TERRITORIAL COOPERATION - THE DESCRIPTION OF MANAGEMENT AND CONTROL SYSTEMS

MARCH 2007

This guide is an introduction to the Description of Management and Control Systems required by the Commission within twelve months of approval of an Operational Programme. It builds on the template for content in the Implementing Regulation (1828/2006) from which all the boxed text is drawn and includes clarifying comments based on a wide range of sources including Commission working papers and presentations, programme experiences and documents from the current period. While every effort has been made to include all important points, we are dealing with a document that has yet to be produced and for which requirements are much more comprehensive than the current Article 5 declaration. Omissions are therefore possible and are entirely the fault of the author.

We also recognise that there are as many different systems and procedures as there are programmes. This handbook is not therefore prescriptive in approach but tries only to highlight the main issues that should be considered. It is of course up to each programme to determine the solutions that will work best in its own context but we hope that this guide will give some hints and help you in preparation of the Systems Description.

INTERACT Viborg
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Table of contents

Regulations in the new period

1083/2006 Laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (**General Regulation**)

1080/2006 On the European Regional Development Fund and repealing Regulation (EC) No 1783/1999 (**ERDF Regulation**)

1828/2006 Setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund (**Implementing Regulation**)

IMPORTANT NOTE: A new version of the Implementing Regulation was published on 15 February 2007. The annexes are renumbered in all versions and there are slight changes in the text of the French and German versions.

DESCRIPTION OF MANAGEMENT AND CONTROL SYSTEMS FOR TERRITORIAL COOPERATION PROGRAMMES
Model description of management and control systems under 1828/2006 Article 21

Introduction

The description of management and control systems is a requirement of Article 71 of Council Regulation (EC) 1083/2006 with more detail provided in Article 21 of the Implementing Regulation (EC) 1828/2006. The description must be submitted to the Commission no later than 12 months after approval of the programme – though this would actually represent a considerable delay and work should begin before or straight after submission of the Operational Programme.

The description must be accompanied by a report usually from the Audit Authority but possibly from another independent body (the 'compliance assessment body'). The report includes an assessment of the systems and in particular their compliance with Articles 58-62 of 1083/2006 (covering general principles of management and control systems, the designation of authorities and the functions of the MA, CA and AA). The description and the compliance assessment report are being given greater weight than the Article 5 declaration required in the 2000-2006 programme period: No interim payments will be made to any programme that has not submitted satisfactory documents. Furthermore, if the compliance assessment report contains any reservations about the management and control systems in place, this will automatically lead to stricter audit requirements for the programme concerned (the required confidence level rises from a minimum of 60% to 90%). In reality programmes should try not submit a description of systems if the Audit Authority still has reservations about the procedures described: The initial description and report should instead be completed soon enough to allow programme management bodies to correct any problems before submission of the final documents to the Commission.

In addition to the actual description, a number of supporting documents need to be prepared and either checked as part of the compliance assessment procedure and /or submitted to the Commission. In many cases these documents cover information to potential applicants, management bodies and other programme stakeholders on important programme rules and will include fact sheets, guidelines and manuals. The requirements are included in the text below. The other documents to be prepared address the standard procedures used by the programme to carry out its normal tasks. These documents deserve particular attention: They should create transparency about programme operations and define common standards that will serve as performance baselines for all programme management bodies. If well written, the procedures can also be used as training manuals for new staff and help to address the high staff turnover experienced in many programmes. The content of these procedures will obviously vary enormously between programmes but the main text includes indications on some key points to cover and Annex 1 includes an example suggesting the level of detail required.

It is also important to note that while programme bodies will in many cases be responsible for drafting this document, a lot of the information required needs to come from participating Member States. This information is mentioned in the text and the process of collecting it should start now with clear deadlines for submission.

A couple of general considerations are also worth bearing in mind when drawing up the description. Firstly, information included in or annexed to the text can only be changed if the description is resubmitted. As a result it will be best to refer to separate sources for documents that may be modified during the programme lifetime such as report forms and standard procedures. Secondly, all documentation mentioned in the description should be available at the time of

submission to the compliance assessment body: If documents needed for the system are missing at this point, it will represent a systemic error.

