

Annex 10

Verification of ESF Operations in England 2007 - 2013: Strategy document outlining the application of Article 13 of Commission Regulation (EC) No 1828/2006

Contents	Page
Purpose	2
Background	2
Overview	2
Article 13 verification programme	4
Raising awareness of Article 13 work	6
Implementation and resources	6
Irregularities	7
Coverage	7
Sampling	9
Quality assurance	11
Monitoring	12
Reporting	13
Cooperation with the Certifying Authority	13
Cooperation with audits	13
Review of Article 13 verification strategy	14
Annexes	
Annex 1 Commission guidance on verification activity	15

Purpose

This strategy document, prepared by the ESFD Managing Authority, sets out the requirements, actions, responsibilities and timescales involved in delivering the obligations under Article 13 of Commission Regulation (EC) No 1828/2006 for ESF in England and Gibraltar for the 2007- 2013 programme.

Background

The Managing Authority is required to ensure that expenditure declared by beneficiaries has been incurred and complies with community and national rules in accordance with Article 60 of the general regulation and Article 13 of the implementing regulation.

Article 13(4) of Regulation (EC) No 1828/2006 requires that the Managing Authority establishes written standards and procedures for both the administrative and on-the-spot verifications and keeps records for each verification, stating the work performed, the date and results of the verification, and the measures taken in respect of irregularities detected.

This verification strategy document draws on European Commission guidance, specifically, COCOF 08/0020/00 EN Working document concerning good practice in relation to management verifications to be carried out by Member States on projects co-financed by the Structural Funds and the Cohesion Fund for the 2007 –2013 programming period (31-03-2008). A version of this document is available at Annex 1 (sections relating to ERDF have been excluded).

Overview

Management verifications are part of the internal control 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.

The central Managing Authority is 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 ESF Article 13 verification strategy covers control arrangements for Co Financing Organisations (the vast majority of ESF provision in England) and non CFO beneficiaries including Technical Assistance and projects in Gibraltar. In addition, the central Managing Authority will prepare an Article 13 Delivery Plan that sets out a detailed programme of verification activity.

Activity in the Article13 strategy and delivery plan will ensure that ESF expenditure declared to the Commission complies with:

- The ESF Operational Programme and relevant ESF regional frameworks (or in the case of Technical Assistance the relevant national or regional strategy);
- The beneficiary agreement, CFO plan or non CFO application;
- Community and national rules including ESF eligibility, procurement requirements, state aid rules, cross cutting themes and publicity.

In addition, the Article 13 verification strategy will:

- establish a framework within which the verification work will be delivered on a consistent basis;
- inform and explain to beneficiaries the rationale for the work, its importance and the reasons behind specific requests and obligations;
- establish the verification activity within the overall framework of management and control activity for ESF in England and Gibraltar.

In addition to this strategy document and the Article 13 delivery plan, detailed procedures, guidance and proformas will be included in the Managing Authority Manual available on the ESF web site.

The Article 13 verification programme

The Article 13 ESF verification programme in England covers the following key elements:-

1. Initial baseline reviews of each CFO

Prior to the receipt of initial claims the Managing Authority will build up a comprehensive understanding of the operation of individual CFOs. The central and regional Managing Authority (with the LDA in London) will undertake an initial baseline review with each CFO to focus on procurement, ESF supporting systems, separate accounting for ESF, management information, match funding and reporting requirements. A baseline report, agreed with the CFO with action points where appropriate, will be issued.

2. Quarterly reviews of each CFO

These quarterly reviews will consider a range of key performance issues including procurement, spend, participant progress, progress against output and results targets, publicity, cross-cutting themes and state aid rules. These reviews are organised by central Managing Authority staff in conjunction with regional Managing Authority colleagues (LDA staff in London). It is envisaged that two of the reviews will be conducted jointly between regional and central Managing Authority staff. A copy of the quarterly review proforma to be used following the baseline review is included in the managing authority manual on the ESF web site.

