrections under Article 99 of Regulation (EC) 1083/2006. Further guidelines in relation to information and publicity requirements will be provided by the Department of Finance and the Managing Authorities.

### **3.4 Procedures for the drawdown of ERDF/ESF Funding**

It is imperative that the drawdown of EU Structural Funds is maximised. In order to ensure the maximum amount of EU funds are drawn down and in order to comply with the requirements of Council Regulation (General Regulation) 1083/2006 (Articles 58, 60, 61, 66 and 76) and European Commission Regulation (Implementation Regulation) 1828/06 (Articles 14, 39, 40, 41, and 42) the declaration procedure will be completed electronically on the EU Structural Funds 2007-13 IT System.

#### ***EU Structural Funds 2007-13 I.T. System***

This EU Structural Funds 2007-13 IT System consists of a centralised database containing the accounting records for each project/operation as set out in Article 14 and annex (iii) of the Implementing Regulation 1828/2006 with appropriate internet access for all bodies with the functionality to create the B1, B2 and B3 forms<sup>6</sup> and subsequently propose them to the body immediately above them in the cascade for approval.

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<sup>6</sup> These forms are contained in Appendices 7, 8 and 9.

The project/operation data will be input initially by the Public Beneficiary Body. However, overall responsibility for ensuring data input and data accuracy rests with the Managing Authorities at all times. As the integrity of the system depends on accuracy of the data, the Managing Authorities will have a key role to play to safeguard this and will be required to verify the accuracy of the data input at regular intervals.

Full guidance on the use of the EU Structural Funds 2007-13 IT System will be provided by the Department of Finance and the Managing Authorities.

### **3.5 Declaration of Statements of Expenditure and applications for payment**

All expenditure reported must be verified on the EU Structural Funds 2007-13 IT System (via Forms B1, B2, B3 see appendices 7, 8 and 9) as eligible before the Certifying Authority can make an expenditure declaration and application for payment to the European Commission, i.e. *ex-ante*.

The Bodies involved in the day to day management of projects/operations will be responsible, in the first instance, for the declaration process. The reporting format provides for confirmation that sound and efficient financial management and control procedures are in place and that an adequate audit trail exists. There are three function levels involved in this process:

4. The Public Beneficiary Body<sup>7</sup> – The Body responsible for initiating and/or implementing the project/operation (Level 1);
5. Intermediate Bodies (all public bodies or agencies acting under the responsibility of Managing or Certifying Authorities or performing tasks on their behalf in relation to Beneficiaries or the bodies or firms carrying out projects/operations (Level 2); and
6. Managing Authorities (Level 3).

The administrative unit responsible for the relevant areas of projects/operations should in all cases reconcile their expenditure records with those of the accounts/finance unit before reporting to the next level. Each of these levels will fulfill their responsibilities in a timely manner in accordance with the requirements of this circular, the applicable eligibility circular, the Administrative Agreements and the relevant EU regulations to enable the Certifying Authority to draw up and submit to the European Commission certified statements of eligible expenditure and applications for payment.

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<sup>7</sup> The General Regulations 1083/06 Article 2 (4) define a Beneficiary as “an operator, body or firm, whether public or private, responsible for initiating or initiating and implementing operations”. In the Irish context, we are making the distinction that the Level 1 Reporting Body will be the Public Beneficiary Body in the Financial Management and Control Cascade System completing the Form B1. There may be other Beneficiary Bodies at a level below; their responsibilities are set out in Section 2.2.4.



***The role of the Public Beneficiary Body (Level 1)***

Level 1 (Public Beneficiary Body) will be responsible for declaring the accuracy, actuality and eligibility of the expenditure to Level 2 and for completing Form B1 through the EU Structural Funds 2007-13 IT system in the required format.

Before proposing the B1 Form on the IT System, the Public Beneficiary Body must be fully satisfied that the expenditure declared can be verified and that an adequate audit trail exists. The B1 checklist sets out the requirements in this regard and is attached at Appendix 7.

***The role of the Intermediate Body (Level 2)***

Level 2 (Intermediate Body<sup>1</sup>) will be responsible for aggregating expenditure information coming from Level 1, reporting and declaring expenditure to Level 3 and completing Form B2 through the EU Structural Funds 2007-13 IT system in the required format and in accordance with the Administrative Agreement.

This level will verify that the management and control procedures described in the reporting body's Procedural Manual, see section 6.2, are in place at Level 1 and that steps (including sample checking of information at Level 1 applying an approved sampling method<sup>1</sup>) have been taken to give reasonable assurance that the amount returned is correct, before declaring and reporting the expenditure to Level 3.

Before proposing the B2 Form on the EU Structural Funds 2007-13 IT System, the Intermediate Body must be satisfied that the expenditure declared can be verified and that an adequate audit trail exists. The B2 checklist sets out the requirements in this regard and is attached at Appendix 8.

***The role of the Managing Authority (Level 3)***

Level 3 (Managing Authority) will be responsible for aggregating expenditure information coming from Level 2 up to Priority level and completing Form B3 through the EU Structural Funds 2007-13 IT system.

This level will verify that the management and control procedures described in the reporting body's Procedural Manual, are in place at Level 2 and that steps (including sample checking of information at Level 2) have been taken to give reasonable assurance that the amount returned is correct, before declaring and reporting the expenditure to the Certifying Authority.

Before proposing the B3 Form on the EU Structural Funds 2007-13 IT System, the Managing Authority must be satisfied that the expenditure declared can be verified and that an adequate audit trail exists. The B3 checklist sets out the requirements in this regard and is attached at Appendix 9.

Expenditure Declaration reports will be accessible by the ESF/ERDF Financial Control Units, Internal Audit Units at each level, the European Commission, the European Court of Auditors and the relevant National Authorities including the Certifying Authorities, and other approved bodies, via the EU Structural Funds 2007-13 IT system.

**3.6 Applications for Interim Payments**

Notwithstanding the 2% and 3% payments on account automatically advanced by the European Commission, following the approval of the Operational Programmes, interim payments will be made by the European Commission based on declared expenditure incurred at project/operation level. As provided for in Article 87 of EC 1083/2006 interim payment claims can be made to the European Commission, in batches, up to three times a year. For a payment to be made by the European Commission in the current year, the

latest date on which an application for payment can be submitted to the European Commission by the Certifying Authority is the 31<sup>st</sup> of October.

Bodies in the financial management and control cascade should ensure that declarations of eligible expenditure are submitted as frequently as possible, so to ensure the Certifying Authority can submit, at a minimum, two claims a year to the European Commission.

It is essential, therefore that the Managing Authorities submit their claims, on the EU Structural Funds IT system to the Certifying Authorities at least one month in advance of the deadlines to facilitate verification and checking. Likewise, Intermediate Bodies shall submit their claims on the EU Structural Funds IT system to the Managing Authorities two months in advance of the deadlines determined by the Managing Authorities.

**Failure to comply with the above procedures may lead to the suspension of financial assistance and/or loss to the Exchequer for which the relevant Bodies in the Financial Management Cascade will have to account.**

### **3.7 N + 2 rule**

Article 93 of Regulation (EC) 1083/2006 provides that,

*“The Commission shall automatically decommit any part of a budget commitment in an operational programme which has not been used for payment of the pre-financing or interim payments or for which an application for payment has not been sent in conformity with article 86 by 31 December of the second year following the year of budget commitment....;”.*

This is commonly known as the N+2 Rule.

In practice this means that the European Commission’s 2007 Structural Funds budget commitment<sup>8</sup> (allocation) must be claimed in full from the European Commission by the end of 2009. Any portion of this commitment, remaining unclaimed at the end of 2009, will be automatically decommitted by the European Commission and lost to Ireland. The N+2 rule is a rolling process and applies equally to the 2008 commitment, which will have a 2010 deadline for payment application, and for each successive year’s commitment.

Managing Authorities will have overall responsibility for identifying underspends in their Operational Programmes and notifying the Certifying Authority and the Member State Authority by the 30<sup>th</sup> September annually to enable appropriate action to be taken in order to prevent the loss of funding under the N+2 Rule.

However, the Intermediate and Public Beneficiary Bodies will have in practice the primary function of identifying underspends in the projects/operations from which they are drawing funding and immediately notifying the relevant Managing Authority. To facilitate monitoring of this requirement, Intermediate Bodies will be required to provide an initial indicative forecast of eligible public expenditure for the 2007-13 period and thereafter a more accurate annual forecast by 31<sup>st</sup> January each year consistent with the Departmental Vote.

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<sup>8</sup> Less any advance paid by the European Commission

## Section 4 Financial Management

### 4.1 Financial Corrections

Articles 98, 99 and 100 of Regulation (EC) 1083/2006 provide the legal basis and set out the procedures for making financial corrections to assistance granted under the Structural Funds. The Audit Authority and/or the European Commission shall base their financial corrections on individual cases of irregularity identified and may take account of the systemic nature of the irregularity to determine whether a flat rate or extrapolated correction should be applied. The Audit Authority and/or the European Commission shall take account of the nature and gravity of the irregularity and the extent and financial implications of the deficiencies found in the Operational Programme concerned. The ultimate sanction that can be applied is the cancellation of all or part of the Structural Funds contribution.

### 4.2 Reporting irregularities and disconformities

The European Commission definition of irregularity is given in Council Regulation 2988/95, Article 1, and restated in Council Regulation 1083/2006 Article 1 (7) which defines an irregularity as:

*“Irregularity shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.”*

For the Irish Authorities irregularities are

- Ineligible expenditure included in aid claims **already** submitted to the European Commission having been certified by the Paying Authority and submitted to the European Commission;
- Discovered during the course of subsequent checks, reviews or audits found by the Financial Control Unit (FCU);
- Subject to the threshold of €10,000 per transaction; and
- Are corrected by means of ex-post adjustments in the subsequent aid claim.

Irregularities must be reported regularly by the completion of irregularity forms to the Certifying Authority. The basis for reporting irregularities is as set out in Article 70 of European Commission Regulation (EC) 1083/2006 and Articles 27-32 of European Commission Regulation (EC) 1828/2006.

Each level of the cascade must take responsibility for ensuring that the requirements for reporting irregularities are adhered to at their own levels and are in agreement/reconcilable with the negative adjustments entered on the EU Structural Funds 2007-13 IT system.

Certifying Authorities will have overall responsibility for reporting irregularities and will report such irregularities on a quarterly basis<sup>9</sup> based on information provided through the Managing Authorities.

The tasks of the collation of irregularity reports and the recoupment to the European Commission of amounts incorrectly drawn down may be delegated to the Managing Authorities. Irregularities will count towards Ireland's error rate.

The Departments of Finance will be responsible for reporting any ERDF irregularities to the European Commission/European Anti-fraud Office (OLAF).

A similar requirement will have to be undertaken by the Department of Enterprise, Trade and Employment in relation to the ESF.

#### **4.3 Disconformities**

Disconformities are ineligible items of expenditure which are identified and adjusted out of a claim **before** it is signed by the Paying Authority and submitted to the European Commission, and therefore do not constitute a charge on the EU budget.

These include deductions arising from the findings of the Managing Authority's Article 4 checks, before the associated expenditure declarations and aid claims are finalised and thus do not make their way into the EU payments system and can therefore have no negative impact on the EU Budget. They are subject to a threshold of €10,000 per transaction.

Disconformities can include practical negative adjustments which are adjustments made in the interest of clarifying and simplifying the audit trail through for example the deletion of blocks of expenditure which are underpinned by the voluminous and individually very small transaction amounts; such adjustments are only made where there is sufficient eligible substitute expenditure.

Disconformities must be reported regularly to the Certifying Authorities. Further guidance will issue in relation to irregularities and disconformities by the Department of Finance.

#### **4.4 Withdrawn and recovered amounts (Debtor's ledger).**

The Managing Authority will be responsible for the recovery of payments from the Structural Funds made to projects/operations, subsequently deemed ineligible, and for ensuring prompt recovery and repayment of the same to the Irish Exchequer.

To facilitate the maintenance of a register of amounts recoverable and withdrawn the Managing Authority shall provide to the Certifying Authority an annual and cumulative year end statement on expenditure that as previously been declared to the European Commission as eligible, under the following headings listed below;

- ***Annual and cumulative amounts withdrawn:*** Expenditure withdrawn from the subsequent expenditure declarations to the European Commission once it was considered/detected as ineligible;

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<sup>9</sup> Within two months following the end of each quarter (Article 28 – 1828/2006)

- ***Annual and cumulative amounts recovered:*** Expenditure that was previously included as pending recoveries (see next point) but has now been excluded from the expenditure declaration to the European Commission and, therefore, is no longer a pending recovery; and
- ***Amounts to be recovered:*** Expenditure that remains in the expenditure declaration even after it was detected as ineligible.

This statement will facilitate the Certifying Authority's responsibility to report information by 31 March each year as required by Article 61(f) of Regulation 1083/2006 and more specifically by Article 20(2) of European Commission Regulation 1828/2006.

To this end, the Managing Authority shall maintain a register of amounts recoverable and withdrawn (debtor's ledger) detailing the three heading listing and before each claim reconcile this record with the record held by the Certifying Authority. However each level of the cascade must take responsibility for ensuring that the information required for the debtor's ledger is made available and is in agreement/reconcilable with the negative adjustments entered on the EU Structural Funds 2007-13 IT declaration system.

