

Guidance Note No: 6

Guidance Note in Relation to Management Verifications under Article 13 of EC Regulation 1828/2006 for the 2007/2013 Programming Period

1) BACKGROUND

The Commission issued, in June 2008, the final version of a guidance document on Management Verification (COCOF ref 08/0020/04-EN) to be carried out under Article 13 of EC Regulation 1828/2006.

The purpose of the document from the Commission is to provide guidance, at the outset, on practical aspects of the application of Article 13 in the 2007-2013 funding period. Commission Audit visits in the 2000-2006 funding period have highlighted the potential benefits of guidance such as this.

The Commission guidance gives details of regulatory requirements, general principles and the purpose of verifications. It also gives detailed examples in specific areas which have caused problems in the 2000-2006 funding period.

This guidance note aims to provide Managing Authorities (MAs) with the relevant elements of Commission Guidance in order to effectively carry out these processes.

2) REGULATORY REQUIREMENTS

Article 13(2) of EC Regulation 1828/2006 requires that the verifications to be carried out by the Managing Authority under Article 60(b) of EC Regulation 1083/2006 must cover the following details of projects:

- Administrative
- Financial

- Technical
- Physical

Article 13(4) of EC Regulation 1828/2006 requires the Managing Authority to draw up written procedures for both the “administrative” and “on-the-spot” verifications and keep records stating:

- The work carried out
- The date carried out and the results of the verification
- Details of any Irregularities detected

The Managing Authority must also ensure adequate separation of functions between operational staff (ie those staff involved in day-to-day project administration) and those designated to carry out management verification checks.

3) **GENERAL**

The main purpose of the verification procedure is to ensure that the processes for which the Managing Authority has responsibility for are carried out properly and in accordance with the relevant rules and regulations. This should be seen as day to day management verifications of the processes for the delivery of the project in order to verify the delivery of the objectives of the project; the reality of the expenditure claimed and the compliance with the terms of the relevant Programme and applicable national and Community rules.

Managing Authorities, as defined in Article 60(a), (b), (g) and (j) of Council Regulation 1083/2006 are responsible for managing and implementing operational programmes in accordance with 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 (including State Aid Rules) for the whole of the implementation period;

- Verifying that the co-financed projects 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 however in some cases some or all of these tasks can be delegated to Intermediary Bodies however if the managing Authority does delegate some roles to others the relevant arrangements must be formally recorded in writing.

The Managing Authority cannot delegate the overall responsibility it has for ensuring that these tasks are carried out. Therefore where any tasks have been delegated that Managing Authority should in its supervisory capacity obtain assurance that tasks have been properly carried out. It can do this by

- Obtaining and reviewing relevant reports prepared by Intermediate Bodies;
- Performing quality reviews on verifications carried out by Intermediate Bodies;
- Receiving audit reports prepared under the context of Article 62.1(a) and (b) of Council Regulation 1083/2006 which would incorporate reviews of Article 13(2) verifications carried out by Intermediate Bodies.

Timing

Best practice would dictate that desk check type verifications should be carried out before expenditure is declared to the next level above; and

On the Spot verifications should take place where the operation is well underway both financially and physically.

Methodology/Scope

There are two key elements to verifications namely administrative (desk based) verifications in respect of each application for reimbursement and on the spot verifications of individual operations.

All applications for reimbursement should be subject to a desk check based on an examination of the claim and relevant supporting documentation such as invoices, delivery notes, bank statements, timesheets etc. Best practice would indicate that the project should submit along with its application for payment a list and description of invoices that support the claim and a list of contracts award as applicable.

The administrative verification should check

- The correctness of the application for reimbursement
- That the 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
- Respect of EC and national rules on publicity

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

Management verifications of 100% of the applications for reimbursement submitted by beneficiaries are required by EU Regulations however verification of each individual expenditure item and related proof of delivery included in an application, although desirable, the Commission accept may not be practical. Therefore a 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.

Organisation of on-the-spot visits

Administrative verifications are not sufficient on their own to give assurance on all element concerning the legality and regularity of expenditure there it is essential that on-the-spot verifications are carried out in order to check in particular the reality of operations, delivery of the product/service in full compliance with the terms and conditions of the letter of offer, physical progress, respect for Community and national rules on publicity and procurement procedures.