3. On the spot check of one interim CFO claim

At one of the quarterly reviews referred in 2 above, the central Managing Authority will undertake an on the spot check of one interim claim for each CFO during a twelve month period. This check will verify expenditure claimed against CFO contract cost payments to providers, other provider payments and actual expenditure claimed for administration costs.

As a key element of the verification of the CFO claim, the Managing Authority undertakes selected on the spot verification visits to DWP prime contractors and their sub-contractors, LSC providers and other CFO providers. Each spot check will select a minimum of 20 per cent of claimed expenditure for verification at prime contractor and sub contractor level.

Provider and sub-contractor visits verify that the services agreed in their contracts have been delivered and correspond to expenditure claimed by CFOs in their interim claims to the managing authority. On-the-spot verifications also confirm existence of participants and compliance with other ESF requirements including publicity and the cross-cutting themes.

The programme of monitoring visits for CFOs will be determined by a

combination of random and risk based selection arrangements. The overall approach to the selection of providers for on the spot checks is set out below in the sampling section. Copies of the Article 13 proformas used for the on the spot CFO visit and the on the spot monitoring of contractors and sub-contractors activity are included in the Managing Authority Manual on the ESF web site.

4. Verification of non CFO delivered provision

Article 13 control arrangements will also be applicable to non CFO delivered ESF provision (projects in Gibraltar, Technical Assistance, some non CFO activity in convergence and phasing in regions and innovation and transnationality projects).

Non- CFO Article 13 activity will cover the following:

a) All non CFO projects will receive an initial baseline monitoring visit from the central Managing Authority within the first 12 months of operation. The purpose of these initial visits is to ensure that appropriate systems and procedures are in place at an early stage, preferably prior to any initial interim claims. A baseline report, agreed with the provider with action points where appropriate, will be issued.

b) For each non CFO and TA project during a twelve month period, one interim claim will be subject to an on the spot check by the central Managing Authority. All non CFO expenditure is based on actual rather than contract costs and Article 13 controls of non CFO provision will reflect this. Control visits will check expenditure included in a specific interim claim against supporting documents and invoices. **Under each ESF cost heading (staff, participant and other) five items of expenditure will be selected at random (using a random number generated selection process) for checking over a twelve month period ensuring that items fall into more than one interim claim period (if available).** These checks will verify the eligibility of the expenditure claimed by projects and the activity supported. Copies of the Article 13 proformas used for non CFO and TA activity are included in the Managing Authority Manual on the ESF web site.

c) For Technical Assistance projects supporting Managing Authority activity, arrangements will be put in place to ensure adequate separation of responsibilities. Article 13 monitoring of Managing Authority TA projects will be undertaken by ESFD staff who have had no involvement with that specific project.

5. Administrative verifications

The regional and central Managing Authorities (including the LDA in London and the government of Gibraltar) are responsible for administrative verifications of all interim and final claims submitted by beneficiaries to

check reasonableness, accuracy and probity.

The administrative verification work will be computerised but prior to the completion of this work a manual system will be in operation. On receipt of the claim the regional Managing Authority will complete a standard list of certification checks. The central Managing Authority then undertakes a scrutiny check of the claim prior to forwarding to the Finance Team in ESFD for payment authorisation. Details of the checks are set out in the Managing Authority Manual on the ESF web site.

Raising awareness of Article 13 work

An important element of the Article 13 verification strategy is to ensure arrangements are put in place to inform beneficiaries and make them aware of the importance of the monitoring work being undertaken by the Managing Authority.

The verification strategy will address the need to raise awareness through the following actions:

- baseline reviews with CFOs and initial visits to non CFO providers will include a short presentation on the rationale for verification and the importance of cooperating with monitoring activity;
- correspondence and forms sent to beneficiaries and providers will include explanations for the monitoring visits;
- final reports will be returned to all beneficiaries with action points highlighted and deadlines for completion;
- the LSC National Office and DWP WWEG Delivery Division will be closely involved in working up the verification proposals and will be a key channel to inform LSC and JC+ in the regions about the work. As part of the baseline review process, 'walkthrough briefings' of national LSC and DWP systems will be organised for Article 13 central MA staff;
- quarterly reports on the outcomes of verification work will be made available to key partners including all CFOs.