## **Section 5 Monitoring and Reporting Arrangements**

### **5.1 Annual Implementation Reports**

Under Article 67 of Regulation (EC) 1083/2006, it is the responsibility of the Managing Authority to submit the Annual Implementation Report to the European Commission by 30 June each year.

The co-operation of Intermediate Bodies and Public Beneficiary Bodies is required and they must provide implementation information as set out in the Administrative Agreements.

Article 67 (2) of the Regulation describes the information required for the report; Article 67(2) is included in Appendix 10.

In addition, an assessment of the results of the information and publicity measures in terms of visibility and awareness of the Operational Programmes and of the role played by the European Commission will be included in the 2010 Annual Implementation Report and in the Final Implementation Report<sup>10</sup>.

### **5.2 Role of Programme Monitoring Committees**

Under Article 65 of General Regulation 1083/2006, Operational Programme Monitoring Committees shall satisfy themselves as to the effectiveness and quality of the implementation of EU co-financed expenditure, in accordance with the following provisions.

The Monitoring Committee shall:

- a) Consider and approve the criteria for selecting the operations financed within six months of the approval of the Operational Programme and approve any revision of those criteria in accordance with programming needs;
- b) Periodically review progress made towards achieving the specific targets of the Operational Programme on the basis of documents submitted by the Managing Authority;
- c) Examine the results of implementation, particularly achievement of the targets set for each priority axis and the evaluations referred to in Article 48 (3);
- d) Consider and approve the annual and final reports on implementation referred to in Article 67;
- e) Be informed of the Annual Control Report, or of the part of the report referring to the Operational Programme concerned, and of any relevant comments the European Commission may make after examining that report or relating to that part of the report;
- f) Propose to the Managing Authority any revision or examination of the Operational Programme likely to make possible the attainment of the Funds' objectives referred to in Article 3 1083/2006 or to improve its management, including its financial management; and
- g) Consider and approve any proposal to amend the content of the European Commission decision on the contribution of the Funds.

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<sup>10</sup> In accordance with Article 4(2) of Regulation (EC) No. 1828/2006

## **Section 6 Administrative Agreements, Training and Procedures Manuals**

### **6.1 The role of Administrative Agreements**

Under Article 12 of European Commission Regulation (EC) 1828/2006 governing the Structural Funds for 2007-2013, where one or more tasks of a Managing Authority or Certifying Authority are performed by an Intermediate Body, the relevant arrangements must be formally recorded in writing.

To comply with this requirement and to ensure there is a clear understanding of responsibilities; Administrative Agreements will be prepared between the Managing Authorities and each Intermediate Body for the Operational Programme. In relation to the management of the ERDF, the Department of Finance will be party to these agreements.

These Administrative Agreements will set out, inter alia, the responsibilities of the Intermediate Body in respect of;

- Implementation of projects/operations in accordance with the Operational Programme Implementation Plan;
- Provision of an initial indicative forecast of eligible public expenditure for the 2007-13 period and thereafter a more accurate annual forecast by 31<sup>st</sup> January each year consistent with the Departmental Vote.
- Provision on an bi-annual basis of expenditure incurred to 30<sup>th</sup> June and 31<sup>st</sup> December to allow the effective monitoring of the Financial Plans;
- Perform management verification checks in accordance with Article 60 of Regulation 1083/2006.
- Mechanisms for the recorded verification of expenditure claims by Public Beneficiary Bodies including agreed targets for the volume and value of on-the-spot checks and, where appropriate, agreed sampling levels;
- Certification of expenditure in accordance with the provisions of this circular including the provision of all necessary information on the procedures and verifications carried out in relation to expenditure for the purpose of certification;
- Audit arrangements, including:
  - maintenance of an adequate audit trail;
  - facilitating verification audits by the European Commission or its agents, European Court of Auditors, ESF/ERDF Financial Control Units; and
  - facilitating systems audits at Intermediate Body level, co-ordinated by the ESF/ERDF Financial Control Units.
- Arrangements for reporting on financial and physical progress on the implementation of the Theme/Sub-theme to the Monitoring Committee;

- Facilitating the evaluation process;
- Ensuring compliance with the EU and NSRF Information and Publicity requirements; and
- Co-operating with Managing, Certifying and Audit Authorities in relation to management verification checks and closure arrangements.

Intermediate Bodies may be required to either enter into administrative agreements with the Public Beneficiaries Bodies or ensure that all of the Public Beneficiaries Bodies' responsibilities are included in the terms of grant agreements entered into between the Intermediate Body and the Public Beneficiary Body. In such cases, it is envisaged that the Managing Authority will be party to these agreements.

## **6.2 Procedures Manual**

To overcome any weakness in the area of financial management and control of the Structural Funds, detailed Procedures Manuals shall be prepared for each level of the financial management and control cascade.

The Procedures Manual shall provide guidance and give details of responsibilities, tasks and procedures for personnel involved in the implementation of EU co-financed activity. The manual should comply with European Commission requirements as set out in Article 22 of Regulation 1828/2006.

The manuals shall be reviewed regularly and should be available for inspection by the level above the Body in the Financial Management and Control Cascade i.e. Certifying Authority, Managing Authority, the ESF and ERDF Financial Control Units, the Internal Audit Units, the European Commission or its agents and the European Court of Auditors.

## **6.3 Training**

The training of staff particularly in relation to familiarisation with the European Regulations, procedures manuals, roles and requirements of each body in the financial management and control cascade will help to ensure a consistent approach across all bodies in the financial management and control cascade.

Managing Authorities, Intermediate Bodies, Public Beneficiary Bodies and other Implementing Departments/Bodies shall ensure the proper training of staff involved in the management of EU Structural Funds.



## **Section 7 Retention of Records and ensuring an adequate Audit Trail**

### **Retention of Records and ensuring an adequate Audit Trail**

All original supporting documentation must be retained in accordance with Article 90 of Council Regulation (EC) 1083/2006 and Article 19 of Council Regulation EC 1828/2006 i.e. for three years after the closure of the programme.

In accordance with Article 78(2)(c) of Regulation 1083/2006 receipted invoices or accounting documents of equivalent probative value shall also be retained for at the least three years after the year of the payment.

Managing Authorities, Intermediate Bodies, Public Beneficiary Bodies and other Implementing Departments/Bodies shall ensure that an audit trail is adequate. An audit trail is considered adequate (Article 15, Implementing Regulation EC 1828/2006) where, for the Operational Programme concerned, it complies with the following criteria:

- It permits the aggregate amounts certified to the European Commission to be reconciled with the detailed accounting records and supporting documents held by the Certifying Authority, Managing Authority, Intermediate Bodies and Public Beneficiary Bodies as regards operations co-financed under the Operational Programme;
- It permits verification of payment of the public contribution to the Public Beneficiary Body;
- It permits verification of application of the selection criteria established by the Monitoring Committee for the Operational Programme;
- It contains, in respect of each operation, as appropriate, the technical specifications and financing plan, documents concerning the grant approval, documents relating to public procurement procedures, progress reports and reports on verifications and audits carried out; and
- It complies with Article 90 of the General Regulation 1083/2006, Articles 14 and 19 of Implementing Regulation 1828/2006, the Administrative Agreements and the Electronic Commerce Act 2000 with regard to electronic storage and location of documents.

**Failure to comply with the above procedures may lead to the suspension of financial assistance and/or loss to the Exchequer for which the relevant Bodies in the Financial Management Cascade will have to account.**

## Section 8 Conclusion

Conformity with this Circular and with the relevant EU Regulations is obligatory.

Each level of the cascade must take responsibility for ensuring that the requirements for implementation are adhered to at their own levels.

**Managing Authorities are required to ensure that all Intermediate and Public Beneficiary Bodies, responsible for implementing the EU Structural Funds co-financed projects/operations in their Operational Programmes, comply with the requirements of this Circular. Managing Authorities will be requested to demonstrate to the appropriate Certifying Authority the steps they have taken to this end.**

**Departments should ensure, therefore, that the introduction of procedures necessary to conform to the terms of this Circular and the relevant EU Regulations are addressed.**

Failure to abide by the financial management and control procedures outlined above may lead to the deferment or cancellation of Structural Funds assistance and result in a loss to the Exchequer.

### *Contact points for further information*

Any queries from Intermediate and Public Beneficiary Bodies on the terms of the Circular should in the first instance be addressed to the relevant Managing Authorities.

BMW Regional Assembly  
Telephone: 094 9862970  
[www.bmwassembly.ie](http://www.bmwassembly.ie)

S&E Regional Assembly  
Telephone: 051 860700  
[www.seregassembly.ie](http://www.seregassembly.ie)

ESF Managing Authority  
Telephone: 01 6313120  
[www.esf.ie](http://www.esf.ie)

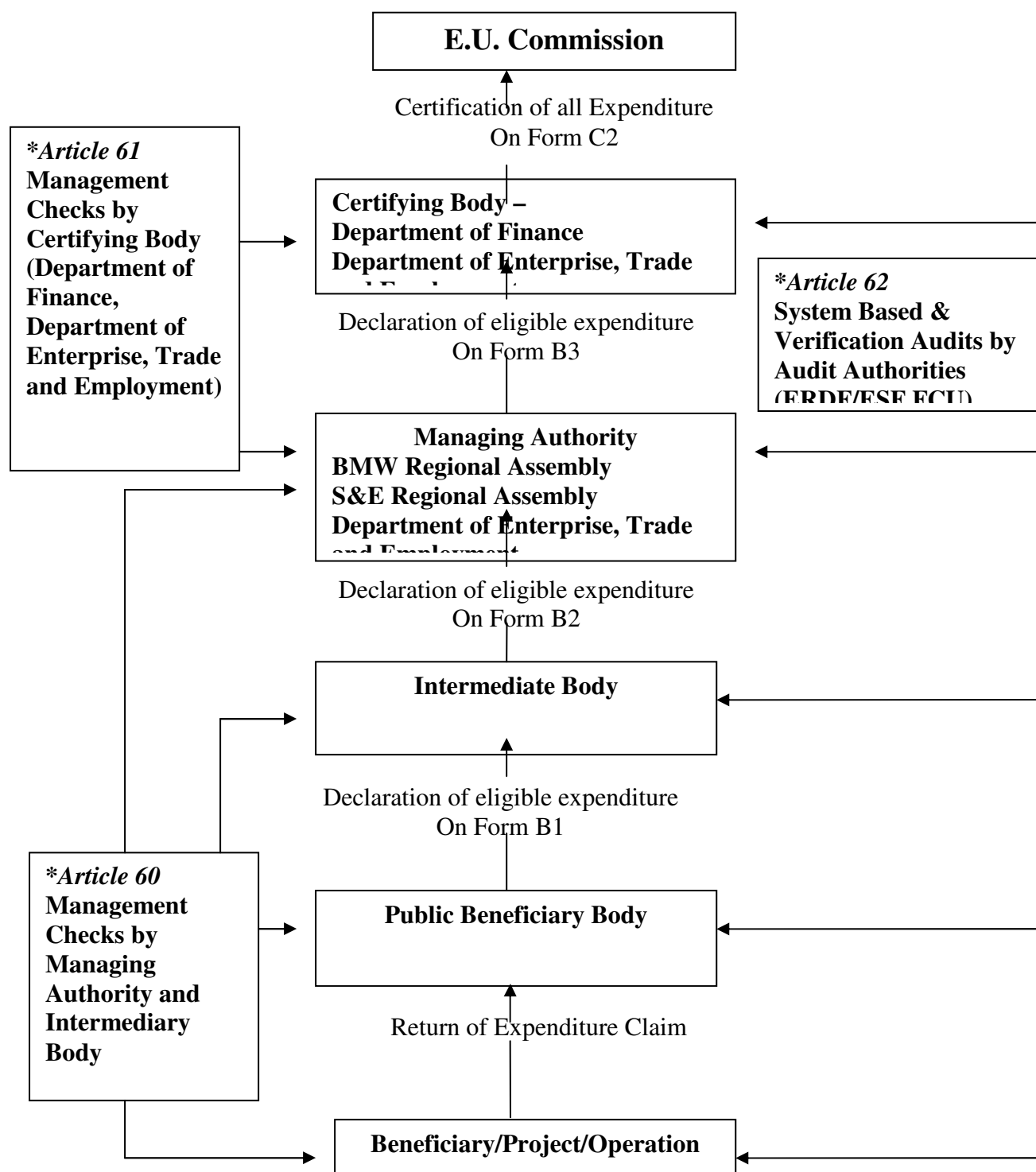
All other queries should be addressed to Mr. Noel Tallon, ERDF Certifying Authority, Department of Finance, telephone 01 6045721, e-mail address [noel.tallon@finance.gov.ie](mailto:noel.tallon@finance.gov.ie).

All queries related to European Social Fund (ESF) should be directed to Mr. Tom Whelan, ESF Certifying Authority, Department of Enterprise, Trade and Employment, telephone 01 6313073, email address [tom\\_whelan@entemp.ie](mailto:tom_whelan@entemp.ie)

Pat Casey  
Principal Officer  
31st of July 2008.

## Appendix 1

### Flow Chart – EU Structural Funds Financial Management and Control System




These articles refer to Council Regulation (EC) No 1083/2006 and should be examined in detail to address the requirements of the regulations.

