



Border, Midland & Western
Regional Assembly
Investing in Your Future

**Guidance Document for Intermediate Bodies on Management Verifications
to be carried out on projects/operations co-financed by the Structural Funds,
for the 2007 – 2013 programming period under
the Border, Midland and Western Regional Operational Programme and
the Southern and Eastern Regional Operational Programme .**



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Introduction

The objective of this document is to provide guidance on certain practical aspects of the application of Article 13 of [Commission Regulation \(EC\) No 1828/2006](#) on the administrative and on-the-spot verifications to be carried out on co-financed operations. It is intended to serve as a reference document for Intermediate Bodies as required under Article 13(4). Intermediate Bodies are recommended to follow the guidance, taking account of their own organisational structures and control arrangements, as defined in their Procedures Manual.

This guidance document 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 sampling methodology to be used, the requirement to document the work and outsourcing. More detailed guidance on good practice is given in several specific areas, namely public procurement and aid schemes, areas which have sometimes been problematic in Member States. Information is also included on management verifications in the areas of State Aid, revenue generating projects and publicity. Issues regarding durability of operations, equality and non-discrimination and the environment have also been covered. This guidance should be read in conjunction with the verification checklists provided by the Managing Authority.

Due to the wide variations in terms of organisational structures and Intermediates bodies under the Operational Programme, it is not possible to cover every situation in this document. Although management verifications are essentially a responsibility of the Managing Authority, under EU Structural Funds regulations, the Managing Authority, as provided for in the regulations may delegate tasks to Intermediate Bodies through administrative agreements. Responsibility for the administration of verification checks has been delegated at paragraph 9(2) of the Administration Agreement signed by each Intermediate Body. Accordingly, where reference is made to managing authorities in the note, this may be taken to apply to Intermediate Bodies where some or all of the management verification tasks have been so delegated by the Managing Authority.

1. Regulatory requirements

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

[Article 13\(3\) of Regulation \(EC\) No 1828/2006](#) requires that where management verifications are carried out a sample basis that a record of the sampling methodology describing and justifying the sample selected be maintained on file.

The methodology used to determine the size of the sample in order to achieve reasonable assurance as to the legality and regularity of the underlying transactions is dealt with in section 2.6 of this document. The sampling method used should be reviewed by the Managing Authority each year.

[Article 13\(4\) of Regulation \(EC\) No 1828/2006](#) requires that the Managing Authority shall establish written standards and procedures for both the administrative and on-the-spot verifications and shall keep records for each management verification check, stating the work performed, the date and results of the verification, and the measures taken in respect of irregularities detected. Tasks in respect of the Managing Authority's responsibilities under this article have been delegated to Intermediate Bodies in the Administrative Agreement.

2. Main issues in management verifications for the Structural

This document provides guidance on particular aspects of management verifications. Where relevant, reference is made to other documents and information notes, e.g. national eligibility rules, Administration Agreements etc.

2.1. Management verifications – general principles and purpose

Management verifications are part of the internal control system of any well managed organisation. They are the normal day to day controls planned and undertaken 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 with the related purchase order in terms of quantity of goods, price and condition. This verification ensures that the actual quantity of goods ordered has been received at the agreed price and that they are of the desired quality. Similarly, with regard to EU Structural Funds, Intermediate Bodies must carry out verification checks on each claim to ensure the legality and regularity of the application for reimbursement.

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 planned and undertaken by management within an organisation should ensure that the processes for which it is responsible are being properly carried out and are in compliance with the relevant rules and regulations. Management verifications under Article 13 are no different in that they are also the day to day management verifications of processes for which the organisation is responsible, carried out in order to verify the delivery of the co-financed products and services, the reality of expenditure claimed and the compliance with the terms of the relevant Commission Decision approving the operational programme and applicable national and Community rules. However, while Intermediate Bodies internal control systems may be adequate for national programmes, they may need to be adapted to certain specific requirements of the Funds.

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

2.2. Timing of management verifications

Within the framework of delegated functions in the multi-level cascade structure for the management and implementation of the co-financed programmes, it is essential that Management verifications should be carried out before the related expenditure is declared to the next level above. For example, before an Intermediate Body forwards either an interim or final expenditure declaration (B2) to the Managing Authority via the Structural Funds I.T. System, its administrative management verifications should already have been carried out and documented in accordance with agreed procedures. In any event, all administrative verifications (see section 2.3) in respect of the expenditure in a particular statement of expenditure must be completed before the Certifying Authority submits the statement to the Commission.

