

N.º 02/AD&C/2015

Data: 2015/03/20

## VERIFICAÇÕES DE GESTÃO

norma

### Síntese

A presente Norma tem por objetivo fornecer orientações em matéria de verificações de gestão a realizar pelas Autoridades de Gestão nos termos do nº 5 do artigo 125º do Reg. (UE) nº 1303/2013 e o artigo 23º do Reg. (UE) nº 1299/2013 e destina-se a servir de referência às AG na aplicação destes artigos.

### Referências documentais e normativas

Regulamentos <sup>1</sup>
Reg. (UE, EURATOM) n.º 966/2012, do Parlamento Europeu e do Conselho de 25 de outubro, relativo às disposições financeiras aplicáveis ao orçamento geral da União – Regulamento Financeiro
Reg. (UE) n.º 1299/2013, do Parlamento Europeu e do Conselho de 17 de dezembro, relativo ao FEDER no âmbito do objetivo da Cooperação Territorial Europeia
Reg. (UE) n.º 1300/2013, do Parlamento Europeu e do Conselho de 17 de dezembro, relativo ao Fundo de Coesão
Reg. (UE) n.º 1301/2013, do Parlamento Europeu e do Conselho de 17 de dezembro, relativo ao FEDER e que estabelece disposições específicas relativas ao objetivo de investimento no crescimento e no emprego
Reg. (UE) nº 1303/2013, do Parlamento Europeu e do Conselho de 17 de dezembro, que estabelece disposições comuns relativas ao FEDER, FSE, FC, FEADER e FFEAMP e a disposições gerais relativas ao FEDER, ao FSE, ao FC e ao FEAMP
Reg. (UE) nº 1304/2013, do Parlamento Europeu e do Conselho de 17 de dezembro, relativo ao FSE
Reg. de Execução (UE) 2015/207 da Comissão de 20 de janeiro de 2015 que estabelece regras pormenorizadas de execução do Reg. (UE) n.º 1303/2013 no que diz respeito aos modelos para apresentação do relatório intercalar, das informações relativas aos grandes projetos, do plano de ação conjunto, dos relatórios de execução do objetivo de investimento no crescimento e no emprego, da declaração de gestão, da estratégia de auditoria, do parecer de auditoria e do relatório anual de controlo, bem como a metodologia a utilizar para efeitos da análise custo-benefício, e nos termos do Reg. (UE) n.º 1299/2013 no que diz respeito ao modelo dos relatórios de execução do objetivo da Cooperação Territorial Europeia
Decreto-Lei n.º 137/2014, de 12 de setembro, que estabelece o Modelo de Governação dos fundos europeus estruturais e de investimento (FEEI), para o período de programação 2014-2020
Decreto-Lei n.º 159/2014, de 27 de outubro, que estabelece as regras gerais de aplicação dos programas operacionais (PO) e dos programas de desenvolvimento rural (PDR) financiados pelos FEEI, para o período de programação 2014-2020
Documentos (em anexo)
Guidance for Member States on Management verifications (EGESIF_14-0012, de 6/1/2015)
Guidance for Member States and Programme Authorities on fraud risk assessment and effective and proportionate anti-fraud measures (EGESIF_14-0021-00, de 16/06/2014)

<sup>1</sup> Disponíveis no Portal do Portugal 2020.



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## Enquadramento

As **verificações de gestão** integram o sistema de controlo interno das Autoridades de Gestão (AG) e consubstanciam-se nos controlos quotidianos normais que visam assegurar que os processos pelos quais as AG são responsáveis são executados de forma adequada, respeitam o princípio da boa gestão financeira (a que se refere o artigo 30.º do Regulamento Financeiro) e em conformidade com as regras e a regulamentação relevantes. Quando corretamente executadas contribuem para a prevenção e deteção de irregularidades e fraudes.

O presente documento tem por objetivo fornecer orientações em matéria de verificações de gestão – nos termos do nº 5 do artigo 125º do Reg. (UE) nº 1303/2013 e o artigo 23º do Reg. (UE) nº 1299/2013 – e destina-se a servir de referência às AG na aplicação destes artigos. Sublinha-se que o mesmo constitui um referencial de aplicação mínimo com vista ao cumprimento dos requisitos regulamentares. Não obstante, as AG poderão em sede de descrição dos sistemas de gestão e controlo optar pela realização de verificações mais exaustivas.

O documento incide sobre as seguintes matérias:

- os requisitos regulamentares;
- o âmbito, a metodologia e a intensidade e o calendário das verificações de gestão e áreas específicas de análise;
- os requisitos sobre documentos de trabalho;
- a supervisão, quando aplicável;
- os certificados de auditoria.

As **verificações de gestão são da responsabilidade da AG**, as quais poderão delegar funções nos organismos intermédios (OI). Nestes casos as AG deverão garantir que aquelas entidades seguem as orientações emanadas no presente documento.

Estas orientações aplicam-se aos fundos da política de coesão.



## 1. Requisitos Regulamentares

As AG, nos termos da alínea a) do n.º 4 do artigo 125.º do Reg. (UE) n.º 1303/2013 e da alínea a) do n.º 2 do artigo 26.º do Decreto-Lei n.º 137/2014, deverão verificar a realização efetiva dos produtos e serviços cofinanciados e o pagamento da despesa declarada pelo beneficiário, bem como a sua conformidade com a legislação aplicável, com o programa operacional (PO) e o cumprimento das condições de apoio da operação.

**Estas verificações de gestão**, nos termos do n.º 5 do artigo 125.º do Reg. (UE) n.º 1303/2013 e do n.º 4 do artigo 26.º do Decreto-Lei n.º 137/2014, **deverão incluir verificações administrativas relativamente a cada pedido de reembolso por parte dos beneficiários e verificações no local das operações**.

Concretamente no que se refere aos PO de CTE, o n.º 1 do artigo 23.º do Reg. (UE) n.º 1299/2013 indica que as AG destes PO devem efetuar as funções estabelecidas no n.º 4 do artigo 125.º do Reg. (UE) n.º 1303/2013. As especificidades relativas às verificações do PO CTE estão cobertas pelos n.º 3 a 5 do artigo 23.º do Reg. (UE) n.º 1299/2013.

## 2. Verificações de Gestão

As verificações de gestão efetuadas pelas AG antes de a despesa ser certificada à Comissão devem ser suficientes para assegurar que a mesma é legal e regular, incidindo, de forma apropriada, sobre os aspetos administrativos, financeiros, técnicos e físicos das operações.

As verificações de gestão devem ser concluídas em tempo útil de modo a capacitar a Autoridade de Certificação (AC) e a Autoridade de Auditoria (AA) para o envio atempado dos documentos referidos no n.º 5 do artigo 59.º do Reg. (UE) n.º 966/2012, nomeadamente as contas sobre as despesas incorridas no exercício contabilístico e a declaração de gestão<sup>2</sup>, porquanto nenhuma despesa poderá ser incluída nas contas sem que as verificações de gestão previstas estejam concluídas e a respetiva legalidade e regularidade confirmadas.

Sem prejuízo da data limite que venha a ser estabelecida para apresentação das contas à AC e à AA, as AG estabelecerão prazos internos para a conclusão de todas as verificações de gestão por forma a estarem refletidas na declaração de gestão e a habilitar a AC para a certificação das contas de acordo com a alínea c) do artigo 126.º do Reg. (UE) n.º 1303/2013.

As AG terão que elaborar manuais, previamente ao exercício de Designação, que incorporem os procedimentos a adotar em matéria de **verificações de gestão**, de modo a garantir a aplicação de uma metodologia consistente por todos os intervenientes no processo. Nos manuais de procedimentos deverão ser identificados os aspetos objeto de controlo no âmbito das verificações administrativas e das verificações no local, identificando as check-list de verificação que devem ser usadas nos diferentes controlos realizados. Os procedimentos deverão assegurar

<sup>2</sup> Nos termos do n.º 5 do artigo 59.º do Reg. (UE) n.º 966/2012, as contas devem ser remetidas à CE até 15 de fevereiro do exercício seguinte.



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que, quando as verificações administrativas e no local são efetuadas por pessoas diferentes, todas têm acesso a informações relevantes e oportunas sobre os resultados de outras verificações.

De igual modo, as AG deverão facultar aos beneficiários informação quanto aos requisitos para a preparação e submissão dos pedidos de pagamento, bem como à legislação aplicável nomeadamente no que respeita à elegibilidade das despesas. Nas situações em que os beneficiários utilizem sistemas de arquivo eletrónico de dados, as AG deverão alertar para a necessidade dos sistemas de controlo interno assegurem a autenticidade dos documentos digitalizados. Por outro lado, deverão sensibilizar os beneficiários sobre as formas das subvenções e ajuda reembolsável, nomeadamente quanto aos custos unitários, aos montantes fixos e financiamento a taxa fixa, bem como aos reembolsos das despesas pagas com base nos custos unitários e montantes fixos definidos pela Comissão e aplicável aos beneficiários do FSE, de acordo com o artigo 14º do Reg. (UE) nº 1304/2013.

As AG devem dispor de recursos humanos suficientes, com experiência e valências adequadas para efetuarem as verificações de gestão, bem como proporcionar aos mesmos orientações e formação nas competências requeridas, nomeadamente na legislação nacional e comunitária no que respeita, entre outros, às regras de elegibilidade, à contratação pública, ao funcionamento dos instrumentos financeiros.

Em conclusão, **a qualidade das verificações de gestão é determinante para a opinião a emitir pela AG no âmbito da declaração de gestão.**

## 2.1. Verificações Administrativas

### 2.1.1. Âmbito

Todos os pedidos de reembolso dos beneficiários, intermédio ou final, devem ser sujeitos às verificações administrativas baseadas na análise do pedido e dos documentos de suporte relevantes. Os documentos a serem submetidos com os pedidos de reembolso deverão ser abrangentes, de modo a habilitar as AG para a verificação da legalidade e regularidade da despesa em conformidade com a legislação nacional e comunitária. A abrangência e o tipo de documentação de suporte a solicitar aos beneficiários deverão basear-se numa análise de risco por tipo de processo ou beneficiário.

### 2.1.2. Calendário

As verificações administrativas relativas a despesas incluídas num pedido de reembolso têm que ser concluídas antes da submissão do pedido de pagamento intermédio à AC e consequentemente antes da sua submissão à Comissão, incluindo quer a análise do pedido de reembolso quer dos respetivos documentos de suporte relevantes.



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## 2.1.3. Metodologia e intensidade

### 2.1.3.1. Metodologia das verificações

As verificações administrativas, descritas nos manuais de procedimentos e suportadas por *check-list* de análise claras e objetivas, deverão incidir no mínimo sobre os seguintes aspetos:

#### a) Formais

1. correto preenchimento dos formulários dos pedidos de reembolso e respetivos anexos, bem como a assinatura pelo responsável competente da entidade;
2. valores corretamente identificados incluindo totais corretamente calculados e coerência dos dados do pedido;
3. existência de documentos de suporte relevantes.

#### b) Substantivos

4. despesa realizada e paga dentro do período de elegibilidade da operação;
5. despesa em conformidade com a operação aprovada, incluindo a respetiva execução física e indicadores de realização e de resultados;
6. despesa em conformidade com as regras de elegibilidade<sup>3</sup> e com as regras nacionais e comunitárias em matéria de contratação pública, ajudas de estado, ambiente, instrumentos financeiros, desenvolvimento sustentável, publicidade, indicadores de desempenho, igualdade de oportunidades e não-discriminação, conflito de interesses;
7. conformidade dos documentos de suporte e existência de uma pista de auditoria suficiente;
8. ausência de duplicação de ajudas;
9. para a opção dos custos simplificados, cumprimento das condições para o pagamento.

O pedido de pagamento deve ser acompanhado dos seguintes documentos comprovativos:

- a) lista de documentos justificativos de despesa na qual devem ser identificados, no mínimo:

<sup>3</sup> Vd. nomeadamente artigo 15.º do Decreto-lei n.º 159/2014, de 27 de outubro.



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- a fatura ou documento equivalente, os respetivos autos de medição (quando aplicável), o respetivo pagamento efetivo (forma e data), o valor elegível e a descrição do investimento/rubrica da despesa aprovada;
- os contratos associados à despesa apresentada no pedido, quando aplicável;
- a contabilização;

b) lista dos contratos celebrados associados à despesa apresentada no pedido, na qual devem ser identificados, no mínimo:

- o número, a data e a designação do contrato, data de lançamento do procedimento, data da adjudicação, o fornecedor, a rubrica do investimento aprovado, valor total do contrato e respetivo valor elegível, valor executado por contrato acumulado (note-se que os valores devem ser apresentados com e sem IVA);

c) por contrato, mapa recapitulativo dos autos de medição no qual devem ser identificados, no mínimo, as componentes e respetivos valores executados por auto(s) e total acumulado, quando aplicável;

d) mapa de realização do investimento, no caso de operações imateriais, devidamente atualizado;

e) mapa dos indicadores de realização física e de resultado devidamente atualizado, quando aplicável (podem ser apresentados de outra forma) e em especial no que se refere aos projetos com custos simplificados;

f) cópia dos documentos justificativos da despesa incluídos no pedido de pagamento (v. g. faturas ou documento equivalente, extratos bancários, guias de entrega, autos de medição, relatórios de progresso, folhas de presença), para todos os documentos ou, em caso de amostragem decidida pela AG, obrigatoriamente para os documentos da amostra de transações (referida no ponto 2.1.3.2);

g) cópia dos documentos justificativos dos critérios de imputação de despesas caso não tenha sido já disponibilizada em sede de seleção e aprovação da operação ou em anterior pedido de pagamento e sempre tenham ocorrido alterações aos critérios de imputação;

As peças dos procedimentos de contratação pública deverão estar disponíveis no Módulo Contratação Pública do Balcão 2020, preferencialmente para todos os procedimentos identificados no pedido de pagamento e obrigatoriamente para a amostra de procedimentos estabelecida na descrição dos sistemas de gestão e controlo tendo em conta o estabelecido na alínea a) do ponto 2.3.



## 2.1.3.2. Intensidade

Como princípio geral, as verificações administrativas deverão incidir sobre a análise de todos os documentos justificativos da despesa incluídos no pedido de pagamento. Sempre que não for exequível a verificação integral dos documentos de despesa, as **AG poderão optar por efetuar a verificação com base numa amostra de documentos**.

Contudo, a opção pela verificação de uma amostra só poderá ser tomada caso o pedido de pagamento contenha mais de 30 documentos de despesa. Assim, para pedidos de pagamento que integrem até 30 documentos de despesa as AG deverão efetuar a sua análise exaustiva.

Caso as AG optem pela seleção de uma amostra, esta deverá ser aleatória e processada automaticamente aquando da submissão do pedido de pagamento<sup>4</sup>, podendo incidir:

- num mínimo de 30 documentos;
- num volume mínimo de despesas declaradas cuja percentagem deverá ser representativa e estar fundamentada na descrição dos sistemas de gestão e controlo.

A este respeito salienta-se que a opção adotada pela AG deverá ser aplicada a todas as operações, pelo menos da mesma tipologia de intervenção.

Para efeitos da seleção da amostra aleatória, as AG poderão excluir os documentos de despesa inferiores a 25€<sup>5</sup> desde que no seu conjunto não ultrapassem 2% do total da despesa apresentada no pedido de pagamento. Esta opção uma vez adotada deverá ser aplicada a todas as operações, pelo menos da mesma tipologia de intervenção.

Importa salientar que caso as AG optem por excluir os documentos de baixo valor, os mesmos não poderão ser tidos em conta para a definição da dimensão da população.

No caso de serem identificados erros sistémicos, a dimensão dessa amostra deve ser aumentada para delimitar o erro e quantificar o seu impacto global.

Se forem identificados erros aleatórios materialmente relevantes ( $\geq 2\%$ ), as AG poderão optar por verificar a totalidade das despesas incluídas no pedido de pagamento, proceder ao alargamento da amostra seguindo as orientações da CE sobre amostragem estatística ou projetar o erro para as despesas não selecionadas (população).

Caso a amostra aleatória não mitigue todos os fatores de risco identificados na avaliação do risco levada cabo pela AG, esta deverá ser complementada por uma amostra de transações selecionadas tendo em conta fatores de risco (v. g. valor, tipo de beneficiário, natureza da despesa, erros aleatórios, experiência passada). Para este efeito importa

<sup>4</sup> Solução prevista no Balcão 2020.

<sup>5</sup> Limite mínimo estabelecido no artigo 95.º do Código do Imposto sobre o Rendimento das Pessoas Singulares (CIRS).



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sublinhar que relevam todos os documentos não verificados na amostra aleatória, incluindo os documentos de baixo valor.

A AG deverá garantir que o volume da despesa verificada por pedido de pagamento (amostra aleatória e amostra complementar) é suficiente para assegurar a legalidade e a regularidade da despesa apresentada nesse pedido. Sempre que o volume de despesa verificada seja reduzido deverá descrever as medidas adotadas tendo em vista assegurar a legalidade e a regularidade da despesa.

**De salientar que o âmbito e intensidade das verificações administrativas condiciona a garantia a proporcionar pelas verificações no local.**

Sublinha-se que o método de amostragem deverá ser descrito e justificado no manual de procedimentos, devendo o mesmo ser revisto anualmente e ter em conta os resultados da avaliação de risco<sup>6</sup>. A AG deverá manter o histórico do exercício de seleção da amostra, bem como de todas as transações selecionadas para verificação.

## 2.2. Verificações no local

### 2.2.1. Âmbito

Mesmo quando as verificações administrativas são exaustivas e detalhadas, existem aspetos respeitantes à legalidade e regularidade da despesa que não podem ser verificados nesse âmbito. É assim essencial que as verificações no local sejam efetuadas a fim de verificar, em particular, a realidade da operação, o fornecimento dos produtos/bens em conformidade com os termos e as condições do contrato, o progresso físico da operação, o respeito pelas regras comunitárias em matéria de publicidade. As verificações no local podem também ser usadas para verificar se o beneficiário está a fornecer informação precisa sobre a execução física e financeira da operação.

Sublinha-se que a metodologia de análise a adotar na realização das verificações no local deverá constar dos manuais de procedimentos elaborados previamente ao exercício de Designação.

### 2.2.2. Calendário

O n.º 5 do artigo 59.º do Reg. (UE) n.º 966/2012 estabelece que as contas relativas às despesas efetuadas durante o período de referência são acompanhadas por uma declaração de gestão que ateste, entre outros, que os sistemas de controlo estabelecidos oferecem as garantias necessárias quanto à legalidade e à regularidade das operações

<sup>6</sup> Cf. consta no ponto 3.3 do Guidance for Member States and Programme Authorities Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures (EGESIF\_14-0021-00, de 16/06/2014), a CE recomenda, como regra geral, a realização do exercício de avaliação de risco numa base anual.



subjacentes. Sendo as verificações no local um dos pilares do sistema de controlo das AG é imperioso que os resultados das verificações no local efetuadas durante o período de referência sejam refletidos na declaração de gestão. Assim, as AG deverão estabelecer prazos para a conclusão dos planos anuais de verificações no local, de modo a garantir a sua compatibilidade com os prazos internos estabelecidos para efeitos da elaboração da declaração de gestão.

### 2.2.2.1. Verificações no local durante a implementação do projeto

As verificações no local devem ser planeadas com antecedência para garantir a sua eficácia. Regra geral, as verificações no local devem ser notificadas para garantir que os responsáveis (i.e. responsável pelo projeto, engenheiro, pessoal da contabilidade) e a documentação (em particular registos contabilísticos e financeiros incluindo faturas e extratos bancários) estejam disponíveis durante a verificação. No entanto, em certos casos, pode ser apropriado efetuar as verificações no local durante a implementação da operação e sem aviso prévio.

As verificações no local devem normalmente ser efetuadas quando, do ponto de vista do progresso físico e financeiro, a operação está em plena execução. Não é recomendado que sejam apenas efetuadas após a conclusão da operação, pois se forem detetadas irregularidades poderá ser tarde demais para a adoção de qualquer medida corretiva. **O momento da realização das verificações no local dependerá das características específicas da operação, do montante da contribuição pública, do nível de risco e da extensão das verificações administrativas.**

Sempre que as operações são imateriais ou quando pouca ou nenhuma evidência física permanece após a sua conclusão, as verificações no local deverão ser realizadas durante a sua execução.

Relativamente a projetos de infraestruturas de grandes dimensões, com um período de execução de vários anos, é recomendável a realização de mais do que uma verificação no local, incluindo uma verificação aquando da conclusão para aferir a realidade da operação.

Quando o mesmo tipo de ajudas é atribuído regularmente (por ex. anualmente), na sequência de um convite/concurso à apresentação de candidaturas, as verificações no local efetuadas no primeiro ano devem ajudar a prevenir a repetição em anos vindouros de quaisquer problemas que tenham sido identificados.

### 2.2.2.2. Verificações no local após a implementação do projeto

No caso de operações que envolvem a construção ou a compra de ativos e onde é imposta a manutenção de determinadas condições ao beneficiário após a conclusão da operação (i.e. manutenção da propriedade, número de novos empregados), poderá ser necessária a realização de verificações no local durante a fase operacional para assegurar que aquelas condições continuam a ser observadas.



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## 2.2.3. Metodologia e intensidade

### 2.2.3.1. Metodologia das verificações

Dependendo da intensidade das verificações administrativas, as verificações no local, descritas nos manuais de procedimentos e suportadas por *check-list* de análise claras e objetivas, deverão incidir no mínimo e quando aplicável sobre os seguintes aspetos:

1. existência e organização do dossier de operação;
2. existência dos originais dos documentos de despesa e de quitação que tenham sido inscritos na lista de documentos justificativos de despesa já apresentados em pedidos de pagamento. No caso de empreitadas, os documentos de despesa (faturas) deverão estar acompanhados dos autos de medição dos trabalhos faturados;
3. existência de autos de receção e conta final das empreitadas concluídas à data da verificação;
4. existência de um sistema contabilístico separado ou uma codificação contabilística adequada para todas as transações relacionadas com a operação;
5. evidência de registo contabilístico adequado da comparticipação comunitária e nacional recebida no âmbito da operação;
6. avaliação da existência e/ou tratamento adequado das receitas geradas pela operação;
7. fornecimento de produtos/serviços em total conformidade com os termos e condições do termo de aceitação/contrato de financiamento;
8. respeito pelas regras comunitárias e nacionais em matéria de publicidade;
9. progresso físico da operação medido por metas de realização específicas do Programa e quando aplicável indicadores de resultados e dados desagregados;
10. ausência de duplicação de ajudas.