## Appendix 2

### ***Form A - Compliance with Structural Funds Regulations and Associated European Commission Decisions to be signed annually by the Secretary General of Government Departments involved in the implementation of EU Structural Funds co-funded projects/operations 2007-2013.***

I confirm that my Department and all Agencies/Bodies involved in the implementation of EU Structural Funds co-funded projects/operations have received copies of and are bound by Department of Finance Circular 12/2008 and the terms of the following Regulations, Decisions etc., governing the administration of the European Regional Development Fund (ERDF)/European Social Fund (ESF), including;

- General Regulation: Council (EC) No. 1083/2006 of 5<sup>th</sup> July, 2006, laying down General Provisions on the Structural Funds.
- ERDF Regulation: Regulation (EC) No. 1080/2006 of the European Parliament and of the Council of 5<sup>th</sup> July 2006 on the European Regional Development Fund.
- ESF Regulation: Regulation (EC) No. 1081/2006 of the European Parliament and of the Council of 5<sup>th</sup> July 2006 on the European Social Fund.
- Council Regulation (EC Euratom No.)1605/2002 as amended by 1995/2006 on the Financial Regulation applicable to the general budget of the European Communities and the accompanying implementing regulations
-  European Commission Regulation (EC) No. 1828/2006 of 8<sup>th</sup> December 2006 setting out the rules for the implementation of Council Regulation (EC) No. 1083/2006 laying down general provision for the Structural Funds and Regulation EC No 1080/2006 of the European Parliament and of the Council on the ERDF.
- National Strategic Reference Framework 2007-13.
- ERDF BMW Operational Programme, S&E Operational Programme and ESF HCIOP Operational Programmes 2007-13.
- European Commission Decision(s) in respect of the Operational Programme(s) for which your Department has responsibility.
- Communications Plan for ESF/ERDF.
- Eligibility Rules for ESF/ERDF.

Secretary General \_\_\_\_\_

Department of \_\_\_\_\_

Date \_\_\_\_\_

### ***General Principles of the management and control systems***

General principles of the management and control systems as set out in Article 58 of Regulation (EC) 1083/2006.

The management and control systems of Operational Programmes set up by Member States shall provide for:

- (a) The definition of the functions of the bodies concerned in management and control and the allocation of functions within each body;
- (b) Compliance with the principle of separation of functions between and within such bodies;
- (c) Procedures for ensuring the correctness and regularity of expenditure declared under the Operational Programme;
- (d) Reliable accounting, monitoring and financial reporting systems in computerised form;
- (e) A system of reporting and monitoring where the responsible body entrusts the execution of tasks to another body;
- (f) Arrangements for auditing the functioning of the systems;
- (g) Systems and procedures to ensure an adequate audit trail;
- (h) Reporting and monitoring procedures for irregularities and for the recovery of amounts unduly paid.

### *Responsibilities of the Managing Authorities*

The specific responsibilities of the Managing Authorities are detailed in Article 60 of the General Regulation (EC) 1083/2006 as follows:

- a) Ensuring that projects/operations are selected for funding in accordance with the criteria applicable to the Operational Programme and that they comply, for their whole implementation period, with applicable Community and national rules;
- b) Verifying the delivery of the co-financed products and services and that the expenditure declared by the Beneficiaries for projects/operations has actually been incurred and complies with Community and national rules, as detailed in Article 13(2) of the Implementation Regulation and in accordance with procedures provided for under Article 74 (2) of the General Regulation, relating to proportional control arrangements;
- c) Ensuring that there is a system for recording and storing in computerised form accounting records of each project/operation under the Operational Programme and that the data on implementation necessary for financial management, monitoring, verifications, audits and evaluation is collected;
- d) Ensuring that Beneficiaries and other bodies involved in the implementation of projects/operations maintain either a separate accounting system or an adequate accounting code for all transactions relating to the project/operation without prejudice to national accounting rules;
- e) Ensuring that the evaluations of Operational Programmes referred to in Article 48(3) are carried out in accordance with Article 47;
- f) Setting up procedures to ensure that all documents regarding expenditure and audits required to ensure an adequate audit trail are held in accordance with the requirements of Article 90;
- g) Ensuring that the Certifying Authority shall receive all necessary information on the procedures and verifications carried out in relation to expenditure for the purpose of certification;
- h) Guiding the work of the Monitoring Committee and providing it with the documents required to permit the quality of the implementation of the Operational Programme to be monitored in the light of its specific goals;
- i) Drawing up and, after approval by the Monitoring Committee, submitting to the European Commission the annual and final reports on implementation;
- j) Ensuring compliance with the information and publicity requirements laid down in Article 69; and
- k) Providing the European Commission with information to allow it to appraise major projects

### ***Responsibilities of the Certifying Authorities***

The specific responsibilities of the Certifying Authorities are detailed in Article 61 of the General Regulation 1083/2006 as follows:

- a) Drawing up and submitting to the European Commission certified statements of expenditure and applications for payment;
- b) Certifying that:
  - (i) the statement of expenditure is accurate, results from reliable accounting systems and is based on verifiable supporting documents,
  - (ii) the expenditure declared complies with applicable Community and national rules and has been incurred in respect of projects/operations selected for funding in accordance with the criteria applicable to the programme and complying with Community and national rules;
- c) Ensuring for the purposes of certification that it has received adequate information from the Managing Authority on the procedures and verifications carried out in relation to expenditure included in statements of expenditure;
- d) Taking account for the purposes of certification of the results of all audits carried out by or under the responsibility of the Audit Authority;
- e) Maintaining accounting records in computerised form of expenditure declared to the European Commission; and
- f) Keeping an account of amounts recoverable and of amounts withdrawn following cancellation of all or part of the contribution for a project/operation. Amounts recovered shall be repaid to the general budget of the European Union, prior to the closure of the Operational Programme by deducting them from the next statement of expenditure.

### ***Responsibilities of the Audit Authorities***

The specific responsibilities of the Audit Authorities are detailed in Article 62 of the General Regulation 1083/2006 as follows:

- (a) Ensuring that audits are carried out to verify the effective functioning of the management and control system of the Operational Programme;
- (b) Ensuring that audits are carried out on projects/operations on the basis of an appropriate sample to verify expenditure declared;
- (c) Presenting to the European Commission within nine months of the approval of the Operational Programme an audit strategy covering the bodies which will perform the audits referred to under points (a) and (b), the method to be used, the sampling method for audits on projects/operations and the indicative planning of audits to ensure that the main bodies are audited and that audits are spread evenly throughout the programming period. Where a common system applies to several Operational Programmes, a single audit strategy may be submitted;
- (d) By 31 December each year from 2008 to 2015:
  - (i) submitting to the European Commission an Annual Control Report setting out the findings of the audits carried out during the previous 12 month-period ending on 30 June of the year concerned in accordance with the audit strategy of the Operational Programme and reporting any shortcomings found in the systems for the management and control of the programme. The first report to be submitted by 31 December 2008 shall cover the period from 1 January 2007 to 30 June 2008. The information concerning the audits carried out after 1 July 2015 shall be included in the final control report supporting the closure declaration referred to in point (e);
  - (ii) issuing an opinion, on the basis of the controls and audits that have been carried out under its responsibility, as to whether the management and control system functions effectively, so as to provide a reasonable assurance that statements of expenditure presented to the European Commission are correct and as a consequence reasonable assurance that the underlying transactions are legal and regular;
  - (iii) submitting, where applicable under Article 88, a declaration for partial closure assessing the legality and regularity of the expenditure concerned. When a common system applies to several Operational Programmes, the information referred to in point (i) may be grouped in a single report, and the opinion and declaration issued under points (ii) and (iii) may cover all the Operational Programmes concerned; and
- (e) Submitting to the European Commission at the latest by 31 March 2017 a closure declaration assessing the validity of the application for payment of the final balance and the legality and regularity of the underlying transactions covered by the final statement of expenditure, which shall be supported by a final control report.



### ***Form B1- Level 1 Public Beneficiary Body Checklist.***

The Public Beneficiary Body must confirm the following before the Form B1 is sent to the Intermediate Body on the EU Structural Funds 2007-13 IT System.

#### **Level 1 – Public Beneficiary Body Checklist**

1. Expenditure on the project/operation is consistent with the provisions of the National Eligibility Rules;
2. The intended purpose of the project/operation is consistent with the objectives of the Operational Programme Priority;
3. The payment application for EU recoupment is based on eligible expenditure actually paid out by the Public Beneficiary Body and supporting documentation is available;
4. The expenditure for which recoupment is sought has been paid within the eligibility period;
5. EU State Aids; EU and National Public Procurement Rules; Horizontal principles of sustainable development, equality between men and women and non-discrimination in accordance with Articles 16 and 17 of the General Regulation and social inclusion in accordance with the NSRF and the Operational Programmes; and Regional aid rates, have been observed as appropriate;
6. EU information and publicity requirements are being observed, i.e. in conformity with Articles 2-9 of Regulation (EC) 1828/2006;
7. Physical and financial progress is being monitored and documented including on-the-spot site inspection where appropriate, in accordance with Article 13 of the Implementation regulation 1828/2006;
8. There has been no overlapping of EU aid for the project/operation;
9. A separate accounting system or an adequate accounting code is being maintained for all transactions relating to the project/operation;
10. Evidence of receipt of funding by the Beneficiary of the grant is available;
11. Details of the underlying transactions are recorded, where possible, on computer files and are available on request to the European Commission Services responsible and national authorities;
12. Accounting records and an adequate audit trail exist i.e. in conformity with Articles 14 and 15 of European Commission Regulation (EC) 1828/2006;
13. All original supporting documentation will be retained in accordance with Article 90 of Council Regulation (EC) 1083/2006 and Article 19 of Council Regulation EC

1828/2006 i.e. for three years after the closure of the programme;

14. Expenditure has been reconciled between the administrative unit and the accounts/finance unit and any differences explained and a print-out from the EU Structural Funds IT System financial management system and a copy of the reconciliation has been supplied; and
15. Projects/Operations have been selected in accordance with the criteria approved by the Monitoring Committee.

Have any financial control weaknesses, risk or irregularities/disconformities been identified in the execution of the project/operation(s)?

If yes, please specify:

- a) What corrective action has/will be taken, including submission of irregularity report where appropriate?
- b) Specify the controls applied to guarantee valid certification and quantify the amount of expenditure actually checked during on-the-spot verifications:

#### **LEVEL 1**

I certify that the controls listed from 1 to 15 above have been performed and on that basis the eligible expenditure returned is correct.

**Report Prepared by:** \_\_\_\_\_  
**Public Beneficiary Body:** \_\_\_\_\_  
**Date:** \_\_\_\_\_  
**(Certified)**

**Verified and Countersigned by:** \_\_\_\_\_  
**Public Beneficiary Body:** \_\_\_\_\_  
**Date:** \_\_\_\_\_  
**(Validated)**

***Form B2- Level 2 Intermediate Body Checklist***

The Intermediate Body must confirm the following before the Form B2 is sent to the Managing Authority on the EU Structural Funds 2007-13 IT System.

**LEVEL 2 - Intermediate Body Checklist**

1. Management and control procedures in accordance with the reporting body's Procedural Manual and/or Administrative Agreement are in place at Level 1.
2. Steps, including sample checking of information at Level 1, have been taken to give reasonable assurance that the amount returned is correct, the working papers are available for inspection and provide adequate assurance regarding proper audit trail.

Have any financial control weaknesses, risk or irregularities/disconformities been identified in the execution of the project/operation?

If yes, please specify:

- a) What corrective action(s) has/will be taken?
- b) Specify the controls applied to guarantee valid certification:

**LEVEL 2**

We certify that requirements 1 and 2 have been complied with and on that basis are satisfied that the eligible expenditure is correct.

**Report Prepared by:** \_\_\_\_\_  
**Intermediate Body:** \_\_\_\_\_  
**Date:** \_\_\_\_\_  
**(Certified)**

**Verified and Countersigned by:** \_\_\_\_\_  
**Intermediate Body:** \_\_\_\_\_  
**Date:** \_\_\_\_\_  
**(Validated)**

***Form B3- Level 3 Managing Authority Checklist***

The Managing Authority must confirm the following before the Form B3 is sent to the Certifying Authority on the EU Structural Funds 2007-13 IT System.

**LEVEL 3 – Managing Authority Checklist**

1. Management and control procedures in accordance with Administrative Agreement and reporting bodies' Procedure Manuals are in place at Level 2;
2. The amount being claimed is in accordance with the latest financial tables;
3. Steps, including sample checking of information at Level 2, have been taken to give reasonable assurance that the amount returned is correct, the working papers are available for inspection and provide adequate assurance regarding proper audit trail.
4. The latest Annual Implementation Report has been forwarded to the European Commission; and
5. An amounts withdrawn and recovery statement is being maintained, in accordance with section 4.4 of the Department of Finance Circular 12/2008.

Have any financial control weaknesses, risk or irregularities/disconformities been identified in the execution of the project/operation(s)?

If yes, please specify:

- a) What corrective action has/will be taken?
- b) Specify the controls applied to guarantee valid certification:

**LEVEL 3**

We certify that requirements 1 to 5 have been complied with and on that basis are satisfied that eligible expenditure is correct.