Implementation and resources

Article 13 controls will be undertaken by the central Managing Authority delivery team (based in ESF Division) and regional Managing Authority teams based in Government Office (GOs). In London the regional element of the controls will be carried out by the London Development Agency (LDA) acting as an Intermediate Body. The staff responsible for verification activity

will be organised on a geographic basis covering the GO regions and Gibraltar. They will be supported by regional staff who will focus primarily on administrative checks of beneficiary claims and CFO quarterly reviews. Staffing in the Managing Authority delivery team and regions include experienced staff who have undertaken Article 4 controls in the 2000-2006 ESF programme. These staff will be responsible for inducting and training new and less experienced members of the Article13 teams.

The Managing Authority may decide to deploy additional staffing resource to undertake some verification activity at CFO provider level. A decision will be made once the range and number of CFO provider contracts is known after CFOs have completed their tendering arrangements for ESF provision in 2008-2010. If additional staff resource is deployed it will be managed directly by the Managing Authority delivery team to ensure that arrangements are applied consistently. Any additional staff brought in to undertake CFO provider verifications will receive necessary training.

Results of verification activity will be recorded and copied to CFOs and non CFO providers so that remedial action can be agreed and implemented. The managing authority will check that recommendations have been implemented and any irregular expenditure identified is removed from future claims.

Article 13 controls will not be undertaken on projects where activity has finished.

All reports of verification activity will be held and filed electronically in the ESF IT system and available to managing authority, Certifying Authority and Audit Authority staff.

Irregularities

Irregularities may be identified during the course of Article 13 verification work. It will be the responsibility of the officer who identified the irregularity to investigate the matter and eventually clear it. Any irregularity involving grant of €10,000 or more must be reported to the Commission. Action on irregularities will follow the procedures set out in the Managing Authority Manual on the ESF web site.

Coverage

Article 13 on the spot verification of CFO activity is undertaken on a sample basis. The Managing Authority is required to set a sample size that achieves 'reasonable assurance as to the legality and regularity of the underlying transactions' (extract from EC guidance). Following consultation with the Audit Authority, the sample Article 13 on the spot verification at CFO level aims to cover a *minimum of 20 per cent of expenditure claimed including match during the lifetime of the 2007 – 2010 phase of the programme.* A key

principle is that all providers/sub-contractors may be the subject of an on the spot check during the lifetime of the programme. This level of sampling will be subject to review prior to the start of the second half of the programme. The level and frequency of verification activity is summarised in the tables below.

CFO verifications

Verification activity	Undertaken by	Coverage
Administrative verifications	MA regional teams LDA; MA central delivery team	All interim and final claims will be checked
Full on-the-spot verifications of interim claims	MA central delivery team	One interim claim in each Priority will be checked every 12 months for each CFO. Facility for more frequent verifications if necessary.
Quarterly reviews	MA regional teams LDA MA central delivery team	All CFOs will be reviewed quarterly. MA regional staff (LDA in London) will participate in all reviews. Two reviews per annum will be joint reviews with the MA delivery team.
On-the-spot verifications of CFO providers	MA central delivery team	During the three year contracting cycle, verifications will be undertaken to: <ul style="list-style-type: none"> - DWP prime contractors - DWP prime contractor sub-contractors - LSC providers - Community Grant Co-ordinating Bodies - other CFO providers Individual contractors will be visited on the basis of a random and risk selection process.

Non CFO providers and Technical Assistance projects (including projects in Gibraltar)

Verification activity	Undertaken by	Coverage
Administrative verifications	MA regional teams LDA; Govt of Gibraltar MA central delivery team	All interim and final claims will be checked
Full on-the-spot verifications of interim claims	MA central delivery team	Interim claims during a 12 month period will be checked for each non CFO and Technical Assistance project. Facility for more frequent verifications if necessary. For each ESF cost heading (participant, staff and other) five invoices will be selected at random as the basis of the check.
Reviews	MA regional teams LDA Govt of Gibraltar	All non CFO and Technical Assistance projects will be reviewed in the first 12 months of operation.