### 2.2.3.2. Intensidade

As **verificações no local** são complementares às verificações administrativas no sentido de confirmar a realidade da operação, bem como obter garantias razoáveis quanto à legalidade e regularidade das transações subjacentes. A sua efetividade apenas poderá ser exequível com base numa amostra de operações, onde nenhuma operação deve ser excluída da possibilidade de ser selecionada para efeitos da realização de uma verificação no local.



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As verificações no local realizadas com base em amostragem deverão respeitar o seguinte:

a) definição de uma amostra aleatória com um mínimo de 30 operações<sup>7</sup>.

No caso de serem identificados erros sistémicos, a dimensão desta amostra deve ser aumentada para delimitar o erro e quantificar o seu impacto global.

Se forem identificados erros aleatórios materialmente relevantes ( $\geq 2\%$ ), a opinião em sede de elaboração da declaração de gestão sobre o correto funcionamento do sistema de controlo dependerá da demonstração, por parte da AG, que foi realizado trabalho complementar de modo a suportar essa opinião, por exemplo o alargamento da amostra seguindo as orientações da CE sobre amostragem estatística. Em alternativa a AG terá que projetar o erro para as despesas não selecionadas (população) e ter esse resultado em conta no âmbito da elaboração da declaração de gestão.

b) definição de uma amostra complementar baseada numa análise de risco e que garanta a representatividade das diferentes tipologias de operações, eixo prioritário, organismos intermédios. Neste contexto deverá ser relevado o resultado da avaliação de risco levada a cabo pela AG.

A intensidade, frequência e cobertura das verificações no local com base na amostra de risco dependerá da complexidade das operações, do montante da contribuição pública, do nível de risco identificado pelas verificações de gestão, da extensão das verificações administrativas, do tipo de documentação enviada pelos beneficiários e dos seus procedimentos de controlo interno, bem como dos resultados das auditorias da AA. A metodologia estabelecida pela AG deverá ser descrita no manual de procedimentos.

Já no que se refere às transações a verificar em sede de verificações no local, a seleção da respetiva amostra poderá seguir a metodologia adotada para efeitos das verificações administrativas.

Quando um determinado beneficiário é responsável por uma operação composta por um grupo de projetos, a AG deve adotar um procedimento para determinar que projetos dentro dessa operação serão sujeitos a verificações no local. Se em resultado das verificações no local forem identificados erros materiais relativos à despesa já certificada à CE, as AG deverão adotar as medidas corretivas necessárias para reforçar as verificações antes da próxima certificação da despesa à CE por intensificação das verificações administrativas ou realização de verificações no local antes da certificação da despesa.

A AG deverá garantir que o número de operações e/ou a despesa controlada no âmbito das verificações no local em cada exercício financeiro é suficiente para suportar a opinião a emitir no âmbito da declaração de gestão.

<sup>7</sup> De acordo com recomendações da CE, não se pode retirar conclusões em amostra com menos de 30 observações.



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Sublinha-se que o método de amostragem deverá ser descrito e justificado no manual de procedimentos, devendo o mesmo ser revisto anualmente e ter em conta os resultados da avaliação de risco<sup>8</sup>. A AG deverá manter o histórico do exercício de seleção da amostra, bem como de todas as transações selecionadas para verificação.

**As AG deverão demonstrar, através de documentação adequada (i. e. avaliação de risco, resultados das verificações/ auditorias realizadas), que a intensidade global das verificações de gestão é suficiente para oferecer garantias razoáveis quanto à legalidade e à regularidade das despesas cofinanciadas.**

### 2.3. Áreas específicas no domínio das verificações gestão

Sem prejuízo das regras gerais detalhadas no quadro seguinte, atenta a natureza transversal de algumas áreas poderão vir a ser emitidas orientações comuns aplicáveis a todas as AG.

#### a) Contratação Pública

As AG deverão proceder à verificação da conformidade das despesas com as regras nacionais e comunitárias em matéria de contratação pública. Como princípio geral, os procedimentos de contratação pública têm que ser analisados na fase de seleção e aprovação da operação ou na fase de execução aquando da apresentação da primeira despesa relativa ao contrato em causa, quando na primeira fase os procedimentos não têm maturidade suficiente.

Uma boa prática é a verificação de todos os procedimentos de contratação pública. Contudo, isso pode não ser exequível devido a um número significativo de contratos. Neste caso, as AG poderão optar por verificar uma amostra de contratos tendo em conta o seguinte:

- 1) Todos os contratos acima dos limiares devem ser objeto de verificação exaustiva;
- 2) No limite até ao encerramento da operação, deve ser garantida a verificação de uma amostra de 30 contratos com valores abaixo dos limiares;

No caso de serem identificados erros sistémicos, a dimensão da amostra de 30 contratos deve ser aumentada para delimitar o erro e quantificar o seu impacto global.

Se forem identificados erros aleatórios materialmente relevantes ( $\geq 2\%$ ), as AG poderão optar por verificar a totalidade dos procedimentos ou projetar o erro.

<sup>8</sup> Cf. consta no ponto 3.3 do *Guidance for Member States and Programme Authorities Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures* (EGESIF\_14-0012, de 21/05/2014), a CE recomenda, como regra geral, a realização do exercício de avaliação de risco numa base anual.



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Para a verificação da amostra dos 30 contratos concorrem os procedimentos analisados no âmbito da verificação da amostra aleatória de transações. Por exemplo, se na verificação dos pedidos de pagamento forem analisados 30 procedimentos, não será necessário efetuar uma amostra específica para verificação de contratos.

3) Verificação de procedimentos concursais com base no risco, sempre que necessário.

Nos casos em que um determinado procedimento de contratação pública já foi analisado por outra entidade nacional (por exemplo, a AA ou outra AG), e desde que o âmbito seja o mesmo, os resultados das verificações já realizadas podem ser considerados para efeitos de verificações de gestão, assumindo a AG a responsabilidade dessas verificações.

## **b) Ambiente**

No âmbito das verificações no domínio do ambiente, as AG devem averiguar se o beneficiário cumpriu as diretivas pertinentes, verificando se as necessárias autorizações foram obtidas junto das autoridades nacionais competentes.

Durante o processo de seleção e aprovação de operações, as AG devem assegurar que têm acesso a competências internas ou externas para a análise das questões ambientais relevantes relacionadas com o tipo de operações a aprovar. Da mesma forma, e no âmbito das verificações de gestão, as AG devem assegurar que têm acesso a competências relevantes no que respeita à verificação de que as operações continuam a estar conformes com as regras ambientais.

## **c) Auxílios de Estado**

No âmbito das verificações de gestão as AG devem assegurar que são respeitadas as disposições estabelecidas na legislação aplicável. Estas verificações devem complementar as verificações efetuadas durante o processo de seleção da operação, devendo ser efetuado no mínimo os seguintes testes complementares:

- no que se refere às regras de minimis, verificar a contabilidade da empresa para assegurar que o limite de minimis não foi excedido e que é respeitado para todas as empresas pertencentes ao mesmo grupo;
- quanto às isenções por categorias, ter particular atenção à definição das pequenas médias empresas (PME) e às disposições comuns aplicáveis a todas as categorias de auxílios, nomeadamente o efeito de incentivo, a transparência dos auxílios, a intensidade de auxílio e custos elegíveis e a acumulação; monitorização das condições estabelecidas aquando da aprovação da ajuda.



## **d) Instrumentos Financeiros (IF)**

As verificações de gestão relativas aos IF visam assegurar a conformidade com a legislação aplicável, a sólida gestão financeira dos fundos, a salvaguarda dos ativos e um reporte financeiro fiável pelos beneficiários e pelos intermediários financeiros.

As verificações a efetuar neste âmbito devem incidir sobre cada pedido de pagamento submetido pelo beneficiário. De sublinhar que aos gestores de fundos pode ser confiada parte das verificações de gestão, devendo essas verificações ser realizadas sob a supervisão da AG.

As AG devem assegurar que a criação e implementação dos IF estão em conformidade com a legislação aplicável, incluindo regras relativas aos FEEI, auxílios de estado, regras de contratação pública relativas à seleção do fundo dos fundos e intermediários financeiros e ao nível das comissões de gestão, bem como à legislação aplicável em matéria de lavagem de dinheiro, luta contra o terrorismo e fraude fiscal. A sua criação deve ser verificada com o primeiro pedido de pagamento e a implementação com cada pedido subsequente.

As verificações de gestão devem focalizar-se nos documentos comprovativos que atestem a observância das condições de financiamento.

A documentação a analisar deve incluir formulários de candidatura, planos de negócio, contas anuais, check-list e relatórios dos fundos que avaliam o pedido, contratos de investimento, contratos de empréstimo e garantia, relatórios das empresas, relatórios de visitas e atas das reuniões, relatório do intermediário financeiro para o fundo de garantia que suporta o pedido, autorizações ambientais, relatórios de igualdade de oportunidades e declarações emitidas no âmbito do recebimento de auxílio de minimis.

As verificações de gestão dos IF são bastante específicas e requerem um adequado conhecimento desta matéria. Concretamente no que se refere às verificações no local, as mesmas devem ser realizadas ao nível do instrumento financeiro. Contudo, se a AG considerar que tal se justifica face ao nível de risco identificado e respeitando as condições previstas no n.º 3 do artigo 40.º do Reg. (UE) n.º 1303/2013, estas verificações também podem ser realizadas, com base numa amostra, ao nível do beneficiário final.

## **e) Projetos geradores de receitas**

Como princípio geral, a classificação dos projetos enquanto geradores de receitas deve ser aferida em sede de análise e seleção da operação. Neste contexto, as AG devem confirmar se a operação configura um projeto gerador de receita durante a sua execução ou gerador de receita líquida após a sua conclusão.

Configurando a operação um projeto gerador de receita líquida após a sua conclusão, as AG devem examinar se o *cash in-flows* vai ser pago diretamente pelo utilizador ou se pode ser classificado como "*outros cash in-flows*" como por exemplo outras contribuições públicas ou privadas ou outros ganhos financeiros.



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De sublinhar que quando a operação faz parte de um projeto mais abrangente, pode ser irrelevante efetuar a análise financeira da operação de forma isolada. Neste contexto, as AG deverão verificar se a análise foi feita tendo por base uma unidade autossuficiente (ao nível do projeto em si, independentemente das parcelas financiadas) e que a receita líquida do projeto foi alocada à operação proporcionalmente ao seu custo elegível em relação ao custo do investimento do projeto.

Contudo, existem aspetos que deverão ser acompanhados ao longo da execução da operação, nomeadamente:

**▪ Projetos geradores de receitas após a sua conclusão**

No âmbito das verificações de gestão, as AG devem verificar se foram seguidas as orientações e se a avaliação da receita gerada na operação foi devidamente efetuada e totalmente documentada.

Deverá ser estabelecido um sistema que permita às AG sinalizar as operações em que é objetivamente impossível determinar previamente a receita, bem como monitorizar e quantificar a respetiva receita líquida, o mais tardar antes do encerramento do programa.

No âmbito das verificações no local e depois da conclusão da operação, as AG devem estabelecer procedimentos para verificar a exatidão da receita líquida reportada pelos beneficiários.

No âmbito das suas verificações as AG deverão assegurar que qualquer operação cujo custo total elegível venha a ultrapassar 1.000.000€ após a sua aprovação, será sujeito aos requisitos dos projetos geradores de receitas.

**▪ Projetos geradores de receitas durante a sua execução e às quais não é aplicável os n.º 1 a 6 do artigo 61º do Reg. (UE) n.º 1303/2013**

As AG, no âmbito das verificações de gestão, deverão garantir que a receita líquida gerada durante a execução da operação é deduzida da despesa elegível da operação o mais tardar até ao pedido de pagamento final submetido pelo beneficiário. Quando nem todas as despesas são elegíveis para cofinanciamento, a receita líquida deve ser alocada proporcionalmente às despesas elegíveis da operação. Esta disposição não deve ser aplicada às operações cujo custo total elegível não excede 50.000€.

**f) Elegibilidade das operações em função da localização**

No âmbito das verificações de gestão as AG deverão confirmar que as operações apoiadas pelos FEEI estão localizadas na zona do programa. Contudo, a AG pode aceitar que uma operação seja realizada fora da zona do



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programa, mas dentro da União desde que respeitadas as condições estabelecidas nas alíneas a) a d) do n.º 2 do artigo 70.º do Reg. (UE) n.º 1303/2013.

No que respeita às operações de assistência técnica ou ligadas a ações de promoção, a despesa pode ser incorrida fora da União, desde que sejam cumpridas as condições estabelecidas na alínea a) do n.º 2 do citado artigo e sejam respeitadas as obrigações em matéria de gestão, controlo e auditoria da operação.

#### **g) Durabilidade das operações**

No âmbito das verificações de gestão, as AG deverão assegurar que a participação dos fundos só fique definitivamente afeta a uma operação se, no prazo de cinco anos a contar do pagamento final ao beneficiário ou três anos no caso de investimentos de PME, caso não esteja previsto maior prazo nas regras do auxílio de estado, a operação não sofrer qualquer alteração substancial definida nas alíneas a) a c) do artigo 71º do Reg. (UE) n.º 1303/2013.

#### **h) Igualdade e não discriminação**

As verificações de gestão devem assegurar que as operações respeitam e promovem a igualdade entre homens e mulheres e que a integração da perspetiva do género teve lugar durante as várias fases de aplicação dos fundos.

As verificações devem assegurar também que foram tomadas as medidas adequadas para evitar qualquer discriminação em razão do sexo, raça ou origem étnica, religião ou crença, deficiência, idade ou orientação sexual, durante as várias fases de aplicação dos fundos, nomeadamente no que respeita ao acesso aos mesmos.

#### **i) Objetivo da cooperação territorial europeia (CTE)**

Os princípios gerais delineados no presente documento aplicam-se igualmente às verificações de gestão a realizar em PO de CTE.

Sublinha-se que as AG devem certificar que a despesa de cada beneficiário que participa numa operação foi validada pelos “responsáveis pelo controlo”.

Quando o fornecimento dos bens e serviços cofinanciados só puder ser verificado em relação à totalidade da operação, a verificação deve ser efetuada pela AG ou pelo controlador do EM em que o beneficiário principal esteja localizado.



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É recomendável assegurar a coerência entre responsáveis pela realização das verificações de gestão dos diferentes países participantes nos PO CTE, em particular quanto à harmonização das *check-list* das verificações. Este procedimento facilitará a monitorização pela AG/STC sobre a qualidade das verificações.

#### **j) Iniciativa de emprego jovem (IEJ)**

No âmbito das verificações de gestão as AG deverão verificar se:

- os participantes são elegíveis na IEJ (grupo de idade, status, lugar de residência);
- os beneficiários asseguram que os participantes numa operação são informados dos apoios da IEJ.

#### **k) Opção pelos custos simplificados**

Relativamente aos **custos unitários e aos montantes fixos**, no âmbito das verificações de gestão, as AG deverão verificar se foram cumpridas as condições de reembolso estabelecidas no contrato entre o beneficiário e a AG e que a metodologia foi corretamente aplicada<sup>9</sup>.

Além disso, no âmbito das verificações de gestão, deve ser confirmado que a operação não foi exclusivamente executada através da adjudicação pública de obras, bens ou serviços<sup>10,11</sup>.

Os documentos de suporte serão necessários para justificar as quantidades declaradas pelos beneficiários. De sublinhar que no caso de operações imateriais assume particular importância as verificações no local a realizar durante a sua execução.

No caso de financiamento à **taxa fixa**, as verificações devem também ter em conta:

- a correta alocação dos custos a uma determinada categoria;
- a inexistência de dupla declaração do mesmo item de custo;
- a correta aplicação da taxa fixa;

<sup>9</sup> Note-se que não é aplicável ao n.º 1 do artigo 14.º do Reg. (UE) n.º 1304/2014.

<sup>10</sup> Note-se que não é aplicável ao n.º 1 do artigo 14.º do Reg. (UE) n.º 1304/2014 e aos projetos suportados no quadro do plano de ação conjunto.

<sup>11</sup> Nos termos do disposto no n.º 4 do artigo 67.º do Reg. (UE) n.º 1303/2013 (relativo às formas das subvenções e ajuda reembolsável), caso uma operação, ou um projeto que faça parte de uma operação, seja exclusivamente executada através da adjudicação pública de obras, bens ou serviços, as subvenções e a ajuda reembolsável apenas pode assumir a forma de reembolso de custos elegíveis efetivamente incorridos e pagos, juntamente com, se for caso disso, as contribuições em espécie e as amortizações. Caso a adjudicação efetuada no âmbito de uma operação ou de um projeto que faça parte de uma operação se limite a certas categorias de custos, então são aplicáveis todas as opções.



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- o ajustamento proporcional do valor atribuído baseado na taxa fixa, quando o valor da categoria de custo for alterado; e
- quando aplicável, que o *outsourcing* foi tido em conta (i.e. a taxa fixa é reduzida nos casos em que parte da operação/projeto foi com recurso a *outsourcing*).

## **l) Indicadores de desempenho**

As verificações de gestão devem assegurar, com base nos dados reportados pelos beneficiários ao nível da operação, que a informação, agregada ou desagregada, relativa aos objetivos do investimento prioritário, do eixo prioritário ou programa é atualizada, completa e fiável.

As verificações devem analisar os requisitos chave relativos à recolha, arquivo e qualidade da informação. A falta de qualidade da informação e conseqüentemente da fiabilidade do sistema de monitorização é motivo para a suspensão dos pagamentos. Em particular, as AG devem assegurar a qualidade da informação através da verificação da sua completude e consistência.

A monitorização do progresso da execução da operação através da revisão dos indicadores (e informação desagregada no caso do FSE) deve estar incorporada nas verificações administrativas de cada pedido de reembolso efetuado pelo beneficiário individual. Durante as verificações de cada pedido de reembolso, quando adequado, as AG deverão verificar o progresso tendo como referência os indicadores. Na fase do pedido de pagamento final, as AG deverão verificar se foi fornecida informação relevante pelo beneficiário, isto é informação da contribuição real para os indicadores de realização e de resultados, se todos os indicadores acordados foram alcançados, quando aplicável, e quando relevante, justificação da diferença entre a contribuição estabelecida no contrato e a real.

Nas verificações no local deve ser examinado que a informação comunicada pelos beneficiários relativa aos indicadores é correta. A correta compreensão dos indicadores pelos beneficiários e os valores reportados devem ser adequadamente verificados. Se o beneficiário foi responsável pelo registo de indicadores no sistema de informação, deve ser verificado, pelo menos no âmbito das verificações no local que este procedimento foi correto.

## **m) Conflito de interesses**

As verificações de gestão devem assegurar o despiste de potenciais situações de conflito de interesse. Para este efeito importa ter presente o disposto tanto no Regulamento Financeiro aplicável ao orçamento geral da União Europeia - Regulamento (UE, Euratom) n.º 966/2012, do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que no n.º 2 do seu artigo 57.º estabelece que "(...) existe conflito de interesses sempre que o exercício imparcial e objetivo das funções de um interveniente financeiro ou de outra pessoa, a que se refere o n.º 1, se encontre comprometido por motivos familiares, afetivos, de afinidade política ou nacional, de interesse económico, ou por qualquer outro motivo de comunhão de interesses com o destinatário", como



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na Diretiva n.º 2014/24/UE que, no 2.º parágrafo do seu artigo 24.º estatui que “(o) conceito de conflito de interesses engloba, no mínimo, qualquer situação em que os membros do pessoal da autoridade adjudicante ou de um prestador de serviços que age em nome da autoridade adjudicante, que participem na condução do procedimento de contratação ou que possam influenciar os resultados do mesmo, têm direta ou indiretamente um interesse financeiro, económico ou outro interesse pessoal suscetível de comprometer a sua imparcialidade e independência no contexto do procedimento de adjudicação.”

### 3. Requisitos sobre documentos de trabalho

Todas as verificações de gestão deverão estar devidamente documentadas. Os registos devem indicar o trabalho realizado, a data da sua realização, os detalhes dos pedidos de reembolso analisados, o resultado das verificações – incluindo o nível global e a frequência dos erros detetados –, uma completa descrição das irregularidades detetadas com a identificação clara das legislação nacional e/ou comunitária infringida e as medidas corretivas adotadas. Deve sempre ser registado o nome e a função do responsável pela execução e pela validação das verificações, bem como a data em que estas tiveram lugar.

As *check-list* utilizadas nas verificações devem ser suficientemente pormenorizadas e específicas face à tipologia da operação (i. e. IEF, custos simplificados). No caso da contratação pública é recomendado haver uma *check-list* detalhada que cubra os principais aspetos dos procedimentos de contratação.

Deverá ser mantido para cada programa um sistema de registo e armazenamento de dados em suporte informático de e para as verificações efetuadas para cada operação, tendo em vista, nomeadamente, o planeamento das verificações, evitar duplicações desnecessárias de trabalho e fornecer informações a outros organismos (i.e. AA e AC).

**As AG deverão conservar os registos das verificações de gestão (administrativas e no local) com pelo menos as seguintes informações: tipo de irregularidade detetada, respetivo valor e medidas corretivas adotadas, os quais relevam para efeitos da elaboração da declaração de gestão.**

As estatísticas subjacentes devem ser regularmente comunicadas a outros organismos (i.e. AA, AC). A ADC divulgará instruções sobre esta matéria (modelos de reporte e prazos)

### 4. Supervisão

Quando as AG delegam a execução das verificações de gestão (ou parte) em OI ou recorrem a outras entidades externas, é recomendável que o âmbito dos trabalhos a executar seja claramente definido nos protocolos/contratos. As AG devem igualmente estabelecer prazos para a conclusão destas verificações, garantido que estes são compatíveis com os trabalhos de supervisão e com os prazos internos estabelecidos para efeitos da emissão da declaração de gestão.



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Compete igualmente às AG avaliarem a qualidade dos trabalhos efetuados pelos OI ou com recurso a entidades externas, revendo, por exemplo um conjunto de pedidos de reembolsos ou de relatórios de verificação no local. Esta supervisão poderá requerer a atribuição recursos humanos adicionais.

Sublinha-se que procedimentos de supervisão têm que estar descritos nos manuais de procedimentos a elaborar previamente ao exercício de designação.

## 5. Certificados de auditoria

Existem situações em que é facultada aos beneficiários a possibilidade de apresentarem um certificado de auditoria com as declarações de despesas que submetem para pagamento.

Esses certificados normalmente abrangem requisitos básicos como a confirmação de que as despesas foram pagas dentro do período de elegibilidade, que estão relacionadas com a operação aprovada, que cumprem as regras de elegibilidade e que existem documentos comprovativos adequados, incluindo registos contabilísticos.