Finally, some indications are already available of some of the main points that will be considered by the Commission in its appraisal of the descriptions and compliance assessment report (though programmes must of course make sure that all aspects are covered sufficiently). Firstly, there is widespread concern about the quality of first level control systems in the current period and particular attention must be paid to establishing systems that allow quality control and improvement. Secondly, information for projects on eligibility and requirements for the audit trail must be improved. Thirdly, procedures must be put on paper and used by all relevant bodies: In the current period too much seems to have relied on the work and knowledge of individuals. Lastly, the delays in starting systems audits in the current period and the low quality of some audit reports need to be addressed.

Section 1 – General Information

1. GENERAL
1.1. Information submitted by:
- [Name of the] Member State
- Title of the programme and CCI No (obtained when submitting the programme through the SFC 2007 system)
- Name of main contact point, including e-mail and fax (body responsible for coordination of descriptions)

1.2. The information provided describes the situation on: (dd/mm/yy)

1.3. System structure (general information and flowchart showing the organisational relationship between the bodies involved in the management and control system)

1.3.1. Managing authority (Name, address and contact point in the managing authority)

1.3.2. Intermediate bodies (Name, address and contact points in the intermediate bodies)

1.3.3. Certifying authority (Name, address and contact point in the certifying authority)

1.3.4. The audit authority and audit bodies (Name, address and contact point in the audit authority and other audit bodies)

Points to consider

1. The submitting Member State for Territorial Cooperation programmes is the Member State hosting the Managing Authority. It may, however, be best for the Compliance Assessment Body (normally the Audit Authority) which checks the description to submit the document in order to ensure that the final checked version is provided. The description and accompanying Compliance Assessment report will be submitted through the SFC 2007 system.

2. The separation of functions (and in particular of management, control and payment responsibilities) remains a key principle (1083/2006 §58.b). This is particularly important to consider with reference to the Certifying Authority. Both the regulations and the good practice paper on Article 9 checks in existing Paying Authorities make clear that the CA is expected to act in a supervisory role towards the MA. It should be made clear that the CA can and will initiate corrective action against the MA if necessary.

3. 1083/2006 §59.4 states that the Managing Authority, Certifying Authority and Audit Authority 'may be part of the same body'. The Commission has already stated, however, that it may be very difficult to demonstrate the full independence of the Audit Authority if this is the case. The MA and CA are, on the other hand, often part of the same body. If this is the case, it needs to be demonstrated that they are managed separately. Audit comments have also mentioned the need to ensure that the separation of functions is not just formal and legal but also a reality in everyday programme implementation.

Three solutions are proposed for achieving the necessary separation and independence of functions. Firstly, different roles can be assigned to different organisations (e.g. two different ministries). Secondly, different roles can be assigned to separate departments within the same organisation. Finally, if this is also impossible and more than one role is assigned to the same department, it is necessary to provide clear job descriptions that make clear the separation of

functions and ensure the independence of staff working on different functions. The clearest way of doing this is to use a chart of the organisation (organigram) showing that different people are responsible for the management of each body and in particular for signing documentation (and in particular statements of expenditure, payment orders etc). The organigram should also show the level in the organisation at which the different programme bodies come under joint responsibility – it must be clear that the same manager is not responsible for taking decisions on both MA and CA operations.

4. Intermediate Bodies are allowed in the regulations but will not be allowed to replace or interfere with the principle of single management bodies as was made clear in the Commission's November letter to programming authorities[1]. This letter also stressed the need to convincingly justify the 'additional complexity' created by the inclusion of Intermediate Bodies and made clear that IBs which were active in the whole programme area rather than just one Member State would clearly be preferred. The precise relationship between IBs and the rest of the management and control system will therefore have to be carefully explained and justified.