	MA central delivery team	Subsequent reviews will be combined with the on-the spot verification checks held every 12 months. Regional MA staff / LDA / Govt of Gibraltar will participate in reviews with the MA delivery team.
--	--------------------------	---

On the spot verification activity is determined by the timing of the submission of quarterly claims. For CFOs, the management information supporting the claim is usually not available until the following quarter.

Sampling of providers

CFOs

The process by which a sample of CFO providers and sub-contractors is chosen to achieve the minimum 20 per cent coverage is set out below. The sampling consists of a two stage process that will be tailored to specific CFOs:

Stage 1.

The providers that make up the CFO claim will be subject to an initial random selection process. It is important that there is the potential for every provider and sub-contractor to be selected during the course of the programme. All providers in the claim will be ranked in order of selection. The first provider selected at random will be subject to the on the spot check unless they were selected during the previous monitoring visit in which case the second ranked will be selected.

Where the CFO has a prime contractor and sub contractors, for example DWP, then the selection process will be adjusted. Prime contractors will be randomly selected and placed in order. The top ranking prime contractor's sub-contractors will then be subject to a further random selection process and ranked in order. The on the spot check will therefore cover both the prime contractor and the selected sub-contractor.

Sufficient numbers of providers need to be selected for scrutiny to provide adequate coverage and reassurance that they are representative of the claim as a whole. The central Managing Authority will therefore select a minimum of two providers for scrutiny in each claim, increasing to a number that will be sufficient to cover 20% of that claim value.

Stage 2

The second provider selected will be on the basis of risk. Prior to the on the spot check the central Managing Authority will agree with the CFO a ranking of providers on a risk basis. A standardised set of risk criteria have been drawn up and are set out in the table below. Risk factors consist of elements

such as project size and experience as well as the assessment of the CFO. The highest rank provider in terms of risk will be selected for a check. If this happens to be the provider selected randomly under stage 1, or they have been subject to a recent inspection by either the CFO or the Audit Authority, then the second ranked provider in terms of risk will be chosen for the on the spot check.

If a third provider is required to ensure the minimum level of coverage then stages 1 and 2 are repeated. The next provider is taken from the random list, if a fourth is required from the risk based list, and so on.

Risk assessment criteria for CFOs

The table below sets out the risk assessment criteria to be used.

Criteria	Variable	Risk weighting
Sector type	Public	1
	FE	2
	Voluntary sector and others	3
Applicant/provider	a) new and no track record	2
	b) existing and questionable track record	1
	c) existing and proven track record	0
Standard of claims	Good standard	0
	Generally acceptable	1
	Poor standard	2
Number of contracts awarded to applicant/provider	Two or more	1
	One	0
Feedback from other monitoring visits/ audit visits/ other sources	Good feedback	0
	No feedback or minimal problems	1
	Significant causes for concern	2
Performance	Generally in line with profile	0
	Minimal deviations from profile	1
	Significant deviations from profile	2
Concerns identified in appraisal process	None identified or those identified acted upon	0
	Areas identified and not yet acted upon	1
Total score out of 16		

Community grants

Specific arrangements for Article 13 monitoring will be developed for Community Grant activity. In most cases the LSC has contracted with grant co-ordinating bodies who award grants to voluntary organisations to support a range of activities aimed at assisting the disadvantaged or excluded to gain access to the labour market.

The intention is to undertake an Article 13 monitoring visit to the grant co-ordinating body once every 12 months. The on the spot check will involve the selection of a number of grant payments involving one visit to a grant recipient to establish compliance with ESF requirements.

Non-CFO projects

Non-CFO projects cover Technical Assistance, direct delivery projects in phasing in and Convergence areas and Innovation and Transnational projects.