Embora a realização das verificações de gestão não possa ser delegada nos beneficiários ou em terceiros em seu nome (i. e. auditores), desde que o trabalho realizado seja de qualidade satisfatória, os certificados de auditoria podem justificar a realização de verificações administrativas menos exaustivas. A extensão destas verificações deverá atender à garantia da verificação de um mínimo de 30 transações por pedido de pagamento e ao risco associado à falta de independência da entidade que disponibiliza o certificado.

No entanto, para que se possa confiar nos certificados, é fundamental que as AG forneçam aos beneficiários orientações relativas ao âmbito dos trabalhos a executar e do relatório/certificado a apresentar.

Para garantir a qualidade e a fiabilidade dos certificados de auditoria, as AG deverão rever uma série de certificados. Os resultados da análise efetuada deverão ser tidos em conta nas avaliações de risco efetuadas pelas AG.



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Anexos





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**Anexo 1**

**Guidance for Member States on Management verifications (EGESIF\_14-0012,  
de 6/1/2015)**





EUROPEAN COMMISSION

European Structural and Investment Funds

Guidance for Member States on  
Management verifications

**Programming period 2014-2020**

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

## LIST OF ACRONYMS AND ABBREVIATIONS

AA	Audit Authority
CA	Certifying Authority
CPR	Common Provisions Regulation (Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17.12.2013 <sup>1</sup> )
"ESIF"	ESIF means all European Structural and Investment Funds. This guidance applies to all except for the European Agricultural Fund for Rural Development (EAFRD)
ETC	European Territorial Cooperation (Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17.12.2013)
IB	Intermediate Body
i.a.	<i>inter alia</i> (among others)
JTS	Joint Technical Secretariat (for ETC programmes)
MA	Managing Authority
Management verifications	Verifications pursuant to Article 125(4a) of the CPR, including administrative verifications in respect of each application for reimbursement by beneficiaries and on-the-spot verifications of operations, as set out in Article 125(5) of the CPR.
MCS	Management and Control System

<sup>1</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R1303>

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**I. BACKGROUND****1. Regulatory references**

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

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

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

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

Article 23(1) ETC Regulation states that the MA of a cooperation programme shall carry out the functions laid down in Article 125(4) CPR. The specificities relating to verifications in ETC programmes are covered by Article 23 (§3 and §5) ETC Regulation.

**2. Purpose of the guidance**

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

The guidance covers the regulatory requirements, general principles and purpose of verifications, the bodies responsible for carrying them out, the timing, scope and intensity of the verifications, the organisation of on-the-spot verifications, the requirement to document the work and outsourcing. More detailed examples of good practice are given in several specific areas, namely public procurement and aid schemes, which have sometimes been problematic in Member States. It also

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includes information on management verifications in the areas of financial instruments, revenue generating projects and ETC. Issues regarding durability of operations, equality and non-discrimination and the environment have also been covered.

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

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

## **II. GUIDANCE**

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

The document provides guidance on particular aspects of management verifications. Practices that are considered to represent particularly good elements of control systems as regards verifications are highlighted in boxes as examples of 'best practice'.

#### **1.1. Management verifications - general principles and purpose**

Management verifications are part of the internal control<sup>4</sup> system of any well managed organisation. They are the normal day to day controls made by management within an organisation to ensure that the processes for which it is responsible are being properly carried out.

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

With more complex processes, the scope of the verifications will obviously increase and might include verifying compliance with relevant rules and regulations. However, the principle remains the same, namely that verifications made by management within an organisation should ensure that the processes for which it is responsible are being properly carried out and are in compliance with the relevant rules and regulations. Management verifications under Article 125(5) CPR 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 in case of reimbursement of costs actually incurred and the compliance with the terms of the relevant Commission Decision approving the operational programme and applicable Union law and national law relating to its application. However, while

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<sup>4</sup> Source: COSO definition of internal control.

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Member States' internal control systems may be adequate for national programmes they may need to be adapted to certain specific requirements of ESIF.

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

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

## 1.2. Responsibilities of Managing Authorities, Intermediate Bodies and Beneficiaries

### Reference:

(i) *Commission's "Guidance note on fraud risk assessment and effective and proportionate anti-fraud measures" EGESIF 14-0021-00 of 16 June 2014*

**The managing authority<sup>5</sup>** is responsible for managing and implementing operational programmes in accordance with the principle of sound financial management, and in particular for:

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

The MA has overall responsibility for these tasks. It can choose to entrust<sup>6</sup> some or all of these tasks to IBs<sup>7</sup>. However, it cannot delegate the overall responsibility for ensuring that they are properly

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<sup>5</sup> Article 125 CPR.

<sup>6</sup> Where one or more tasks of a MA or CA are performed by an IB, the relevant arrangements shall be formally recorded in writing.

<sup>7</sup> IBs are any public or private body which act under the responsibility of a MA or CA, or which carry out duties on behalf of

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carried out. Therefore, where certain tasks have been entrusted to IBs, the MA should, in its supervisory capacity, obtain assurance that the tasks have been properly carried out. It can do this in a number of ways such as,

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

It shall carry out checks at IB level including a sample of beneficiary's applications for reimbursement so that, as part of its routine supervision or where it has concerns that the tasks are not being properly carried out, it can assess how the verifications have been performed. This should include an examination of a limited sample of files selected on the basis of professional judgment.

In order to avoid risks arising where a MA is responsible for (i) selection and approval of operations, (ii) management verifications and (iii) payments adequate segregation of duties shall be ensured between these three functions.

While designing the verifications, the MA is to consider fraud risks. Management and staff should have sufficient knowledge of fraud to identify red flags. In principle the presence of more than one indicator at one time increases the probability of fraud. The verifications shall be carried out with professional scepticism. The MA shall include instructions and information in its guidance manuals to raise awareness of the risk of fraud. In addition, clear procedures shall be in place to ensure any reported cases of fraud or suspected fraud are actioned promptly. All cases of suspected or definite fraud must be reported to the MA.

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

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

such an authority vis-à-vis beneficiaries implementing operations (Article 2(18) CPR). They are responsible for establishing a system of internal control to guarantee the regularity and legality of the operations, their conformity with the terms of the operational programme and compliance with the relevant Union rules. Where the MA has delegated the tasks set out in Article 125(5) CPR, the system of internal control should include verification by the IB on the applications for reimbursement submitted by the beneficiary.

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and proportionate anti-fraud measures.
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**Intermediate body**, amongst others, may be responsible for compiling applications for reimbursement received from a number of beneficiaries into one overall expenditure declaration which it submits to the MA. In such cases, the MA is responsible to carry out the verifications under Article 125(5) CPR to ensure the accuracy of the compilation of the expenditure by the IB. In cases where the IB submits expenditure declarations directly to the CA, then verifications carried out in accordance with the Article 125(5) CPR should have been done at IB level. In addition, the MA should be informed of each transmission in order to allow it to carry out verifications on the accuracy of the expenditure compilation and in order to be able to provide any required assurance to the CA.

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

### 1.3. Guidance given by Member State

#### Guidance by Member State to all authorities

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

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

Member State authorities should seek to prevent errors from occurring by working with beneficiaries at the start of each operation. They should provide the beneficiaries with training and guidance on setting up the systems to meet Union requirements and drawing up the first applications for reimbursement. Specific attention should be given to ensuring that the beneficiaries are aware of which costs and outcomes/outputs are eligible for reimbursement.

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Particular attention should be paid to raising awareness of beneficiaries on the option offered by Articles 67.1 b,c,d) and 68 CPR, Article 14.2-14.4 of Regulation (EU) No 1304/2013, and Article 19 ETC Regulation on the unit costs, lump sums and flat rate financing as well as the reimbursement of expenditure paid by Member States on the basis of unit costs and lump sums defined by the Commission applicable to ESF beneficiaries according to Article 14.1 of Regulation (EU) No 1304/2013.

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

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

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

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

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

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

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

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

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

Reference:

- (i) *Information note on fraud indicators for ERDF, ESF, CF, Final version of 18/2/2009; COCOF 09/0003/00-EN*
- (ii) *For EFF: Specific EFF indicators (EFFC/71/2010)*
- (iii) *European Commission, OLAF Compendium of anonymized cases, Structural actions, 2011*
- (iv) *Commission's "Guidance note on fraud risk assessment and effective and proportionate anti-fraud measures" (EGESIF 14-0021-00 of 16 June 2014)*

Verifications under the Article 125(5) of the CPR comprise two key elements namely, administrative verifications (i.e. desk-based verifications) in respect of each application for reimbursement by beneficiaries and on- the-spot verifications of operations.

All applications for reimbursement by beneficiaries, whether intermediate or final, shall be subject to administrative verifications based on an examination of the claim and relevant supporting documentation such as i.a. invoices, delivery notes, bank statements, progress reports and timesheets. The amount of supporting documents might be reduced when operations are implemented through simplified costs options<sup>8</sup>.

The verifications carried out by the MA and IB before expenditure is certified to the Commission should be sufficient to guarantee that the expenditure certified is legal and regular. If during on-the-spot verifications, carried out on a sample basis, a material amount of irregular expenditure is detected (which has already been certified to the Commission), then the responsible authority should take the necessary corrective measures to strengthen verifications before the next certification to the Commission. In any event, the irregular expenditure which has already been certified to the Commission is to be corrected in the subsequent payment application or, at the latest, in the accounts submitted to the Commission for that accounting year.

The verifications should cover in particular:

- That expenditure relates to the eligible period and has been paid;
- That the expenditure relates to an approved operation;

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<sup>8</sup> For simplified cost options, please refer to the relevant Commission guidance (EGESIF\_14-0017 of 6/10/2014).

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

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

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

As indicated above where the MA is also a beneficiary, an appropriate segregation of functions for the verifications under Article 125(5) CPR shall be ensured. Adequate segregation may be achieved, for example, by using a separate department within the same organisation, independent of the department where the beneficiary is located, to carry out the management verifications. This could be the finance department or the internal audit unit, where neither of these bodies is the beneficiary and where the latter does not perform any audit work under Article 127 CPR.

In technical areas such as compliance with environmental rules, there may be competent national authorities responsible for checking compliance and issuing the relevant consents. In such cases MA should check that the relevant approvals have been obtained by the beneficiary from these bodies. For verification of compliance with state aid rules, MA may also be able to place reliance on the work of other national authorities with competence in this area.

The methodology used by MA for carrying out verifications under the Article 125(5) CPR should be set out in the procedures manuals of each body identifying which points are checked in the administrative verifications and in the on-the-spot verifications respectively and referring to the checklists to be used for different checks executed.

When a beneficiary or provider enjoys a special status i.a. of an international organization the Member State concerned should ensure access to documents for verification purposes, in e.g. memorandum of understanding, prior to the conclusion of a funding agreement or contract.

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

### 1) Verifications during project selection

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

### 2) Administrative verifications during project implementation

Management verifications should be carried out before the related expenditure is declared to the next level above. For example, before an IB forwards either an interim or final payment application to the MA (or a MA to the CA), its administrative verifications should already have been carried out. In any event, at least all administrative verifications (see section 1.5) in respect of the expenditure in a particular payment application shall be completed before the CA<sup>9</sup> submits the payment application to the Commission.

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

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

On-the-spot verifications should usually be undertaken when the operation is well under way, both in terms of physical and financial progress. It is not recommended that on-the-spot verifications are carried out only when the operation has been completed as it will be too late to effect any corrective action where problems are identified and in the meantime, irregular expenditure will have been certified. Visits of operations as a preventive measure to verify the capacity of an applicant do not replace the on-the-spot verifications of operations selected for funding.

The nature, specific characteristics of an operation, amount of public support, risk level and the extent of administrative verifications, will often influence the timing of on-the-spot verifications.

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

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

Agreements for individual form of support involving the construction or purchase of an asset often impose ongoing conditions (e.g. retention of ownership, number of new employees) on beneficiaries after completion of the operation or acquisition of the asset. In such cases, a further on-the-spot

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<sup>9</sup> Article 126 of Regulation (EU) No 1303/2013.

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verification may be required during the operational phase to ensure that the conditions continue to be observed.

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

5) All management verifications should be finalized in due time in order to enable Member State's authorities for a timely transmission of the documents listed in Article 138 CPR i.e. accounts the management declaration and the annual control report /audit opinion. The MA is recommended to set internal deadlines for the completion of all management verifications in order to enable both the CA to certify the accounts as required by the Article 126 (c) CPR and the MA to issue the management declaration in line with Article 125(4 and 10) CPR .

No expenditure shall be included in the certified accounts submitted to the Commission if the planned management verifications are not fully completed and the expenditure is not confirmed as legal and regular<sup>10</sup>. If the MA decides to perform on the spot verifications (e.g. further to the ones that it may have already been carried out) in a subsequent accounting year, the irregularities detected at that time are to be deducted during this year and adequately disclosed in the relevant accounts.

### 1.7. Intensity of verifications

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

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

Although management verifications of 100% of the applications for reimbursement submitted by beneficiaries are required by the regulation, verification of each individual expenditure item against source documentation within each application sent for reimbursement and the related proof of delivery included in an application, although desirable, may not be practical. Therefore, selection of the expenditure items to be verified within each application sent for reimbursement, where justified, may be done on a sample of transactions, selected taking account of risk factors (value of items, type of beneficiary, past experience), and complemented by a random sample to ensure that all items have probability to be selected. The value of checked expenditure is the amount tested to

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<sup>10</sup> According to Article 126 (c) CPR, when the CA submits the accounts to the Commission it certifies that the expenditure declared is legal and regular, as follows from Annex VII of Regulation (EU) No 1011/2014 which requires the CA to certify that: (i) the accounts are complete accurate and true and that the expenditure entered into the accounts complies with applicable law and has been incurred in respect of operations selected for funding in accordance with the criteria applicable to the operational programme and complying with applicable law; (ii) that the provisions in the Fund-specific Regulations, Article 59(5) of Regulation (EU, Euratom) No 966/2012 and in points (d) and (f) of Article 126 CPR are respected; that the provisions in Article 140 CPR with regard to the availability of documents are respected.

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source documentation. The sampling methodology used shall be established ex-ante by the MA and it is recommended to establish parameters in order that the results of the random sample checked can be used to project the errors in the unchecked population. In case that material errors are found in the sample tested, it is recommended to extend the testing to determine whether the errors have a common feature (i.a. type of transaction, location, product, period of time) and then either extend the verifications to 100% of the payment claim or project the error in the sample to the unchecked population. The total error is calculated by adding the errors from the risk based sample to the projected error from the random sample.

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

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

### **On-the-spot verifications**

Where administrative verifications are exhaustive and detailed, there are still some elements concerning the legality and regularity of expenditure that cannot be verified through an administrative verification. It is therefore essential that on-the-spot verifications are carried out in order to check in particular the reality of the operation, delivery of the product/service in full compliance with the terms and conditions of the agreement, physical progress, respect for Union rules on publicity. On-the-spot verifications can also be used to check that the beneficiary is

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providing accurate information regarding the physical and financial implementation of the operation.

When on-the-spot verifications and administrative verifications are carried out by different persons, the procedures should ensure that both receive relevant and timely information on the results of the verifications carried out. Project progress reports prepared by beneficiaries, or engineers' reports in the case of larger infrastructure projects, can be used as the basis for both administrative and on-the-spot verifications.

The MA, when determining the extent of verifications to be carried out under the Article 125(5) CPR may take account of the internal control procedures of the beneficiary where this is justified. For example, where the beneficiary is a government ministry and checks on the expenditure have already been carried out by a separate part of the ministry as part of their own control procedures (i.e. with appropriate segregation of functions in accordance with Article 125(7) CPR), the MA may treat them as contributing to the assurance to be obtained under Article 125(5) CPR, whilst still being responsible for carrying out verifications under this same Article . The checks carried out directly by the beneficiaries cannot be considered to be the equivalent of the verifications falling under Article 125 CPR.

On-the-spot verifications may be carried out on a sample basis. Where sampling is used for the selection of operations for on-the-spot verifications, the MA shall keep records describing and justifying the sampling method and a record of operations selected for verification. It shall review the sampling method each year.

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

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

The sample could focus on high value operations, operations where problems or irregularities have been identified previously or where particular transactions have been identified during the administrative verifications that appear unusual and require further examination (i.e. risk-based selection). A random sample should be selected as a complement. For infrastructure projects implemented over several years, several verifications are likely to be required during implementation and at completion. Where a particular beneficiary is responsible for an operation made up of a group of projects, the MA should put in place a procedure for determining which projects within this operation will be subject to the on-the-spot verification..

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

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

For the selection of the expenditure items to be verified within each operation the same rules apply as for administrative verifications.

If following the conduct of on-the-spot verifications, it results that a material amount of expenditure which was already certified to the Commission is irregular then the MA or IB should take the necessary corrective measures to strengthen verifications before the next certification to the Commission. This may be achieved by either strengthening the administrative verifications or by carrying out the on-the-spot checks before the expenditure is certified to the Commission.

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

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

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

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

All management verifications (both administrative and on-the-spot) shall be documented. The records should state the work performed, the date when the work was carried out, details of the application for reimbursement reviewed, amount of expenditure tested, the results of the

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verifications, including the overall level and frequency of the errors detected, a full description of irregularities detected with a clear identification of the related Union or national rules infringed and the corrective measures taken. Follow up action might include the submission of an irregularity report and/or a procedure for recovery of the funding.

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

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

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

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

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

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

As a general principle, management verifications are to be carried out under the responsibility of the MA by the body directly responsible for the management of the programme or priority axis. Sufficient staff resources shall be allocated to these verifications in order to ensure that they are carried out properly and in a timely way (see section 3.4).

However, in situations where, due to the high volume or technical complexity of the operations to be verified, MA finds that it does not have sufficient staff or expertise to carry out the verifications itself, outsourcing of some or all elements of the verifications to external firms may be appropriate. Where the option of outsourcing is used, it is essential that the scope of the work to be carried out and a wording of the opinion are set out clearly in the terms of reference. Therefore, the consequences of any delays in carrying out this work may have an impact on the threshold of eligible expenditure to declare in order to avoid N+3 decommitment. In order to avoid this risk, the

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MA is recommended to implement procedures ensuring timely processing of reports by external firms. This is particularly relevant in the case of public sector bodies where delays can be experienced in the award of contracts for this type of work. There is also an onus on the contracting authority to assess the quality of the outsourced work e.g. by reviewing a number of applications for reimbursement. This will usually involve assigning additional staff to this function. Accordingly, before a decision to outsource management verifications is taken, all of these factors should be taken into consideration.

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

The terms of agreements for individual form of support may include a requirement for beneficiaries to provide an auditor's certificate with applications for reimbursement they submit. These certificates vary depending upon the scope of the work carried out by the auditor but generally cover basic requirements such as confirmation that the expenditure has been paid within the eligible period, that it relates to items approved under the agreement, that the terms of the agreement for individual form of support have been complied with and that adequate supporting documentation, including accounting records, exists. Although the assurance under Article 125(5) CPR cannot be obtained solely by checks carried out by beneficiaries themselves or by third parties (e.g. auditors) on their behalf, auditors' certificates may, provided the work carried out is of satisfactory quality, justify limiting the management verifications to a sufficient sample taking account of known risks, including the risk of a lack of independence of the body providing the certificate. However, in order for reliance to be placed on the certificates, it is essential that the MA provides guidance for use by the beneficiaries' auditors on the scope of the work to be done and the report/certificate to be presented. This should not be simply a one sentence certificate on the regularity of the beneficiary's claim, but should describe the work carried out and the results.

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

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

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

The report should describe the purpose and the agreed-upon procedures of the engagement in

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sufficient detail to enable the reader to understand the nature and the extent of the work performed. ISRS 4400 also sets out useful templates for engagement letters and for reports on factual findings.

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

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

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

The staff performing verifications under the Article 125(5) CPR shall not be involved in systems audits or audits of operations carried out under the responsibility of the AA (Article 127 CPR) and vice versa. The objectives of management verifications are different from those of audits carried out under the responsibility of the AA, the latter being carried out ex-post (i.e. after the payment application has been submitted to the Commission). The objective of these audits is to assess whether the internal controls are operating effectively whereas management verifications form part of the internal controls. The two types of work must therefore be clearly distinguished in their planning, organisation, execution, content and documentation.

Although management verifications and audits under the responsibility of the AA shall be separated, exchange of information between the MA, CA and AA services is desirable. For example, the staff involved in management verifications should be kept informed of the results of audits and may well look to the AA for advice while the latter should take account of the results of management verifications in its risk analysis and audit strategy.

## **2. Specific areas concerning management verifications**

### **2.1 Management verifications of public procurement**

#### **Reference:**

- (i) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.*
- (ii) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors*
- (iii) Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives (2006/C179/02)*
- (iv) Commission Interpretative Communication on the application of Community law on Public Procurement and Concessions to Institutionalised Public-Private Partnerships (2007/C 6661)*
- (v) "Identifying conflicts of interests in public procurement procedures for structural actions. A practical guide for managers." Working document drafted by a group of Member States' experts with support from OLAF, 2013. It is intended to facilitate the implementation of operational programmes and to encourage good practice. It is not legally binding on the Member States but provides general guidelines with recommendations and reflects best practices.*
- (vi) "Detection of forged documents in the field of structural action. A practical guide for*

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*managing authorities."* Working document drafted by a group of Member States' experts with support from OLAF, 2013. It is intended to facilitate the implementation of operational programmes and to encourage good practice. It is not legally binding on the Member States but provides general guidelines with recommendations and reflects best practice.

**(vii) New procurement directives:**

- Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contract;
- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC;
- Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC;

*(viii) Commission Decision C(2013) 9527 of 19.12.2013 on the setting out and approval of the guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement*

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

Verifications should be carried out as soon as possible<sup>11</sup> after the particular process has occurred as it is often difficult to take corrective action at a later date.

At award of funding stage, it should be ensured that beneficiaries are aware of their obligations in this area and that staff has received relevant training. Some Member States have prepared specific guidance on or even templates for the public procurement procedures to be used by beneficiaries. This is particularly useful where beneficiaries are involved in one-off contracts and lack relevant experience. Guides and explanatory notes on the Community rules for public procurement have been produced by the European Commission and provide useful information and explanations ([http://ec.europa.eu/internal\\_market/publicprocurement/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/index_en.htm))

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

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

Intensity of verifications of public procurement

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

<sup>11</sup> For public procurement in case of simplified cost options, please refer to the specific guidance in EGESIF\_14-0017.