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 declared and possibly certified.

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

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

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

2.3. Methodology and scope of Article 13(2) management verifications

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

All applications for reimbursement by beneficiaries, whether intermediate or final applications, must be subject to administrative verifications based on an examination of the claim and relevant

supporting documentation such as invoices, delivery notes, bank statements, progress reports and timesheets. Verification of the supporting document can, where justified, be carried out on a sample basis (see section 2.6). It is recommended that all claims should include at least a list and description of the invoices which support the claim, and a list of the contracts awarded. Depending upon the documentation supplied, the administrative verifications should check:

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

The above are all detailed in the generic verification checklist provided by the Managing Authority.

Administrative verifications are not sufficient on their own to give assurance on all elements concerning the legality and regularity of expenditure and it is therefore essential that on-the-spot verifications are carried out in order to check in particular the reality of the operation, delivery of the product/service in full compliance with the terms and conditions of the grant agreement, physical progress, respect for Community rules on publicity, and full compliance with public procurement procedures. On-the-spot verifications can also be used to check that the beneficiary is providing accurate information regarding the physical and financial implementation of the operation. When on-the-spot verifications and administrative verifications are carried out by different persons, the procedures should ensure that both receive relevant and timely information on the results of the verifications carried out. Project progress reports prepared by beneficiaries, or engineers' reports in the case of larger infrastructure projects, can be used as the basis for both administrative verifications and on-the-spot verifications. Where the beneficiary presents an auditor's certificate in support of expenditure declared this may also be taken into account (see section 2.9).

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

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

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

2.4. Organisation of on-the-spot verifications

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

2.5. Intensity of verifications

2.5.1 Administrative verifications

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

Although management verifications of 100% of the applications for reimbursement submitted by beneficiaries are required by the Regulation, verification of each individual expenditure item and the related proof of delivery included in an application, although desirable, may not be practical.

Therefore, selection of the expenditure items to be verified, where justified, may be done on the basis of a sample of transactions, selected taking account of risk factors (e.g. value of items, type of beneficiary, past experience), and complemented by a random sample where considered necessary.

Best practice would require that all relevant documentation should 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:

- Schedule of the individual expenditure items
- Totalled, reconciled and showing the expenditure amount
- References of the related invoices or timesheet
- Date of payment
- Payment reference number.

Ideally, copies of invoices and proof of payment should be provided for all expenditure items. However, where this would involve an inordinately large volume of documentation being submitted by beneficiaries, an alternative approach might involve requesting only the supporting documentation in respect of the sample of expenditure items selected for verification. This approach has the advantage of reducing the volume of documentation to be submitted by beneficiaries. However, as the selection of the required supporting documentation can only be made on receipt of the beneficiary's reimbursement claim, processing of the claim may be delayed pending receipt of the requested documentation. An acceptable sampling methodology is discussed further in section 2.6. There is also a potentially higher risk for the conservation of documents if the beneficiary ceases operations before the end of the period.

2.5.2 On-the spot verification

The intensity of on-the-spot verifications is dependent upon the nature of the operations in the programme (or priority) and the type of documentation that is forwarded by the beneficiary. For large infrastructure projects implemented over several years, three or more on-the-spot verifications are likely to be required during implementation and at completion. No operation should be excluded from the possibility of being subject to an on-the-spot verification. Where a particular beneficiary is responsible for a number of operations, at least one should be subject to on-the-spot verification.

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

2.6 Sampling methodology

There are two cases where sampling may be applied in order to ensure adequate management verifications of operations under the new programming period:

- Selection of operation for on-site inspection
- Selection of transactions for testing

In either case it is essential that the methodology adopted be documented on file and agreed with the Managing Authority to ensure the correct approach was taken in selecting the sample size and applying the sample methodology. The overall approach to sampling must be agreed with the Managing Authority in advance annually as set out in paragraph 9(2) of the Administration Agreement.

2.6.1. Selection of an operation for on-site inspection

No operation should be excluded from the possibility of being subject to an on-the-spot verification. However, in practice, for priorities having a large number of small operations, desk-based checks

may on their own be sufficient to provide a sufficient level of assurance (e.g. where the beneficiary sends all relevant documentation to the Intermediate Body and where reliable documentary evidence is provided evidencing that an operation exists). The desk based checks can then be complemented by on-the-spot visits for a sample of operations.

The sample should be focused on the following:

- Large value operations.
- Operations where problems or irregularities have been identified previously.
- Operations where particular transactions have been identified during the administrative verifications that appear unusual and require further examination.