All non-CFO projects will be subject to an on the spot check of interim claims every 12 months. Control visits will check expenditure included in interim claims against supporting documents and invoices. These are used to verify the eligibility of the expenditure claimed by projects and the activity supported.

All Non-CFO projects will be the subject of an annual monitoring visit that includes an on the spot check of expenditure during a 12 month period so there is no need to make a selection for Article 13 based on risk.

Under each ESF cost heading (staff, participant and other) five items of expenditure will be selected at random (using a random number generated selection process) for checking over a twelve month period ensuring that items fall into more than one interim claim period (if available). These checks will verify the eligibility of the expenditure claimed by projects and the activity supported.

Quality assurance

Experience of Article 4 work under the 2000-2006 ESF programme demonstrated the importance of the operation of suitable quality systems to maintain standards. In practice this is about the setting up of a checking process which ensures that Article 13 monitoring visits are being done to a standard which is consistent across the managing authority and also that they meet the national guidelines and EC regulations.

The implementation of quality systems will provide the Certifying Authority, Risk Assurance Division and the Commission with a degree of assurance that

consistent standards are being applied by the managing authority.

Quality assurance procedures

- a) All monitoring files held by the central Managing Authority will contain a standard checklist of actions that will require signatures from staff involved in the Article 13 monitoring work. The checklist will provide an audit trail of activity relating to that monitoring visit.
- b) The SEO team leader **or the MA: Delivery Team Leader** central Managing Authority will countersign all Article 13 monitoring visit reports including the quarterly CFO reviews undertaken by the regional Managing Authority.
- c) For on the spot checks of claims, the SEO team leader will sample the supporting documents to confirm that copies of those important to the process are included in the file and that reports cover all the necessary findings and recommendations. If some documentation cannot be obtained at the CFO/provider, the reason for not taking copies should be clearly stated and signed off by the SEO team leader for audit purposes.
- d) The SEO team leader will oversee the process until the **HEO Contract Delivery Manager** confirms that all action points have been addressed, monitoring progress via completion of the spreadsheet maintained of visits made and follow-up carried out.
- e) The SEO will accompany each **Contract Delivery Manager** on at least two monitoring visits per year to assess individual standards and review the appropriateness of procedures.
- f) The G7 Team Leader of the central Managing Authority team will select at random 10% of monitoring visit files and check to ensure they are compliant and meet agreed standards.
- g) Timescales for the completion of Article 13 visit reports and clearance of recommendations will be monitored. The following standards have been set:

complete A4 report and send to provider	Within 20 working days of the visit
Provider to respond to report agreeing recommendations and remedial action	Within 20 working days of receipt of report
follow up on outstanding issues	Ongoing by Contract Delivery Manager

Monitoring

The central Managing Authority has established a Standing Group of practitioners to oversee the implementation of the Article 13 verification programme. The Group will:

- work up and endorse the detailed Article verification 13 procedures including monitoring visit proforma documentation and any training aides;
- provide feedback on the initial implementation of verification work including the effectiveness of forms and procedures;
- contribute to an on-going review of the operation of Article 13 verification activity and input to any developments or changes to the programme;
- Contribute to the review of the Article 13 strategy in 2010.

Reporting

The central Managing Authority will produce reports summarising relevant verification activity undertaken during the previous quarter. The reports will set out the number of monitoring visits undertaken including follow-up activity, the outcome of any on the spot checks including irregularities, any systemic issues of relevance.

The central Managing Authority will include relevant Article 13 verification reports and data in the Annual Implementation Report submitted to the European Commission.

Cooperation with the Certifying Authority

A representative of the Certifying Authority will attend the Article 13 Standing Group meetings and will have the opportunity to contribute to the on-going development of verification work and the review in 2010.

Certifying Authority representatives will be invited to accompany central Managing Authority staff on Article 13 monitoring visits to allow them to assess the adequacy of the procedures in place.