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

### Planning

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

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

This should ensure that problems with the initial tendering as well as additional works/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, MA is recommended, prior to advertising the contract, that the quality of the tender documents (including the terms of reference) have been verified either by their own experts or by an external expert. Particular attention should be given to verifying that the specifications are well-defined as regards technical, economic and financial capabilities and that appropriate selection and award criteria are to be used.

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

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of the contract<sup>12</sup>) level of advertising of the contract should have been made in order to ensure that the Treaty's general principles of equal treatment and transparency are respected. This is particularly relevant for public procurement with cross border interest. This can be achieved by requesting beneficiaries to provide a copy of the relevant publications when submitting applications for reimbursement. Evidence of dispatch of contract award notices should also be requested, particularly for services listed in Annex IIB of Directive 2004/18/EC or in Annex XVII B of Directive 2004/17/EC.

### Selection and award criteria

In order to properly verify that tender selection and award procedures have been carried out in accordance with the EU and national public procurement rules, MA should obtain and review the tender evaluation reports prepared by evaluation committees. In addition, managing authorities or constituted bodies as applicable should review any complaints submitted to the contracting authority or constituted bodies by tenderers. During management verifications the MA should ensure itself that the complaint procedure was correctly followed. These complaints may highlight possible weaknesses in the tender award procedure.

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

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

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 or national permits requested at tendering stage;

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

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- 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 Treaty (transparency, non-discrimination, equal treatment);
- inadequate documentation of decisions taken by the evaluation committee;
- too dissuasive selection criteria not linked to the subject matter of the contract.

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

#### Contract implementation phase

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

- supplementary/complementary works awarded directly without being re-tendered;
- substantial amendment of essential conditions of the contract at implementation stage.

For contracts exceeding the threshold in the EU public procurement directives, best practice would include a procedure to ensure that all significant supplementary/complementary contracts or substantial amendments of contracts are notified to a public procurement verification unit/MA before being signed by the contracting authority. This will allow for any verifications considered necessary to ensure that the relevant public procurement rules have been complied with to be carried out before the related contracts or amendments have been signed<sup>13</sup>.

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

- Additional works – direct award in the absence of unforeseen circumstances;
- Unlawful award criteria;
- Splitting of a project to avoid tender procedures on EU level;

<sup>13</sup> Court cases T-540/10 and T-235/11 from 21/01/2013 on the interpretation of unforeseen circumstance concerning addenda to contracts.

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- Unlawful selection criteria;
- Time limits for tendering - too restrictive;
- Direct award of contract;
- Non-compliance with advertising procedures;
- Tender clarification – weaknesses;
- Failure to provide an adequate audit trail;
- Unjustified use of negotiated procedure;
- Unjustified use of accelerated procedure;
- Deficiencies in the case of contract value calculation;
- Deficiencies in respecting the established delivery deadline;
- Works started before the tender procedure was completed.

## 2.2. Environment

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

- The **Environmental Impact Assessment** or EIA Directive<sup>14</sup> as amended requires Member States to carry out an assessment on certain public and private projects likely to have a significant impact on the environment prior to project approval or authorization. Although not yet explicitly included in the formal requirements of the EIA, impacts of climate on the project, referred to as climate change adaptation, have also to be addressed during the design process of some projects<sup>15</sup>. The Directive takes account of the provisions of the Aarhus Convention on public participation and access to justice in environmental matters. The EIA Directive contains a provision dealing with exceptional cases (Article 2(3) of the Directive). Recent guidance emphasizes the exceptional nature of the circumstances in which this provision might be used (in line with the European Court of Justice's standard approach to interpreting derogations).
- The **Strategic Environmental Assessment** (SEA) Directive<sup>16</sup> - Environmental assessment can be undertaken for individual projects on the basis of the above-mentioned EIA Directive or for public plans or programmes on the basis of the SEA Directive. In addition to requiring Member States to make an assessment before an operational programme is approved, the SEI/SEA Directive provides for monitoring indicators to identify, at an early stage, unforeseen adverse

<sup>14</sup> Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment,

as last amended by Directive 2003/35/EC

<sup>15</sup> See 'Guidance on Integrating Climate Change and Biodiversity into Environmental Impact Assessment', European Commission, DG Environment, 2013

<sup>16</sup> Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment

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effects and to undertake appropriate remedial action. If appropriate, existing monitoring arrangements may be used to avoid duplication. In addition, the SEA process already carried out may need to be updated if there are significant changes to the operational programme. If the operational programmes lead themselves to further plans and programmes, then it must be assessed if these too require an SEA process. Finally, it should be noted that Waste Management Plans required under the Waste Framework Directive require a mandatory SEA. Only those interventions and infrastructure works that are in conformity with Waste Plans notified to the Commission are admissible for financing.

- **Environmental Information** - The freedom of access to information on the environment Directive<sup>17</sup> aims to make information held by public authorities on the environment more accessible to the public and to ensure that fair standards of access to information are applied across the Community.

**Nature** is covered by the Birds and Habitats Directives<sup>18</sup>, in particular in relation to impacts on the network of Natura 2000 sites. Together, these Directives provide a comprehensive protection scheme for a range of animals and plants as well as for the selection of habitat types. In order to restore or maintain a favourable conservation status for natural habitats and species of Community interest, the Habitats Directive set up the Natura 2000 ecological network of protected areas, which has become the centrepiece of EC nature and biodiversity policy. The Habitats Directive (in Article 6) contains specific provisions for an appropriate assessment of impacts and mitigation and compensation measures.

- **Water** - The Water Framework Directive<sup>19</sup> establishes a framework for the protection of all water bodies (i.e. rivers, lakes, transitional waters, coastal waters, canals and groundwater) in the European Union. Its central objective is to achieve good quality status for water resources by 2015 through integrated management based on river basin districts. It contains specific provisions (in Article 4.7) for the assessment of infrastructures with potential risks of water resources deterioration, for example related to inland waterway projects.
- **Waste** - The Waste Framework Directive<sup>20</sup> lays down basic requirements regarding the handling of waste and establishes the hierarchy for waste management options (in decreasing order of preference: prevention, recovery, reuse, material recycling, energy recovery, disposal). In order for a waste management infrastructure project to be co-financed by the ERDF or the Cohesion Fund, it must be part of a coherent waste management plan. The Landfill Directive<sup>21</sup> establishes a set of detailed rules in order to prevent or minimise the negative effects that landfill sites for waste can have, including pollution of soil, air and water and risks to human health and to reduce the quantities of biodegradable waste going to landfills. The Incineration Directive<sup>22</sup> aims to prevent or limit as far as practicable the negative effects on the environment and the resulting risks to human health, from the incineration of waste. It imposes stringent

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

<sup>18</sup> Council Directive 2009/147/EC of the European Parliament and of the Council (codified version of directive 79/409/EEC) on the conservation of wild birds; Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora

<sup>19</sup> Directive 2000/60/EC establishing a framework for Community action in the field of water policy, as last amended by Directive 2008/32/EC

<sup>20</sup> Council Directive 2006/12/EC of the European Parliament and the Council on waste

<sup>21</sup> Council Directive 1999/31/EC on the landfill of waste

<sup>22</sup> Council Directive 2000/76/EC on the incineration of waste

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operational conditions and technical requirements and sets emission limit values for waste incineration plants within the EU.

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

Management verifications in the environment area should verify that the beneficiary has complied with the applicable Directives by checking whether the relevant consents have been obtained from the competent national authorities in accordance with the procedures. The competent national authorities are responsible for ensuring that EU environmental legislation is correctly applied, and for taking appropriate steps if this is not the case.

In order to carry out its responsibilities under Article 125(3) CPR during the selection and approval of operations, MA should ensure that it has access to appropriate in-house or external expertise to assist it in identifying all relevant environmental issues related to the particular type of operation being approved. Close working relationships with the national environmental agencies could be established to assist MA in this regard.

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

### 2.3 State aid

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

To the extent that State aid is present, Member States are required to notify State aid to the Commission and may not implement the State aid until the Commission has approved the aid.

However, certain measures are exempted from notification because they are compatible with the Treaty when they fulfil certain conditions (block exemptions) or they do not constitute State aid (*de minimis*).

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

The following State aid regulations and guidelines are typically relevant for the assessment:

1. *De minimis* Regulations - Regulation No 1407/2013, OJ L 352/1 of 24.12.2013 or possibly preceding regulations. There is also a specific *de minimis* regulation for Services of General Economic Interest and a specific *de minimis* regulation for the agricultural sector;
2. Block exemption rules (Regulation No 800/2008 amended by Regulation No 1224/2013) and Decision 2012/21);
3. Notified aid (individual or schemes) - See DG Competition website:

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

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

- Risk capital: Community guidelines 2006/C194/02
- Guaranty: Commission notice 2008/C155/02
- Loan: Commission communication 2008/C14/02.

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

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

- (1) They shall verify whether the operation includes State aid. It should be noted that State aid is not excluded if the recipient is a non-profit organisation or a public body. For this purpose, it shall be considered whether the beneficiary is engaged in an economic activity (i.e. offering goods and services on a market open to competition) regardless of its legal status.
- (2) The legal basis (normally on the basis of the selection documentation of the operation) should be clearly identified.
- (3) The use of a specific checklist for each type of State aid measure is highly recommended to ensure that all relevant provisions are tested. Such a checklist will be used as an aide-memoire and an audit trail of the checks carried out.

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

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

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

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amounts, maximum intensity, eligible costs, etc.);

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

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

Examples of the most common issues identified in the past by the Commission in the area of State aid<sup>24</sup>:

- Infringement of Article 3 of Regulation No 1998/2006 - State aid - lack of verification of *de-minimis* rules.
- Exceeding of permissible aid ceilings due to the fact that a company does not qualify as SME and therefore is not entitled to an SME bonus.
- Early 'start of works' (before application for aid was made or before granting authority has given approval).
- Insufficient checks of 'incentive effect' for the aid.

## 2.4. Financial instruments

### Reference:

- (i) **Article 40 of Regulation (EU) No 1303/2013;**
- (ii) **Article 9 of Delegated Regulation (EU) No 480/2014<sup>25</sup>;**
- (iii) **Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15/11/2006 on information on the payer accompanying transfers of fund;**
- (iv) **Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26/10/2005 on controls of cash entering or leaving the Community;**
- (v) **Directive 2001/97/EC of the European Parliament and of the Council of 4/12/2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering;**
- (vi) **Directive 2005/60/EC of the European Parliament and of the Council of 26/10/2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;**
- (vii) **"Financial instruments in ESIF programmes 2014-2020 - A short reference guide for managing authorities" (EGESIF\_14\_0038-03 of 10 December 2014)<sup>26</sup>, to be supplemented with more detailed specific guidance as relevant, including in complementarity with *fi-compass*, the unique platform for advisory services on financial instruments under the ESIF (<http://www.fi-compass.eu/>)<sup>27</sup>.**

Management verifications in relation to financial instruments should aim to ensure the compliance

<sup>24</sup> The legal provisions relate to past periods and at present are no longer in force

<sup>25</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.138.01.0005.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.138.01.0005.01.ENG)

<sup>26</sup> [http://ec.europa.eu/regional\\_policy/thefunds/fin\\_inst/pdf/fi\\_esif\\_2014\\_2020.pdf](http://ec.europa.eu/regional_policy/thefunds/fin_inst/pdf/fi_esif_2014_2020.pdf)

<sup>27</sup> The final version of the detailed guidance and interpretation fiches on financial instruments will be made available on INFOREGIO in a first stage and later in the <http://www.fi-compass.eu/>, which will centralize all material on financial instruments.

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with applicable laws and regulations, the sound financial management of ESIF, the safeguarding of assets and the reliable financial reporting by the beneficiaries or the financial intermediaries

In case of financial instruments operations, the MA shall carry out administrative verifications on each application for payment submitted by the beneficiary. Fund managers might be entrusted with part of the management verification tasks to be carried out under the supervision of MA.

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

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

- ex-ante assessment under Article 37(2);
- implementation option under Article 38;
- design of the financial instrument (with or without funds of funds);
- content of the funding agreement(s) or strategy document (Annex IV CPR);
- selection and agreement with fund of funds and/or financial intermediaries;
- fiduciary accounts or separate block of finance (only for option under Article 38(4)(b));
- national co-financing (Article 38(9));
- State aid (rules on risk-finance, Global Block Exemption Regulation, de minimis).

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

- Compliance with the funding agreement, including:
- Implementation of the investment strategy (e.g. products, final recipients, combination with grants);
- Implementation of business plan including leverage;
- Calculation and payment of management costs.

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

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

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Checklists were provided by the Commission to the national audit authorities in 2011 (cf. Ares(2011)1078561 – 11 October 2011). Although they refer to the period 2007-2013, they could be considered as useful by the MA, but should be adapted to the rules applicable for the period 2014-2020.

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

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

On-the-spot verifications should take place in the first instance at financial instrument level. They should also be carried out at final recipient level (e.g. on a sample basis) if the MA estimates that this is justified given the level of risk identified. In any case, on-the-spot verifications should take place at final recipient only in cases listed in Article 40(3) CPR.

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

- Conditions related to the stage of investment: generally the investments to be supported by financial instruments shall not be physically completed or fully implemented at the date of the investment decision (Article 37(5) CPR; there is however a derogation from this rule under Article 37(6) CPR;
- Combination of financial instruments with other types of support within the same operation (Article 37(7)) or as a separate operation (Article 37(8) CPR). Conditions under Article 37(9) CPR have to be complied with.
- Limitations for contributions in kind (Article 37(10) CPR);
- VAT treatment;
- Working capital;
- undertakings in difficulty (limitation under Article 3(3)(d) the ERDF Regulation (EU) No 1301/2013 and State aid rules).

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

As it is possible to have contributions from more than one operational programme to the same

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financial instrument, in such cases, the fund of funds or/and the financial intermediary must keep separate accounts or maintain an adequate accounting code for the contribution from each operational programme, for reporting, audit and verification purposes. An examination of the audit trail should form part of the Article 125(5) verification.

Management verifications should focus on checking the supporting documents attesting to observance of the funding conditions. The documentation may include application forms, business plans, annual accounts, checklists and reports of the venture capital fund assessing the application, the signed investment, loan or guarantee agreement, reports by the enterprise, reports on visits and board meetings, reports by the loan intermediary to the guarantee fund supporting claims, environmental approvals, equal opportunities reports and declarations made in connection with receipt of de minimis aid.

Evidence of expenditure in the form of receipted invoices and proof of payment for goods and services by SMEs is only required as part of the audit trail where the capital, loan or guarantee to the SME is conditional on incurring expenditure on particular goods or services. However, in all cases, there must be proof of the transfer of the capital or loan by the venture capital fund or loan intermediary to the enterprise.

Management verifications of financial instruments are quite specific and require adequate knowledge in this respect. Attention should be given to the adherence of the financial instruments to the State aid rules of the investments, the public procurement rules in respect of the selection of the fund of funds and financial intermediaries and the level of the management costs.

Examples of the most common issues identified in the past by the Commission in the area of financial instruments<sup>28</sup>:

- Guarantees issued by the FEI constituted collaterals of loans that had been provided from another FEI under the same OP;
- Unlawful capital rebates when principles of the loans not fully reimbursed;
- Loans provided to finance exclusively working capital before 1/12/2011;
- Management costs not based on evidence;
- Failure to provide an adequate audit trail;
- Slow project implementation and potentially ineffective countermeasures allowing to improve the performance;
- Inadequate management verifications (Article 13 of Regulation (EC) No 1828/2006);
- Missing compulsory elements in the funding agreement (Articles 43(3) 44(2) of Regulation (EC) No 1828/2006);
- Audit of operations not performed because of limitation to scope (Article 16 of Regulation (EC) No 1828/2006 );
- Funding used to acquire assets instead of expanding or strengthening of the general business activity (Article 45 of Regulation (EC) No 1828/2006).

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<sup>28</sup> The legal provisions relate to past periods and at present are no longer in force

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## 2.5. Revenue-generating operations

### Reference

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

The CPR makes a distinction between operations generating net revenue after completion (and possibly during implementation as well), which are covered by Article 61, and operations generating net revenue during their implementation and to which paragraphs 1 to 6 of Article 61 do not apply, which are covered by Article 65(8).

### Operations generating net revenue after their completion

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

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

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

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

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

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

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

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

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

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

- the reasonableness and disclosure of any assumptions made regarding the forecast revenue and cost in the situations with and without operation, considering any available historical data, the category of investment concerned, the type of project, the profitability normally expected from the type of investment concerned, the application of the polluter-pays principle and any available historical data;
- the direct link between the assessment and above assumptions;
- the application of the recommended calculation parameters (length of the reference period, etc.);
- the correctness of the calculations.

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

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

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

Article 61(7) CPR stipulates among others in point b) that Article 61 is not applicable to operations whose total eligible cost does not exceed EUR 1 000 000. Therefore, the MA should ensure that any operation that gets an increase of its total eligible cost from below to above the EUR 1 000 000

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threshold after its initial recording in the information system of the MA shall be subject to the requirements of the said Article 61.

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

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

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

Concerning the use of simplified costs in operations generating net revenue, please refer to section 7.4 of the specific Commission guidance (EGESIF\_14-0017 of 6/10/2014).

## **2.6. Durability of operations**

Pursuant to Article 71 CPR, the MA must ensure that an operation retains the contribution from ESIF only if that operation does not, within five years from the final payment to the beneficiary or the period applicable to State aid, undergo a substantial modification defined in Art 71.1 a-c). Period of ten years is set for cases when the productive activity is relocated outside the EU. Specific conditions apply to SME, financial instruments, natural persons subsequently receiving support from EGF and operations that are not investment in infrastructure or productive investment.

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

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

Pursuant to Article 7 CPR management verifications should check that operations respect and promote equality between men and women and that the integration of the gender perspective has been applied during the various stages of implementation of the ESIF. This involves a gender mainstreaming approach ensuring that all operations openly and actively take into account their effects on the respective situation of women and men, with a view to overcoming inequalities. All programmes should contribute to improved equality between men and women, and should be able to demonstrate the impact in this respect, prior to, during and after implementation. Management verifications should comply with the Charter of Fundamental Rights.

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

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Checklists used for management verifications should therefore, where relevant, include questions dealing with the respect of the principles of equality and non-discrimination. Management verifications should check the actual performance of co-financed programmes and operations against the target indicators throughout the programming period. The MA should check that appropriate steps have been taken during the implementation of the operation to comply with the relevant conditions set out in the contract. Accessibility for disabled people is one of the criteria to be observed in defining operations co-financed by ESIF and to be taken into account during the various stages of implementation.

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

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

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

By virtue of Article 4 of the ETC Regulation and by way of derogation from the general provisions for the management of mainstream programmes where the MA is responsible for verifying the legality and regularity of the expenditure, under ETC this responsibility lies with the participating Member States or third countries. They must set up control systems and designate staff carrying out management verification who in turn carry out the verification of the legality and regularity of the expenditure declared by each beneficiary participating in the operation. The MA shall satisfy itself that the expenditure of each beneficiary participating in an operation has been validated by a designated controller referred to in Article 23(4) of the ETC Regulation.

In order to validate the expenditure, pursuant to Article 23(4) of the ETC Regulation, each Member State or third country shall set up a control system making it possible to verify the delivery of the products and services co-financed, the soundness of the expenditure declared for operations or parts of operations implemented on its territory, and the compliance of such expenditure and of related operations, or parts of those operations, with Union rules and its national rules.

For this purpose each Member State or third country shall designate the staff carrying out management verification responsible for verifying the legality and regularity of the expenditure declared by each beneficiary participating in the operation. Participating countries may decide to designate a single controller for the whole programme area. Where the delivery of the co-financed products and services can be verified only in respect of an entire operation, the verification shall be performed by the MA or by the controller of the Member State where the lead beneficiary is located..

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The content and scope of the verifications by the staff carrying out management verification is identical to that of a MA for the mainstream OPs. Staff carrying out management verification must verify that the co-financed products and services have been delivered and that the expenditure declared by beneficiaries for operations has actually been incurred and complies with Union and national rules. For this purpose they have to perform administrative verifications in respect of each application for reimbursement by beneficiaries and on-the-spot verifications of individual operations, which could be carried out on a sample basis.

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

The most common issues identified by the Commission services relating to operations co-financed in ETC programmes during the 2007-2013 programming period are: weak audit trail, missing staff costs, overheads and general administrative costs justifications, weaknesses in public procurement procedures, revenue generated by operations not taken into account and incomplete verifications checklists were amongst the main audit findings by the Commission. The audits of the Commission showed that centralized management verifications done by structures subordinated to the MA function more efficiently than other systems. Under the other type of control system the control risk is higher (multiple staff carrying out management verification, no standard quality procedures), verifications focus mainly on financial control and there is difficulty for the MA/JTS to monitor the controls.

Best practice indicates that centralized management verifications system diminishes the control risk, there is better understanding and more familiarity with EU regulations when staff carrying out management verification are also responsible for the mainstream programmes. Article 23.4 of the ETC Regulation states that the staff carrying out management verification may be the same bodies responsible for carrying out such verifications for the operational programmes under the Structural funds or, in the case of third countries, for carrying out comparable verifications under the external policy instrument of the Union. It is advisable to put in place measures to ensure coherence among staff carrying out management verification from all countries participating in the programme. In particular, harmonization of the checklists that are used for the management verifications is recommended (such as the HIT – Harmonisation implementation tools prepared by Interact). This facilitates the monitoring by the MA/JTS of the quality of controls carried out for operations co-financed under an ETC operational programme.

Under the ETC goal, Article 13.1 of ETC Regulation requires that a lead beneficiary be appointed for each operation. The lead beneficiary should ensure that both the expenditure presented by each of the beneficiaries participating in the operation has been incurred for the purpose of implementing the operation and corresponds to the activities agreed between those beneficiaries, and that the expenditure presented by each of the beneficiaries participating in the operation has been validated by the staff carrying out management verification. The scope of the work of the controller responsible for the lead beneficiary should therefore include a verification of how the lead beneficiary complies with these obligations. As regards the role of the MA, it has to satisfy itself that the expenditure of each beneficiary participating in an operation has been validated by the staff

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carrying out management verification.

Best practice in this area would allow for details of the work done by each of the staff carrying out management verification to be made available to the controller of the lead beneficiary, the lead beneficiary and to the MA. This requirement could be included in the terms of reference of the staff carrying out management verification on their appointment.

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

The MA and the JTS should ensure the independence and the separation of the first level controller function from the statutory audit function and/or from any other role the appointed first level controller might hold within the beneficiary (consultancy work, accountancy work, payroll preparation work, etc.). The first level controller organisation structure and its audit work review process shall be fully independent from the statutory auditor function and or any other role held within the beneficiary.

