



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 20 April 2012

**Interinstitutional File:
2011/0276 (COD)
2011/0273 (COD)**

**8207/12
ADD 3 REV 2**

FSTR	26
FC	17
REGIO	39
SOC	240
AGRISTR	40
PECHE	103
CADREFIN	165
CODEC	831

ADDENDUM 3 to NOTE

from: Presidency
to: Permanent Representatives Committee (part 2)/Council

No. prev. doc.: 15243/2/11 REV 2, 15253/1/11 REV 1
No. Cion prop.: COM(2011) 615 final/2, COM(2011) 611 final/2

Subject: Cohesion Policy legislative package
- Presidency compromise on Management and Control

Delegations will find attached a compromise text on the Management and Control parts of the proposal for the Common Provisions Regulation and of the proposal for the ETC Regulation.

The modifications highlighted in bold are those in comparison to the revised versions (corrigendum) presented by the Commission on 14 March 2012.

COMMON PROVISIONS REGULATION

TITLE VIII

MANAGEMENT AND CONTROL

CHAPTER I

Management and control systems

Article 62

General principles of management and control systems

Management and control systems shall provide for:

- (a) a description of the functions of each body concerned in management and control, and the allocation of functions within each body;
- (b) compliance with the principle of separation of functions between and within such bodies;
- (c) procedures for ensuring the correctness and regularity of expenditure declared;
- (d) computerised systems for accounting, for the storage and transmission of financial data and data on indicators, for monitoring and for reporting;
- (e) systems for reporting and monitoring where the responsible body entrusts execution of tasks to another body;
- (f) arrangements for auditing the functioning of the management and control systems;

- (g) systems and procedures to ensure an adequate audit trail;
- (h) the prevention, detection and correction of irregularities, including fraud, and the recovery of amounts unduly paid, together with any interest **on late payments**.

Article 62 bis

Responsibilities under Shared Management

In accordance with the principle of shared management, Member States and the Commission shall be responsible for the management and control of programmes in accordance with their respective responsibilities laid down in this Regulation and the fund specific rules.

Article 63

Responsibilities of Member States

1. Member States shall fulfil the management, control and audit obligations and assume the resulting responsibilities laid down in the rules on shared management set out in the Financial Regulation and the Fund-specific rules. [...]
2. Member States shall ensure that their management and control systems for programmes are set up in accordance with the provisions of the Fund-specific rules and that **those** systems function effectively.
3. Member States shall **ensure effective arrangements for the examination of complaints concerning the CSF Funds. The set-up of the system, including the scope and decision-making modalities covered by the arrangements, shall be the responsibility of Member States in accordance with applicable national law and practice.** [...] Member States shall **inform the Commission of** the results of such examinations [...] upon request.

4. All official exchanges of information between the Member State and the Commission shall be carried out using an electronic data exchange system established in compliance with the terms and conditions laid down by the Commission by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 143(3).

CHAPTER III

Commission powers and responsibilities

Article 65

Commission powers and responsibilities

1. The Commission shall satisfy itself on the basis of available information, including the [accreditation procedure], **statement of management responsibilities** [...], [annual] control reports, [annual] audit opinion¹, annual implementation report and audits carried out by national and Union bodies, that the Member States have set up management and control systems that comply with this Regulation and the Fund-specific rules and that these systems function effectively during the implementation of programmes.
2. [...] Commission officials or authorised Commission representatives may carry out on-the-spot audits or checks upon giving **at least fifteen working days** notice **to the competent national authority, subject to the on-the-spot audit or check except in urgent cases. The Commission shall respect the principle of proportionality by taking into account the need to avoid unjustified duplication of audits or checks carried out by Member States, the level of risk to the Union budget and the need to minimise administrative burdens for beneficiaries in accordance with the Fund-specific rules.** The scope of such audits or checks may include, in particular, verification of the effective functioning of management and

¹ The brackets and amendments made follow the mandate agreed in COMBUD on 12 December 2011 concerning art. 56 of the proposed triennial revised Financial Regulation, cf. in particular Art. 56 Paragraphs 3 and 5 (a). All brackets in this document indicate that the content depends on the outcome of negotiations on said regulation proposal and cannot be negotiated at present.

control systems in a programme or a part thereof, operations and assessment of the sound financial management of operations or programmes. Officials or authorised representatives of the Member State may take part in such audits **or checks**.

Commission officials or authorised Commission representatives, duly empowered to carry out on-the-spot audits **or checks**, shall have access to all **necessary** records, documents and metadata, irrespective of the medium in which they are stored, relating to operations supported by the CSF Funds or to management and control systems. Member States shall provide copies of such records, documents and metadata to the Commission upon request.