The information relating to Article 13 verification will be made available to the Certifying Authority through access to files and quarterly progress reports. The Certifying Authority will have the opportunity to discuss the findings with the central managing authority at their regular KIT meetings.

Cooperation with audits

The central Managing Authority will retain and record information relating to Article 13 verification in a way that ensures ready access for audit purposes.

Risk Assurance Division (RAD) will advise, comment upon and endorse the Article 13 verification strategy as part of its assessment of the management and control description completed by the central Managing Authority and submitted to the Commission.

Review of Article 13 verification strategy

The strategy for implementing the verification of operations set out in this document is intended to cover the lifetime of the ESF programme. However, the central Managing Authority recognises the importance of keeping this work under review to reflect changes arising from the operation of the ESF programme and or feedback from key partners including the European Commission.

The central Managing Authority intends to formally review all aspects of Article 13 verification in 2010 to coincide with the start of the second half of the ESF programme in England and Gibraltar.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
REGIONAL POLICY

**DRAFT Working document concerning good practice
in relation to management verifications to be carried out by
Member States
on projects co-financed by the Structural Funds and the
Cohesion Fund
for the 2007 – 2013 programming period
(31-03-2008)**

Table of contents

Introduction.....	17
1. Regulatory requirements	17
2. Main issues in management verifications for the Structural and Cohesion Funds.....	18
2.1. Management verifications – general principles and purpose	18
2.2. Responsibilities of Managing Authorities, Intermediate Bodies and Beneficiaries	19
2.3. Guidance on management verifications	21
2.4. Timing of management verifications.....	22
2.5. Methodology and scope of Article 13(2) management verifications	24
2.6. Organisation of on-the-spot verifications	25
2.7. Intensity of verifications	25
2.8. Documenting management verifications	27
2.9. Outsourcing management verifications	28
2.10. Management verifications and audits under the Audit Authority's responsibility	29
2.12. Management verifications of public procurement.....	29
1083/2006).....	
2.19. Equality and non-discrimination	33

Introduction

The objective of this document is to provide guidance on good practice on certain practical aspects of the application of Article 13 of Commission Regulation (EC) No 1828/2006. It presents the main issues raised by the requirement to carry out management verifications on expenditure declared by beneficiaries.

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. As management verifications are essentially a responsibility of the managing authority, which has the possibility of delegating tasks to intermediate bodies, where reference is made to intermediate bodies in the note, this implies that some or all of the management verification tasks have been so delegated by the managing authority.

1. Regulatory requirements

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

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

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

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

Main issues in management verifications for the Structural and Cohesion Funds

The note provides examples of good practice on particular aspects of management verifications. Where practices that are considered to represent particularly good elements of control systems as regards verifications are mentioned in the note, they are **highlighted** as representing **examples of 'best practice'**. Where relevant, reference is made to other existing guidance and information notes.

2.1 Management verifications – general principles and purpose

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

A simple example of one such verification in a typical organisation would be to compare goods actually delivered to the related purchase order in terms of quantity of goods, price and condition. This verification ensures that the

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

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

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

Source: COSO definition of internal control

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 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 Structural Funds and the Cohesion Fund.

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

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

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

The managing authority therefore has overall responsibility for these tasks. It

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

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

- 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 reviews on verifications carried out by intermediate bodies.

In particular, it should also reserve the right to carry out some controls at intermediate body level so that, where it has concerns that the verifications that it has delegated are not being properly carried out, it can assess how the verifications have been performed through an examination of a limited sample of the verifications carried out by the intermediate body. The determination of the size of the sample is a matter of professional judgement.

It is essential to ensure adequate separation of duties within the managing authority between those responsible for carrying out the selection and approval of operations on the one hand and the management verifications of expenditure declarations on the other hand.

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

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

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

to be able to provide any required assurance to the certifying authority. Such verifications may be carried out on a sample basis.

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

2.3 Guidance on 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 Structural 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 of particular programmes or projects. Such guidance should be incorporated in the procedures manuals of these bodies.