The sample size should be agreed with the Managing Authority prior to any site-visits to ensure an adequate level of assurance has been achieved from the selected sample.

In cases where a risk based approach to selecting operations for a sample is not deemed appropriate or possible, or where problem areas have been identified in the initial sample, a random sample could be selected as a complement or as an alternative. Again, the methodology used in selecting the random sample should be agreed with the Managing Authority prior to its application and reviewed every year, in accordance with paragraph 9 (2) of the Administrative Agreement.

2.6.2. Selection of transactions for testing

When carrying out both desk-based and on-the-spot verifications, a sample of transactions may be selected where an inordinate amount of paperwork would be otherwise involved in verifying 100% of transactions. A statistical sampling methodology is to be applied when selecting the transactions for testing. All sampling methodologies must be agreed with the Managing Authority prior to its application and reviewed every year to provide for risk factors.

This suggested method consists of a two stage process with each stage requiring a number of steps to follow in order to eliminate bias from the sample. The two stages are separated for items over €1,000 and under €1,000

Over €1,000

1. Obtain schedule of transactions listing as requested in section 2.5
2. Select a number between 1-4
3. If No. 1 is selected for example, go to the first item over €1,000 on the transaction listing.
4. Select this amount and every fourth item thereafter over €1,000 for the duration of the transaction listing e.g. 1st, 5th, 9th 13th etc.
5. Generate schedule of sample items selected for testing.

Under €1,000

1. Obtain schedule of transactions listing as requested in section 2.5
2. Select a number between 1-10.
3. If No. 6 is selected for example, go to the sixth item under €1,000 on the transaction listing.

4. Select this amount and every 10th item thereafter under €1,000 for the duration of the transaction listing e.g. 6th 16th 26th, 36th etc.
5. Generate schedule of sample items selected for testing.

Support documentation from the selected sample should then be submitted by the beneficiary on notification by the verifying body of the selected items. All errors which have arisen from the sample should be documented to allow for further evaluation. Where problem areas are identified with the sample of items selected or operations visited, a further sample may be required to gain assurance of the legality and regularity of expenditure. If further assurances cannot be gained from this sample, a site-visit should be organised to determine the eligibility of the operation and appropriate action should be taken to ensure community funds are not compromised.

2.7. Documentation of management verifications

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

Checklists have been provided, which act as a guide for carrying out the verifications for both desk-based and on-site checks. The checklists for on-site visits are made up of seven comprehensive checks in the following areas:

- Eligibility Rules
- Audit Trail
- Public Procurement
- Publicity
- Procedures Manual
- Revenue Generating Projects
- Compliance with EU and National Law

When these checklists are been completed, it is essential that any evidence supporting a finding is copied and referenced and placed in the relevant section. Quality audits will be carried out by the Managing Authority to ensure documented evidence is on file supporting signed and completed checklists, the level and frequency of the errors detected have been recorded and sampling methodology used, where applicable, is on file.

Where a sample of transactions have been selected for testing under the eligibility check, a schedule of these transactions including checks carried out, cross referenced to support documentation should be on file. Likewise, with regard to public procurement, a schedule of contracts awarded should support the checklist; checks carried out on contracts should be indicated on same. Each contract should be then cross referenced to back-up documentation obtained on file which highlights the procurement process undertaken.

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 on any documentation placed on file.

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

The value of transactions verified and errors identified must be entered on the Structural Funds I.T. System.

2.8. Outsourcing management verifications

As a general principle, management verifications are to be carried out under the responsibility of the Managing Authority by the Intermediate Body and public beneficiary body directly responsible for the management of the co-financed theme. Sufficient staff resources should be allocated to these verifications in order to ensure that they are carried out properly and in a timely way.

However, in situations where, due to the high volume or technical complexity of the operations to be verified, Intermediate Bodies find that they do not have sufficient staff resources or expertise to carry out the verifications themselves, outsourcing of some or all elements of the verifications to external firms may be appropriate¹. Where the option of outsourcing is used, it is essential that the scope of the work to be carried out is set out clearly in the terms of reference. Therefore, the consequences of any delays in carrying out this work, such as compliance with the N+2 rule, should be recognised. This is particularly relevant in the case of public sector bodies where delays can be experienced in the award of contracts for this type of work. There is also an onus on the contracting authority to assess the quality and consistency of the outsourced work. This will usually involve assigning additional staff resources to this function. Accordingly, before a decision to outsource management verifications is taken, all of these factors should be taken into consideration.