The powers set out in this paragraph shall not affect the application of national provisions which reserve certain acts for agents specifically designated by national legislation.

Commission officials and authorised representatives shall not take part, inter alia, in home visits or the formal questioning of persons within the framework of national legislation.

However, they shall have access to the information thus obtained **without prejudice to the competences of national courts and in full respect of the fundamental rights of the concerned legal subjects**.

3. The Commission may require a Member State to take the actions necessary to ensure the effective functioning of their management and control systems or the correctness of expenditure in accordance with the Fund-specific rules.
4. [...].

TITLE VI

MANAGEMENT AND CONTROL

CHAPTER I

Management and control systems

Article 112

Responsibilities of Member States

1. Member States shall ensure that management and control systems for operational programmes are set up in accordance with Articles 62 and 63.
2. Member States shall prevent, detect and correct irregularities and shall recover amounts unduly paid, together with any interest on late payments. They shall notify [...] irregularities **that exceed EUR 10 000 in contribution from the Funds** to the Commission and shall keep the Commission informed of the **outcome** of related administrative and legal proceedings.

The Member States shall not notify irregularities to the Commission in the following cases:

- (a) cases where the irregularity consists solely in the failure to execute, in whole or in part, an operation included in the co-financed operational program owing to the bankruptcy of the beneficiary;**
- (b) cases brought to the attention of the managing authority or certifying authority by the beneficiary voluntarily and before detection by either of them, whether before or after the payment of the public contribution;**
- (c) cases which are detected and corrected by the managing authority or certifying authority before inclusion of the expenditure concerned in a statement of expenditure submitted to the Commission.**

In all the other cases, in particular those preceding a bankruptcy or in cases of suspected fraud, the detected irregularities with the associated preventing and correcting measures shall be reported to the Commission.¹

When amounts unduly paid to a beneficiary cannot be recovered and this is as a result of fault or negligence on the part of a Member State, the Member State shall be responsible for reimbursing the amounts concerned to the general budget of the Union. **Member States may decide not to recover an amount unduly paid if the amount to be recovered from the beneficiary, not including interests, does not exceed EUR 250 in contribution from the Funds.**

The Commission shall [...] adopt **implementing** acts in accordance with **the examination procedure referred to in Article 143 (3)** laying down **uniform conditions concerning the reporting modalities and formalities on irregularities specified in this paragraph.**

3. Member States shall ensure that no later than 31 December **2016**, all exchanges of information between beneficiaries and **a** managing authority, certifying authority, audit authority and intermediate bodies can be carried out [...] by means of electronic data exchange systems.

The systems shall facilitate interoperability with national and Union frameworks and allow for the beneficiaries to submit all information referred to in the first sub-paragraph only once.

The Commission shall adopt, by means of implementing acts, detailed rules concerning the exchanges of information under this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 143(3).

¹ Cf. Cion. Reg. 1828/06 art.28.2

CHAPTER II

Management and control authorities

Article 113

Designation of authorities

1. The Member State shall designate, for each operational programme, a national, regional or local public authority or body **or a private body** as managing authority. The same [...] **managing authority** may be designated [...] for more than one operational programme.
2. The Member State shall designate, for each operational programme, a national, regional or local public authority or body as a certifying authority, without prejudice to paragraph 3. The same certifying authority may be designated for more than one operational programme.
3. The Member State may designate for an operational programme a managing authority, which **is a public authority or body, to carry** out in addition the functions of the certifying authority.
4. The Member State shall designate, for each operational programme, a national, regional or local public authority or body, functionally independent from the managing authority and the certifying authority, as audit authority. The same audit authority may be designated for more than one operational programme.
5. For the Investment for growth and jobs goal, provided that the principle of separation of functions is respected, the managing authority, the certifying authority, where applicable, and the audit authority may be part of the same public authority or body. [...] For those operational programmes for which the total amount of support from the Funds exceeds EUR 250 000 000, the audit authority may [...] be part of the same public authority or body

as the managing authority **either if, pursuant to the applicable provisions for the previous programming period¹, the Commission has informed the Member State of its conclusion that it can rely principally on its audit opinion, or if the Commission is satisfied on the basis of the experience of the previous programming period that the institutional organisation and accountability of the audit authority provide adequate guarantees of its functional independence and reliability.**

6. The Member State may designate one or more intermediate bodies to carry out certain tasks of the managing or the certifying authority under the responsibility of that authority. The relevant arrangements between the managing authority or certifying authority and the intermediate bodies shall be formally recorded in writing.
7. The Member State or the managing authority may entrust the management of part of an operational programme to an intermediate body by way of an agreement in writing between the intermediate body and the Member State or managing authority (a 'global grant'). The intermediate body shall provide guarantees of its solvency and competence in the domain concerned, as well as its administrative and financial management.
8. The Member State shall lay down in writing rules governing its relations with the managing authorities, certifying authorities and audit authorities, the relations between such authorities, and the relations of such authorities with the Commission.