On the spot verifications should also be used to check that the project is providing accurate information regarding its physical and financial progress.

On the spot verification may be carried out on a sample basis however the Managing Authority shall keep records describing and justifying the sampling method and a record of the transactions selected for verification – where sampling is used for the selection of individual transactions from claims. It is the responsibility of the Managing Authority to determine the size of the sample in order to achieve reasonable assurance on the legality and regularity of the underlying transactions. The Managing Authority shall review the sampling method each year.

Managing Authorities may wish, when determining the extent of Article 13(2) verifications, to take account of the control procedures of the project where this is justified – for example where the project is within another government department with its own controls the Managing Authority may treat them as contributing to the assurance to be obtained under Article 13(2) whilst still retaining the responsibility for carrying out checks to ensure their reliability.

The methodology to be used by Managing Authorities for carrying out Article 13(2) verifications should be clearly set out in the procedures manual identifying which elements are checked in the desk based checks and which in the on-the-spot verifications with checklist are appropriate.

On-the-spot verifications should be planned well in advance to ensure that they are effective. Advance notice should be provide in order to ensure that

the relevant staff and documentation (financial records including bank statements, invoices etc) are available for inspection. In instances where the reality of the project is impossible to determine after the project has been completed it may be necessary/appropriate to carry out on-the-spot verifications without prior notice (e.g. ESF funded training courses where timesheets for participants and teaching staff should also be verified).

Documentation/checklists to be used

It is extremely important that all the management verifications are documented. The following data should be recorded:

- The work performed
- The date of any on-the-spot verifications
- The results of the verifications, including the overall level and frequency of errors detected
- A full description of the irregularities detected with a clear identification of the related EC or national legal rules infringed and corrective measures taken.

Follow up action might include the submission of an irregularity report and/ or the procedure for the recovery of grant. While case of irregularities detected and corrected by the Managing authority or Certifying Authority before any payment to the beneficiary of the public contribution and before the inclusion of the expenditure concerned in a statement of expenditure submitted to the Commission do not have to be formally reported to the Commission but should be recorded.

Checklists may be developed by the Managing Authority for use in verification activity however they should not be 'tick boxes' but allow for detailed comments. The Managing AuthorityA should consider those checklist developed for the 2000-06 in relation to Article 4 checks as a minimum for best practice purposes but should adopt/refine as necessary for use in the 2007-13 programming period.

Photographs of billboards and copies of promotional materials etc may be used to provide evidence of the verification of compliance with publicity requirements.

Managing Authorities should ensure that the central computerised recording system is maintained in respect of their programme.

The date of any on-the-spot verifications of individual projects carried out Must be recorded on the Systems 2007 Database.

Outsourcing Management Verifications

Management verification must be carried out under the responsibility of the Managing Authority however if Managing Authorities find they are unable to carry out such work because of the high volume of technical complexity of the operations to be verified outsourcing to external firms may be a consideration. Managing Authorities should consult with European Division, DFP as appropriate on this issue. Where this option is used it is essential that the scope of the work is set out clearly in the terms of reference recognising the consequences of delays such as the compliance with N+2 rules. There will still be an onus on the MA to assess the quality of such outsourced work.

Auditors Certificates

Letters of offer may include a requirement for auditor's certificates to accompany each expenditure declaration made by a project. These certificates vary dependant on 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 and that it relates to items approved under the LoO and that there is adequate supporting documentation to support the expenditure declared.

In order to provide assurance necessary external audit certificates need to be a detailed description of the work carried out and the results rather than a one sentence certification of regularity of the claim. Managing Authorities should provide guidance as necessary to beneficiaries' auditors on the scope of work to be done and on the report/certificates to be presented.

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

Management verifications / audits under the Audit Authority responsibility

Staff carrying out Article 13 (Regulation 1828/2006) verifications should not be involved in systems audits or any other type of audits carried out under the responsibility of the Audit Authority (article 62 of EC Regulation 1083/2006 and Article 16 Regulation 1828/06) and vice versa.

Although management verifications and audits under the responsibility of the Audit Authority should be separated the exchange of information between the staff carrying out these separate controls is desirable.

Specific areas concerning management verifications

Public Procurement

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.

These verifications should be carried out as soon as possible after the particular process has occurred as corrective action is often difficult if left to a later date.