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

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

## **2.10. Simplified costs options**

### ***Reference:***

- (i) Guidance on simplified costs options (EGESIF\_14-0017 of 6/10/2014)*
- (ii) Articles 67 and 68 of Regulation (EU) No 1303/2013 and Article 14 of Regulation (EU) No 1304/2013 and 19 of Regulation (EU) No 1299/2013*

For the unit costs and lump sums the management verifications will check whether the conditions for reimbursement set in the agreement between the beneficiary and MA have been met and that the agreed methodology has been correctly applied<sup>29</sup>. In addition the management verification should verify that the operation/project is not implemented exclusively through the public procurement<sup>30</sup>. The supporting documents will be required to justify the quantities declared by the beneficiary. In particular for "intangible" operations, the focus will move towards technical and physical aspects of operations, with a particular importance of on-the-spot verifications during the implementation period.

<sup>29</sup> Please note that it is not applicable to Article 14(1) of Regulation (EU) 1304/2014.

<sup>30</sup> Please note that it not applicable to Article 14(1) of Regulation (EU) 1304/2014 and to projects supported within the framework of a Joint Action Plan.

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

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

## 2.11. Performance indicators

*Reference:*

- (i) **Article 50(2) of Reg. (EU) No 1303/2013 about implementation reports**
- (ii) **Article 125 of Reg. (EU) No 1303/2013 about the functions of the managing authority**
- (iii) **Article 25(1)i of 9 of Delegated Regulation (EU) No 480/2014**
- (iv) **Guidance Document on Monitoring and Evaluation – European Regional Development Fund and Cohesion Fund – January 2014**
- (v) **Guidance Document on Monitoring and Evaluation – European Social Fund, May 2014**

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

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

Article 125(2)(d) CPR requires that MA record and store in computerized form data on each operation necessary for monitoring, evaluation, including data on individual participants in operations, where applicable. For the ESF, the data shall be recorded and stored in a way that allow the MA to perform the tasks related to monitoring and evaluation in conformity with the requirements set out in Article 56 CPR and Articles 5 and 19 and Annexes I and II of Regulation (EU) No 1304/2013.

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

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

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

The verifications should check key requirements concerning data collection, storage and quality. The lack of data quality and consequently, the reliability of the monitoring system, is subject to suspension of payments. In particular, the MA is required to ensure data quality through checking their completeness and consistency.<sup>31</sup>

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

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

Each participant shall be registered only once within one operation (e.g. one trainee shall be registered only once although he/she can participate on several different activities within one operation). Guidance on participation records can be found in the Guidance document on Monitoring and Evaluation, European Social Fund.

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<sup>31</sup> Guidance document on Monitoring and Evaluation, European Social Fund, chapter 2 of Annex D.



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**Anexo 2**  
**Guidance for Member States and Programme Authorities on fraud risk assessment and effective and proportionate anti-fraud measures (EGESIF\_14-0021-00, de 16/06/2014)**





European Structural and Investment Funds

Guidance for Member States and Programme Authorities

Fraud Risk Assessment and Effective and  
Proportionate Anti-Fraud Measures

June 2014

**DISCLAIMER:**

*"This is a working document prepared by the Commission services. On the basis of applicable EU law, it provides technical guidance for public authorities, practitioners, beneficiaries or potential beneficiaries, and other bodies involved in the monitoring, control or implementation of the European Structural and Investment Funds on how to interpret and apply EU rules in this area. The aim of this document is to provide Commission services' explanations and interpretations of the said rules in order to facilitate programme implementation and to encourage good practice(s). However this guidance is without prejudice to the interpretation of the Court of Justice and the General Court or decisions of the Commission."*

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<b>Annex 3</b> Template for anti-fraud policy	
<b>Annex 4</b> Checklist for the AA	

## LIST OF ACRONYMS AND ABBREVIATIONS

AA – Audit Authority

CA – Certifying Authority

"the CPR" – Common Provisions Regulation (Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013, laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006)

ERDF – European Regional Development Fund

ESF – European Social Fund

The Financial Regulation – Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities

"the Funds" – for this document specifically, this means: the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund

IB – Intermediate Body

MA – Managing Authority

OLAF – European Anti-Fraud Office

## EXECUTIVE SUMMARY

This guidance note provides assistance and recommendations to managing authorities (MAs) for the implementation of Article 125(4)(c) CPR, which lays down that the MA shall put in place effective and proportionate anti-fraud measures taking into account the risks identified. The Commission also provides guidance for the audit authority's (AA) verification of the compliance of the MA with this article.

The Commission recommends that MAs adopt a **proactive, structured and targeted approach to managing the risk of fraud**. For the Funds, the objective should be proactive and proportionate anti-fraud measures with cost-effective means. All programme authorities should be committed to zero tolerance to fraud, starting with the adoption of **the right tone from the top**. A well-targeted fraud risk assessment, combined with a clearly communicated commitment to combat fraud can send a clear message to potential fraudsters. Effectively implemented robust control systems can considerably reduce the fraud risk but cannot completely eliminate the risk of fraud occurring or remaining undetected. This is why the systems also have to ensure that procedures are in place to detect frauds and to take appropriate measures once a suspected case of fraud is detected. The guidance is intended to help as a step-by-step guide to addressing any remaining instances of fraud once other sound financial management measures have been put in place and are implemented effectively. However, the overall objective of the regulatory provisions is cost-effective fraud risk management and the implementation of effective and proportionate anti-fraud measures, which in practice means **a targeted and differentiated approach for each programme and situation**.

Therefore, the fraud risk self-assessment tool which is attached to this guidance note, together with detailed instructions, can be used to assess the impact and likelihood of common fraud risks occurring. Secondly, the guidance indicates the recommended mitigating controls which could help further reduce any remaining risks, not yet effectively addressed by current controls. The operational objective for the MA should be to deliver fraud responses which are proportionate to the risks and tailored to the specific situations related to the delivery of the Funds in a particular programme or region. Notably, following this risk assessment and related mitigating controls put in place at system level, managing authorities are recommended to address specific situations which may arise at the level of implementation of operations by further developing specific fraud indicators (red flags) and by ensuring effective cooperation and coordination between the managing authority, the audit authority and investigative bodies. The Commission will also assist Member States by offering a specific risk scoring tool, ARACHNE, which will help to identify, prevent and detect risky operations, projects, beneficiaries and contracts/contractors and will serve also as a preventive instrument.

The fraud risk self-assessment proposed by the Commission is straightforward, logical and practical and is based on five main methodological steps:

1. Quantification of the risk that a given fraud type would occur by assessing impact and likelihood (gross risk).
2. Assessment of the effectiveness of the current controls in place to mitigate the gross risk.
3. Assessment of the net risk after taking into account the effect of any current controls and their effectiveness i.e. the situation as it is at the current time (residual risk).

4. Assessment of the effect of the planned mitigating controls on the net (residual) risk.
5. Defining the target risk, i.e. the risk level which the managing authority considers tolerable after all controls are in place and effective.

Finally, the Commission plans to provide targeted roll-out support, when needed, to assist Member States in implementing Article 125(4)(c) CPR and this guidance.

## 1. INTRODUCTION

### 1.1. Background

According to Article 59(2) of the Financial Regulation, Member States shall take all necessary measures, including legislative, regulatory and administrative measures, to protect the EU's financial interests, namely by preventing, detecting and correcting irregularities and fraud.

The CPR includes specific requirements in relation to Member States' responsibility for fraud prevention. This guidance on fraud risk management is addressed to the MAs and AAs of the European Regional Development Fund (ERDF), the Cohesion Fund and the European Social Fund (ESF) and the European Maritime and Fisheries Fund (EMFF).

Apart from Article 72(h) CPR, which sets out that the management and control systems shall provide for the prevention, detection and correction of irregularities, including fraud, and the recovery of amounts unduly paid, together with any interest, Article 125(4)(c) CPR lays down that the MA shall put in place **effective and proportionate anti-fraud measures taking into account the risks identified**.

Fraud and corruption risks should be adequately managed. MAs have a responsibility to demonstrate that attempts at defrauding the EU budget is unacceptable and will not be tolerated. Dealing with fraud, and its causes and consequences, is a significant challenge to any management, as fraud is designed to avoid detection. MAs are also advised to take notice of Transparency International's *Corruption Perception Index*<sup>1</sup> and the EU anti-corruption report prepared by the Commission<sup>2</sup>, when assessing to what extent its overall operating environment is perceived to be exposed to potential corruption and fraud.

The potential for fraud cannot be ignored and should be seen as a set of risks to be adequately managed alongside other business risks or potentially negative events. Assessment of fraud risks can therefore be carried out using existing risk management principles and tools. Effectively implemented robust control systems can reduce the risk that fraud occurs or remains undetected but cannot eliminate the likelihood of fraud occurring. The overall objective should be to address the main fraud risks in a targeted manner, keeping in mind that – apart from baseline requirements – the overall benefit of any additional anti-fraud measures should exceed their overall costs (the principle of proportionality), taking also into account the high reputational cost linked to fraud and corruption.

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<sup>1</sup> <http://cpi.transparency.org/cpi2012>

<sup>2</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee of 6 June 2011 – Fighting corruption in the EU (COM(2011)308 final).

In order to assess the impact and likelihood of any potential fraud risks which could harm the EU's financial interests, the Commission recommends that MAs use the attached fraud risk assessment tool in **Annex 1**. The assessment should be carried out by a self-assessment team set up by the MA<sup>3</sup>. The list of recommended but non-binding mitigating controls which the MA could put in place, in response to any remaining risks, is indicated in **Annex 2**. These proportionate measures could help further mitigate any remaining risks identified in the self-assessment, not yet effectively addressed by current controls.

Moreover, a voluntary template for an anti-fraud policy statement is also proposed at **Annex 3**, for the benefit of those MAs which wish to set out their anti-fraud programme in a policy statement, which communicates internally and externally their official position with regard to fraud and corruption.

In order to complement this guidance, the Commission also provides guidance for the AA's verification of the work done by the MA in the context of the fraud risk assessment and the corresponding measures it has put in place to mitigate the fraud risks. The checklists in **Annex 4** may prove useful in view of the systems audits to be performed by the AAs under Article 127 CPR. They will be used for the Commission's own risk assessment purposes and may also be useful for the purpose of the report and opinion of the independent audit body responsible for the assessment of the management and control system in view of the designation of MAs referred to in Article 124(2) CPR.

## **1.2. A proactive, structured and targeted approach to managing fraud risk**

The attached practical fraud risk self-assessment tool targets the main situations where key processes in the implementation of the programmes could be most open to manipulation by fraudulent individuals or organisations, including organised crime, the assessment of how likely and how serious these situations could be and, what is currently being done by the MA to tackle them. Three selected key processes considered to be most exposed to specific fraud risks are targeted:

- selection of applicants;
- implementation and verification of the operations;
- certification and payments.

The end output of the fraud risk assessment is the identification of those specific risks where the self-assessment concludes that not enough is currently being done to reduce the likelihood or impact of the potentially fraudulent activity to an acceptable level. This assessment will then form the basis for responding to the deficiencies by choosing effective and proportionate anti-fraud measures from the list of recommended mitigating controls. In some cases, the conclusion could be that most residual risks have been addressed and that therefore very few, if any, additional anti-fraud measures are required. In all assessment scenarios, it would be expected that arguments can be provided by the MA to support its conclusions.

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<sup>3</sup> In the case of European territorial cooperation, as MAs are responsible for all functions, the risk assessment should take into account fraud risks across the whole programme area and should seek to ensure that effective and proportionate anti-fraud measures are put in place, as necessary.

## 2. DEFINITIONS

This risk assessment deals only with specific fraud risks, not irregularities. **However, indirectly, effective implementation of the exercise may also have an impact on prevention and detection of irregularities at large**, being understood as a larger category than fraud.

It is the element of intention which distinguishes fraud from irregularity.<sup>4</sup>

### 2.1. 2.1. Definition of irregularity

For the purposes of Council Regulation (EC) No 2988/95 of 18 December 1995<sup>5</sup> on the protection of the European Communities' financial interests, the term irregularity is a wide concept and covers both intentional and non-intentional irregularities committed by economic operators.

Article 1(2) of Regulation (EC) No 2988/95<sup>5</sup> defines "**irregularity**" as:

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

### 2.2. 2.2. Definition of fraud in the Treaty

The Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests<sup>6</sup> defines "**fraud**", in respect of expenditure, as any intentional act or omission relating to:

- "- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of the European Communities;*
- non-disclosure of information in violation of a specific obligation, with the same effect;*
- the misapplication of such funds for purposes other than those for which they were originally granted."*

### 2.3. Definition of corruption

A broad definition of corruption used by the Commission is the abuse of (public) position for private gain. Corrupt payments facilitate many other types of fraud, such as false invoicing, phantom expenditure or failure to meet contract specifications. The most

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<sup>4</sup> The reasons behind fraudulent behaviour have been dealt with in COCOF 09/0003/00 of 18.2.2009 - Information Note on Fraud Indicators for ERDF, ESF and CF.

<sup>5</sup> OJ L 312, 23.12.1995, p. 1.

<sup>6</sup> OJ C 316, 27.11.1995, p. 49.

common form of corruption is corrupt payments or other advantages; a receiver (passive corruption) accepts a bribe from a giver (active corruption) in exchange for a favour.

### **3. FRAUD RISK SELF-ASSESSMENT**

#### **3.1. The tool**

The main objective of the fraud risk assessment tool at **Annex 1** is the facilitation of a self-assessment by the MA of the impact and likelihood of specific fraud scenarios occurring. The specific fraud risks which should be assessed were identified through knowledge of previous fraudulent cases encountered in cohesion policy, as well as commonly recognised and recurring fraud schemes. In other words, the tool has been pre-filled with a set of recognised specific risks. Any other known risks for the specific programme/region under assessment should be added by the self-assessment team (see section 3.2 below).

**The guidance in Annex 1 explains in detail how to complete the fraud risk assessment tool.**

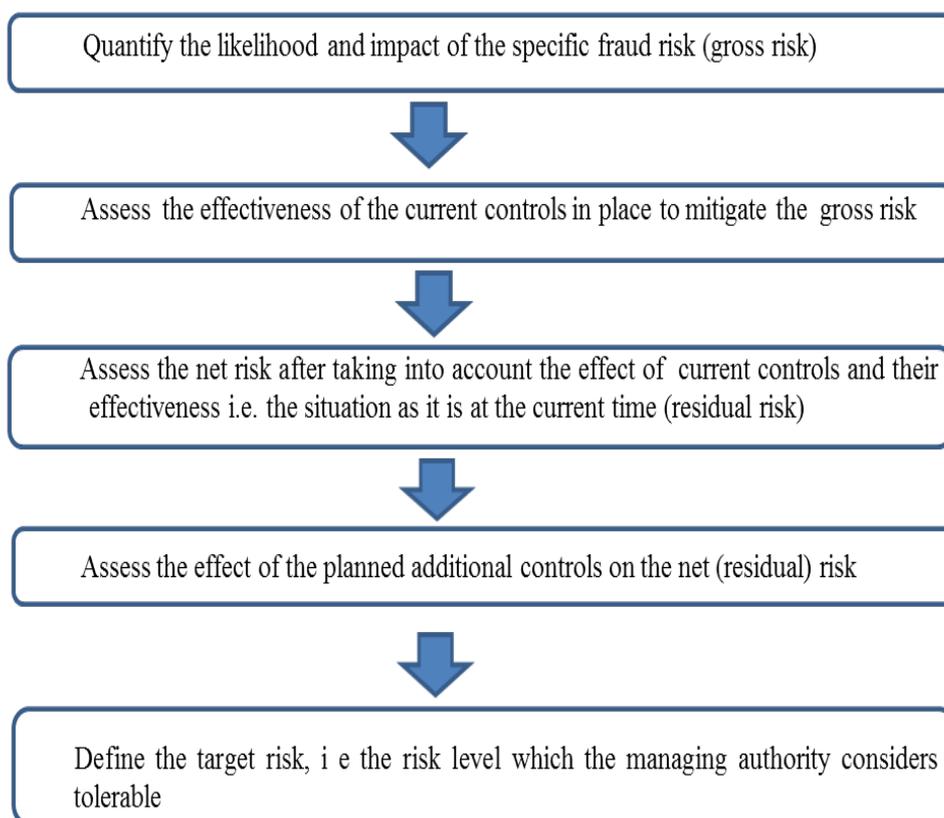
The tool covers the likelihood and impact of specific and commonly recognised fraud risks particularly relevant to the key processes:

- selection of applicants (worksheet 1 of the spreadsheet);
- implementation of the projects by the beneficiaries, focusing on public procurement and labour costs (worksheet 2);
- certification of costs by the MA and payments (worksheet 3).

Each section is preceded by a cover sheet, which lists the specific risks relevant to the section.

Moreover, the MA is recommended to assess the overall fraud risks in relation to public procurement contracts it may manage directly, e.g. in the context of procuring technical assistance (worksheet 4). If the MA does not carry out any public procurement for which a fraud risk assessment is necessitated, section 4 need not be filled in.

The methodology for this fraud risk assessment has **five main steps**:



For each of the specific risks, the overall objective is to assess the ‘gross’ risk of particular fraud scenarios occurring, and then to identify and assess the effectiveness of controls already in place to mitigate against these fraud risks either from occurring or ensuring that they do not remain undetected. The result will be a ‘net’ current risk which should lead an internal action plan to be put in place when the residual risk is significant or critical in order to improve controls and further reduce the exposure of the Member State to negative consequences (i.e. putting in place any additional effective and proportionate anti-fraud measures, as necessary – see the list of recommended mitigating controls<sup>7</sup> in **Annex 2**).

### **3.2. Composition of the self-assessment team**

Depending on the size of the programme and of the MA, it may be that each of the implementation processes is executed by different departments within the MA. It is recommended that the most relevant actors take part in the assessment in order that it is as honest and accurate as possible and so that it can be done in an efficient and smooth way. The assessment team could therefore include staff from different departments of the MA having different responsibilities, including selection of operations, desk and on the spot verification and authorisation of payments, as well as representatives from the certifying authority (CA) and implementing bodies. MAs may want to consider involving the Anti-Fraud Coordination Services ('AFCOS') or other specialised bodies, which could bring in specific anti-fraud expertise into the assessment process.

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<sup>7</sup> These constitute **non-binding suggestions** for additional controls in order to further mitigate the residual risk.

As the AA will audit the completed risk assessment, it is recommended that it does not take a direct role in deciding on the level of risk exposure, but it could be envisaged to participate in the assessment process in an advisory role or as an observer.

For obvious reasons, the self-assessment should not be outsourced as it requires a good knowledge of the operating management and control system and the programme's beneficiaries.

### **3.3. Frequency of the self-assessment**

**First, compliance with the requirements for adequate procedures for putting in place effective and proportionate anti-fraud procedures are part of the designation criteria for MAs.**

The recommendation is that this tool should be completed in full on an annual basis, as a general rule, or every second year. However, more regular reviews of progress against action plans related to additional controls which were put in place, changes to the risk environment and the continuing adequacy of assessment scores may be necessary (e.g. through management meetings). When the level of risks identified is very low and no instances of fraud were reported during the preceding year, the MA may decide to review its self-assessment only each second year. The occurrence of any new fraud instance, or main changes in the MA procedures and/or staff, should immediately lead to a review of perceived weaknesses in the system and of relevant parts of the self-assessment.

## **4. GUIDANCE ON MINIMUM REQUIREMENTS FOR EFFECTIVE AND PROPORTIONATE ANTI-FRAUD MEASURES**

Whereas this section provides general guidance on principles and methods which should be employed by the MA to combat fraud, **Annex 2** provides for each specific risk identified in the fraud risk assessment, the recommended non-binding mitigating controls which could be put in place in order to seek to reduce the risks to an acceptable level.

**The minimum standards set out in this chapter which MAs are recommended to comply with relate to the anti-fraud cycle.**

In order to successfully tackle the issue of fraud, the Commission recommends that the MA develop a structured approach to tackling fraud. There are four key elements in the anti-fraud cycle: prevention, detection, correction and prosecution. The combination of a thorough fraud risk assessment, adequate preventative and detective measures, as well as coordinated and timely investigations by competent bodies could significantly reduce the fraud risk as well as provide adequate deterrence against fraud.

### **4.1. Anti-fraud policy**

Many organisations use an anti-fraud policy to communicate their determination to combat and address fraud. Within any such policy, which should be simple and focused, the following topics should be covered:

- Strategies for the development of an anti-fraud culture;
- Allocation of responsibilities for tackling fraud;
- Reporting mechanisms for suspicions of fraud;
- Cooperation between the different actors.

This policy should be visible within an organisation (distributed to all new staff, included on intranet) and it should be clear to staff that it is actively implemented, via avenues such as regular updates on fraud matters and reporting of outcomes of investigations into fraud. See the suggested template for an anti-fraud policy in **Annex 3**, which provides a voluntary template for an anti-fraud policy statement for the benefit of those MAs which wish to go beyond the immediate regulatory requirements and to formalise and communicate internally and externally their official position with regard to fraud and corruption.

**4.2. Prevention**

If the MA demonstrates a clear commitment to combat fraud and corruption, raises awareness about its preventative and detective controls, and is determined in transmitting cases to the competent authorities for investigations and sanctions, it will send a clear message to any potential perpetrators and could change behaviours and attitudes towards fraud.

Given the difficulties in proving fraudulent behaviour and repairing reputational damage, it is generally preferable to prevent fraudulent activity rather than to have to deal with it after the event. Prevention techniques most often revolve around reducing opportunities to commit fraud via the implementation of a robust internal control system, combined with a proactive, structured and targeted fraud risk assessment, but comprehensive training and awareness raising activities and the development of an **‘ethical’ culture** can also be used to combat any potential ‘rationalisation’ of fraudulent behaviour.

The strongest preventative defence against fraud is the operation of a robust system of internal control which should be designed and operated as a proportionate response to the risks identified during a risk assessment exercise. An organisation should however also work to create the right structures and culture to discourage potential fraudulent behaviour.



#### 4.2.1. *Ethical culture*

The creation of an anti-fraud culture is key both in deterring potential fraudsters and also in maximising the commitment of staff to combat fraud within the MA. This culture can be created by a combination of specific anti-fraud structures and policies, as shown in the second circle in the above diagram and discussed in more detail below, but also through the operation of more general mechanisms and behaviours:

- **Mission statement** – a clear expression, visible to all internal and external observers, that the MA is striving to achieve the highest ethical standards;
- **Tone from the top** – oral and/or written communication from the highest level of the MA that the highest standard of ethical behaviour is expected from staff and beneficiaries (the latter can be implemented through the grant letters and contracts);
- **Code of conduct** – a unambiguous code of ethics that all staff must routinely declare adherence to, covering such things as:
  - Conflicts of interest – explanation and requirements and procedures for declaring them;
  - Gifts and hospitality policy – explanation and responsibilities of staff for compliance;
  - Confidential information – explanation and responsibilities of staff;
  - Requirements for reporting suspected fraud.