2.9. Auditors' certificates

The terms of grant agreements may include a requirement for beneficiaries to provide an auditor's certificate along with expenditure declarations they submit for payment. These certificates vary depending upon the scope of the work carried out by the auditor but generally cover basic

¹ This is not a co-fundable activity as it's not directly linked to the delivery of the project

requirements such as confirmation that the expenditure has been paid within the eligible period, that it relates to items approved under the grant agreement, that the terms of the grant agreement have been complied with and that adequate supporting documentation, including accounting records, exists. Although the assurance under Article 13(2) cannot be obtained solely by checks carried out by beneficiaries themselves or by third parties (e.g. auditors) on their behalf, auditors' certificates may, provided the work carried out is of satisfactory quality, justify limiting the management verifications to a sufficient sample taking account of known risks, including the risk of a lack of independence of the body providing the certificate. However, in order for reliance to be placed on the certificates, it is essential that the Intermediate Bodies and/or Public Beneficiary Body 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.

International Federation of Accountants has issued an International Standard on Related Services (ISRS) 4400 entitled '[Engagements to Perform Agreed-upon Procedures Regarding Financial Information](#)'² which establishes standards and provide guidance on the auditor's professional responsibilities when an engagement to perform agreed-upon procedures regarding financial information is undertaken and on the form and content of the report that the auditor issues in connection with such an engagement. This type of agreed-upon procedure could be used for the provision of an auditor's certificate accompanying a beneficiary's reimbursement claim.

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

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

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

3. Specific areas concerning management verifications

3.1. Management verifications of public procurement

Reference

(i) [Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of](#)

² http://www.ifac.org/Members/Source_Files/Auditing_Related_Services/A340_ISRS_4400.pdf

- procedures for the award of public works contracts, public supply contracts and public service contracts.*
- (ii) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors*
- (iii) Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives (2006/C 179/02)*
- (iv) Commission Interpretative Communication on the application of Community law on Public Procurement and Concessions to Institutionalised Public-Private Partnerships (2007/C 6661)*
- (v) Public Sector Procurement Regulations 2006 SI 329 of 2006*

General

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

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

At award of funding stage, it should be ensured that beneficiaries are aware of their obligations in this area and that staff have received relevant training. The Managing Authority will provide some training/guidance on public procurement to be used by beneficiaries. This is particularly useful where beneficiaries are involved in 'one-off' contracts and lack relevant experience. Guides and explanatory notes on the Community rules for public procurement have been produced by the European Commission and provide useful information and explanations.

(http://ec.europa.eu/internal_market/publicprocurement/index_en.htm)

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

Intensity of verifications of public procurement

As set out in sections 2.5 and 2.6 of this guidance document, the intensity of management verifications should be determined by the Intermediate Body according to the value and type of the contracts.

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

Planning

Beneficiaries are responsible for ensuring the quality of the initial studies, the design and the accuracy of the project costing. Where Managing Authorities or Intermediate Bodies consider that

there is a risk, they should verify these elements as a preventive measure and also check that cost estimates are up-to-date.

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

Particular attention should be paid to checking:

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

Tendering

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

Although there are specific advertising requirements required by EC public procurement rules, Intermediate Bodies should also be aware of the need to verify that, even where contracts fall below the EC thresholds or where services are subject only to a limited application of [Directive 2004/18/EC](#) (i.e. Annex IIB) or of [Directive 2004/17/EC](#) (i.e. Annex XVII B), an adequate (i.e. in the context of the size and nature of the contract) 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 can be achieved by requesting beneficiaries to provide a copy of the relevant publications when submitting expenditure declarations. Evidence of dispatch of post-award contract notices should also be requested, particularly for services listed in Annex IIB of [Directive 2004/18/EC](#) or in Annex XVII B of [Directive 2004/17/EC](#).

Selection and award criteria

In order to properly verify that tender selection and award procedures have been carried out in accordance with the EC and national public procurement rules, Intermediate Bodies should obtain and review the tender evaluation reports prepared by evaluation committees. In addition, they should review any complaints submitted to the contracting authority by tenderers. These complaints may highlight possible weaknesses in the tender award procedure.

For contracts that exceed the thresholds set in the EC public procurement directives, Intermediate Bodies may choose to send an observer to tender evaluations. A report setting out the observer's conclusions regarding the tender evaluation is then prepared. The observer verifies that a

sufficiently detailed tender evaluation report has been prepared showing how the evaluation committee has reached its conclusions.