Article 114

Functions of the managing authority

1. The managing authority shall be responsible for managing the operational programme in accordance with the principle of sound financial management.

¹ As a consequence a new third paragraph needs to be added to Article 145 along the following lines: "*When applying Article 113 (5), the Commission assessment and conclusion in accordance with Article 73 (3) of Council Regulation (EC) No 1083/2006 can be made until the date of the approval of the first operational programme of the Member State concerned pursuant to this Regulation*".

2. As regards the [...] management of the operational programme, the managing authority shall:
- (a) support the work of the monitoring committee **referred to in Article 41** and provide it with the information it requires to carry out its tasks, in particular data relating to the progress of the operational programme in achieving its objectives, financial data and data relating to indicators and milestones;
 - (b) draw up and, after approval by the monitoring committee, submit to the Commission annual and final implementation reports **referred to in Article 44**;
 - (c) make available to intermediate bodies and beneficiaries information that is relevant to the execution of their tasks and the implementation of operations respectively;
 - (d) establish a system to record and store in computerised form data on each operation necessary for monitoring, evaluation, financial management, verification and audit, including data on individual participants in operations, where applicable;
 - (e) ensure that the data referred to in point (d) is collected, entered and stored in the system, and that data on indicators is broken down by gender where required by Annex I of the ESF Regulation.
3. As regards the selection of operations, the managing authority shall:
- (a) draw up and, once approved, apply appropriate selection procedures and criteria that:
 - (i) ensure the contribution of operations to the achievement of the specific objectives and results of the relevant priority axes;**
 - (ii)** are non-discriminatory and transparent;
 - (iii)** take into account the general principles set out in Articles 7 and 8;
 - (b) ensure that a selected operation falls within the scope of the Fund or Funds concerned and **can be attributed to** a category of intervention identified in the priority axis or axes of the operational programme;

- (c) **ensure that** the beneficiary **is provided with** a document setting out the conditions for support for each operation including the specific requirements concerning the products or services to be delivered under the operation, the financing plan, and the time-limit for execution;
 - (d) satisfy itself that the beneficiary has the administrative, financial and operational capacity to fulfil the conditions defined in point (c) before approval of the operation;
 - (e) satisfy itself that, where the operation has started before the submission of an application for funding to the managing authority, Union and national rules relevant for the operation have been complied with;
 - (f) ensure that an applicant does not receive support from the Funds where it has been, or should have been, subject to a procedure of recovery in accordance with Article 61 following the relocation of a productive activity within the Union;
 - (g) determine the category of intervention to which the expenditure of an operation shall be attributed.
4. As regards the financial management and control of the operational programme, the managing authority shall:
- (a) 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 Union and national law, the operational programme and the conditions for support of the operation;
 - (b) ensure that beneficiaries involved in the implementation of operations reimbursed on the basis of eligible costs actually incurred maintain either a separate accounting system or an adequate accounting code for all transactions relating to an operation;

- (c) put in place effective and proportionate anti-fraud measures taking into account the risks identified;
- (d) set up procedures to ensure that all documents regarding expenditure and audits required to ensure an adequate audit trail are held in accordance with the requirements of Article 62(g);
- (e) **[draw up the statement of management responsibilities [...] on the functioning of the management and control system, the legality and regularity of underlying transactions and the respect of the principle of sound financial management, together with a report setting out the results of management controls carried out, any weaknesses identified in the management and control system and any corrective action taken].**

5. Verifications pursuant to paragraph 4(a) shall include the following procedures:

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

The frequency and coverage of the on-the-spot verifications shall be proportionate to the amount of public support to an operation and **to** the level of risk identified by these verifications and audits by the audit authority for the management and control system as a whole.

- 6. On-the-spot verifications of individual operations pursuant to paragraph (5)(b) may be carried out on a sample basis.
- 7. Where the managing authority is also a beneficiary under the operational programme, arrangements for the verifications referred to in paragraph 4(a) shall ensure adequate separation of functions.