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

A particular attention should be paid to raising awareness of ESF grant beneficiaries through information and training on the specific requirements for the declaration of indirect costs on a flat rate basis (art. 11 (3) b) of

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

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

Regulation (EC) 1081/2006, resulting both from the EC legal framework and the national scheme, which the Commission invited the Member States authorities to communicate).

Member State authorities should provide their staff with training and guidance on the skills required for reviewing and assessing the projects. In particular, the managing authority staff needs to have the skills to review contracting procedures and costing systems 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

The managing authority is also 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.

Best practice would involve management verifications including a check to ensure that this assessment of beneficiaries has actually been carried out. The verification should check that appropriate criteria to assess the capacity of beneficiaries have been established and used during the assessment process. The criteria used 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

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

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

For the purpose of selection and approval of operations the managing authority must ensure that beneficiaries have the capacity to fulfil a number of conditions (e.g. the product or service to be delivered and the time-limit for execution) before the approval decision is taken. Where the managing authority has carried out this assessment of a beneficiary in a thorough and comprehensive manner prior to grant approval, the need to carry out on-the-spot verifications immediately after commencement of the project may be reduced.

On-the-spot verifications should usually be undertaken when the project is well under way, both in terms of physical and financial progress. The need for follow-up on-the-spot verifications can often be assessed based on the results of the previous visit. In some Member States, on-the-spot verifications are carried out when the project has been completed. For projects where only one on-the-spot verification is planned after completion of the project covering all reimbursement claims submitted by the beneficiary, this may give further assurance that all expenditure declared for the operation is correct. On the other hand, the disadvantage of this approach is that it may be too late to effect any necessary corrective action where problems are identified.

The nature and specific characteristics of a project 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 made over this period. 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 grantees after completion of the project or acquisition of the asset. In such cases, best practice would involve a further on-the-spot verification during the operational phase to ensure that the relevant grant conditions continue to be observed.

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

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

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 should be subject to desk verifications based on an examination of the claim itself and relevant supporting documentation such as invoices, delivery notes, bank statements, progress reports and timesheets. The nature of the documents to be submitted should be determined by the managing authority/intermediate body 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 details of contracts awarded. Depending upon the documentation supplied, the desk-based verifications should at least check:

- The correctness of the application for reimbursement
- That expenditure relates to the eligible period;
- That the expenditure relates to an approved project;
- 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 (See section 2.12);
- The respect of EC and national rules on publicity.

Desk-based 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 project, 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 project. When on-the-spot verifications and desk verifications are carried out by different persons, the procedures should ensure that both receive relevant information on the results of the verifications carried out by each of them on a timely basis. Project progress reports prepared by beneficiaries, or

engineers' reports in the case of larger infrastructure projects, can be used as the basis for both desk verifications and on-the-spot verifications.

The managing authority or intermediate body, 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 verification under Article 13(2), whilst still being responsible for carrying out any further verifications necessary 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 or intermediate body is also a beneficiary, an appropriate segregation of functions for the verifications under Article 13(2) should be ensured.

Adequate segregation may be achieved by using a separate department within the same organisation, independent of the department where the beneficiary is located, to carry out the management verification. This could be the finance department or the internal audit unit, where neither of these bodies is the beneficiary and where the latter is not responsible for any audit work under Article 62 of Council Regulation (EC) No. 1083/2006.

The methodology used by Member States 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 desk-based 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 (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).

2.7 Intensity of verifications

Commission Regulation (EC) No. 1828/2006 requires:

1. Administrative verifications in respect of each application for reimbursement by beneficiaries; and
2. On-the-spot verifications of individual operations.

1. Therefore, **administrative verifications** must be carried out in respect of all 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 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 of the administrative verifications to be carried out during the desk-based 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, copy 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 "disappears" before the end of the period.