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

Particular areas of the tender evaluation and award procedures which Commission audits have identified as being problematic include:

- No separation between the selection phase and award phase of the procedure and confusion of selection criteria and award criteria;
- Selection criteria incorrectly used during the award phase;
- The selection and award criteria not being published in the tender notice or tender specifications;
- Use of discriminatory technical specifications;
- Selection and award criteria other than those published being used during the evaluation;
- The criteria used not being in compliance with the fundamental principles of the EC Treaty (transparency, non-discrimination, equal treatment);
- Inadequate documentation of decisions taken by the evaluation committee;
- Inadequate documentation to support the appointment of the panel that took the decision;
- Supplementary / complementary works awarded directly without being re-tendered;
- Amendment of essential conditions of the contract award at performance stage.
- No evidence of notification to unsuccessful tenderers;

The Department of Finance have established an independent [public procurement control unit](#) which is empowered to carry out controls of all stages of tender procedures, up to contract signature stage.

In respect of both nationally funded and EC funded contracts, it can attend tender evaluations in the capacity of observer. Where it has concerns regarding any elements of the procedure, it will report these concerns to both the contracting authority and to the Intermediate Body. In this way, the Intermediate body is made aware of any potential problems regarding the contract and, before approving any expenditure declared to it by the beneficiary in respect of the affected contract, it can request information from both the beneficiary and the public procurement control unit to ensure that the problems identified have been adequately addressed. An agreement between the Intermediate body and the public procurement control unit could be used to specify the scope and coverage of the controls of EC funded contracts.

Contract implementation phase

For contracts exceeding the threshold in the EC public procurement directives, best practice would include a procedure to ensure that all significant supplementary / complementary contracts or substantial amendments of contracts are notified to a public procurement control unit / Intermediate body before being signed by the contracting authority. This will allow for any

verifications considered necessary to ensure that the relevant public procurement rules have been complied with to be carried out before the related contracts or amendments have been signed.

3.2. Environment

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

- The **Environmental Impact Assessment or EIA Directive** as amended requires Member States to carry out an assessment on certain public and private projects likely to have a significant impact on the environment before they are authorised. This is a procedural directive requiring the evaluation of a wide range of environmental impacts and consultation with environmental authorities and the public (including trans-border consultations). The Directive takes account of the provisions of the Aarhus Convention on public participation and access to justice in environmental matters. The EIA Directive contains a provision dealing with exceptional cases (Article 2.3). Recent guidance emphasises the exceptional nature of the circumstances in which this provision might be used (in line with the European Court of Justice's normal approach to interpreting derogations).
- The **Strategic Environmental Assessment (SEA) Directive**, in addition to requiring Member States to make an assessment before an Operational Programme is approved, includes provisions for monitoring indicators to identify, at an early stage, unforeseen adverse effects and to undertake appropriate remedial action. If appropriate, existing monitoring arrangements may be used to avoid duplication. In addition, the SEA process already carried out may need to be updated if there are significant changes to the Operational Programme. If the Operational Programmes lead themselves to further plans and programmes, then it must be assessed if these too require an SEA process. Finally, it should be noted that Waste Management Plans required under the Waste Framework Directive require a mandatory SEA. Only those interventions and infrastructure works that are in conformity with Waste Plans notified to the Commission are admissible for financing.
- **Environmental Information** - The freedom of access to information on the environment Directive 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, 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 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 lays down basic requirements regarding the handling of waste (that waste disposal and recovery should not present a risk to the environment or health; on the prohibition of dumping or uncontrolled disposal; on the creation of a network of waste disposal plants; on the elaboration of waste management plans; on establishing permitting for waste treatment operations), and establishes the hierarchy for waste management options (in order of decreasing preference: prevention, recovery (reuse, material recycling, energy recovery, disposal). In order for a waste management infrastructure project to be co-financed with ERDF or the Cohesion Fund, it must be part of a coherent waste management plan. The Landfill Directive 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 aims to prevent or limit as far as practicable the negative effects on the environment and the resulting risks to human health, from the incineration of waste. It imposes stringent operational conditions and technical requirements and sets emission limit values for waste incineration plants within the EU.

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

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

In order to carry out its responsibilities under Article 13(1), during the selection and approval of operations, Intermediate Bodies should ensure that they have access to appropriate in-house or external expertise to assist them in identifying all relevant environmental issues related to the particular type of operations being approved. Close working relationships with the relevant national environmental agencies could be established to assist Intermediate Bodies in this regard.