**Report Prepared by:** \_\_\_\_\_  
**Managing Authority:** \_\_\_\_\_  
**Date:** \_\_\_\_\_  
**(Certified)**

**Verified and Countersigned by:** \_\_\_\_\_  
**Managing Authority:** \_\_\_\_\_  
**Date:** \_\_\_\_\_  
**(Validated)**

## Appendix 10

### ***Article 67 of General Regulation (EC) 1083/2006***

#### ***Annual report and final report on implementation***

1. For the first time in 2008 and by 30 June each year, the Managing Authority shall send the European Commission an annual report and by 31 March 2017 a final report on the implementation of the Operational Programme.

2. The reports referred to in paragraph 1 shall include the following information in order to obtain a clear view of the implementation of the Operational Programme:

(a) The progress made in implementing the Operational Programme and priority axes in relation to their specific, verifiable targets, with a quantification, wherever and whenever they lend themselves to quantification, using the indicators referred to in Article 37(1)(c) at the level of the priority axis;

(b) The financial implementation of the Operational Programme, detailing for each priority axis:

(i) the expenditure paid out by the Beneficiaries included in applications for payment sent to the Managing Authority and the corresponding public contribution;

(ii) the total payments received from the European Commission and quantification of the financial indicators referred to in Article 66(2); and

(iii) the expenditure paid out by the body responsible for making payments to the Beneficiaries.

Where appropriate, financial implementation in areas receiving transitional support shall be presented separately within each Operational Programme;

(c) For information purposes only, the indicative breakdown of the allocation of Structural Funds by categories, in accordance with the implementation rules adopted by the European Commission in accordance with the procedure referred to in Article 103(3);

(d) The steps taken by the Managing Authority or the Monitoring Committee to ensure the quality and effectiveness of implementation, in particular:

(i) monitoring and evaluation measures, including data collection arrangements;

(ii) a summary of any significant problems encountered in implementing the Operational Programme and any measures taken, including the response to comments made under Article 68(2) where appropriate;

(iii) the use made of technical assistance;

(e) The measures taken to provide information on and publicise the Operational Programme;

(f) Information about significant problems relating to compliance with European Commission law which have been encountered in the implementation of the Operational Programme and the measures taken to deal with them;

(g) Where appropriate, the progress and financing of major projects;

(h) The use made of assistance released following cancellation as referred to in Article 98(2) to the Managing Authority or to another public authority during the period of implementation of the Operational Programme;

(i) Cases where a substantial modification has been detected under Article 57. The breadth of information transmitted to the European Commission shall be proportional to the total amount of expenditure of the Operational Programme concerned. Where appropriate, such information may be provided in summary form.

Information referred to in points (d), (g), (h) and (i) shall not be included if there has been no significant modification since the previous report.

3. The reports referred to in paragraph 1 shall be judged admissible where they contain all the appropriate information listed in paragraph 2. The European Commission shall inform the Member State on the admissibility of the Annual Report within 10 working days from the date of its receipt.

4. The European Commission shall inform the Member State of its opinion on the content of an admissible Annual Report on implementation submitted by the Managing Authority within two months from the date of receipt. For the final report on an Operational Programme, the time limit shall be a maximum of five months from the date of receipt of an admissible report. If the European Commission does not respond within the time limit laid down, the report shall be deemed to be accepted.



Ireland's EU Structural Funds  
Programmes 2007 - 2013

Co-funded by the Irish Government  
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EUROPEAN SOCIAL FUND

**“Investing in your future”**

## **ESF Certifying Authority, Department of Education and Skills Circular 1/2012**

(Replacing ESF Certifying Authority, Department of Enterprise  
Trade and Employment Circular 1/2008)

ELIGIBILITY RULES FOR THE EUROPEAN SOCIAL FUND (ESF)  
2007-2013 UNDER THE NATIONAL STRATEGIC REFERENCE FRAMEWORK

### **1. Background**

I am authorised by the Minister for Education and Skills to advise all bodies in the financial management and control cascade of the eligibility rules for expenditure concerning the European Social Fund (ESF) 2007-2013 under Ireland's National Strategic Reference Framework (NSRF), which apply to all expenditure co-financed through the Human Capital Investment Operational Programme (HCI OP).

This Circular should be read in conjunction with the financial management and control Circular 12/2008 issued by the Department of Finance for all Structural Funds to conform with the regulatory framework as laid down in the Council Regulation (EC) 1083/2006 and in particular Articles 58 and 62 and Commission Regulation (EC) 1828/2006.

The Department of Finance, as Member State Authority has overall policy responsibility for the Structural Funds and the Department of Education and Skills has primary responsibility for the European Social Fund (ESF). However, the day-to-day responsibility for the implementation of co-financed operations rests with the appropriate statutory bodies e.g. Government Departments, Agencies and Authorities. These bodies are also accountable both to the Oireachtas and to the Comptroller & Auditor General for the National/Exchequer contribution to the co-financed operations.

Failure to comply with the procedures as laid out in Department of Finance Circular 12/2008 and/or this Department of Education and Skills ESF Eligibility Rules Circular may lead to the suspension of financial assistance and/or loss to the Exchequer for which the relevant bodies in the financial management cascade will have to account.

A separate eligibility circular for the European Regional Development Fund (ERDF) has been issued by the Department of Finance (i.e. Department of Finance ERDF Eligibility Rules Circular 16/2008).

## **2. Scope**

The eligibility rules set out in this Circular shall cover all expenditure declared for operations within the European Social Fund (ESF) co-financed operational programme 2007-2013 (i.e. HCI OP) as required by Article 56(4) of the Council Regulation (EC) 1083/2006, and subject to the general rules of the other subsections within Article 56 and the scope and exceptions provided for in Articles 3 and 11 of the Council Regulation (EC) 1081/2006.

## **3. National ESF Eligibility Rules**

- 3.1 Expenditure shall be eligible for a contribution from the ESF if it has actually been incurred and paid (therefore notional costs are considered ineligible) for ESF co-financing between 1 January 2007 and 31 December 2015 and any grant/contract approval dates, subject to the receipt of the goods and services in accordance with the objectives of the operation as outlined in paragraph 3.2. Operations must not have been completed before the starting date for eligibility.

An example of 'incurred and paid' is a cheque given by the beneficiary in settlement of a purchase invoice/contract for goods and/or services received which is subsequently cashed by the project bank account of the beneficiary. The period for recording the eligible expenditure for ESF purposes is the later of the date entered on the cheque or the date the expenditure must be cashed through the beneficiary's bank account before it can be certified as eligible on an expenditure declaration.

- 3.2 Expenditure shall be eligible for a contribution from the ESF only where incurred for operations approved by the managing authority of the operational programme concerned or under its responsibility, in accordance with criteria fixed by the monitoring committee and set out in the individual Activity Implementation Plans (AIP's). New expenditure, added by the revision of an operational programme, shall be eligible from the date of the submission to the Commission of the request for revision of the operational programme.

- 3.3 Proof of expenditure is required and, as a general rule, the expenditure must be supported by receipted invoices or accounting documents of equivalent probative value, which have a proven link with the operation. Effectively, this means any document accepted to prove that the book entry gives a true and fair view of the transactions in accordance with current accountancy regulations. Examples of such proof include; purchase invoice/statement, contract agreement, signed delivery dockets/timesheet, cheque book, electronic fund transfers printouts and bank statements.

These supporting documents must be held for up to three years after the closure (i.e. final or partial closure) of the operational programme, which is the date the final settlement is made for the closure of the HCI OP.

- 3.4 By way of derogation from paragraph 3.1, overheads/indirect costs, depreciation costs and in-kind contributions may, under specific conditions, be treated as eligible expenditure incurred and paid by beneficiaries in implementing operations. This is provided the written approval of the managing authority is received and the amount of the expenditure is justified by accounting documents having a probative value equivalent to invoices. Details



of how these costs should be treated are addressed at section 2 of Appendix A and 4 to 5 of Appendix B.

- 3.5 A list of potential costs that shall be considered eligible for a contribution from the ESF, provided they are incurred in accordance with standard accountancy rules, is set out in Appendix A. This list is not an exhaustive list of all types of expenditure eligible for ESF purposes, therefore, clarification should be sought from the ESF certifying authority through the managing authority on any item not included or where the eligibility of same is considered uncertain.
- 3.6 A list of potential costs that shall not be considered eligible for a contribution from the ESF is set out in Appendix B. Again, this list is not an exhaustive list of all types of expenditure ineligible for ESF purposes, therefore, clarification should be sought from the ESF certifying authority through the managing authority on any item not included or where the eligibility of same is considered uncertain.
- 3.7 A revenue-generating project, for the purposes of ESF co-financed operations in Ireland and in accordance with Article 55 of the Council Regulation 1083/2006, means any operation involving the provision of services against payment (e.g. training course where fees are paid by participants). There are certain conditions applicable to assessing and implementing ESF co-financed revenue generating projects, which are set out in detail in Appendix C.
- 3.8 The Financial Management and Control system for ESF co-financed operations in Ireland is based on the principle of shared responsibilities by way of delegation and administrative agreements. Each level of the cascade must therefore take responsibility for ensuring that the requirements of the Management and Control system are adhered to at their own levels and that ESF and national rules are complied with (refer to Appendix D for a flowchart of the ESF financial management and control cascade structure). A checklist accompanies the level 1 expenditure declarations (i.e. Form B1) and requires confirmation that fifteen conditions have been adhered to before certifying to the next level in the cascade systems. The fifteen conditions are detailed in Appendix E and are all considered essential to ensure that expenditure is eligibility for ESF co-financing.
- 3.9 The Department of Finance Circular 12/2008 sets out the Financial Management and Control Procedures for EU Structural Funds Programmes 2007-2013 required. This Circular includes procedures for State aids, public procurement, information and publicity, irregularities, audit trail and retention of records that are required to safeguard the eligibility of expenditure for EU co-financing.

### *Conclusion*

Conformity with this Circular, the Department of Finance Circular 12/2008 and with the relevant EU Regulations is obligatory for all operations within the ESF co-financed HCI OP. Failure to abide by the ESF eligibility rules outlined above may lead to the deferment or cancellation of ESF assistance to Ireland and a loss to the National Exchequer. Therefore, these rules must be adhered to and introduced into the procedures (i.e. procedure manuals) of all organisations involved in implementing and administrating ESF co-financed operations.

Finally, while every effort has been made to ensure that the ESF eligibility rules laid down in the Circular are as comprehensive as possible, they are not exhaustive. If, therefore, any items are not included or where the eligibility of expenditure is considered uncertain clarification should in the first instance be sought by contacting the HCI OP managing authority, Department of Education and Skills. Any additional clarifications required will be sought from the ESF certifying authority, Department of Education and Skills.

**Tom Whelan**  
**ESF Certifying Authority**  
**Department of Education and Skills**

**12 April 2012**

### *Eligible Expenditure*

The following is a list of potential costs that shall be considered eligible for a contribution from the ESF, provided they are incurred in accordance with standard accountancy rules. This list is not an exhaustive list of all types of expenditure eligible for ESF purposes, therefore, clarification should be sought from the ESF certifying authority through the managing authority on any item not included or where the eligibility of same is considered uncertain.

#### **1. Salaries, Travel and Subsistence Costs**

The salaries, travel and subsistence costs of operations that meet any of the following conditions are eligible;

- Salaries costs including employer's PRSI are eligible if based on real costs (e.g. amounts paid to employee/revenue and not notional costs). The grades and pay scales should be shown, where applicable, and evidence of actual time spent on ESF operation, such as time sheets must be maintained, unless the individual is allocated exclusively to the ESF operation. The relevant salary costs that include non-ESF activity must be excluded.
- Travel and subsistence costs per staff member must relate to ESF operations only and have appropriate documentation to support the costs. The travel and subsistence rates must be appropriate and justifiable (e.g. in line with applicable civil service rates and rules).
- Allowances or salaries disbursed by a third party for the benefit of the participants in an operation (e.g. training course allowances) and certified to the beneficiary.

#### **2. Overheads/Indirect Costs**

Overheads/indirect costs of operations may be eligible under certain conditions i.e., according to duly justified fair and equitable methods. These conditions must be confirmed and approved by the ESF managing authority in writing to the relevant intermediate bodies for each activity heading. The ESF managing authority will select one of the following methods for calculating the overheads/indirect costs:

- real costs which relate to the implementation of the operation co-financed by ESF and are allocated pro rata to the operation,
- indirect costs declared on a flat rate basis for grants, up to a maximum of 20% of the direct costs of an operation. A clarification note that sets out the legal basis, the definition of direct and indirect costs, the scope and the justification requirements for this method is attached at Appendix F to this document.

#### **3. Purchase Costs of Equipment (equal to or less than €1,000)**

The purchase costs of equipment that is linked to the operation and that is equal to or less than €1,000, which is equivalent to the National accountancy threshold as set out in the

Department of Finance Circulars 02/2004 regarding the rules for the inclusion of assets in capital asset registers, are eligible.

**4. Purchase Costs of Second Hand Equipment**

The purchase costs of second-hand equipment that is linked to the operation and that is equal to or less than €1,000 threshold, as under section 3 above, and that meet all of the following conditions are eligible;

- the seller of the equipment shall provide a declaration stating its origin, and confirm that at no previous point has the equipment been purchased with the aid of National or Community grants;
- the price of the equipment shall not exceed its market value and shall be less than the cost of similar new equipment, and;
- the equipment shall have the technical characteristics necessary for the operation and comply with applicable norms and standards.