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

2. **On-the-spot verifications** may be carried out on a sample basis for an operational programme. 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 measures having a large number of small operations, desk-based verifications may be sufficient on their own to provide a sufficient level of assurance (e.g. where the beneficiary sends all relevant documentation to the managing authority/intermediate body and where reliable documentary evidence of the reality of the project is provided). The desk-based verifications can then be complemented by on-the-spot visits to a sample of these operations. The intensity of on-the-spot verifications is very much dependent upon the nature of the projects in the programme (or priority/measure) and the type of documentation that is forwarded by the beneficiary.

For on-the-spot verifications, 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 desk based verifications that appear unusual and require further examination (i.e. risk oriented). Alternatively, a random representative sample could be selected. For large infrastructure projects implemented over several years, three or more on-the-spot verifications are likely to be required. These could be carried out during project implementation and at project completion. Where a particular beneficiary is responsible for a number of operations, at least one on-the-spot verification should be carried out at the level of such a beneficiary.

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

The managing authority/intermediate body should be in a position to demonstrate, through adequate documentation of the management verifications carried out, that the overall intensity of verifications, both desk-based 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, the full description of irregularities detected with the clear identification of the related EC and national legal basis infringed and the corrective measures taken.

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 project).

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.

Irregularities identified during the verifications should be recorded and any corrective and / or follow-up action documented. Follow up action might include the submission of an irregularity report and / or a proposal for recovery of co-financing. Cases of irregularities which are detected and corrected by the managing authority or certifying authority before any payment to the beneficiary of the public contribution and before inclusion of the expenditure concerned in a statement of expenditure submitted to the Commission, do not have to be reported to the Commission¹⁰.

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

The date of on-the-spot verifications of individual operations carried out is required¹¹ to be recorded in the computer system for data exchange with the Commission.

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 priority axis or measure. Member States are encouraged to manage Community funds in the same way as they would manage national funds and accordingly, sufficient staff resources should be allocated to carrying out these verifications in order to ensure that they are carried out properly and in a timely way.

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

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

However, in situations where, due to the high volume or technical complexity of the operations to be verified (e.g. aid schemes), managing authorities / intermediate bodies 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. As already noted in point 2.4, most elements of verifications should be performed ex-ante (i.e. before the related expenditure is submitted to the next level above).

Therefore, the consequences of any delays in carrying out this work, such as compliance with N+2 / N+3 rules or delays in submitting claims, should be recognised before this option is chosen. 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.

2.11 Management verifications and 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.

2.12 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 6661)

General

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

Verifications in this area 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 has 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 which can be used during verifications. (http://ec.europa.eu/internal_market/publicprocurement/index_en.htm)

Intensity of verifications of public procurement

The intensity of management verifications can vary 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.

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.

Planning

Beneficiaries are responsible for ensuring the quality of the initial studies, the design and the accuracy of the project costing. Managing authorities / intermediate bodies should verify these elements and also check that cost estimates are up-to-date. This should ensure that problems with 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 / intermediate bodies 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 both EC and national public procurement rules, managing authorities / intermediate bodies should also be aware of the need to ensure that, even where contracts fall below the EC thresholds or where services are subject only to a limited application of Directive 2004/18/EC (i.e. Annex IIB) or of Directive 2004/17/EC (i.e. Annex XVII B), an adequate (i.e. in the context of the size and nature of the contract¹²) level of advertising of the contract should be 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

For contracts that exceed the thresholds set in the EC public procurement directives, managing authorities / intermediate bodies in some Member

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)

States often 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.

In order to properly verify that tender selection and award procedures have been carried out in accordance with the national and EC public procurement rules, managing authorities / intermediate bodies 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.

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.

In some Member States, where managing authorities / intermediate bodies have concerns as to how a particular contract is to be awarded and where their recommendations have not been followed by a beneficiary, they are empowered to reject the tender award procedure.

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 and approved by the managing authority / intermediate bodies before being signed by the contracting authority. This should ensure that where there are additional works, the relevant public procurement rules have been complied with.

2.19 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 measures and 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 and operations should contribute to improved equality between men and women, and should be able to demonstrate this 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 measures against the target indicators included in the operational programmes throughout the programming period.

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.

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