Similarly, for the purpose of Article 13(2) management verifications, managing authorities should ensure that they have access to relevant expertise in verifying continuing compliance of operations with the relevant environmental rules.

3.3. State Aid

Reference

(i) [Vademecum Community rules on State Aid dated 15 February 2007](#)

(ii) [Guidelines on national regional aid for 2007-2013\(OJ C 54, 4.3.2006\)](#)

(ii) [Regional Aid Rates applicable for Ireland](#)

State Aid rules apply only to measures that satisfy all of the criteria listed in Article 87(1) of the Treaty, namely that:

- the measure involves a transfer of State resources;
- it creates an economic advantage that the undertaking would not have received in the normal course of business;
- the aid must be selective and thus affect the balance between certain firms and their competitors; and
- it must have a potential effect on competition and trade between Member States.

Member States are required to inform the Commission of any plan to grant or alter State Aid and they are not allowed to put such aid into effect before it has been authorised by the Commission.

The Commission determines whether or not the notified aid measure constitutes State Aid and, if it does, whether or not it qualifies for exemption under Article 87(2) or (3) of the Treaty.

Certain measures may also be exempted from notification on the basis of a block exemption regulation for State Aid. Under these regulations the Commission can declare certain categories of State Aid compatible with the Treaty if they fulfil certain conditions, thus exempting them from the requirement of prior notification. At present there are five block exemption regulations, three of which create exemptions for aid to small and medium-sized enterprises, employment aid and training aid, allowing Member States to grant aid that meets the conditions laid down in these three regulations without the need for notification and agreement of the Commission. A fourth regulation exempts transparent regional investment aid schemes and applies from 2007 to 2013. A fifth regulation deals with the de minimis rule and establishes that aid to an enterprise that is below the relevant threshold (for most sectors, the applicable amount is € 200,000) over a period of three fiscal years and that respects certain conditions, constitutes a permissible State Aid. Such aid does therefore not need to be notified. A general block exemption regulation, due to enter into force in 2008, will bring together these existing instruments. As a result of the economic downturn, the Commission have introduced a temporary increase in the de minimis threshold to allow Member States to address the exceptional difficulties of companies to obtain finance. The new threshold of €500,000 is limited up to the end of 2010 and subject to conditions.

There are several key risk areas which should be checked by management verifications in the area of State Aid, namely:

- That the aid scheme has been notified to and approved by the Commission or that it is covered by either a block exemption or satisfies the de minimis rules whereby the aid scheme does not need to be notified;
- That the undertakings in receipt of the aid satisfy the conditions of the aid scheme as approved by the Commission or that the nature of the operations covered by a block exemption satisfy the particular exemption conditions;

- That there is no overlapping of aid from different sources which could breach the de minimis rule or the applicable rules on the cumulation of aid.

Aid schemes may pose problems for Member States as regards management verifications due to the following:

- Increased control risk (i.e. the inherent complexity of the rules governing the aid scheme, the nature of those recipients – i.e. SMEs – with the risk of a potentially weaker control environment, etc.);
- Specific eligibility criteria;
- Specific provisions concerning the final date of eligibility of expenditure.

For the purposes of establishing a satisfactory approach to management verifications, two types of aid scheme arrangements should be distinguished:

1) When the role of the body granting the aid in the context of the aid scheme is merely an administrative/managerial one (i.e. involving the selection of recipients, the allocation and administration of individual grants provided, etc.) and where it holds no direct financial interest in the scheme itself. This may be the case when the body granting the aid is a public beneficiary body.

2) When the body granting the aid has a financial interest in the scheme or the project (i.e. it provides part of the equity or provides loan funding to the recipient that uses it to finance the operation). This is usually the case when the grant awarding body is a financial institution.

For both cases, best practice would include a detailed definition of eligible investments in the grant decision for each individual operation or in the aid scheme itself. This is particularly important when the body granting the aid relies on auditors' certificates, in order to clarify the scope of the verifications required.

The issue that may arise concerns the nature and extent of the verifications by the Intermediate body within the context of Article 13 in order to obtain assurance that the verifications done at the level of the body granting the aid have been properly carried out. In case 1), the body granting the aid is performing its functions as an intermediate body. The Managing Authority may carry out limited verifications itself to obtain assurance concerning the regularity of expenditure from the verifications carried out at the level of the body granting the aid.