**5. Leasing and Rental Costs**

The leasing/rental costs of operations that meet all of the following conditions are eligible;

- The lease/rental costs must be related to the operation, where the link with this operation to the ESF co-financed operation can be shown and are allocated exclusively to this operation within the co-financing period. If the lease/rental costs are not related to the operation and/or are not allocated exclusively for the duration of the operation then the lease/rental costs are ineligible but may be claimable as an indirect/overhead cost if all the conditions set out under section 2 above are met, and,
- The maximum amount of ESF eligible expenditure shall not exceed the market value of the asset leased/rented as supported, were possible, by a receipted invoice or an accounting document of equal probative value detailing the purchase cost to the leaser of the asset being leased/rented.

**6. Financial Charges**

The financial charges of operations that meet any of the following conditions are eligible;

- charges for transnational financial transactions;
- where the implementation of an operation requires a separate account or accounts to be opened, the bank charges for opening and administering the account or accounts;
- legal consultancy fees, costs of technical and financial experts and accountancy and audit costs, if they are directly linked to the co-financed operation and are necessary for its preparation or implementation or, in the case of accounting and audit costs, if they relate to requirements imposed by the managing authority;

- the cost of guarantees, not including interest on debt, provided by a bank or other financial institution to the extent to which the guarantees are required by national or Community legislation.

The financial charges that are specifically ineligible are detailed under section 1 of Appendix B.

## **7. Technical Assistance**

The technical assistance costs for the preparatory, management, monitoring, evaluation, information and control activities of the ESF operational programme together with activities to reinforce the administrative capacity for implementing the ESF actions are eligible. This includes the following categories of expenditure:

- relating to the preparation, selection, appraisal and monitoring of the assistance and of operations,
- on meetings of monitoring committees and sub-committees relating to the implementation of assistance. This expenditure may also include the costs of experts and other participants in these committees, including third-country participants, where the chairperson of such committees considers their presence essential to the effective implementation of the assistance,
- relating to audits and management checks of operations,
- expenditure relating to studies, seminars, information actions and evaluation, and,
- the acquisition and installation of computerised systems for management, monitoring and evaluation. This cost is subject to the €1,000 equipment threshold set out under section 3 above but the depreciation costs may be claimable if all the conditions set out under section 4 of Appendix B are met.

Expenditure on salaries including social security contributions is eligible only in the following cases:

- the salaries costs of the staff in the ESF Financial Control Unit,
- other civil servants or other public officials seconded by duly documented decision of the competent authority to carry out tasks, and,
- other staff employed to carry out tasks referred above.

The ESF contribution to the technical assistance expenditure is limited to the maximum amount approved for this cost by the HCI OP Commission Decision and this shall be within a limit of 4% of the total amount allocated to the programme as required by Article 46 of the General Regulation.

## **8. Cross Financing ERDF Activity**

Without prejudice to the derogations laid down in the specific regulations of the Funds, the ERDF and the ESF may finance (i.e. cross financing), in a complementary manner and subject to a limit of 10 % of Community funding for each priority axis of an operational

programme, actions falling within the scope of assistance from the other Fund, provided that they are necessary for the satisfactory implementation of the operation and are directly linked to it as allowed for under Article 34 of Council Regulation 1083/2006.

The national ERDF eligibility rules set out in the Department of Finance Eligibility Circular 16/2008, which comply with Article 7 of Council Regulation 1080/2006 (ERDF Regulation), shall apply to actions co-financed by the ESF, which fall within the scope of Article 3 of the ERDF Regulation.

The approval of the managing authority must be granted to the ESF co-financed operation before any cross financing is considered eligible. The amount of cross financing expenditure at operations level must be recorded and made available on request in order for the managing authority to ensure that the 10% limit is respected at priority level.

**9. Redundancy Costs**

The redundancy costs of operations are eligible provided they relate to the non-refundable statutory element only and are proportional to the amount of time the person being made redundant was working on the ESF operation.

**10. Pension Costs**

The employee and employer pension costs of operations are eligible provided they relate to the real costs (i.e. not notional costs) of that beneficiary/project (e.g., paid into a managed fund directly or offset against income/grants received). A sufficient audit trail that reconciles the payroll records of individuals included in the ESF claim to such real costs of the beneficiary/project is required to support the eligibility of the pension costs.

### Ineligible Expenditure

The following expenditure shall not be eligible for a contribution from the ESF. Again, this list is not an exhaustive list of all types of expenditure ineligible for ESF purposes, therefore, clarification should be sought from the ESF certifying authority through the managing authority on any item not included or where the eligibility of same is considered uncertain.

#### 1. **VAT and Charges**

The costs that come under the following headings are ineligible;

- recoverable VAT, and/or,
- fines, financial penalties, expenditure on legal disputes (e.g. court costs, legal fees and settlement costs) and interest on debt (e.g. bank interest).

#### 2. **Vehicles, Infrastructure, Real Estate and Land Costs**

The purchase costs of vehicles, infrastructure, real estate and land are ineligible. This includes all the associated costs (e.g. auctioneers, legal, surveyors and engineers fees) involved in purchasing such items.

#### 3. **Purchase Costs of Equipment (greater than €1,000)**

The purchase costs of equipment over the €1,000 capital threshold, which is equivalent to the National accountancy threshold as set out in the Department of Finance Circulars 02/2004 regarding the rules for the inclusion of assets in capital asset registers, are ineligible. The definition of equipment for the purpose of ESF co-financed operations in Ireland is that equipment relates to tangible property of a more or less permanent nature which is useful in carrying on operations. An equipment item is a moveable or fixed unit of furniture or furnishings, an instrument, a machine, an apparatus, or a set of articles that meets all of the following conditions;

- Under normal conditions of use, including reasonable care and maintenance, there is an anticipated useful life of more than one year;
- It retains its original shape and appearance with use;
- If the article is damaged or some of its parts are lost or worn, it may be more feasible to repair it than to replace it with an entirely new item, and;
- It does not lose its identity through incorporation into a different or more complex unit.

However, the depreciation costs of such equipment may be eligible if the conditions set out under section 4 below are met.

#### 4. **Depreciation Costs**

As a general rule depreciation costs are ineligible, with the exception for operations approved by the managing authority in writing and that meet all of the following conditions;

- The depreciable equipment is directly used for the ESF co-financed operation,
- The depreciable equipment is allocated exclusively for the duration of an operation within the co-financing period. If the depreciable asset is not allocated exclusively for the duration of the operation then the depreciation costs are ineligible but may be claimable as an indirect/overhead costs if all the conditions set out under section 2 of Appendix A are met,
- The purchase cost of the depreciable equipment has not been already declared as eligible expenditure,
- National or Community grants have not contributed towards the purchase of the depreciable equipment, and,
- The depreciation cost is calculated in accordance with the relevant accountancy rules.

If written approval is received and all the above conditions are met then the depreciation costs of depreciable assets (i.e. equipment) as set out under section 3 above are eligible at the following rates:

- computer equipment 33.33%
- all other equipments 20%

## **5. In-Kind Contributions**

As a general rule public or private in-kind contributions are ineligible, with the exception for operations approved by the managing authority in writing and that meet all of the following conditions;

- the co-financing from the ESF does not exceed the total eligible expenditure excluding the value of such in-kind contributions;
- the value can be independently assessed and audited;
- in the case of unpaid voluntary work, the value of that work shall be determined taking into account the time spent and the hourly and/or daily rates of remuneration for equivalent work (i.e. the value of volunteer time is based on the notional value of the tasks performed by the volunteer for the project not the current earnings of an individual in their usual paid employment);
- the overall in-kind contributions cost of providing the service and/or goods (e.g. hours worked multiplied by hourly rate for equivalent work) is not greater than the market value for providing the same service and/or goods. This case may arise where the number of hours taken by the volunteer in performing a specific task is greater than the hours required by a professional for the same specific task resulting in a cost greater than the market value, even if different hourly rates are applied to both the volunteer and the professional.



**6. Sub-contracting Costs**

The sub-contracting costs that fall under the following headings are ineligible:

- Sub-contracting which adds to the cost of execution of an operation, without adding proportionate value to it,
- Sub-contracts with intermediaries or consultants in which the payment is defined as a percentage of the total cost of an operation unless such payment is justified by the beneficiary by reference to the actual value of the work or services provided, and/or,
- Profit elements included in sub-contracts between related party organisation (e.g. sub-contract between a company and a subsidiary of the same company). Therefore, only the actual cost element of such related sub-contracts are considered eligible.

**7. Location of Operation**

As a general rule operations not located in Ireland are ineligible, with the exception for operations approved by the managing authority in writing and that meet all of the following conditions;

- The managing authority must foresee that Ireland will accrue a greater than 50% proportion of benefits from an operation located outside its region, and;
- The operation must be located in a NUTS III area of a Member State immediately adjacent to Ireland.

**8. Treatment of Revenue / Income / Receipts**

As a general rule any revenue/income/receipts generated by an EU co-financed operation must be deducted from the eligible expenditure of the operation. There are certain additional conditions applicable to assessing and implementing ESF co-financed revenue generating projects, which are set out in detail in Appendix C.

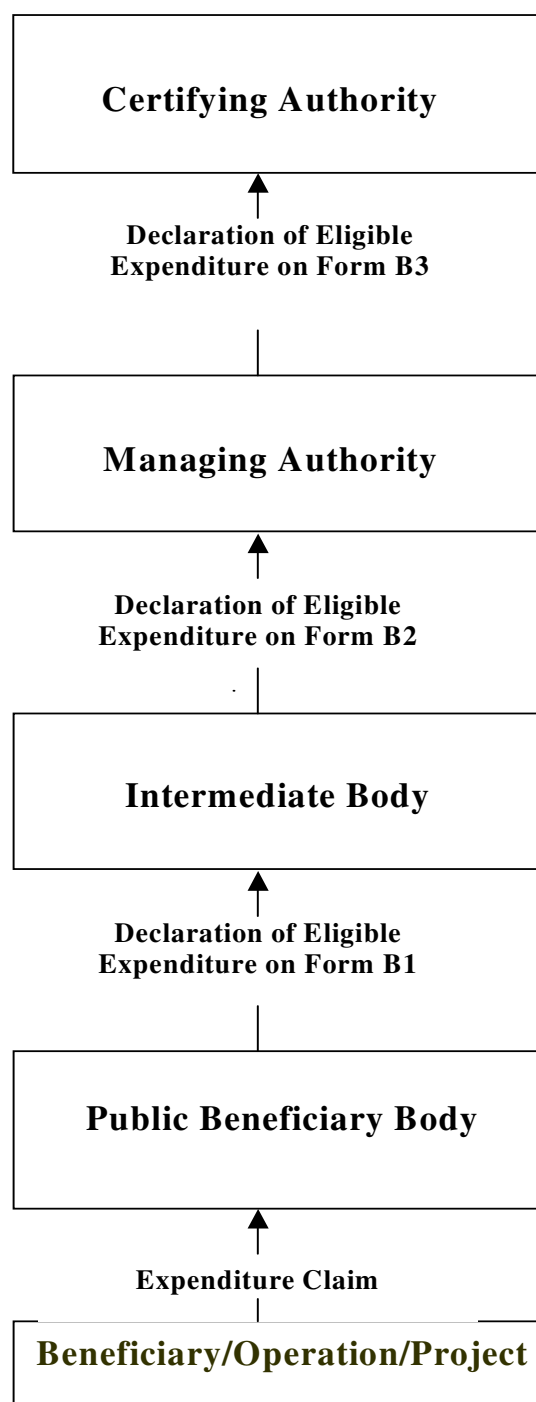
### Assessing and Implementing Revenue Generating Projects

A revenue generating project, for the purposes of ESF co-financed operations in Ireland and in accordance with Article 55 of the General Regulation, means any operation involving the provision of services against payment (e.g. training course where fees are paid by participants). The following conditions are applicable to assessing and implementing ESF co-financed revenue generating projects:

- The eligible expenditure on revenue generating projects shall not exceed the current value of the investment cost less the current value of the net revenue from the investment over a specific reference period for projects where it is possible to objectively estimate the revenues in advance.
- Where not all the investment cost is eligible for co-financing, the net revenue shall be allocated pro rata to the eligible and non-eligible parts of the investment cost.
- In the calculation of the revenue estimate, the managing authority shall take account of the reference period appropriate to the category of investment concerned, the category of project, the profitability normally expected of the category of investment concerned, the application of the polluter-pays principle, and, if appropriate, considerations of equity linked to the relative prosperity of Ireland.
- Where it is objectively not possible to estimate the revenue in advance, the revenue generated within five years of the completion of an operation shall be deducted from the expenditure declared to the Commission. The deduction shall be made by the certifying authority at the latest at partial or at final closure of the operational programme. The application for payment of the final balance shall be corrected accordingly.
- Where, at the latest three years after closure of the operational programme, it is established that an operation has generated revenue that has not been taken into account such revenue shall be refunded to the general budget of the European Union in proportion to the contribution from the ESF.
- The operations whose total cost is below €200,000 may adopt procedures proportionate to the amounts concerned for monitoring revenues generated.

The provision of the above are not applicable to revenue generating projects that are subject to the rules on State aid within the meaning of Article 87 of the Treaty of Amsterdam. It should be noted that where there is no transfer of State resources to an undertaking, there is no State aid. Thus, if the State (at central, regional or local level) is the beneficiary of the contribution from the Funds there is no State aid as there is no transfer of resources away from the State.