In short, staff should comply with principles such as integrity, objectivity, accountability and honesty.

#### 4.2.2. *Allocation of responsibilities*

Within the MA, there should be a clear allocation of responsibilities for setting up management and control systems which comply with EU requirements and for verifying that these systems function effectively in preventing, detecting and correcting fraud. This is to ensure that all actors fully understand their responsibilities and obligations, and to communicate both internally and externally, towards all potential programme beneficiaries, that the organisation has a coordinated approach towards combatting fraud.

#### 4.2.3. *Training and awareness raising*

Formal training and awareness-raising can be included within the organisation's overall risk management strategy, as necessary. All staff could be trained on both theoretical and practical matters, both to raise awareness of the MA's anti-fraud culture and also to assist them in identifying and responding to suspected instances of fraud. It could cover the detail of any anti-fraud policy, specific roles and responsibilities and reporting mechanisms.

Awareness-raising can also be carried out via less formal avenues, such as through newsletters, posters, intranet sites or inclusion as a regular agenda item for group meetings.

#### 4.2.4. *Internal control systems*

The strongest defence against potential fraud is a well-designed and operated system of internal control, where controls are focused at effectively mitigating the identified risks.

Management verifications must be thorough and the associated on-the-spot controls must be risk-based and carried out with sufficient coverage. **The likelihood of detecting potential fraud cases will increase when management verifications are thorough.** Staff in charge of desk and on-the-spot management verifications should be aware of the Commission and any national guidance on fraud indicators (see below).

#### 4.2.5. *Data analytics and the ARACHNE tool*

With the growth in sophistication of data gathering, storage and analytics comes an opportunity in the fight against fraud. Within and taking duly into account the limits of the respective legislation in each Member State, data analytics can be used at this stage to significantly enrich the risk assessment process, cross-check data with other public or private sector organisations (e.g. tax authorities, government departments, credit checking authorities) and detect potentially high risk situations even prior to the award of funding.

In the framework of the fight against fraud (and irregularities), the Commission offers a specific data mining tool called ARACHNE to MAs in order to identify projects which might be susceptible to risks of fraud, conflict of interest and irregularities. ARACHNE is a risk-scoring tool which can increase the efficiency of projects' selection, management verifications and audit, and further strengthen fraud identification, prevention and detection. It has been developed by the Commission and is particularly suited for the identification and assessment of fraud risks in the Funds, including, among other areas, public procurement, an area particularly prone to fraud and irregularities, such as collusive bidding.

The Commission submitted through the Data Protection Office on 17 May 2013 the required notification for prior checking concerning the processing of personal data to the European Data Protection Supervisor who, after thoroughly checking the relevant legal basis, issued on 17 February 2014 a positive opinion concerning the compliance of ARACHNE with the provisions of Regulation (EC) No 45/2001<sup>8</sup>. This included certain considerations concerning the processing of special categories of data in order to ensure their necessity, proportionality and quality. Other recommendations related to the feedback loop to ensure accuracy of data, measures to ensure high data quality, case-by-case analysis of data transfers to OLAF and the European Court of Auditors, deletion of data after a reasonable period of time and information to data subjects. All these considerations and recommendations are being thoroughly analysed in view of their implementation by the Commission.

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<sup>8</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

The correct use of ARACHNE will be considered by the Commission as a good practice in order to identify red flags and target fraud combatting measures, and should be taken into account when assessing the adequacy of current preventive and detective controls in place. The tool will be gradually rolled out in 2014 to all those Member States that voluntarily decide to implement it in order to further improve their fraud risk management controls. As opposed to a "one-size-fits-all" approach, such decision may well vary from Member State to Member State and even within different programmes/regions in a Member State, since, based on the figures shown in the latest PIF report,<sup>9</sup> the factual situation in terms of fraud detected and reported to the Commission also varies widely among Member States.

### 4.3. Detection and reporting

Preventative techniques cannot provide absolute protection against fraud and so the managing authority need systems that detect fraudulent behaviour in a timely manner. Such techniques include analytical procedures to highlight anomalies (eg data mining tools, such as the ARACHNE tool), robust reporting mechanisms and on-going risk assessments.

A strong ethical culture and a sound system of internal control cannot provide absolute protection against perpetrators of fraud. A fraud strategy must therefore take into consideration that instances of fraud may still occur, for which a series of fraud detection measures must be designed and implemented.

#### 4.3.1. Developing an appropriate mind-set

The MA could address fraud risks with specialised and focused detection techniques with designated individuals having responsibility for conducting them. In addition to this, all of those involved in implementing a structural funding cycle have a role to play in spotting potentially fraudulent activity and then acting upon it. This necessitates the cultivation of an appropriate mind-set. A healthy level of scepticism should be encouraged, together with an up-to-date awareness of what could constitute potential fraud warning signs.

#### 4.3.2. Fraud indicators (red flags)

Fraud indicators are more specific signs or 'red flags' that fraudulent activity is taking place, when an immediate response is required to verify whether further action is required.

Indicators can also be specific to those activities frequently taking place under structural funding programmes, such as procurement and labour costs. For this purpose, the Commission has provided the following information to Member States:

- *COCOF 09/0003/00 of 18.2.2009 - Information Note on Fraud Indicators for ERDF, ESF and CF*
- *OLAF Compendium of Anonymised Cases – Structural Actions*
- *OLAF practical guide on conflict of interest*
- *OLAF practical guide on forged documents*

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<sup>9</sup> Protection of the European Union's financial interests — Fight against fraud, 2012 Annual Report. COM(2013)548 final, 24.7.2013.

These publications should be read in detail and the content widely publicised amongst all staff who are in positions in which they could detect such behaviour. In particular, these indicators must be familiar to all of those working in roles involving the review of beneficiary activities, such as those performing both desk-based and on-the-spot management verifications or other monitoring visits.

#### 4.3.3. *Reporting mechanisms*

The establishment and promotion of clear reporting mechanisms is a key element of prevention, as well as detection. Any such mechanisms should facilitate the reporting of both suspicions of fraud and also control weaknesses that may increase the MA's susceptibility to fraud. MAs should have clear reporting mechanisms ensuring **sufficient coordination on anti-fraud matters with the audit authority and competent investigative authorities in the Member State**, including anti-corruption authorities.

Reporting to the Commission on the results of effective anti-fraud measures and any suspected instances of fraud will be part of the annual summary report and management opinion of the MA. The annual control report of the AA will also comprise a section on fraud suspicions detected during the year.

Communication and training with staff about these reporting mechanisms must ensure that they:

- understand where they should report suspicions of fraudulent behaviour or control;
- are confident that these suspicions are acted upon by management;
- are confident that they can report in confidence and that the organisation does not tolerate retaliation against any staff member who reports suspicions.

Suspected fraud must be reported to OLAF by the authority designated by the Member State in line with requirements under Article 122 CPR. In addition, beneficiaries should be made aware of how they can approach OLAF with any information they may have.<sup>10</sup>

#### 4.4. **Investigation, correction and prosecution**

Once a suspicion of fraud has been raised and correctly reported, the MA must transmit the case to the competent authority in the Member State for investigation and sanctions, including anti-corruption authorities where relevant, and inform OLAF accordingly.

The MA should also conduct a thorough and critical review of any related internal control systems that may have exposed them to the potential or proven fraud.

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<sup>10</sup> COCOF 09/0003/00 of 18.2.2009 - Information Note on Fraud Indicators for ERDF, ESF and CF, also contains information on reporting procedures.

Once a case of suspected fraud has been detected and reported in accordance with internal and EU requirements, in order for the competent body to make an assessment whether an investigation should be opened, recovery and criminal prosecution should ensue, as relevant.

#### *4.4.1. Recovery and criminal prosecution*

Recovery of undue payments from beneficiaries is required by MAs and CAs and so they should ensure that they have robust processes in place for following up any potential recoveries of EU funds spent in a fraudulent manner. These processes should also be clear on the cases in which civil and criminal proceedings will be pursued. **The implementation of such sanctions, and the visibility of these, are a key deterrent to potential fraudsters** and so the MA should be vigorous in pursuing such outcomes.

#### *4.4.2. Follow-up*

Once a fraud investigation has been concluded by competent authorities, or handed over to the relevant authorities for pursuit, a review of any processes, procedures or controls connected to the potential or actual fraud should be conducted. This should be objective and self-critical and should result in clear conclusions about perceived weaknesses and lessons learned, with clear actions, responsible individuals and deadlines. This should also feed into the subsequent review of the self-assessment, as indicated in section 3.3 above.

Full cooperation with investigative, law enforcement or judicial authorities should be ensured, in particular by keeping files concerning fraud cases in safe places and ensure a proper hand over in case of staff mobility.

## **5. AUDIT BY THE AA OF THE MA'S FRAUD RISK ASSESSMENT AND ITS ANTI-FRAUD MEASURES**

### **5.1. Checklist for AAs**

A proposal for a checklist for the AA's audit of the MA's (and its intermediate bodies') compliance with Article 125(4)(c) CPR is at **Annex 4**. This can be part of checklists used by the AA for its system audits.

The check list can also be used by the independent body in charge of assessing the management and control system for the purpose of designation in accordance with Article 124(2) CPR.

### **5.2. Frequency of the AA's verification**

In connection with audits on the functioning of the management and control systems, the AA should carry out verifications of the effective implementation of the anti-fraud measures by the MA as early as possible in the programming period.<sup>11</sup> Depending on the results of such audits and on the identified fraud risk

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<sup>11</sup> As regards European territorial cooperation, where it is not possible for the single AA to do this, a group of auditors should assist the AA.

environment, follow-up audits may be carried out as often as necessary. In some cases this may entail annual follow-up audits, depending on the gravity of fraud suspicion for each programme. Here again a targeted and proportionate (risk-related) approach is recommended. The conclusions should be included in the AA's annual control report.

The AA should also systematically review the implementation of effective and proportionate anti-fraud measures at the level of intermediate bodies, as part of its system audits.

## 1.1. HOW TO USE THE SELF-ASSESSMENT TOOL

The tool covers three key processes under three sections:

- selection of applicants (worksheet 1 of the spread-sheet);
- implementation of the projects by the beneficiaries, focusing on public procurement and labour costs (worksheet 2);
- certification of costs by the MA and payments (worksheet 3).

**Each of these three sections, containing the specific risks, which have been numbered (e.g. SR1, SR2 etc) is preceded by a cover sheet, which lists all the specific risks relevant to the section.**

Moreover, the MA is recommended to assess fraud risks in relation to any public procurement it manages directly, e.g. in the context of technical assistance (section 4 on direct procurement). In case the MA does not carry out any public procurement for which a fraud risk assessment is necessitated, section 4 need not be filled in.

Note: only yellow cells should be filled in by the self-assessment team.

### **RISK DESCRIPTION**

To help the team a certain number of risks have been pre-defined in the tool. These pre-defined risks should all be assessed by the team, but if additional risks are identified more rows can be added.

**The complete risk description can be found either in the cover sheet (as regards sections 2 and 4) or under the specific risk (sections 1 and 3).**

Column Heading	Guidance
<b>Risk Ref</b>	A unique risk reference. The letters refer to the section in which the risk has been identified (SR = Selection of beneficiaries, IR = Implementation and Monitoring, CR = Certification and Payment and PR = Direct Procurement by the MA) and the number is the sequential identification reference.  This cell only needs to be completed for new risks added.
<b>Risk Title</b>	This cell only needs to be completed for new risks added.
<b>Risk Description</b>	This cell only needs to be completed for new risks added.

<p><b>Who is involved in the risk?</b></p>	<p>Details of the bodies in which the individuals or actors involved in perpetrating any fraud are located are named here e.g. Managing Authority, Implementing bodies, Certifying Authority, Beneficiaries, Third Parties.</p> <p>This cell only needs to be completed for new risks added.</p>
<p><b>Is the risk internal (within the MA), external or the result of collusion?</b></p>	<p>Details of whether the fraud would be internal (only within the Managing Authority), external (only within one of the bodies external to the Managing Authority) or a result of collusion (involving one of more of the bodies) are given here.</p> <p>This cell only needs to be completed for new risks added.</p>

## 2. THE FIVE KEY STEPS IN THE SELF-ASSESSMENT

### 2.1. Gross risk

Gross risk refers to the level of risk **before taking into account** the effect of any **existing or planned** controls. The quantification of risk normally consists of a combination of the risk **‘likelihood’** – how likely is the event to happen and the risk **‘impact’** – what consequences will the event have, financially and non-financially. In order to ensure consistency of assessment, a **time horizon** should be set when determining the likelihood, which in this case should be the seven-year programming period.

Column Heading	Guidance																
<p><b>Risk Impact (GROSS)</b></p>	<p>From the drop-down menu, the risk assessment team should select a risk impact score from 1 to 4, based on the impact that the risk would have if it occurred, according to the following criteria:</p> <table border="1" data-bbox="624 1332 1257 1861"> <thead> <tr> <th></th> <th>Reputation</th> <th>On Objectives</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Limited impact</td> <td>Additional work delaying other processes</td> </tr> <tr> <td>2</td> <td>Minor impact</td> <td>Achievement of operational objective delayed</td> </tr> <tr> <td>3</td> <td>Major impact, e.g. because nature of fraud is particularly serious or several beneficiaries are involved</td> <td>Achievement of operational objective endangered or strategic objective delayed</td> </tr> <tr> <td>4</td> <td>Formal enquiry from stakeholders, e.g. Parliament and/or negative press</td> <td>Strategic objective endangered</td> </tr> </tbody> </table>			Reputation	On Objectives	1	Limited impact	Additional work delaying other processes	2	Minor impact	Achievement of operational objective delayed	3	Major impact, e.g. because nature of fraud is particularly serious or several beneficiaries are involved	Achievement of operational objective endangered or strategic objective delayed	4	Formal enquiry from stakeholders, e.g. Parliament and/or negative press	Strategic objective endangered
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<b>Risk Likelihood (GROSS)</b>	<p>From the drop-down menu, the risk assessment team should select a risk likelihood score from 1 to 4, based on the likelihood that the risk will occur in the seven-year programming period, according to the following criteria:</p> <table border="1" data-bbox="627 360 1142 495"> <tr> <td>1</td> <td>Will almost never happen</td> </tr> <tr> <td>2</td> <td>Will rarely occur</td> </tr> <tr> <td>3</td> <td>Will sometimes occur</td> </tr> <tr> <td>4</td> <td>Will often occur</td> </tr> </table>	1	Will almost never happen	2	Will rarely occur	3	Will sometimes occur	4	Will often occur
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<b>Total Risk Score (GROSS)</b>	<p>This cell is automatically calculated from the inputs into Risk Impact and Likelihood. It is ranked according to the total score:</p> <ul style="list-style-type: none"> <li>• 1 – 3 – Tolerable (Green)</li> <li>• 4 – 6 – Significant (Orange)</li> <li>• 8 – 16 – Critical (Red)</li> </ul>								

## 2.2. Current mitigating controls

A certain number of suggested preventative controls have been pre-defined in the tool. **These controls are examples only** can be removed by the assessment team, if the controls do not exist and more rows can be added if there are additional controls in place that counter the identified risk. **It may be that a control currently allocated to one particular risk is also relevant to other risks - in such cases the controls can be repeated several times. In particular, the exercise can be facilitated by making a simple cross-reference to current controls which are described and/or listed in e.g. the description of the management and control system, business processes and manuals.**

<b>Column Heading</b>	<b>Guidance</b>
<b>Control Ref</b>	<p>A unique control reference. The numbers have been sequentially allocated to each risk, e.g. controls for risk SR1 begin at SC 1.1, controls for risk IR2 begin at IC 2.1.</p> <p>This cell only needs to be completed for new controls added.</p>
<b>Control Description</b>	<p>This cell only needs to be completed for new controls added.</p>
<b>Do you evidence operation of this control?</b>	<p>From the drop-down menu, the risk assessment team should indicate ‘Yes’ or ‘No’ evidence for the operation of the control is documented. For example, evidence of approval is documented by a signature and the control is therefore visible.</p>
<b>Do you regularly test this control?</b>	<p>From the drop-down menu, the risk assessment team should indicate ‘Yes’ or ‘No’ as to whether the operation of the control is regularly tested. This could be tested by internal or external audit or any other monitoring system.</p>
<b>How confident are you in the effectiveness of this control?</b>	<p>Based partly on the responses to the previous two questions, the risk assessment team should indicate how confident they are in the effectiveness of the control in mitigating against the identified risk (High,</p>

	Medium or Low). If the control is not evidenced or not tested the confidence level will be low. If the control is not evidenced then it will clearly not be able to test it.
<b>Effect of combined controls on risk IMPACT taking into account confidence levels.</b>	From the drop-down menu, the risk assessment team should select a score from -1 to -4, indicating by how much they believe the risk impact has been reduced by the controls currently in place. Controls which detect fraud reduce the impact of fraud since they show that the internal control mechanisms work.
<b>Effect of combined controls on risk LIKELIHOOD taking into account confidence levels.</b>	From the drop-down menu, the risk assessment team should select a score from -1 to -4, indicating by how much they believe the risk likelihood has been reduced by the controls currently in place. Controls which detect fraud only indirectly reduce the likelihood of fraud.

### 2.3. Net risk

Net risk refers to the level of risk **after taking into account** the effect of any **existing** controls and their effectiveness i.e. the situation as it is at the current time.

Column Heading	Guidance															
<b>Risk Impact (NET)</b>	<p>This cell will be automatically calculated from deducting the effect of combined existing mitigating controls from the GROSS risk impact. The result should be reviewed against the following criteria to confirm that the assessment is still reasonable:</p> <table border="1" data-bbox="624 616 1257 1149"> <thead> <tr> <th></th> <th>Reputation</th> <th>On Objectives</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Limited impact</td> <td>Additional work delaying other processes</td> </tr> <tr> <td>2</td> <td>Minor impact</td> <td>Achievement of operational objective delayed</td> </tr> <tr> <td>3</td> <td>Major impact , e.g. because nature of fraud is particularly serious or several beneficiaries are involved</td> <td>Achievement of operational objective endangered or strategic objective delayed</td> </tr> <tr> <td>4</td> <td>Formal enquiry from stakeholders, e g Parliament and/or negative press</td> <td>Strategic objective endangered</td> </tr> </tbody> </table>		Reputation	On Objectives	1	Limited impact	Additional work delaying other processes	2	Minor impact	Achievement of operational objective delayed	3	Major impact , e.g. because nature of fraud is particularly serious or several beneficiaries are involved	Achievement of operational objective endangered or strategic objective delayed	4	Formal enquiry from stakeholders, e g Parliament and/or negative press	Strategic objective endangered
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<b>Risk Likelihood (NET)</b>	<p>This cell will be automatically calculated from deducting the effect of combined existing mitigating controls from the GROSS risk likelihood. The result should be reviewed against the following criteria to confirm that the assessment is still reasonable:</p> <table border="1" data-bbox="624 1328 1142 1458"> <tbody> <tr> <td>1</td> <td>Will almost never happen</td> </tr> <tr> <td>2</td> <td>Will rarely occur</td> </tr> <tr> <td>3</td> <td>Will sometimes occur</td> </tr> <tr> <td>4</td> <td>Will often occur</td> </tr> </tbody> </table>	1	Will almost never happen	2	Will rarely occur	3	Will sometimes occur	4	Will often occur							
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<b>Total Risk Score (NET)</b>	<p>This cell is automatically calculated from the values Risk Impact and Likelihood. It is ranked according to the total score:</p> <ul style="list-style-type: none"> <li>• 1 – 3 – Tolerable (Green)</li> <li>• 4 – 6 – Significant (Orange)</li> <li>• 8 – 16 – Critical (Red)</li> </ul>															

## 2.4. Action plan for putting in place effective and proportionate anti-fraud measures

Column Heading	Guidance
<b>Planned Additional Control</b>	A full description of the planned control/effective and proportionate anti-fraud measures should be given here. <b>Whereas section 5 of the guidance note sets out general principles and methods to combat fraud, Annex 2 provides for each identified risk, the recommended mitigating controls.</b>
<b>Responsible Individual</b>	A responsible individual (or role) for any planned controls should be given here. This individual should agree to taking responsibility for the control and be accountable for the introduction and its effective functioning.
<b>Deadline for Implementation</b>	A deadline for the implementation of the new control should be given here. The responsible individual should agree to this deadline and be accountable for the introduction of the new control by this date.
<b>Effect of combined planned additional controls on risk IMPACT</b>	From the drop-down menu, the risk assessment team should select a score from -1 to -4, indicating by how much they believe the risk impact will be reduced by the planned controls.
<b>Effect of combined planned additional controls on risk LIKELIHOOD.</b>	From the drop-down menu, the risk assessment team should select a score from -1 to -4, indicating by how much they believe the risk likelihood will be reduced by the planned controls.

## 2.5. Target risk

Target risk refers to the level of risk **after taking into account** the effect of any **current and planned** controls.