Depending upon the Managing Authority's judgement concerning the level of risk in the management and control systems of both the body granting the aid and the beneficiaries, this assurance could be provided by regular reporting by the body granting the aid, including statistics of the results of the verifications and information on who carried them out, the methodology applied and the scope, in particular regarding the respect of the eligibility rules. This reporting could be combined with verifications by the body granting the aid.

In case 2), where the body granting the aid has a direct financial interest in the operation, it may not be regarded as being entirely independent. The reliance placed by the Intermediate body on the

work of the body granting the aid should be supported by its own on-the-spot verifications to the beneficiary.

Depending upon the control measures taken by the body granting the aid in response to this higher apparent risk, the control arrangements to be organised by the Intermediate body will involve a regular reporting mechanism (including the same information mentioned for case 1) combined with on-the-spot verifications at the level of the beneficiary, the frequency of which should be established with reference to 2.7 of this guidance note.

Best practice for management verifications to ensure compliance with the de minimis rule would include checking, on a sample basis, that the aid to an undertaking over the period of three fiscal years has not exceeded the relevant threshold.

The Directorate General for Competition has issued a useful guide and factsheets on the Community rules on State Aid.

3.4. Information and publicity

Reference

(i) Directorate General for Regional Policy Guidance note on Article 2-10 [of Commission Regulation \(EC\) No. 1828/2006](#)

(ii) Section 18 of the Administrative Agreement

(iii) Information and publicity guidelines

(iv) [Communications Plan for the BMW and S&E Regional OP 2007-2013](#)

General

Verifications in relation to information and publicity should aim to ensure that beneficiaries have acted in accordance with the Implementation Regulation (EC) 1828/2006. The beneficiary is responsible for informing the public about assistance obtained. This can be achieved through the use of billboards, plaques as outlined in Article 8.9 of Regulation (EC) 1828/2006. Project conferences, press conferences and project web-pages can also be used as tools to inform the public of any contribution.

It is advised that Intermediate Bodies, Public Beneficiary Bodies and beneficiaries open a publicity folder where any evidence highlighting instances of compliance be held whether it be photographs of billboards, plaques and leaflets, fliers, posters tender notices, web site details etc.

Verification checks should ensure that the EU Flag and the Europeans Union's participation should feature on the following in relation to projects in receipt of EU Structural Funds:

- Billboards Plaques
- Brochures/Literature
- Application Forms
- Annual Reports
- Display/Exhibition stands
- Videos
- Advertising & Supplements
- Conference Material

- Web sites
- Offer letters, correspondence with projects/beneficiaries
- Press releases
- Posters

The arrangements for the use of logos are as follows:

- the NSRF logo is to **replace** the NDP logo for **all** EU co-financed publicity material;
- this is to be accompanied by the EU flag logo, with European Regional Development Fund underneath, to be inserted on right hand side of the NSRF logo;
- as applied under the 2000-06 programmes, the sponsoring organisation or Department logo (where used) is inserted to the right of the EU logo;
- all logos to be of equal scale; and
- in addition, where it is feasible to do so, the EU Commission's suggested tagline "**Investing in your future**" should also be used.

Appropriate logos can be downloaded from the websites of the Managing Authorities (BMW and S&E Regional Assemblies)

Requirements for billboards and Plaques

- Billboards and commemorative plaques are compulsory for projects where the public contribution is over €500k.
- The billboard must be of a size that is appropriate to the scale of the operation.
- The section of the billboard reserved for the EU contribution should take up to at least 25% of the total area of the billboard.
- The letters used must be at least the same size as the letters for the national announcement although the typeface may be different.
- Once a site or project is completed, billboards must remain in place for no longer than six months.

Wherever possible, the billboard must be replaced by a commemorative plaque within 6 months of completion of the project.

For further information on publicity, see the website www.eustructuralfunds.ie

3.5. Revenue-generating projects ([Article 55 of Regulation No. 1083/2006](#))

Reference

[\(i\) \(Draft\) Directorate General for Regional Policy Guidance note on Article 55 of Council Regulation \(EC\) No. 1083/2006](#)

[\(ii\) \(Draft\) Directorate General for Regional Policy Information note on Article 55\(6\) of Council Regulation \(EC\) No. 1083/2006](#)

A revenue-generating project is any operation involving an investment in infrastructure the use of which is subject to charges borne directly by users or any operation involving the sale or rent of land or buildings or any other provision of services against payment. When an operation is expected to generate revenue, this revenue should be taken into account in the calculation of the eligible expenditure. The eligible expenditure shall not exceed the current value of the investment cost less

the current value of the net revenue from the investment over the specific reference period for investments in infrastructure or other projects where it is possible to objectively estimate the revenues in advance.