Flow Chart – ESF Financial Management and Control Cascade Structure



### Form B1 Checklist

1. Expenditure on the project/operation is consistent with the provisions of the National Eligibility Rules.
2. The intended purpose of the project/operation is consistent with the objectives of the OP Priority
3. The payment application for EU recoupment is based on eligible expenditure actually paid out by the Public Beneficiary Body and/or the Body that is implementing the operation with supporting documentation available. However, where EU state aid rules apply the amount has been restricted to the lower of these paid out amounts
4. The expenditure for which recoupment is sought has been paid within the eligibility period
5. EU State Aids; EU and National public procurement; Horizontal principles of sustainable development, equality between men and women and non-discrimination in accordance with Articles 16 and 17 of the General Regulation and social inclusion in accordance with the NSRF; and Regional aid rates, have been observed as appropriate
6. EU information and publicity requirements are being observed, i.e. in conformity with Regulation (EC) 1828/2006 (information & publicity)
7. Physical and financial progress is being monitored and documented including on the spot site inspection where appropriate, in accordance with Article 13 of the Implementation regulation
8. There has been no overlapping of EU aid for the project/operation
9. A separate accounting system or an adequate accounting code is being maintained for all transactions relating to the operation
10. Evidence of receipt of funding by the beneficiary of the grant is available where the EU's State Aid rules apply
11. Details of the underlying transactions are recorded, where possible, on computer files and are available on request to the Commission Services responsible and national authorities
12. Accounting records and an adequate audit trail exists i.e. in conformity with Article 14 and 15 of Commission Regulation (EC) 1828/2006.
13. All original supporting documentation will be retained in accordance with Article 90 of Council Regulation (EC) 1083/2006 and Article 19 of Council Regulation (EC) 1828/2006 i.e. for three years after the closure of the programme
14. Expenditure has been reconciled between the administrative unit and the accounts/finance unit and any differences explained and a print-out from the financial management system & copy of reconciliation has been supplied
15. Operations have been selected in accordance with the criteria approved by the Monitoring Committee

### Clarification on the indirect costs declared on a flat-rate basis up to 20% for the ESF grants in the 2007-2013 programming period

#### Background

The European Commission proposed and the European Council agreed, by adopting Article 11.3(b) into the ESF Regulation, to simplify the rule on justification of the indirect costs (overheads) of ESF operations in the case of grants for the 2007 –2013 programming period, because experience from previous programming periods showed that the justification of these costs constituted a high source of risk for the beneficiaries, and an often disproportionate administrative cost for ESF operations presenting small amounts. Therefore, Ireland's national eligibility rules for the treatment of indirect costs in the case of grants, as provided for in the ESF Regulation, is that indirect costs can be declared on a flat-rate basis, up to 20% of the direct costs of an operation once it has been clearly defined and approved in the project's granting decision.

The aim of this rule is to simplify the administrative and financial file pertaining to an ESF operation, both for the beneficiary and for the other bodies responsible for the administration of the programme. Nevertheless, the detailed rules for the application of this treatment of indirect costs must be set out clearly as they could, otherwise, become a source of financial risk and of financial corrections when checks and audits are performed. Accordingly the following paragraphs set out the legal basis, the definition of direct and indirect costs, the scope and the justification requirements for indirect costs declared on a flat-rate basis up to 20% and some practical examples.

#### Legal basis

The legal basis for the indirect costs to be declared on a flat rate basis for grants is provided for in Article 11 of the ESF Regulation as follows.

11.1. *The ESF shall provide support towards eligible expenditure which, notwithstanding Article 53(1)(b) of Regulation (EC) No 1083/2006, may include any financial resources collectively contributed by employers and workers. The assistance shall take the form of non-reimbursable individual or global grants, reimbursable grants, loan interest rebates, micro-credits, guarantee funds and the purchase of goods and services in compliance with public procurement rules.*

.....

11.3. *The following costs shall be expenditure eligible for a contribution from the ESF as defined in paragraph 1[article 11.1] provided that they are incurred in accordance with ..... accountancy rules, and under the specific condition ..... (b) in the case of grants, indirect costs declared on a flat-rate basis, up to 20 % of the direct costs of an operation.*

#### Definition of direct and indirect costs

The definition of direct and indirect costs for the purpose of ESF operations 2007-2013 is that direct costs are to be regarded as those costs which are directly related to an individual operation,

where the link with this operation can be demonstrated. Indirect costs, on the other hand, are costs which are not, or cannot, be connected directly to an individual operation of the entity in question. Such costs could include administrative expenses, for which it is inherently difficult to determine precisely the amount attributable to a specific operation (e.g. administrative/staff expenditure, such as management costs, recruitment expenses, personnel costs for the accountant or the cleaner, telephone, water and/or electricity expenses).

#### Scope of the Article 11(3)(b) of the ESF Regulation

The treatment of indirect costs on a flat-rate basis up to 20% concerns only operations managed in the framework of grant payments, where declared expenditure is normally justified by paid invoices and/or other accounting documents of equivalent probative value (i.e. reimbursing the operation for actual expenditure incurred). This flat rate rule means that once direct costs have been clearly defined in the granting decision and properly justified by the beneficiaries by means of supporting paid invoices, beneficiaries can apply the agreed flat rate (i.e. within the 20% ceiling) to declare and justify indirect costs linked to this ESF operation, without any further justification.

If payments are not based on a grant payments but on the contract agreement price to the successful tender (i.e. not the actual expenditure incurred by the successful tender) then no overheads/indirect costs are eligible unless already included in the contract agreement price.

#### Justifying indirect costs declared on a flat-rate basis up to 20%

It is important to remember, first of all, that the declaring of indirect costs on a flat-rate basis must be foreseen at the programming stage of operations. The objective is to dispense with the need to justify in detail (e.g. provision of copies of paid invoices and a specific pro rata breakdown for each type of expenditure) the costs which make up the indirect costs. This simplifies matters both for the beneficiary and for the administration managing and controlling the ESF operation.

The simplification of the justification of indirect costs implies, however, careful verification of the declared direct costs, in accordance with the granting decision. This verification of direct costs allows for the justification of the amount of declared indirect costs and constitutes part of the management checks (Article 60(b) of Regulation 1083/2006) and of audits on operations (Article 62(a) and (b) of Regulation 1083/2006).

Finally, it also needs to be clear that;

- since actually incurred direct costs serve as the basis for calculation of indirect costs, any reduction in these direct costs in relation to the estimated budget or following a financial correction will have an impact on the flat-rate amount of indirect costs;
- any income generated on the ESF operation ought to be deducted from total costs (i.e. direct and indirect costs) declared on this ESF operation. When the income is allocated pro rata to the eligible and non-eligible parts of the investment cost the total costs of the eligible operation must be used. The rules governing revenue generating projects are set out further in Appendix C.

# Human Capital Investment Operational Programme 2007-2013



## EUROPEAN SOCIAL FUND INFORMATION AND PUBLICITY GUIDELINES



Ireland's EU Structural Funds  
Programmes 2007 - 2013

Co-funded by the Irish Government  
and the European Union



EUROPEAN SOCIAL FUND



AN ROINN OIDEACHAIS  
AGUS SCILEANNA | DEPARTMENT OF  
EDUCATION  
AND SKILLS

*Investing in your Future*

## **1. Introduction**

The European Social Fund (ESF) enables the European Union to demonstrate how the European Union impacts on the everyday lives of citizens. Over the seven-year period 2007-2013 Ireland will, through the Human Capital Investment Operational Programme, receive €375m in funding under the ESF, which is managed by the Department of Enterprise, Trade and Employment. This is the only ESF Programme being funded in Ireland during the period.

These guidelines have been produced to inform and assist organisations in correctly applying the ESF logo and complying with both the EU and Irish information and publicity requirements. It is based on the EU Regulations (Article 69 of 1083/2006 and Articles 2 to 9 of Regulation 1828/2006 - see text in Annex I below).

In relation to the programming round 2007-2013, Ireland's EU Structural Funds logo (see section 7 for more details) and the ESF logo must be used for any projects which have an EU co-funded element; failure to acknowledge and publicise the EU Structural/Social Fund's contribution can lead to a 100% financial correction being applied by the Commission. This financial correction would lead to a loss to the exchequer. Obviously, it is in Ireland's interests to adhere stringently to the information and publicity regulations to ensure no financial corrections are applied. Management verifications carried out by Managing Authorities and Intermediate Bodies will include checks on compliance with these guidelines.

The overall aims of information and publicity actions with regard to ESF funding are

- To recognise the role and support provided by the European Social Fund
- To promote an understanding of the objectives and achievements of funds/activities supported by the European Social Fund
- To provide information on the availability of the European Social Fund for applicants, beneficiaries and the general public

## **2. Promoting the support role of the EU**

The means of providing information and promoting the role of the European Social Fund can include

- Information and communication material such as publications, newsletters, brochures and pamphlets which must contain a clear indication on the title page of the EU's participation i.e., the ESF logo. The ESF logo must be the same size as the national and regional logo used. Publications should include references to the body responsible for the information content and to the Managing Authority designated to implement the assistance package in question.
- Notification of grants by the Intermediate or Public Beneficiary Body to Beneficiaries, which must indicate that the grant is co-financed by the EU and must specify the fund – ESF.
- Posters displayed on the premises of Managing Authorities, Intermediate Bodies, Public Beneficiary Bodies or Beneficiaries e.g., employment agencies, vocational training centres, chambers of commerce and industry, regional development agencies. Posters should indicate the EU's contribution and the fund concerned i.e., ESF.



- Websites concerning the Social Fund should include both Ireland's EU Structural Funds logo (see section 7 for more details) and the ESF logo, should mention the EU Fund contribution - on the home page, at least - as well as including a hyperlink to the other Commission websites concerning the Social Funds.
- Information events such as conferences, seminars and exhibitions on EU co-financed programmes, should include Ireland's EU Structural Funds logo (see section 7 for more details), should clearly indicate the EU contribution and also use the ESF logo on documentation and display the EU flag in meeting rooms.
- Press Releases and information directed at the national or local media (press, radio and television) with appropriate references to the ESF contribution are useful ways of reaching the general public.

Intermediate Bodies and Public Beneficiary Bodies are requested to liaise with the relevant Managing Authority in relation to launches and associated publicity events for the co-financed programmes delivered by them.

### **3. Target groups**

The key target groups for the Communications Plan include the following: -

- the general public;
- Beneficiaries and Potential Beneficiaries (individuals, businesses, NGOs);
- Government Departments, Regional Assemblies, Regional and Local Authorities, Intermediate Bodies, Public Bodies and Agencies;
- MEPs, TDs, Senators and Councillors;
- International Groups (visiting groups, parliamentary delegations and other Member State Managing Authorities);
- The Social Partners incorporating Trade Unions, Employers and Business Groups, Farming Organisations and the Community and Voluntary sector; and
- Local, Regional and National opinion formers and influencers including Journalists and the Media, Academics, Researchers and Educators.

### **4. Information and Publicity Measures; Strategy and Content**

- The Managing Authority will aim at the broadest possible media coverage using all suitable forms and methods of communication at the appropriate territorial level. It will inform the media, both nationally and locally, about the assistance part-financed by the European Union. Appropriate channels, which will result in the most cost effective promotion of the role of the European Union, will be used.
- Beneficiaries/Intermediate Bodies for individual operations will be responsible for carrying out information and publicity measures relevant to the operations for the public. In doing so, Beneficiaries will apply the provisions contained in Article 8 of Commission Implementation Regulation (EC) 1828/2006 as they concern the putting up of plaques, billboards and acknowledgement of funding sources.
- Intermediate and Public Beneficiary Bodies will promote the individual priorities/themes/operations for which they are responsible using the various channels at their disposal, i.e., websites, launches, sectoral publications, business/community groups, advertisements, information leaflets and selected seminars and conferences.

- Intermediate and Public Beneficiary Bodies will report (as part of annual progress reports) to the OP Monitoring Committee on planned and completed information actions relating to their priorities/themes/operations. The Managing Authority will report annually on a similar basis to the NSRF Monitoring Committee.
- The information and publicity actions will be proportionate to the level of funding available.
- All potential information channels to promote the 2007-2013 OP will be availed of in order to achieve the overall aims of the strategy in a cost-effective manner, e.g., on websites related to the OP.

## 5. Where to use the ESF logo

Ireland's Structural Funds logo and the ESF logo must feature if a project has received or will receive EU funding. These should feature on the following items produced in relation to projects or schemes in receipt of ESF funds:

- Publicity Signage
- Brochures/Literature
- Application Forms
- Annual Reports
- Display/Exhibition stands
- Videos
- Advertisements & Supplements
- Conference Material
- CD-ROMs/DVDs
- Websites
- Offer letters, correspondence with projects/beneficiaries
- Press releases
- Launches/Awards
- Posters

## 6. Describing the Social Funds

Wherever possible, e.g., in publications, annual reports, press releases, speeches etc., a description of the Social Fund should be used. The tag line suggested by the Commission, (Article 9 of Implementation regulation 1828/2006) and in use on numerous documents already is ***“Investing in your future”***. The operation/project can also be advertised in Irish. The Irish version of “Investing in your future” is ***“Ag infheistiú i do dhán”***.