8. The Commission shall adopt **implementing** acts, in accordance with **the examination procedure referred to in** Article **143 (3)**, laying down the modalities of the exchange of information in paragraph 2(d).
9. The Commission shall adopt **implementing** acts, in accordance with **the examination procedure referred to in** Article **143 (3)**, laying down rules concerning arrangements for the audit trail referred to in paragraph 4(d) **of this Article**.
10. [The Commission shall adopt, by means of implementing acts, the model for the **statement of management responsibilities** referred to in paragraph 4(e). Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 143(2)].

Article 115

Functions of the certifying authority

The certifying authority of an operational programme shall be responsible in particular for:

- (a) drawing up and submitting to the Commission payment applications and certifying that these result from reliable accounting systems, are based on verifiable supporting documents and have been subject to verifications by the managing authority;
- (b) drawing up the [annual] accounts;
- (c) certifying the completeness, accuracy and veracity of the [annual] accounts and that the expenditure entered in the accounts complies with applicable Union and national rules and has been incurred in respect of operations selected for funding in accordance with the criteria applicable to the operational programme and complying with Union and national rules;

- (d) ensuring that there is a system which records and stores, in computerised form, accounting records for each operation, and which supports all the data required for drawing up payment applications and [annual] accounts, including records of amounts recoverable, amounts recovered and amounts withdrawn following cancellation of all or part of the contribution for an operation or operational programme;
- (e) ensuring for the purposes of drawing up and submission of payment applications that it has received adequate information from the managing authority on the procedures and verifications carried out in relation to expenditure;
- (f) taking account when drawing up and submitting payment applications **of** the results of all audits carried out by or under the responsibility of the audit authority;
- (g) maintaining accounting records in a computerised form of expenditure declared to the Commission and the corresponding public contribution paid to beneficiaries;
- (h) keeping an account of amounts recoverable and of amounts withdrawn following cancellation of all or part of the contribution for an operation. Amounts recovered shall be repaid to the general budget of the Union prior to the closure of the operational programme by deducting them from the next statement of expenditure.

Article 116

Functions of the audit authority

1. The audit authority shall ensure that audits are carried out on the **proper functioning of the management and control system of the operational programme. The audit authority shall ensure that audits are carried out on an appropriate sample of operations on the basis of the declared expenditure. Appropriate are all statistical or non-statistical methods, which include a representative sample of declared expenditure. In case of non-statistical sampling it must be ensured that at least 5% of the declared expenditure is audited.**

The Commission shall [...] adopt **implementing** acts in accordance with **the examination procedure referred to in Article 143 (3), laying down the modalities of appropriate statistical or non-statistical sampling methods.**

2. Where audits are carried out by a body other than the audit authority, the audit authority shall ensure that any such body has the necessary functional independence.
3. The audit authority shall ensure that audit work takes account of internationally accepted audit standards.
4. The audit authority shall, within **eight** months of adoption of an operational programme, prepare an audit strategy for performance of audits. The audit strategy shall set out the audit methodology, the sampling method for audits on operations and the planning of audits in relation to the current accounting year and the two subsequent accounting years. The audit strategy shall be updated annually from 2016 until and including 2022. Where a common management and control system applies to more than one operational programme, a single audit strategy may be prepared for the operational programmes concerned. The audit authority shall submit the audit strategy to the Commission upon request.
5. The audit authority shall draw up:
 - (i) an audit opinion on the **accuracy of the declarations of expenditure of the [...]** **previous** accounting year, **the legality and regularity of the underlying transactions [...]** **as well as** the **proper** functioning of the management and control system [...];
 - (ii) [...] a control report setting out the **main** findings of the audits **carried out according to paragraph 1 and the suggested and implemented corrective measures [...]**.

The report under point (ii) shall set out [...] deficiencies found in the management and control system and [...] corrective measures taken or proposed to be taken.

Where a common management and control system applies to more than one operational programme, the information required under point (ii) may be grouped in a single report.

6. The Commission shall adopt, by means of implementing acts, models for the audit strategy, the audit opinion and the [annual] control report [...]. These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 143(3).
7. **The Commission shall adopt, by means** of implementing **acts**, rules concerning the use of data collected during audits carried out by Commission officials or authorised Commission representatives. **Those implementing acts** shall be adopted [...] in accordance with the examination procedure referred to in Article 143(3).

Article 118

Cooperation with audit authorities

1. The Commission shall cooperate with audit authorities to coordinate their audit plans and methods and shall immediately exchange **with those authorities** the results of audits carried out on management and control systems.
2. To facilitate this cooperation in cases where a Member State designates more than one audit authority, the Member State may designate a coordination body.
3. The Commission, the audit authorities and any coordination body shall meet on a regular basis and, **as a general rule**, at least once a year, unless otherwise agreed, to examine the [annual] control report, the **audit** opinion and the audit strategy, and to exchange views on issues relating to improvement of the management and control systems.