Column Heading	Guidance															
<p><b>Risk Impact (TARGET)</b></p>	<p>This cell will be automatically calculated from deducting the effect of combined planned mitigating controls from the NET risk impact. The result should be reviewed against the following criteria to confirm that the assessment is still reasonable:</p> <table border="1" data-bbox="624 618 1256 1144"> <thead> <tr> <th></th> <th>Reputation</th> <th>On Objectives</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Limited impact</td> <td>Additional work delaying other processes</td> </tr> <tr> <td>2</td> <td>Minor impact</td> <td>Achievement of operational objective delayed</td> </tr> <tr> <td>3</td> <td>Major impact , e.g. because nature of fraud is particularly serious or several beneficiaries are involved</td> <td>Achievement of operational objective endangered or strategic objective delayed</td> </tr> <tr> <td>4</td> <td>Formal enquiry from stakeholders, e g Parliament and/or negative press</td> <td>Strategic objective endangered</td> </tr> </tbody> </table>		Reputation	On Objectives	1	Limited impact	Additional work delaying other processes	2	Minor impact	Achievement of operational objective delayed	3	Major impact , e.g. because nature of fraud is particularly serious or several beneficiaries are involved	Achievement of operational objective endangered or strategic objective delayed	4	Formal enquiry from stakeholders, e g Parliament and/or negative press	Strategic objective endangered
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# 1: ASSESSMENT OF EXPOSURE TO SPECIFIC FRAUD RISKS - SELECTION OF APPLICANTS BY MANAGING AUTHORITIES

DESCRIPTION OF RISK						
Risk Ref	Risk Title	Risk description	Who is involved in the risk? (Managing Authority (MA) / Implementing Bodies (IP) / Certifying Authority (CA) / Beneficiaries (BF) / Third Parties (TP))	Is the risk internal (within the MA), external, or a result of collusion?	Is this risk relevant to your Managing Authority?	If you have answered NO, provide justification for your answer
SR1	Conflicts of interest within the evaluation board	Members of the MA's evaluation board intentionally influence the evaluation and selection of applicants to favour a certain applicant by providing favourable treatment to the their application in the evaluation or by exerting pressure on other panel members	Managing Authority and Beneficiaries	Internal / Collusion		
SR2	False declarations by applicants	Applicants submit false declarations in the application, misleading the evaluation board that they comply with the general and specific eligibility criteria to win an application procedure	Beneficiaries	External		
SR3	Double funding	An organisation applies for funding for the same project from several EU funds and/or Member States without declaring these applications	Beneficiaries	External		
SRX		<i>Insert description of additional risks...</i>				









## 2: ASSESSMENT OF EXPOSURE TO SPECIFIC FRAUD RISKS - IMPLEMENTATION OF PROGRAMME AND VERIFICATION OF ACTIVITIES

RISK DESCRIPTION							
Risk Ref	Risk Title	Risk description	Detailed risk description	Who is involved in the risk? (Managing Authority (MA) / Implementing Bodies (IP) / Certifying Authority (CA) / Beneficiaries (BF) / Third Parties (TP))	Is the risk internal (within the MA), external, or a result of collusion?	Is this risk relevant to your Managing Authority?	If you have answered NO, provide justification for your answer
<b>Implementation - public procurement risks for contracts tendered and managed by beneficiaries</b>							
IR1	Undisclosed conflict of interests or bribes and kickbacks	A member of staff of the beneficiary favours an applicant / tenderer because: - an undeclared conflict of interest occurred or - bribes or kickbacks were paid	1) Beneficiaries may award sub-contracts to third parties in which a member of staff has an interest, whether financial or otherwise. Similarly organisations may not fully disclose all conflicts of interest when applying for a contract or 2) Third parties that have applied for contracts may offer kickbacks or bribes to the beneficiaries in order to influence the award of contracts.	Beneficiaries and Third Parties	External		
IR2	Avoidance of required competitive procedure	A beneficiary avoids the required competitive procedure in order to favour a particular applicant in either winning or maintaining a contract by: - split purchases or - unjustified single source award or - not organising a tendering process or - irregular extension of the contract.	1) Beneficiaries may split a purchase into two or more purchase orders or contracts in order to avoid having to launch a competitive procedure or higher-level management review or 2) Beneficiaries may falsify single source acquisition justification by drafting very narrow specifications or 3) Beneficiaries may award contracts to favoured third parties without the required tendering process or 4) Beneficiaries may extend original contract lengths via a contract amendment or additional condition, in order to avoid a re-tendering process.	Beneficiaries and Third Parties	External		
IR3	Manipulation of the competitive procedure process	A member of staff of an MA favours a tenderer in a competitive procedure through: - rigged specifications or - leaking bid data or - manipulation of bids.	1) Beneficiaries may tailor requests for bids or proposals so that they contain specifications which are tailored to meet the qualifications of a particular bidder, or which only one bidder can meet. Specifications which are too narrow can be used to exclude other qualified bidders or 2) Contracting, project design or bid evaluation personnel from a beneficiary may leak confidential information to help a favoured bidder formulate a superior technical or financial proposal, such as estimated budgets, preferred solutions, or the details of competing bids or 3) Beneficiaries can manipulate bids after receipt to ensure that a favoured contractor is selected	Beneficiaries and Third Parties	External		
IR4	Collusive bidding	Bidders manipulate the competitive procedure organised by a beneficiary to win a contract by colluding with other bidders or setting up fake bidders: - collusive bidding including bidding by interlinked companies or - phantom service provider	1) Third parties in a particular geographic area or region or industry can conspire to defeat competition and raise prices through various collusive bidding schemes, such as complementary bidding, bid suppression, bid rotation and market division or 2) Third parties may set up a 'phantom' service provider to submit complementary bids in collusive bidding schemes, to inflate costs or simply to generate fictitious invoices. In addition, an employee of the beneficiary can authorise payments to a fictitious seller in order to embezzle funds.	Third parties	External		
IR5	Defective pricing	A bidder manipulates the competitive procedure by not specifying certain costs in its bid	Third parties may fail to disclose current, complete and accurate cost or pricing data in their price proposals resulting in an increased contract price.	Third Parties	External		
IR6	Manipulation of cost claims	A contractor manipulates cost claims or invoices to overcharge or recharge incurred costs. - Single contractor double claims costs or - False, inflated or duplicate invoices.	1) A third party with multiple similar work orders might charge the same personnel costs, fees or expenses to several contracts or 2) Third parties might knowingly submit false, inflated or duplicate invoices, either acting alone or in collusion with contracting personnel.	Third Parties	External		
IR7	Non-delivery or substitution of products	Contractors violate the contract conditions by non-delivery of agreed products or alterations and substitution with inferior quality - Product substitution or - Non-existence of products or operation not carried out in line with grant agreement	1) Third parties may substitute inferior quality items for those which are specified in the contract or otherwise fail to meet contract specifications and then knowingly misrepresent that they have. Beneficiaries may be complicit in this fraud or 2) Some or all products or services to be supplied as part of a contract may not be provided, or the contract was knowingly not carried out in line with the grant agreement.	Beneficiaries and Third Parties	External		
IR8	Amendment of existing contract	A beneficiary and a contractor collude to amend an existing contract with more favourable conditions for the third party to such an extent that the original procurement decision is no longer valid.	Amendment may be made to a contract after it has been agreed between a beneficiary and a third party, changing the contract terms/conditions to such an extent that the original procurement decision may no longer be valid.	Beneficiaries and Third Parties	External		

Implementation - risks with labour costs incurred within beneficiaries or third parties							
IR9	Overstatement of quality or activities of personnel	A contractor intentionally overstates the quality of provided personnel or activities to claim them as eligible costs. - Inadequately qualified labour or - Inaccurate descriptions of activities completed by personnel	1) A beneficiary or third party may propose a team of adequately qualified personnel in a tender, only to implement the action with personnel that are inadequately qualified or 2) A beneficiary or third party may knowingly falsify descriptions of tasks performed by personnel in order to ensure that costs claimed are considered eligible	Beneficiaries or Third Parties	External		
IR10	False labour costs	A beneficiary claims knowingly false labour costs for activities that are not carried out or not carried out in accordance with the contract. - False labour costs or - Uncompensated overtime or - Incorrect time rates claimed or - Staff costs claimed for personnel that do not exist or - Staff costs claimed for activities that took place outside the implementation period.	1) A beneficiary or third party may knowingly claim false labour, by inflating the number of working hours completed by the trainers, or by falsifying documents supporting the existence of such events, such as the record of attendance and invoices for the renting of teaching rooms or 2) A beneficiary or third party may knowingly claim overtime where no credit for the extra hours is usually give to staff or 3) A beneficiary or third party may knowingly claim inflated rates for personnel by misrepresenting hourly rates or actual working hours 4) A beneficiary or a third party may falsify documentation in order to claim costs for personnel that are not employed, or which do not exist or 5) A beneficiary or third party may knowingly falsify documentation to ensure that costs appear to have been incurred during the relevant implementation period.	Beneficiaries or Third Parties	External		
IR11	Labour costs are apportioned incorrectly to specific projects	A beneficiary knowingly incorrectly apportions staff costs between EU projects and other sources of funding	A beneficiary may knowingly incorrectly apportion staff costs between EU projects and other sources of funding	Beneficiaries	External		
IRXX		<i>Insert description of additional risks...</i>					

























**3: ASSESSMENT OF EXPOSURE TO SPECIFIC FRAUD RISKS - CERTIFICATION AND PAYMENTS**

RISK DESCRIPTION						
Risk Ref	Risk Title	Risk description	Who is involved in the risk? (Managing Authority (MA) / Implementing Bodies (IP) / Certifying Authority (CA) / Beneficiaries (BF) / Third Parties (TP))	Is the risk internal (within the MA), external, or a result of collusion?	Is the Managing Authority exposed to this risk?	If NO, provide justification
CR1	Incomplete / inadequate management verification process	Management verifications may not give adequate assurance for absence of fraud, due to a lack of the necessary skills or resources at the MA.	Managing Authority	Internal		
CR2	Incomplete / inadequate expenditure certification process	Expenditure certifications may not give adequate assurance for absence of fraud, due to a lack of the necessary skills or resources at the CA.	Certifying Authority	External		
CR3	Conflicts of interest within the MA	Members of the MA may have conflicts of interest which have undue influence on the approval of payments for certain beneficiaries.	Managing Authority and Beneficiaries	Internal / Collusion		
CR4	Conflicts of interest within the Certifying Authority	Expenditure may be certified by a Certifying Authority that has a connection to the beneficiary.	Certifying Authority and Beneficiaries	External		
CRXX		<i>Insert description of additional risks...</i>				











#### 4: ASSESSMENT OF EXPOSURE TO SPECIFIC FRAUD RISKS - DIRECT PROCUREMENT BY MANAGING AUTHORITIES

DESCRIPTION OF RISK							
Risk Ref	Risk Title	Risk description	Detailed risk description	Who is involved in the risk? (Managing Authority (MA) / Implementing Bodies (IP) / Certifying Authority (CA) / Beneficiaries (BF) / Third Parties (TP))	Is the risk internal (within the MA), external, or a result of collusion?	Is the Managing Authority exposed to this risk?	If NO, provide justification
PR1	Avoidance of required competitive procedure	A member of staff of the MA avoids the required competitive procedure in order to favour a particular tenderer in either winning or maintaining a contract by: - not organising a tender process or - split purchases or - unjustified single source award or - irregular extension of the contract.	1) A member of MA may split a purchase into two or more purchase orders or contracts in order to avoid having to launch a competitive procedure or higher-level management review or 2) A member of MA may falsify single source acquisition justification by drafting very narrow specifications or 3) A member of MA may award contracts to favoured third parties without the required tendering process or 4) A member of MA may extend original contract lengths via a contract amendment or additional condition, in order to avoid a re-tendering process.	Managing Authorities and Third Parties	Internal / Collusion		
PR2	Manipulation of the competitive procedure process	A member of staff of an MA favours an tenderer in a competitive procedure through: - rigged specifications or - leaking bid data or - manipulation of bids.	1) A member of MA may tailor requests for bids or proposals so that they contain specifications which are tailored to meet the qualifications of a particular bidder, or which only one bidder can meet. Specifications which are too narrow can be used to exclude other qualified bidders or 2) Contracting, project design or bid evaluation personnel from MA may leak confidential information to help a favoured bidder formulate a superior technical or financial proposal, such as estimated budgets, preferred solutions, or the details of competing bids or 3) A member of MA can manipulate bids after receipt to ensure that a favoured contractor is selected	Managing Authorities and Third parties	Collusion		
PR3	Undisclosed conflict of interests or bribes and kickbacks	A member of staff of an MA favours an applicant / tenderer because: - an undeclared conflict of interest occurred or - bribes or kickbacks were paid	1) A contract may be awarded to a beneficiary in which a member of staff has an interest, whether financial or otherwise. Similarly organisations may not fully disclose all conflicts of interest when applying for a contract or 2) Beneficiaries that have applied for contracts may offer kickbacks or bribes in order to influence the award of contracts.	Managing Authorities and Third parties	Collusion		
PRX		<i>Insert description of additional risks...</i>					









## Recommended mitigating controls

<b>1. SELECTION OF APPLICANTS</b>		
<b>Overarching controls</b>		
<ul style="list-style-type: none"> <li>• Secondary panel could review individual decisions or a sample of decisions made by the evaluation panel.</li> <li>• Adequate training courses on ethics and integrity, covering individual responsibilities, as appropriate.</li> <li>• Use of data mining tools, such as <b>ARACHNE</b></li> <li>• Regular independent audits (e.g. by internal audit or by AA)</li> <li>• Whistle-blowing mechanism could be put in place for suspected fraudulent behaviour.</li> </ul>		
<b>Specific Fraud Risk</b>	<b>Control description</b>	<b>Recommended mitigating controls</b>
Conflicts of interest within the evaluation board	<b>Selection of applicants</b> <ul style="list-style-type: none"> <li>• All calls for application are published</li> <li>• All applications are recorded</li> <li>• All applications are evaluated in accordance with applicable criteria</li> <li>• All decisions on the acceptance / rejection of applications are communicated to the applicants</li> </ul>	<ul style="list-style-type: none"> <li>• The evaluation board is comprised of several senior management personnel who could be rotated, with some level of randomness in their selection for participation in each evaluation board.</li> <li>• <b>Conflict of interest policy</b>, with an annual declaration and register.</li> </ul>
False declarations by applicants		<ul style="list-style-type: none"> <li>• Cross-checking of supporting documents to independent sources of evidence</li> <li>• Use of prior knowledge of the beneficiary to make informed decisions as to the veracity of declarations and information submitted.</li> </ul>
Double funding	<b>Audit trails</b> <ul style="list-style-type: none"> <li>• Procedures should be in place to ensure that all documents required to ensure an adequate audit trail are held</li> </ul> <b>Accounting, monitoring and financial reporting systems</b> <ul style="list-style-type: none"> <li>• A computerised system capable of providing reliable and relevant information works effectively</li> </ul>	<ul style="list-style-type: none"> <li>• Cross checks with the national authorities administering other EU funds, and also other relevant Member States, whenever this is feasible, and whenever this risk is assessed as relevant and likely to occur.</li> </ul>

## Recommended mitigating controls

<b>2. IMPLEMENTATION AND VERIFICATION OF OPERATIONS</b>		
<b>Overarching controls</b>		
<ul style="list-style-type: none"> <li>• Requirement for beneficiaries to have conflict of interest policies, with annual declaration and register</li> <li>• Provision of training for beneficiaries on the detection of fraudulent behaviour</li> <li>• Use of data mining tools, such as <b>ARACHNE</b></li> <li>• Whistle-blowing mechanism could be put in place for suspected fraudulent behaviour</li> <li>• Effective management verifications</li> <li>• Compliance with national requirements for independent audit of project costs by beneficiaries</li> </ul>		
<b>Specific Fraud Risk</b>	<b>Control description</b>	<b>Recommended mitigating controls</b>
Split purchases	<p><b>Guidance to beneficiaries</b></p> <ul style="list-style-type: none"> <li>• Effective communication to beneficiaries of their rights and obligations in particular the national eligibility rules laid down from the programme, the applicable Community rules on eligibility, the specific conditions concerning the products or services to be delivered under the operation, the financing plan, the time-limit for execution, the requirements concerning separate accounting or adequate accounting codes, the information to be kept and communicated</li> <li>• The existence of clear and unambiguous national eligibility rules laid down for the programme</li> <li>• The existence of a strategy to ensure that beneficiaries have access to the necessary information and receive an appropriate level of guidance</li> </ul>	<ul style="list-style-type: none"> <li>• As appropriate, review by MA of list of proposed contracts prior to implementation of programmes for contracts just under threshold values</li> </ul>
Unjustified single source awards to avoid tendering		<ul style="list-style-type: none"> <li>• Review by the MA of a sample of beneficiaries' single source awards.</li> <li>• Prior MA approval for all single source awards.</li> </ul>
Lack of tendering process for favoured suppliers		<ul style="list-style-type: none"> <li>• Review by MA of a sample of significant size contracts prior to payment of any invoices for evidence of tendering.</li> </ul>
Extension of existing contracts to avoid retendering		<ul style="list-style-type: none"> <li>• Prior approval by MA for contract amendments that extend an original agreement above a pre-defined significant threshold.</li> </ul>
Rigged specifications to favour certain bidders		<ul style="list-style-type: none"> <li>• Requirement by MA for beneficiaries to have a secondary mechanism other than e.g. the procuring department to verify that bid specifications are not too narrow. Review of the operation of this control by the MA for a sample of beneficiaries.</li> </ul>
Leaking bid data		<ul style="list-style-type: none"> <li>• Requirement by MA for beneficiaries to have a secondary mechanism that conducts a review of a sample of winning bids against competition for any indications of prior knowledge of bid information. Review of the operation of this control by the MA for a sample of beneficiaries.</li> <li>• Requirement by MA for a high level of transparency in the award of contracts, such as the publication of all contract information that is</li> </ul>

## Recommended mitigating controls

	<p><b>Management verifications</b></p> <ul style="list-style-type: none"> <li>• The existence of written procedures and comprehensive checklists for management verifications</li> </ul>	<p>not publically sensitive. Review of the operation of this control by the MA for a sample of beneficiaries.</p> <ul style="list-style-type: none"> <li>• Review by MA of a sample of winning bids against competition for any indications of prior knowledge of bid information.</li> </ul>
Undisclosed conflict of interest	<ul style="list-style-type: none"> <li>• Management verifications to be completed before certification</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Conflict of interest policy</b>, with an annual declaration and register.</li> </ul>
Bribes and kickbacks	<ul style="list-style-type: none"> <li>• All applications for reimbursement to be subject to administrative verification, including review of claim and supporting documentation</li> <li>• On-the-spot verifications to be undertaken when the project is well under way</li> <li>• Evidence is kept for the work done and results obtained and follow up of findings</li> <li>• Sampling to be based on adequate risk assessment</li> <li>• Existence of procedures to ensure that certifying authority receives all necessary information</li> </ul>	<ul style="list-style-type: none"> <li>• Requirement by MA for beneficiaries to have strong controls on bidding procedures, e.g. enforcing submission deadlines. Review of the operation of this control by the MA for a sample of beneficiaries.</li> <li>• Requirement by MA for beneficiaries to review all contract awards with a secondary mechanism for indications such as winning bids being very close to the next lowest bid, late bids winning, and / or evidence of the winning bidder communicating privately with contracting personnel. Review of the operation of this control by the MA for a sample of beneficiaries.</li> <li>• Review by MA of a sample of winning tenders for indications such as winning bids being very close to the next lowest bid, late bids winning, and / or evidence of the winning bidder communicating privately with contracting personnel, for any indications of fraudulent behaviour.</li> </ul>
Collusive bidding	<p><b>Audit trails</b></p> <ul style="list-style-type: none"> <li>• Accounting records should be kept by the MA that provide detailed information on expenditure actually incurred in each co-financed operation by beneficiary</li> <li>• Technical specifications and financial plan of the operation, progress and monitoring reports, documents concerning application, evaluation, selection, grant approval and tendering and contracting procedures and reports on inspections of the products and services co-financed should be kept at an appropriate management level</li> </ul>	<ul style="list-style-type: none"> <li>• Requirement by MA for beneficiaries to have controls in place to detect persistently high or unusual bid data (such as bid evaluators that have a knowledge of the marketplace) and to unusual relationships between third parties (e.g. rotation of contracts). Review of the operation of this control by the MA for a sample of beneficiaries.</li> <li>• Requirement by MA that beneficiaries 'benchmark' price comparators for standard goods or services. Review of the operation of this control by the MA for a sample of beneficiaries.</li> </ul>
Manipulation of bids		<ul style="list-style-type: none"> <li>• Requirement by MA for beneficiaries to have a tender process that includes a transparent bid opening process, and adequate security arrangements for unopened tenders. Review of the operation of this control by the MA for a sample of beneficiaries.</li> </ul>
Defective pricing	<ul style="list-style-type: none"> <li>• The MA should verify whether the beneficiaries maintain either a separate accounting system or separate accounting code for all transactions</li> <li>• Procedures should be in place to ensure that</li> </ul>	<ul style="list-style-type: none"> <li>• Requirement by MA that beneficiaries have controls in place to corroborate prices quoted by the third parties to other independent sources. Review of the operation of this control by the MA for a sample of beneficiaries.</li> <li>• Requirement by MA for the use of standard unit costs by the</li> </ul>

## Recommended mitigating controls

	all documents required to ensure an adequate audit trail are held	beneficiaries for regularly purchased supplies.
'Phantom' service providers	<b>Accounting, monitoring and financial reporting systems</b> A computerised system capable of providing reliable and relevant information works effectively	<ul style="list-style-type: none"> <li>Requirement by the MA for beneficiaries to complete background checks on all third parties. This can include general website checks, companies location and contact information etc. Review of the operation of this control by the MA for a sample of beneficiaries.</li> </ul>
Single contractor double claims costs		<ul style="list-style-type: none"> <li>Requirement by MA that beneficiaries review activity reports and contract outputs for evidence of costs (e.g. staff names) and are contractually permitted to request additional evidence in support (e.g. time recording systems). Review of the operation of this control by the MA for a sample of beneficiaries.</li> </ul>
Product substitution		<ul style="list-style-type: none"> <li>Requirement by MA for beneficiaries to review products / services purchased against contract specifications, using relevant experts. Review of the operation of this control by the MA for a sample of beneficiaries.</li> <li>Review by MA of a sample of activity reports and specific products / services purchased against contract specifications.</li> </ul>
Non-existence of products or operation not carried out in line with grant agreement		<ul style="list-style-type: none"> <li>Requirement by MA for beneficiaries to request works certificates or other forms of verification certificates, awarded by an independent third party, on the completion of the contract. Review of the operation of this control by the MA for a sample of beneficiaries.</li> <li>Review by MA of a sample of works certificates or other forms of verification certificates.</li> </ul>
False, inflated or duplicate invoices		<ul style="list-style-type: none"> <li>Requirement by MA for beneficiaries to perform a review of invoices submitted for duplication (i.e. multiple invoices with the same amount, invoice no, etc.) or falsification. Review of the operation of this control by the MA for a sample of beneficiaries.</li> <li>Requirement by MA for beneficiaries to compare the final price of products / services against budget and generally accepted prices for similar contracts. Review of the operation of this control by the MA for a sample of beneficiaries.</li> <li>Review by MA of a sample of project outputs against costs for any evidence that the work was not completed or that the necessary costs were incurred.</li> </ul>