This is consistent with the Irish translation of “future” used in the National Development Plan/Community Support Framework 2000-2006. The recommended font for this tagline is DAX Medium, which is the same as used in the Ireland's EU Structural funds logo.

## 7. How to use Ireland's EU Structural Funds logo

Ireland's EU Structural Funds logo and the ESF logo must be used for all projects that have or will receive EU funding. Ireland's EU Structural Funds logo is a Golden Harp facing left that has the text

*“Ireland's EU Structural Funds Programmes 2007-2013 co-funded by the Irish Government and the European Union”*

The Font is DAX Medium and the Colour is PANTONE 875 (Gold). The logo can be also be used in black and white. The preferred option is in gold, which complements the EU flag.



**Ireland's EU Structural Funds  
Programmes 2007 - 2013**

**Co-funded by the Irish Government  
and the European Union**



**Ireland's EU Structural Funds  
Programmes 2007 - 2013**

**Co-funded by the Irish Government  
and the European Union**

**7.1 Official Languages Act 2003 (Section 9) Regulations 2008:**

The requirements of the Official Languages Act 2003 (Section 9) Regulations 2008, have to be adhered to by public bodies when placing signage and designing stationery. Further details on the provisions of these regulations are available from the Department of Community, Rural and Gaeltacht Affairs at: [www.pobail.ie](http://www.pobail.ie).

The Irish version is also available to use with the text

*“Cláir Chistí Struchtúracha AE na hÉireann 2007-2013 Cómhaoinithe ag Rialtas na hÉireann agus ag an Aontas Eorpach”.*

Again the Font is DAX Medium and the Colour is Pantone 875 (Gold). The logo can also be used in black and white. The preferred option is in gold, which complements the EU flag.



**Cláir Chistí Struchtúracha AE  
na hÉireann 2007-2013**

**Cómhaoinithe ag Rialtas na hÉireann  
agus ag an Aontas Eorpach**



## Clair Chistí Struchtúracha AE na hÉireann 2007-2013

### Cómhaoinithe ag Rialtas na hÉireann agus ag an Aontas Eorpach

#### 8. How to use the ESF logo; structure of the ESF logo

The logo has 12 stars. There is no correlation between the number of countries in the EU and the number of stars. The blue (Pantone Reflex Blue) and yellow (Pantone Yellow) should be used whenever possible with the Typeface Frutiger Roman for the words European Union Social Fund. The ESF logo can also be used in black and white. There are 3 types of ESF logos, which can be used in either Irish or English:

- EU Flag with the words “*European Social Fund*” or with the words “*Ciste Sóisialta na hEorpa*”.



**EUROPEAN SOCIAL FUND**

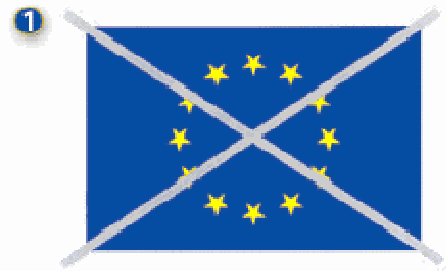
##### 8.1. Geometrical Description

All stars are upright, i.e., with one point vertical and two points in a straight line at right angles to the mast. The circle is arranged so that the stars appear in the position of the hours on the face of a clock. The number of stars is invariable at 12. (See Annex I of Commission Regulation 1828/2006 for instructions for creating the emblem and a definition of the standard colours).

##### 8.2 Incorrect Uses of the Logo

A frequent mistake is to use the emblem upside down. If the stars have a single point each pointing upwards the emblem is the right way up.

- The emblem is upside down.



- The stars are not upright.



- The stars are wrongly positioned in the circle: they must appear in the position of the hours on the face of a clock.



### 8.3 Single Colour Reproduction:



If only black is available, outline the rectangle in black and print the stars in black and white.



In the event that blue is the only colour available (it must be Pantone Reflex Blue), use it 100% with the stars reproduced in negative white and the field 100% blue.

### 8.4 Reproduction on a colour background



The emblem is reproduced for preference on a white background. Avoid a background of varied colours, and in any case one, which does not go with blue. If there should be no alternative to a coloured background, put a white border around the rectangle, with the width of this being equal to 1/25 of the height of the rectangle.

## 9. Using the EU flag with the other logos:

For projects/schemes which are EU co-financed, the ESF logo and Ireland's Structural Funds logo must feature on any publicity and information material produced. The National Development Plan (NDP) logo **should not** be used for co-financed operations.

The ESF logo shall be the same size as Ireland's Structural Funds logo (and that of any other logo(s) featured).

Both logos should not be smaller than a minimum size of 26mm in horizontal width. If used horizontally, the Ireland Structural Funds logo should be placed on the left, followed by the ESF logo in the centre, followed by the Department or Agency's corporate logo on the right. If used vertically the Ireland Structural Funds logo should be placed on the top, followed by the ESF logo in the centre, followed by the Department or Agency's corporate logo on the bottom. The full range of logos, in Irish and English, colour and monochrome, in JPEG and EPS (Encapsulated PostScript) format are available from the Managing Authority's websites.

The tag line "*investing in your future*" should be placed underneath the other logos if possible.

Sufficient `breathing space` between logos should be utilised to enhance the visual appearance of publications and signage.

## 10. Promoting your event & the role of the EU

The start of a project or scheme provides an opportunity to promote the role of the ESF. The following publicity actions will provide the opportunity to promote the EU's contribution to your project.

**Launching the Project** - a publicity event, attended by a senior Minister, local public representatives and the local media should be organised for the start of a project or scheme. EU and Managing Authority representatives should be invited to the launch of EU funded projects.

**Media** - for the promotion of projects the focus should be firmly on the local media. A strong presence should be established with local radio with project coordinators on hand to answer questions from the general public. Advertising in the local press should be considered as an option in any project communications plan.

**Online Activity** - the website of the Managing Authority is updated regularly. It is the responsibility of local implementers to ensure that their information is published on these central websites, in addition to developing and maintaining their own websites.

## **11. Where to get the Ireland's Structural Funds logo and the ESF logo**

Ireland's Structural Funds logo and the ESF logo are available to download from the Managing Authority website at: <http://www.esf.ie/en/logos.aspx>

## **12. Important points to note**

All activities or projects in receipt of EU funding must display Ireland's Structural Funds logo and the ESF logo on all signs and on all advertisements, information and publicity material.

Where projects are co-financed by the EU, Ireland's Structural Funds logo and the ESF logo must be displayed and given similar visibility with respect to size, location and format as outlined above.

Ministerial speeches in relation to projects/schemes should include appropriate reference to the EU Social Fund.

Commission and Managing Authority officials should be issued with invitations to publicity events, project launches, etc.

### **Contact:**

#### **Human Capital Investment Operational Programme**

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# Annex 1

## EU Regulation 1083/2006 [Extract]

### *Article 69*

#### **Information and publicity**

1. The Member State and the managing authority for the operational programme shall provide information on and publicise operations and co-financed programmes. The information shall be addressed to European Union citizens and beneficiaries with the aim of highlighting the role of the Community and ensure that assistance from the Funds is transparent. The Commission shall adopt implementing rules for this Article in accordance with the procedure referred to in Article 103(3).

2. The managing authority for the operational programme shall be responsible for publicity in accordance with the implementing rules of this Regulation adopted by the Commission in accordance with the procedure referred to in Article 103(3).

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## EU Regulation 1828/2006 [Extract]

### ***“PROVISIONS IMPLEMENTING REGULATION (EC) NO 1083/2006***

#### **Information and publicity**

##### *Article 2*

##### *Preparation of the communication plan*

1. A communication plan, as well as any major amendments to it, shall be drawn up by the managing authority for the operational programme for which it is responsible or by the Member State to cover several or all operational programmes co-financed by the European Regional Development Fund (ERDF), the European Social Fund (ESF) or the Cohesion Fund.

2. The communication plan shall include at least the following:

- (a) the aims and target groups;
- (b) the strategy and content of the information and publicity measures to be taken by the Member State or the managing authority, aimed at potential beneficiaries, beneficiaries and the public, having regard to the added value of Community assistance at national, regional and local level;
- (c) the indicative budget for implementation of the plan;
- (d) the administrative departments or bodies responsible for implementation of the information and publicity measures;
- (e) an indication of how the information and publicity measures are to be evaluated in terms of visibility and awareness of operational programmes and of the role played by the Community.

##### *Article 3*

##### *Examination of compatibility of the communication plan*

The Member State or the managing authority shall submit the communication plan to the Commission within four months of the date of adoption of the operational programme or, where the communication plan covers two or more operational programmes, of the date of adoption of the last of these operational programmes.

In the absence of observations made by the Commission within two months of receipt of the communication plan, the plan shall be deemed to comply with Article 2(2).

If the Commission sends observations within two months of receipt of the communication plan, the Member State or the managing authority shall within two months send a revised communication plan to the Commission.

In the absence of further observations by the Commission within two months of submission of a revised communication plan, it shall be considered that the communication plan may be implemented.

The Member State or the managing authority shall commence the information and publicity activities provided for in Articles 5, 6 and 7, where relevant, even in the absence of the final version of the communication plan.

##### *Article 4*

##### *Implementation and monitoring of the communication plan*



1. The managing authority shall inform the monitoring committee for each operational programme of the following:
  - (a) the communication plan and progress in its implementation;
  - (b) information and publicity measures carried out;
  - (c) the means of communication used.

The managing authority shall provide the monitoring committee with examples of such measures.

2. The annual reports and the final report on implementation of an operational programme, referred to in Article 67 of Regulation (EC) No 1083/2006, shall include:

- (a) examples of information and publicity measures for the operational programme carried out when implementing the communication plan;
  - (b) the arrangements for the information and publicity measures referred to in point (d) of Article 7(2) including, where applicable, the electronic address at which such data may be found;
  - (c) the content of any major amendments to the communication plan.

The annual implementation report for the year 2010 and the final implementation report shall contain a chapter assessing the results of the information and publicity measures in terms of visibility and awareness of operational programmes and of the role played by the Community, as provided for in point (e) of Article 2(2).

3. The means used for implementing, monitoring and evaluating the communication plan shall be proportional to the information and publicity measures identified in the communication plan.

#### *Article 5* *Information measures for potential beneficiaries*

1. The managing authority shall, in accordance with the communication plan, ensure that the operational programme is disseminated widely, with details of the financial contributions from the Funds concerned, and that it is made available to all interested parties. It shall in addition ensure that information on the financing opportunities offered by joint assistance from the Community and the Member State through the operational programme is disseminated as widely as possible.

2. The managing authority shall provide potential beneficiaries with clear and detailed information on at least the following:

- (a) the conditions of eligibility to be met in order to qualify for financing under an operational programme;
  - (b) a description of the procedures for examining applications for funding and of the time periods involved;
  - (c) the criteria for selecting the operations to be financed;
  - (d) the contacts at national, regional or local level who can provide information on the operational programmes.

In addition, the managing authority shall inform potential beneficiaries of the publication provided for in point (d) of Article 7(2).

3. The managing authority shall involve in information and publicity measures, in accordance with national laws and practices, at least one of the following bodies that can widely disseminate the information listed in paragraph 2:

- (a) national, regional and local authorities and development agencies;
  - (b) trade and professional associations;
  - (c) economic and social partners;
  - (d) non-governmental organisations;
  - (e) organisations representing business;
  - (f) information centres on Europe as well as Commission representations in the Member States;
  - (g) educational institutions.

#### *Article 6* *Information measures for beneficiaries*

The managing authority shall inform beneficiaries that acceptance of funding is also an acceptance of their inclusion in the list of beneficiaries published in accordance with point (d) of Article 7(2).

#### *Article 7*

#### **Responsibilities of the managing authority relating to information and publicity measures for *the public***

1. The managing authority shall ensure that the information and publicity measures are implemented in accordance with the communication plan and that they aim at the widest possible media coverage using various forms and methods of communication at the appropriate territorial level.

2. The managing authority shall be responsible for organising at least the following information and publicity measures:

(a) a major information activity publicising the launch of an operational programme, even in the absence of the final version of the communication plan;

(b) at least one major information activity a year, as set out in the communication plan, presenting the achievements of the operational programme(s) including, where relevant, major projects;

(c) flying the flag of the European Union for one week starting 9 May, in front of the premises of each managing authority;

(d) the publication, electronically or otherwise, of the list of beneficiaries, the names of the operations and the amount of public funding allocated to the operations.

Participants in an operation of the ESF shall not be named.

#### *Article 8*

##### *Responsibilities of beneficiaries relating to information and publicity measures for the public*

1. The beneficiary shall be responsible for informing the public, by means of the measures laid down in paragraphs 2, 3 and 4, about the assistance obtained from the Funds.

2. The beneficiary shall put up a permanent explanatory plaque that is visible and of significant size no later than six months after completion of an operation that fulfils the following conditions:

(a) the total public contribution to the operation exceeds EUR 500 000;

(b) the operation consists in the purchase of a physical object or in the financing of infrastructure or of construction operations.

The plaque shall state the type and name of the operation, in addition to the information referred to in Article 9. That information shall take up at least 25% of the plaque.

3. The beneficiary shall, during the implementation of the operation, put up a billboard at the site of each operation which fulfils the following conditions:

(a) the total public contribution to the operation exceeds EUR 500 000;

(b) the operation consists in the financing of infrastructure or of construction operations.

The information referred to in Article 9 shall take up at least 25% of the billboard.