ETC-REGULATION

CHAPTER VII

MANAGEMENT, CONTROL AND ACCREDITATION

Article 20

Designation of authorities

1. For the purposes of Articles 113(1) [...] of Regulation (EU) No [...]/2012 [CPR], Member States participating in a cooperation programme shall appoint a single managing authority [...], **for the purpose of Article 113(2) of that Regulation, a single certifying authority, and** for the purpose of Article 113(4) of that Regulation, a single audit authority. **The managing authority and the audit authority** shall be situated in the same Member State. **The Member States participating in a cooperation programme may designate the single managing authority to carry out the functions of the certifying authority. The appointments are without prejudice to the apportionment of liabilities in relation to the application of financial corrections among the participating Member States as laid down in the cooperation programme.**
2. The **certifying** authority shall receive the payments made by the Commission and shall, **as a general rule,** make payments to the lead beneficiary in accordance with Article 122 of Regulation (EU) No [...]/2012 [CPR].

Article 21

European grouping of territorial cooperation

Member States participating in a cooperation programme may make use of an EGTC with a view to making the grouping responsible for managing the cooperation programme or part thereof, notably by conferring on it the responsibilities of a managing authority.

Article 22

Functions of the managing authority

1. The managing authority of a cooperation programme shall carry out the functions [...] laid down in Article 114 [...] of Regulation (EU) No [...]/2012 [CPR], **without prejudice to paragraph 4 of this Article.**
2. The managing authority, after consultation with the Member States and any third countries participating in a cooperation programme, shall set up a joint secretariat.

The joint secretariat shall assist the managing authority and the monitoring committee in carrying out their respective functions. The joint secretariat shall also provide information to potential beneficiaries about funding opportunities under cooperation programmes and shall assist beneficiaries in the implementation of operations.

3. Verifications under Article 114(4)(a) of Regulation (EU) No [...]/2012 [CPR] shall be carried out by the managing authority for the whole programme area where the managing authority is an EGTC.
4. Where the managing authority **does** not carry out verifications under Article 114(4)(a) of Regulation (EU) No [...]/2012 [CPR] throughout the whole programme area, each Member State or, **when it has accepted the invitation to participate in the cooperation programme, the** third country shall designate the body or person responsible for carrying out such verifications in relation to beneficiaries on its territory ("controller(s)"). **In this connection, the managing authority shall satisfy itself that the expenditure of each beneficiary participating in an operation has been verified by a designated controller. Each Member State shall ensure that the expenditure can be verified within a period of three months from the submission of the documents by the beneficiary.**

Those controllers **may** [...] be the same bodies responsible for carrying out such verifications for the operational programmes under the Investment for growth and jobs goal or, in the case of third countries, for carrying out comparable verifications under external policy instruments of the Union.

Each Member State or, **when it has accepted the invitation to participate in the cooperation programme, the** third country shall be responsible for verifications carried out on its territory.

5. Where the delivery of co-financed products or services can be verified only in respect of an entire operation, the verification shall be performed by the managing authority or by the controller of the Member State where the lead beneficiary is located.

Article 22 bis

Functions of the certifying authority

The certifying authority of a cooperation programme shall carry out the functions laid down in Article 115 of Regulation (EU) No [...] /2012 [CPR].

Article 23

Functions of the audit authority

1. The Member States and third countries participating in a cooperation programme may decide that the audit authority is authorised to carry out directly the functions provided for in Article 116 of Regulation (EU) No [...] /2012 [CPR] in the whole of the territory covered by a cooperation programme. They shall specify when the audit authority shall be accompanied by an auditor of a Member State or a third country.

2. Where the audit authority does not have the authorisation referred to in paragraph 1, it shall be assisted by a group of auditors composed of a representative from each Member State or third country participating in the cooperation programme and carrying out the functions provided for in Article 116 of Regulation (EU) No [...]/2012 [CPR]. **Each Member State or third country shall be responsible for audits carried out on its territory.**

Each representative shall be responsible for providing the factual elements relating to expenditure on its territory that is required by the audit authority in order to perform its assessment.

The group of auditors shall be set up at the latest within three months of the decision approving the cooperation programme. It shall draw up its own rules of procedure and be chaired by the audit authority for the cooperation programme.

3. The auditors shall be functionally independent from controllers who carry out verifications under Article 22.