Four reference documents have been highlighted by the Commission

- *Directive 2004/18/EC of the European Parliament And of the council of 31 March 2004 on the co-ordination of procedures for the award of public works contract, public supply contracts and public service contracts.*

- *Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 co-ordinating the procurement procedures of entities operating in the water, energy, transport and postal services sector*
- *Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives (2006/C179/02);*
- *Commission Interpretative Communication on the application of Community law on Public Procurement and Concessions to Institutionalised Public-Private Partnerships (2007/C6661);*

Environment - There are over 200 EC legal acts in the environmental field covering all sectors including water, air, nature, waste and chemicals as well as other dealing with cross cutting issues such as access to environmental information and public participation in environmental decision-making.

Management verifications in the environment area should verify that the beneficiary has complied with the relevant Directives.

The following areas are of particular importance in relation to co-financed actions;

Environmental Impact Assessment – (EIA) Council Directive 85/337/EEC (as amended by Directive 2003/35/EC) on the assessment of the affects of certain public and private projects on the environment requires assessments on public and private projects that are likely to have a significant impact on the environment. Where these assessments are necessary they must be carried out before the project is approved. While there are provisions for exceptional cases (article 2.3) Managing Authorities should consult with DFP should these be considered necessary.

Council Directive 79/409/EEC on the conservation of wild birds

Council Directive 92/43/EEC on the conservation of natural habitats and wild flora and fauna

Council Directive 2000/60/EC (last amended by Directive 2008/323/EC) establishing a framework for Community action in the field of water policy.

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

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

State Aid Schemes - The EC has produced (in February 2007) a guide and fact sheet on the Community rules on State Aids – ‘Vademecum Community rules on State Aid (recently update 17 July 2008).

Aid Schemes may pose problems for Managing Authorities to carry out management verifications as the Commission often perceives them to be an increased control risk when drawing Structural Funds support as additional controls are required to satisfy the requirements of the Structural Funds Regulations. To minimise this Managing Authorities should ensure that any State Aid related projects, included in an Operational Programme, have a detailed definition of the eligible investment as well as specific documentation requirements such as auditors’ certificates, invoices etc which support the declared expenditure fully articulated in the grant decision for each project.

Financial Engineering Instruments - Under Article 44 of Regulation 1083/2006 this includes venture capital funds, guarantee funds, loan funds and urban development funds. Where these are used in Operational Programmes management verifications should be carried out to examine the transparency of the selection procedures used, to monitor the investments made and to ensure that the funds are being invested in accordance with the objectives of the programme. In accordance with Article 43 (4) Regulation 1828/2006 checks should also carried out to ensure that the thresholds for management costs are not exceeded.

Revenue Generating Projects – Article 55 Regulation 1083/2006 refers. A revenue generating project is one where 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 building or any other provision of services against payment. Where a project is expected to generate revenue this revenue should be taken into account in the calculation of eligible

expenditure. The eligible expenditure should not exceed the current value of the investment cost less the current value of the net revenue from the investment over the specific period for investments in infrastructure or other projects where it is possible to objectively estimate the revenues in advance.

The Managing Authority as part of its management verification process should ensure that the assessments of revenue generating projects have been carried out properly, that they have examined the financial analysis in detail and that the assessments are fully documented. The Managing Authority should also ensure that where it has not been possible to estimate the revenue in advance, the revenue generated within 5 years of the completion of the operation must be deducted from the expenditure declared to the Commission.

Durability of Operations – Article 57 of the Regulation 1083/2006 requires the Managing Authority to ensure that a project/operation supported by a contribution of the Funds may retain that contribution only if it does not within a period of 5 years undergo a substantial modification; (a) affecting its nature or its implementation conditions or giving to firm or a public body an undue advantage; and (b) resulting from a change in ownership of an item of infrastructure or the cessation of a productive activity. Managing Authorities must ensure that this requirement is included in all letters of offer and management verifications should check compliance with this requirement.

Equality and Non-Discrimination - Managing Authorities should ensure that management verifications should check that projects respect and promote equality of opportunity between men and women and that this is applied during the various stages of implementation of the project in order to satisfy the requirements of Article 16 Regulation 1083/2006.

Any queries on the content of this guidance note should be referred to European Division, DFP. Updates to this guidance will be issued as necessary and will be dated to reflect effective implementation dates.

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