When the operation is completed, the billboard shall be replaced by the permanent explanatory plaque referred to in paragraph 2.

4. Where an operation receives funding under an operational programme co-financed by the ESF and, in appropriate cases, where an operation receives funding under the ERDF or the Cohesion Fund, the beneficiary shall ensure that those taking part in the operation have been informed of that funding.

The beneficiary shall provide clear notice to the effect that the operation being implemented has been selected under an operational programme co-financed by the ESF, the ERDF or the Cohesion Fund.

Any document, including any attendance or other certificate, concerning such an operation shall include a statement to the effect that the operational programme was co-financed by the ESF or, where appropriate, the ERDF or the Cohesion Fund.

#### *Article 9*

##### *Technical characteristics of information and publicity measures for the operation*

All information and publicity measures aimed at beneficiaries, potential beneficiaries and the public shall include the following:

(a) the emblem of the European Union, in accordance with the graphic standards set out in Annex I, and reference to the European Union;

(b) reference to the Fund concerned:

(a) for the ERDF: "European Regional Development Fund";

(b) for the Cohesion Fund: "Cohesion Fund";

(c) for the ESF: "European Social Fund";

(c) a statement chosen by the managing authority, highlighting the added value of the intervention of the Community, and preferably "Investing in your future".

For small promotional objects, points (b) and (c) shall not apply."

## ANNEX 5

Final version of 05/06/2008

COCOF 08/0020/04-EN

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

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## Introduction

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

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

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

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

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

### 1. Regulatory requirements

Article 13(2) of Regulation (EC) No 1828/2006 requires that the verifications to be carried out by the managing authority under Article 60(b) of Regulation (EC) No 1083/2006 shall cover administrative, financial, technical and physical aspects of operations, as appropriate. Verifications shall ensure that the expenditure declared is real, that the products or services have been delivered in accordance with the approval decision, that the applications for reimbursement by the beneficiary are correct and that the operations and expenditure comply with Community<sup>1</sup> and national rules. They shall include procedures to avoid double-financing of expenditure with other Community or national schemes and with other programming periods. The verifications shall include administrative verifications in respect of each application for reimbursement by beneficiaries and on-the-spot verifications of individual operations.

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

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

keep records for each verification, stating the work performed, the date and results of the verification, and the measures taken in respect of irregularities detected<sup>2</sup>.

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

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

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

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

### **2.1. Management verifications – general principles and purpose**

Management verifications are part of the internal control<sup>3</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 one such verification in a typical organisation would be to compare goods actually delivered to the related purchase order in terms of quantity of goods, price and condition. This verification ensures that the actual quantity of goods ordered have been received at the agreed price and are of the desired quality.

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

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<sup>2</sup> The wording "irregularity" means any infringement of a provision of Community law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the Communities by charging an unjustified item of expenditure to the general budget (Article 2(7) of Council Regulation (EC) 1083/2006

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

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

Source: COSO definition of internal control

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

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

## **2.2. Responsibilities of Managing Authorities, Intermediate Bodies and Beneficiaries**

### **Reference**

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

**Managing authorities**<sup>4</sup> are responsible for managing and implementing operational programmes in accordance with the principle of sound financial management, and in particular for:

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

The managing authority has overall responsibility for these tasks. It can choose to entrust<sup>5</sup> some or all of these tasks to intermediate bodies<sup>6</sup>. However, it cannot delegate the overall responsibility for ensuring that they are properly carried out. Therefore, where certain tasks have been entrusted to other bodies, the managing authority should, in its supervisory capacity, obtain assurance that the tasks have been properly carried out. It can do this in a number of ways such as,

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

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

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

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

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

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

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

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

**Beneficiaries**<sup>7</sup> are operators, bodies or firms, whether public or private, responsible for initiating or initiating and implementing operations. Where they are public bodies, they may also be the same body as that which has been designated as managing authority or intermediate body. In that case a clear separation of functions must be ensured<sup>8</sup>. Beneficiaries are responsible for ensuring that expenditure which they declare for co-financing is legal and regular and complies with all applicable Community and national rules. They should therefore have their own internal control procedures, proportionate to the size of the body and the nature of the operation, for providing this assurance.

## 2.3. Guidance in relation to management verifications

### Guidance by Member State to all authorities

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

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

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

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



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

#### Guidance by managing authority to beneficiaries

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

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

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

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

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

## **2.4. Timing of management verifications**

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

particular statement of expenditure should be completed before the certifying authority<sup>9</sup> submits the statement to the Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **2.6. Organisation of on-the-spot verifications**

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

## **2.7. Intensity of verifications**

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

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

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

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

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

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

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

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

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

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

## **2.8. Documenting management verifications**

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

and before inclusion of the expenditure concerned in a statement of expenditure submitted to the Commission, do not have to be reported to the Commission<sup>10</sup>. Nonetheless, such irregularities and corrections should be recorded.

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

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

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

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

The date of on-the-spot verifications of individual operations carried out is required<sup>11</sup> to be recorded in the computerised monitoring system.

## **2.9. Outsourcing management verifications**

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

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

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

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

## 2.10. Auditors' certificates

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

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

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

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

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

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

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

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

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

## 3. Specific areas concerning management verifications

### 3.1. Management verifications of public procurement

#### *Reference*

- (i) *Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.*
- (ii) *Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors*
- (iii) *Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives (2006/C 179/02)*
- (iv) *Commission Interpretative Communication on the application of Community law on Public Procurement and Concessions to Institutionalised Public-Private Partnerships (2007/C 666/1)*

#### *General*

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

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

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



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

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

#### Intensity of verifications of public procurement

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

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

#### Planning

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

Particular attention should be paid to checking:

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

#### Tendering

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

Although there are specific advertising requirements required by EC public procurement rules, managing authorities should also be aware of the need to verify that, even where contracts fall below the EC thresholds or where services are subject only to a limited application of Directive 2004/18/EC (i.e. Annex IIB) or of Directive 2004/17/EC (i.e. Annex XVII B), an adequate (i.e. in the context of the size and nature of the contract<sup>12</sup>) level of advertising of the contract should have

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

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

### Selection and award criteria

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

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

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

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

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

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

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

### Contract implementation phase

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

## **3.2. Environment**

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

- The **Environmental Impact Assessment** or EIA Directive<sup>13</sup> as amended requires Member States to carry out an assessment on certain public and private projects likely to have a significant impact on the environment before they are authorised. This is a procedural directive requiring the evaluation of a wide range of environmental impacts and consultation with environmental authorities and the public (including trans-border consultations). The Directive takes account of the provisions of the Aarhus Convention on public participation and access to justice in environmental matters. The EIA Directive contains a provision dealing with exceptional cases (Article 2.3). Recent guidance emphasises the exceptional nature of the circumstances in which this provision might be used (in line with the European Court of Justice's normal approach to interpreting derogations).
- The **Strategic Environmental Assessment** (SEA) Directive, in addition to requiring Member States to make an assessment before an Operational Programme is approved, includes provisions for monitoring indicators to identify, at an early stage, unforeseen adverse effects and to undertake appropriate remedial action. If appropriate, existing monitoring arrangements may be used to avoid duplication. In addition, the SEA process already carried out may need to be updated if there are significant changes to the Operational Programme. If the Operational Programmes lead themselves to further plans and programmes, then it must be assessed if these too require an SEA process. Finally, it should be noted that Waste Management Plans required under the Waste Framework Directive require a mandatory SEA. Only those interventions and infrastructure works that are in conformity with Waste Plans notified to the Commission are admissible for financing.

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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, as last amended by Directive 2003/35/EC

• **Environmental Information** - The freedom of access to information on the environment Directive<sup>14</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>15</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>16</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>17</sup> lays down basic requirements regarding the handling of waste (that waste disposal and recovery should not present a risk to the environment or health; on the prohibition of dumping or uncontrolled disposal; on the creation of a network of waste disposal plants; on the elaboration of waste management plans; on establishing permitting for waste treatment operations), and establishes the hierarchy for waste management options (in order of decreasing preference: prevention, recovery (reuse, material recycling, energy recovery, disposal). In order for a waste management infrastructure project to be co-financed with ERDF or the Cohesion Fund, it must be part of a coherent waste management plan. The Landfill Directive<sup>18</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>19</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.

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

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

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

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

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

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

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

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

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

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

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

### **3.3. Management verifications of State aid schemes**

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

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

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

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

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

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

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

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

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

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

### 3.4. State Aid

#### *Reference*

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

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

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

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

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

- that the aid scheme has been notified to and approved by the Commission or that it is covered by either a block exemption or satisfies the *de minimis* rules<sup>20</sup> whereby the aid scheme does not need to be notified;
- that the undertakings in receipt of the aid satisfy the conditions of the aid scheme as approved by the Commission or that the nature of the operations covered by a block exemption satisfy the particular exemption conditions;
- that there is no overlapping of aid from different sources which could breach the *de minimis* rule or the applicable rules on the cumulation of aid.

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

The Directorate General for Competition has issued a useful guide<sup>21</sup> and factsheets on the Community rules on State Aid.

### 3.5. Financial engineering instruments

#### *Reference*

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

Financial engineering instruments<sup>22</sup> (FEIs) under Article 44 of Council Regulation No1083/2006 include venture capital funds, guarantee funds, loan funds and urban development funds.

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

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

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

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

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

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

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

The beneficiary<sup>23</sup> is either the holding fund or, if no holding fund exists, it is the FEI itself. However, by way of derogation<sup>24</sup> from the general rule that statements of expenditure should only include expenditure actually paid by beneficiaries, the statements of expenditure for FEIs may include the total expenditure paid from the operational programme in establishing or contributing to such funds or holding funds. However, the eligible expenditure at closure will be the final amount paid out by the holding fund or FEI which has been invested, provided or committed as a guarantee, or paid in management costs, and not the expenditure paid from the operational programme.

Management verifications of FEIs should nonetheless be carried out throughout the programming period in order to monitor the investments made and to ensure that the funds are being invested in accordance with the objectives of the priority axis. They should also check that the thresholds<sup>25</sup> for management costs are not exceeded. Front-loaded payment of management costs may be justified in certain cases where fund managers incur significant upfront costs prior to the investments taking place.

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

Article 45 of Regulation (EC) No 1828/2006 requires that FEI investments in SMEs may only be made at the establishment, early stages or expansion of these enterprises, and only in activities which the FEI managers judge potentially economically viable. They shall not invest in firms in difficulty<sup>26</sup>.

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

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

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

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

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

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



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

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

#### **Reference**

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

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

A revenue-generating project is any operation involving an investment in infrastructure the use of which is subject to charges borne directly by users or any operation involving the sale or rent of land or buildings or any other provision of services against payment. When an operation is expected to generate revenue, this revenue should be taken into account in the calculation of the eligible expenditure<sup>27</sup>. The eligible expenditure shall not exceed the current value of the investment cost less the current value of the net revenue from the investment over the specific reference period for investments in infrastructure or other projects where it is possible to objectively estimate the revenues in advance.

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

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

Since it is the responsibility of the managing authority to ensure that operations comply with the Community rules, it should provide adequate guidance to beneficiaries for preparing their financial analysis. The managing authority, as part of its management verifications, should check that the assessments of revenue-generating operations have been carried out properly, that they have examined the financial analysis in detail and that the assessments are fully documented. In addition, the managing authority has to ensure that in the case of an operation where it is objectively not possible to estimate the revenue in advance, the revenue generated within five years of the completion of that operation must be deducted from the expenditure declared to the Commission<sup>28</sup>.

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

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27 Article 55 of Council Regulation No. 1083/2006

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

declared expenditure), such revenue shall be refunded to the general budget of the European Union in proportion to the contribution of the Funds<sup>29</sup>.

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

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

The Directorate General for Regional Policy has issued separate detailed guidance on the implementation of Article 55 on revenue generating projects<sup>30</sup> (Draft) together with an information note on Article 55(6)<sup>31</sup> (Draft).

### 3.7. Durability of operations

Pursuant to Article 57 of Regulation (EC) No 1083/2006 the managing authority must ensure that an operation retains the contribution from the Funds only if that operation does not, within five years<sup>32</sup> from its completion, undergo a substantial modification: (a) affecting its nature or its implementation conditions or giving to a firm or a public body an undue advantage; and (b) resulting either from a change in the nature of ownership of an item of infrastructure or the cessation of a productive activity.

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

### 3.8. Equality and non-discrimination

#### *Reference*

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

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

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

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

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

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

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

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

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

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

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

### **3.9. European territorial cooperation objective (ETC)**

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

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

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

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

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

The content and scope of the verifications by the controllers is identical to that of a managing authority for the Competitiveness and Convergence programmes<sup>33</sup>. Controllers must verify that the co-financed products and services have been delivered and that the expenditure declared by beneficiaries for operations has actually been incurred and complies with Community and national rules. For this purpose they have to perform administrative verifications in respect of each application for reimbursement by beneficiaries and on-the-spot verifications of individual operations, which could be carried out on a sample basis.

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

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

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

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

Where part of an operation is implemented outside the European Community<sup>34</sup> and where a controller has not been appointed, specific arrangements should be made in order to define which controller or entity is responsible for verifying the legality and regularity of the expenditure. Similar arrangements should be made for the verification of expenditure made in the European Community when it is outside of the territory of the participating Member States<sup>35</sup>.

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

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

## Annex 6

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