## Recommended mitigating controls

<b>2. IMPLEMENTATION AND VERIFICATION OF OPERATIONS</b>		
<b>Overarching controls</b>		
<ul style="list-style-type: none"> <li>• Whistle-blowing mechanism could be put in place for suspected fraudulent behaviour</li> <li>• Use of data mining tools, such as <b>ARACHNE</b></li> <li>• Effective management verifications</li> <li>• Compliance with national requirements for independent audit of project costs by beneficiaries</li> </ul>		
<b>Specific Fraud Risk</b>	<b>Control description</b>	<b>Recommended mitigating controls (or specific checks to be included in the management verifications)</b>
Costs claimed for inadequately qualified labour	<p><b>Guidance to beneficiaries</b></p> <ul style="list-style-type: none"> <li>• Effective communication to beneficiaries of their rights and obligations in particular the national eligibility rules laid down from the programme, the applicable Community rules on eligibility, the specific conditions concerning the products or services to be delivered under the operation, the financing plan, the time-limit for execution, the requirements concerning separate accounting or adequate accounting codes, the information to be kept and communicated</li> </ul>	<ul style="list-style-type: none"> <li>• Review of final activity and financial reports for any discrepancies between planned against actual personnel.</li> <li>• Request of additional evidence (e.g. certificates of qualification) to confirming the suitability of any significant substitutes.</li> <li>• Prior authorisation for significant changes in key personnel.</li> <li>• Requirement for beneficiaries to review key third party personnel involved within the implementation of a contract in comparison to those proposed in tenders and request evidence confirming the suitability of significant substitutes. Reviews of operation of this control by the MA in a sample of beneficiaries.</li> <li>• Requirement for beneficiaries to give prior authorisation to third parties for significant changes in personnel. Reviews of operation of this control by the MA in a sample of beneficiaries.</li> </ul>
False labour costs	<ul style="list-style-type: none"> <li>• The existence of clear and unambiguous national eligibility rules laid down for the programme</li> <li>• The existence of a strategy to ensure that beneficiaries have access to the necessary information and receive an appropriate level of guidance</li> </ul> <p><b>Management verifications</b></p> <ul style="list-style-type: none"> <li>• The existence of written procedures and comprehensive checklists for management verifications</li> </ul>	<ul style="list-style-type: none"> <li>• Verification of evidence from beneficiaries for completion of project activities e.g. attendance registers, time recording systems.</li> <li>• Review of final activity and financial reports received from beneficiaries for any discrepancies between planned and actual activities.</li> <li>• Requirement for beneficiaries to verify evidence supplied by third parties in support of the completion of activities e.g. attendance registers, timekeeping records. Review of the operation of this control by the MA for a sample of beneficiaries.</li> <li>• Requirement for beneficiaries to review final activity and financial reports for any discrepancies between planned and actual activities. Review of the operation of this control by the MA for a sample of</li> </ul>

## Recommended mitigating controls

Uncompensated overtime claimed as actual cost	<ul style="list-style-type: none"> <li>• Management verifications to be completed before certification</li> <li>• All applications for reimbursement to be subject to administrative verification, including review of claim and supporting documentation</li> <li>• On-the-spot verifications to be undertaken when the project is well under way</li> <li>• Evidence is kept for the work done and results obtained and follow up of findings</li> </ul>	<p>beneficiaries.</p> <ul style="list-style-type: none"> <li>• Review of final financial and activity reports and supporting documentation for indications that overtime is being claimed (excessive numbers of working hours for project staff, fewer number of implementing staff than planned but all activities achieved).</li> <li>• Requirement for beneficiaries to review invoices from suppliers against supporting documentation for indications that overtime is being claimed (excessive numbers of working hours for project staff, fewer number of implementing staff than planned) Review of the operation of this control by the MA in a sample of beneficiaries.</li> </ul>
Incorrect time rates claimed	<ul style="list-style-type: none"> <li>• Sampling to be based on adequate risk assessment</li> <li>• Existence of procedures to ensure that certifying authority receives all necessary information</li> </ul> <p><b>Audit trails</b></p> <ul style="list-style-type: none"> <li>• Accounting records should be kept by the MA that provide detailed information on expenditure actually incurred in each co-financed operation by beneficiary</li> </ul>	<ul style="list-style-type: none"> <li>• Review of final financial reports against evidence supporting actual salary costs incurred (e.g. contracts, payroll data) and time spent on project activities (e.g. time recording systems, attendance records).</li> <li>• For labour costs of third parties - the MA requires that beneficiaries review invoices for labour costs against evidence supporting actual salary costs incurred (e.g. contracts, payroll data) and time spent on project activities (e.g. time recording systems, attendance records). All evidence is scrutinised with appropriate scepticism. The MA reviews the operation of this control in a sample of beneficiaries.</li> </ul>
Labour costs are apportioned incorrectly between projects	<ul style="list-style-type: none"> <li>• Technical specifications and financial plan of the operation, progress and monitoring reports, documents concerning application, evaluation, selection, grant approval and tendering and contracting procedures and reports on inspections of the products and services co-financed should be kept at an appropriate management level</li> </ul>	<ul style="list-style-type: none"> <li>• Review of evidence from beneficiaries to independently verify the apportionment of staff costs for project activities e.g. attendance registers, time recording systems, data from accounting ledgers.</li> </ul>
Inaccurate descriptions of activities completed by personnel	<ul style="list-style-type: none"> <li>• The MA should verify whether the beneficiaries maintain either a separate accounting system or separate accounting code for all transactions</li> <li>• Procedures should be in place to ensure that all documents required to ensure an adequate audit trail are held</li> </ul>	<ul style="list-style-type: none"> <li>• Review of evidence from beneficiaries to independently verify the completion of project activities e.g. attendance registers, time recording systems.</li> <li>• Review of final activity and financial reports for discrepancies between planned and actual activities.</li> <li>• Requirement for beneficiaries to review evidence from third parties to independently support the completion of activities e.g. attendance registers, timekeeping records. Reviews of the operation of this control by the MA for a sample of beneficiaries.</li> <li>• Requirement for beneficiaries to review final activity and financial reports for any discrepancies between planned and actual activities. Review of the operation of this control by the MA for a sample of beneficiaries.</li> </ul>
Staff costs claimed for personnel that do not exist		<ul style="list-style-type: none"> <li>• Review of evidence from beneficiaries to independently verify the existence of staff e.g. contracts, social security details.</li> <li>• Requirement for beneficiaries to review evidence from third parties</li> </ul>

## Recommended mitigating controls

	<b>Accounting, monitoring and financial reporting systems</b>	<p>that can independently verify the existence of staff e.g. contracts, social security details. Review of the operation of this control by the MA for a sample of beneficiaries.</p>
<p>Staff costs claimed for activities that took place outside of the implementation period</p>	<p>A computerised system capable of providing reliable and relevant information works effectively</p>	<ul style="list-style-type: none"> <li>• Review of evidence from beneficiaries that can independently verify that costs were incurred within project deadlines e.g. original invoices, bank statements.</li> <li>• Requirement for beneficiaries to review evidence from third parties that can independently verify that costs were incurred within project deadlines e.g. original invoices, bank statements. Review of the operation of this control by the MA for a sample of beneficiaries.</li> </ul>

## Recommended mitigating controls

<b>3. CERTIFICATION AND PAYMENTS</b>		
<b>Overarching controls</b>		
<ul style="list-style-type: none"> <li>• Conflict of interest policy, with an annual declaration and register</li> <li>• Effective management verifications</li> <li>• Whistle-blowing mechanism could be put in place for suspected fraudulent behaviour</li> <li>• Regular adequate training courses on ethics and integrity, covering individual responsibilities.</li> </ul>		
<b>Specific Fraud Risk</b>	<b>Control description</b>	<b>Recommended mitigating controls</b>
Incomplete / inadequate management verification process that does not give adequate assurance against fraud	<b>Allocation of roles in MA and CA</b> <ul style="list-style-type: none"> <li>• Clear definition and allocation of functions</li> </ul>	<ul style="list-style-type: none"> <li>• Detailed secondary review by MA of a sample of management verifications, ensuring they have been performed in line with relevant guidelines and standards.</li> </ul>
Incomplete / inadequate certification process that does not give adequate assurance against fraud	<b>Management verifications</b> <ul style="list-style-type: none"> <li>• The existence of written procedures and comprehensive checklists for management verifications</li> <li>• Management verifications to be completed before certification</li> <li>• All applications for reimbursement to be subject to administrative verification, including review of claim and supporting documentation</li> <li>• On-the-spot verifications to be undertaken when the project is well under way</li> <li>• Evidence is kept for the work done and results obtained and follow up of findings</li> <li>• Sampling to be based on adequate risk assessment</li> <li>• Existence of procedures to ensure that certifying authority receives all necessary information</li> </ul>	<ul style="list-style-type: none"> <li>• Staff carrying out expenditure certifications are adequately qualified and trained, with up to date refresher training on fraud awareness. The MA reviews the adequacy of these training programmes.</li> <li>• Review by the AA of expenditure certifications performed by the CA, ensuring they have been performed in line with relevant guidelines and standards.</li> </ul>
Conflicts of interest within the MA has undue influence on the approval of payments		<ul style="list-style-type: none"> <li>• The payment process has several segregated stages of approval, where evidence for the validity of expenditure is required (e.g. independent audit opinions) before approval can be given</li> </ul>
Conflicts of interest within the CA has undue influence on the certification	<b>Certifications</b> <ul style="list-style-type: none"> <li>• Adequate accounting records should be maintained in computerised form by the CA</li> <li>• Audit trail within the CA should allow reconciliation of the expenditure declared to the Commission with the</li> </ul>	<ul style="list-style-type: none"> <li>• The certification process has several segregated stages of approval before confirmation can be given for the validity of the expenditure</li> </ul>

**Recommended mitigating controls****3. CERTIFICATION AND PAYMENTS**

	<p>statements received from MA</p> <ul style="list-style-type: none"><li>• CA has specified the information that it requires on the procedures operated by the MA for the verification of expenditure and has put into place procedures to ensure that it receives it on a timely basis</li><li>• CA reviews the reports reviews the reports drawn up by the MA</li><li>• CA reviews the results of all audits</li><li>• CA ensures that the results of these examinations are properly taken into account</li><li>• CA reconciles and does an arithmetic check of the payment requests</li></ul>	
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## Recommended mitigating controls

<b>4. DIRECT PROCUREMENT BY MANAGING AUTHORITIES (only if applicable )</b>		
<b>Overarching controls</b>		
<ul style="list-style-type: none"> <li>• Review of tender awards by a secondary mechanism other than the selection panel (e.g. senior level personnel within the MA)</li> <li>• Regular independent audits</li> <li>• Conflict of interest policy, with an annual declaration and register</li> <li>• Whistle-blowing mechanism could be put in place for suspected fraudulent behaviour</li> <li>• Regular adequate training courses on ethics and integrity, covering individual responsibilities and consequences for non-adherence.</li> </ul>		
<b>Specific Fraud Risk</b>	<b>Control description</b>	<b>Additional recommended controls</b>
Unjustified single source awards to avoid tendering or select favoured suppliers	<p><b>Audit trails</b></p> <ul style="list-style-type: none"> <li>• Procedures should be in place to ensure that all documents required to ensure an adequate audit trail are held</li> </ul> <p><b>Accounting, monitoring and financial reporting systems</b></p> <ul style="list-style-type: none"> <li>• A computerised system capable of providing reliable and relevant information works effectively</li> </ul>	<ul style="list-style-type: none"> <li>• Prior approval for all single source awards are given by secondary mechanism other than the procuring department (e.g. senior level personnel within the MA).</li> </ul>
Lack of tendering process for favoured suppliers		<ul style="list-style-type: none"> <li>• Independent review of significant size contracts for evidence of tendering prior to payment of any invoices.</li> </ul>
Extension / extension of existing contracts to avoid retendering		<ul style="list-style-type: none"> <li>• Prior approval for all contract extensions are given by secondary mechanism other than the procuring department (e.g. senior level personnel within the MA).</li> </ul>
Rigged specifications to favour certain bidders		<ul style="list-style-type: none"> <li>• All contract notices are reviewed by a secondary mechanism than the procuring department prior to publication (e.g. senior level personnel within the MA), who each verify that bid specifications are not too narrow.</li> </ul>
Leaking bid data		<ul style="list-style-type: none"> <li>• A secondary panel conducts a review of a sample of winning bids against competition for any indications of prior knowledge of bid information.</li> <li>• High level of transparency in the award of contracts , such as the publication of all contract information that is not publically sensitive.</li> </ul>
Undisclosed conflict of interest		<ul style="list-style-type: none"> <li>• <b>Conflict of interest policy</b>, with an annual declaration and register</li> </ul>
Bribes and kickbacks		<ul style="list-style-type: none"> <li>• Enforced submission deadlines.</li> <li>• Review of a sample of winning bids for indications such as winning bids being very close to the next lowest bid, late bids winning, and / or evidence of the winning bidder communicating privately with contracting personnel.</li> </ul>

## ANTI-FRAUD POLICY<sup>1</sup> TEMPLATE

*[this template suggests how the managing authority (MA) could structure its anti-fraud policy statement, and also includes a commitment from the audit authority]*

### **Introduction**

The Managing Authority (MA) for *[insert programme details]* is committed to maintain high legal, ethical and moral standards, to adhere to the principles of integrity, objectivity and honesty and wishes to be seen as **opposed to fraud and corruption** in the way that it conducts its business. All members of staff are expected to share this commitment. The objective of this policy is to promote a culture which deters fraudulent activity and to facilitate the prevention and detection of fraud and the development of procedures which will aid in the investigation of fraud and related offences and which will ensure that such cases are dealt with timely and appropriately.

A procedure is in place for the **disclosure of situations of conflict of interests**.

The term fraud is commonly used to describe a wide range of misconducts including theft, corruption, embezzlement, bribery, forgery, misrepresentation, collusion, money laundering and concealment of material facts. It often involves the use of deception to make a personal gain for oneself, a connected person or a third party, or a loss for another – intention is the key element that distinguishes fraud from irregularity. Fraud does not just have a potential financial impact, but it can cause damage to the reputation of an organisation responsible for managing funds effectively and efficiently. This is of particular importance for a public organisation responsible for the management of EU funds. Corruption is the abuse of power for private gain. Conflict of interests exists where the impartial and objective exercise of the official functions of a person are compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with e.g. an applicant for or a recipient of EU funds.

### **Responsibilities**

- Within the MA, overall responsibility for managing the risk of fraud and corruption has been delegated to *[insert details of department or person]* who has the responsibility for
  - Undertaking a regular review, with the help of a risk assessment team, of the fraud risk;
  - Establishing an effective anti-fraud policy and fraud response plan;
  - Ensuring fraud awareness of staff and training;
  - Ensuring that the MA refers promptly investigations to competent investigation bodies when they occur;
- Process owners/managers of the MA are responsible for the day-to-day management of fraud risks and action plans, as set out in the fraud risk assessment and particularly for

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<sup>1</sup> The anti-fraud policy statement, together with procedures for adequate fraud risk assessment and the putting in place of effective and proportionate anti-fraud measures through an action plan (whenever the net risk after controls is significant or critical), are key components of the managing authority's anti-fraud programme or strategy.

- Ensuring that an adequate system of internal control exists within their area of responsibility;
- Preventing and detecting fraud;
- Ensuring due diligence and implementing precautionary actions in case of suspicion of fraud
- Taking corrective measures, including any administrative penalties, as relevant.
- The Certifying Authorities have a system which records and stores reliable information on each operation; they receive adequate information from the MA on the procedures and verifications carried out in relation to expenditure
- The Audit Authority has a responsibility to act in accordance with professional standards<sup>2</sup> in assessing the risk of fraud and the adequacy of the control framework in place.

### **Reporting Fraud**

The MA has procedures in place for reporting fraud, both internally and to the European Anti-Fraud Office [...*insert details of internal reporting lines and those reporting to the European Anti-Fraud Office*...].

All reports will be dealt with in the strictest of confidence and in accordance with [...*insert details of relevant Data Protection/Disclosure Act*...]. Staff reporting irregularities or suspected frauds are protected from reprisals.

### **Anti-fraud measures**

The MA has put in place proportionate anti-fraud measures based on a thorough fraud risk assessment (cf. the Commission's guidance on the implementation of Article 125.4 c)). In particular, it uses IT tools to detect risky operations (such as ARACHNE) and ensures that staff is aware of fraud risks and receives anti-fraud training. The MA carries out a vigorous and prompt review into all cases of suspected and actual fraud which have occurred with a view to improve the internal management and control system where necessary. [...*insert details of review procedures*...].

### **Conclusion**

Fraud can manifest itself in many different ways. The MA has a zero tolerance policy to fraud and corruption, and has in place a robust control system that is designed to prevent and detect, as far as is practicable, acts of fraud and correct their impact, should they occur.

[*Delete or retain, as relevant:*] This policy and all relevant procedures and strategies are supported by the [...*insert title of oversight body who will approve the Fraud Policy e.g. a Board*..] who will proactively review and update them on a continual basis.

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<sup>2</sup> International Standards for the Professional Practice of Internal Auditing, International Standards on Auditing

**AUDIT AUTHORITY****Verification of the Managing Authority's  
compliance with article 125.4 c) regarding****Fraud risk assessment and effective and proportionate anti-fraud  
measures for 2014-2020**

		<b>Prepared</b>	<b>Reviewed</b>
<b>C.0</b>	Issues Log		
<b>C1.1</b>	Assessment Process		
<b>C1.2</b>	Gross Risk		
<b>C.1.3</b>	Existing Controls & Net Risk		
<b>C.1.4</b>	Action Plan and Target Risk		



C1.1	Assessment Process	Y/N/ n/a	Comments
	<b>Review the process for conducting the fraud risk assessment process and consider the following questions:</b>		
1.	Did the assessment team contain people with appropriate knowledge and experience of: fraud risks and associated responses, the design and operating effectiveness of controls, risk assessments?		
2.	Was an adequate amount of time and resource spent on the exercise for it to be a meaningful and credible exercise?		
3.	Is there evidence that sources of information such as audit reports, fraud reports and control self-assessments were taken into account during the risk assessment process?		
4.	Was the self-assessment process clearly documented, allowing for clear review of the conclusion reached?		
5.	Is there evidence that senior management had adequate oversight and/or involvement in the process and that approved the net level of risk exposure?		

C1.2	Gross Risks	Y/N/ n/a	Comments
	<p><b>Sample selection:</b>  <b>Select a sample of Risk References from the fraud risk assessment tool. This sample should:</b></p> <ul style="list-style-type: none"> <li>- cover all processes ( 1) selection of applicants, 2) implementation of programme, 3) certification and payments and 4) direct procurement by MA (when applicable))</li> <li>- include risks across all categories of gross risk scores (tolerable, significant and critical).</li> </ul> <p><b>For each of these risks, complete the following tests:</b></p>		
1	<p>Review the Risk Impact (GROSS) score against the scoring scales in the ‘Guidance Note on Fraud Risk Assessment’. Is the score consistent with:</p> <ul style="list-style-type: none"> <li>- explanations provided by the assessment team;</li> <li>- supporting evidence provided by the assessment team;</li> <li>- your knowledge of the GROSS risk environment.</li> </ul>		
2	<p>Review the Risk Likelihood (GROSS) score against the scoring scales in the ‘Guidance Note on Fraud Risk Assessment’. Is the score consistent with:</p> <ul style="list-style-type: none"> <li>- explanations provided by the assessment team;</li> <li>- supporting evidence provided by the assessment team;</li> <li>- your knowledge of the GROSS risk environment.</li> </ul>		
3	<p>Has the total GROSS risk been calculated correctly and has it been correctly graded (tolerable, significant, critical)?</p>		

C.1.3	Existing Controls and Net Risk	Y/N/ n/a	Comments
	<p><b>Sample selection:</b>  <b>Select a sample of risks from the fraud risk assessment tool. This sample should:</b></p> <ul style="list-style-type: none"> <li>- cover all processes ( 1) selection of applicants, 2) implementation of programme, 3) certification and payments and 4) direct procurement by MA (when applicable))</li> <li>- include risks across the significant and critical GROSS risk scores.</li> </ul> <p><b>For each of these risks, complete the following tests:</b></p>		
1	Review the details of the existing controls that the assessment team have documented. For each, confirm the following:		
a.	Do these controls exist?		
b.	Do you agree with the assessment team's response regarding whether the operation of these controls is documented? Is there documentary evidence to support this?		
c.	Do you agree with the assessment team's response regarding whether the controls are regularly tested? Is there documentary evidence to support this?		

C.1.3	Existing Controls and Net Risk	Y/N/ n/a	Comments
2.	<p>Review the score given for the effect of the combined controls on the gross risk IMPACT. Is the score consistent with:</p> <ul style="list-style-type: none"> <li>- your knowledge of the effectiveness of the design of the controls in mitigating the specific risk;</li> <li>- supporting evidence confirming that the controls are operating effectively (from testing carried out by the MA, the AA, IA or other audit body).</li> </ul>		
3.	<p>Review the score given for the effect of the combined controls on the gross risk LIKELIHOOD. Is the score consistent with:</p> <ul style="list-style-type: none"> <li>- your knowledge of the effectiveness of the design of the controls in mitigating the specific risk;</li> <li>- supporting evidence confirming that the controls are operating effectively (from testing carried out by the MA, the AA, IA or other audit body).</li> </ul>		
4.	<p>Has the total NET risk been calculated correctly and has it been correctly graded (tolerable, significant, critical)?</p>		

C.1.4	Action Plan and Target Risk	Y/N/ n/a	Comments
	<p><b>Sample selection:</b>  <b>Select a sample of risks from the fraud risk assessment tool. This sample should:</b></p> <ul style="list-style-type: none"> <li>- cover all processes ( 1) selection of applicants, 2) implementation of programme, 3) certification and payments and 4) direct procurement by MA (when applicable))</li> <li>- includes risks across the significant and critical NET risk scores.</li> </ul> <p><b>For each of these risks, complete the following tests:</b></p>		
1	<p>Review the score given for the effect of the planned new controls on the net risk IMPACT. Is the score consistent with:</p> <ul style="list-style-type: none"> <li>- your knowledge of the effectiveness of the design of the controls in mitigating the specific risk;</li> </ul>		
2	<p>Review the score given for the effect of the planned new controls on the net risk LIKELIHOOD. Is the score consistent with:</p> <ul style="list-style-type: none"> <li>- your knowledge of the effectiveness of the design of the controls in mitigating the specific risk;</li> </ul>		
3	<p>Has the total TARGET risk been calculated correctly and has it been correctly graded (tolerable, significant, critical)?</p>		

<b>C.1.4</b>	<b>Action Plan and Target Risk</b>	<b>Y/N/ n/a</b>	<b>Comments</b>
<b>4</b>	Do the planned additional controls appear to be optimal and well-considered?		