The 'funding gap method', which is used to determine the contribution from the funds to revenue generating projects, is based on the difference between the current value of the investment costs and net revenue of the operation. It is the part of the project investment cost which needs to be financed. The overall aim is to ensure that an operation has sufficient resources to be implemented and at the same time to avoid over-financing.

In the assessment of the accuracy of the net revenues, the Managing Authority shall take account of the reference period appropriate to the category of investment concerned, the type of project, the profitability normally expected of the type of investment concerned, the principle of polluter-pays and, if necessary, considerations of equity. It should also assess the reasonableness of any assumptions made regarding the forecast revenue and expenditure of the operation.

Since it is the responsibility of the Managing Authority to ensure that operations comply with the Community rules, it will provide guidance to beneficiaries for preparing their financial analysis. The Managing Authority, as part of its management verifications, will check that the assessments of revenue-generating operations have been carried out properly, that they have examined the financial analysis in detail and that the assessments are fully documented.

In addition, the Managing Authority has to ensure that in the case of an operation where it is objectively not possible to estimate the revenue in advance, the revenue generated within five years of the completion of that operation must be deducted from the expenditure declared to the Commission.

Where, at the latest three years after closure of the operational programme, it is established that an operation has generated revenue that has not been taken into account (i.e. where the actual revenue is higher than the estimated revenue and this additional revenue has not been deducted from declared expenditure), such revenue shall be refunded to the general budget of the European Union in proportion to the contribution of the Funds.

A system will be established to allow the Intermediate body to monitor and quantify such revenues. As part of its on-the spot management verification and after the completion of operations, the Managing Authority will check, on a sample basis, the accuracy of the revenues that public beneficiary bodies have reported.

Proportionate procedures may be adopted for monitoring revenues generated by operations with a total cost below €1,000,000. Projects subject to the rules on State Aid are not subject to the rules on revenue generation laid down by Article 55(1) to Article 55(5).

The Directorate General for Regional Policy has issued separate detailed guidance on the implementation of Article 55 on revenue generating projects (Draft) together with an information note on Article 55(6) (Draft).

3.6. Durability of operations

Pursuant to Article 57 of [Regulation \(EC\) No 1083/2006](#) the Intermediate body must ensure that an operation retains the contribution from the Funds only if that operation does not, within five years from its completion, undergo a substantial modification: (a) affecting its nature or its implementation conditions or giving to a firm or a public body an undue advantage; and (b) resulting either from a change in the nature of ownership of an item of infrastructure or the cessation of a productive activity.

As part of its verifications and after the completion of operations, the Intermediate body should check compliance with these conditions, including by on-the-spot verifications on a sample basis. Any amounts identified as having been unduly paid should be recovered, by way of a negative adjustment on a subsequent claim and by the submission of an irregularity report if the threshold has been exceeded and the amount certified to the commission.

3.7. Equality and non-discrimination

Reference

[\(Draft\) Directorate General for Regional Policy Information Note on Article 16 of Council Regulation \(EC\) No. 1083/2006](#)

[Pursuant to Article 16 of Regulation \(EC\) No 1083/2006](#) management verifications should check that operations respect and promote equality between men and women and that the integration of the gender perspective has been applied during the various stages of implementation of the Funds. This involves a gender mainstreaming approach ensuring that all operations openly and actively take into account their effects on the respective situation of women and men, with a view to overcoming inequalities. All programmes should contribute to improved equality between men and women, and should be able to demonstrate the impact in this respect, prior to, during and after implementation.

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

Checklists used for management verifications should therefore, where relevant, include questions dealing with the respect of the principles of equality and non-discrimination. Management verifications should check the actual performance of co-financed programmes and operations against the target indicators throughout the programming period. Intermediate Bodies should check that appropriate steps have been taken during the implementation of the operation to comply with the relevant conditions set out in the grant contract. A good practice would be to verify from the attendance sheet of a training programme that the participation rate of men and women corresponds to that foreseen in the project proposal and to obtain explanations for any significant differences. Accessibility for disabled people is one of the criteria to be observed in defining operations co-financed by the Funds and to be taken into account during the various stages of implementation.

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

Directorate General for Regional Policy has issued an Information Note on Article 16 and will shortly issue all Managing Authorities with this toolkit.