5. Although not included in the list of bodies to be mentioned in the description of systems, programmes should already include the Joint Technical Secretariat at this point and its relationship with the other management bodies. This information is necessary for completing the flow chart showing the relationship between management bodies.

6. The 'other audit bodies' referred to in Territorial Cooperation programmes are the nationally delegated representatives in the Group of Auditors (where participating Member States have not decided to allow the Audit Authority alone to carry out all audit work for the whole programme area). The representatives in this group do not necessarily have to carry out the audits themselves but remain responsible for monitoring all audits.

1.4. Guidance provided to the managing and certifying authorities and intermediate bodies to ensure sound financial management of Structural Funds (date and reference)

Points to consider

1. 'Sound financial management' is a term often used in connection with Territorial Cooperation (and other European programmes of course). Council Regulation 1605/2002 on the Financial Regulation applicable to the general budget of the European Commission (§27.2) mentions three key principles to be addressed. These are:

- **The principle of economy:** Resources used by the institution for the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price.

- **The principle of efficiency:** The best relationship between resources employed and results achieved.

- **The principle of effectiveness:** Attaining the specific objectives set and achieving the intended results.

Clearly these principles are also central to Territorial Cooperation programmes and guidance to programme management bodies should take these requirements as their starting point.

2. Guidance to these bodies also needs to address a range of other issues. There is a potential for overlap in the work of the MA and the CA and clear definitions need to be developed, for example,

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[1] This letter does not of course have the same legal basis as the regulations but it does seem to set out key principles that will be used in the Commission assessment of the Operational Programmes submitted.

of the control work to be carried out by each body in order to avoid duplication while ensuring that essential tasks are actually being carried out.

3. Other issues to address in addition to control include entering (and changing) data in the accounting system, making forecasts and claims to the Commission, receiving Commission payments and making payments to projects, managing programme bank accounts and liquidity, and managing additional financial flows such as MS contributions to the TA budget.

Section 2 – Managing Authority & control systems

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2. MANAGING AUTHORITY
NB: This section should be completed separately for each managing authority.

2.1. Managing authority and its main functions

2.1.1. The date and form of the formal designation authorising the managing authority to carry out its functions

2.1.2. Specification of the functions and tasks carried out directly by the managing authority

2.1.3. Functions formally delegated by the managing authority (functions, intermediate bodies, form of delegation)

Points to consider

1. In Territorial Cooperation programmes there can only be one Managing Authority so the first comment can be disregarded.

2. The MA can delegate many of its tasks to the JTS or in more exceptional cases to IBs (see section 1 above). Regardless of such delegation, the MA maintains full responsibility for the proper completion of all tasks assigned to it in the regulations. Delegation therefore needs to be formally documented and controls put in place to ensure that delegated tasks are carried out correctly.

3. The extent of delegation to the JTS is not covered in the regulations and the decision needs to be taken on a programme by programme basis. The Commission has recommended that core tasks which should be delegated to the JTS include processing applications, organising project assessment and presenting proposals on project approval/rejection to the selection committee. The JTS should also provide help and support to projects at all stages. All project applications should be submitted to the programme through the JTS.

4. The tasks assigned to the Managing Authority in Territorial Cooperation programmes are primarily defined in 1083/2006 §60. They are:

• Ensuring that projects are selected in accordance with the criteria defined in the Operational Programme (1083/2006, §60 (a))

The MA must monitor the whole application assessment and selection procedure. Decisions on project approvals and rejections must be directly related to the criteria in place in the programme. Rejected applicants must as a minimum receive notification of the reasons for rejection linked to the published programme criteria.

• Ensuring that all project activities comply with applicable Community and national rules (1083/2006, §60 (a))

See section 2.2.4 for more information

• Recording and storing MA accounting records for each project and making sure that the required monitoring data are collected (1083/2006, §60 (c))

See section 2.2.6 for more information

- Ensuring that projects maintain either a separate accounting system or an adequate accounting system (1083/2006, §60 (d))

Project systems must allow controllers and auditors to identify which transactions are project related. In some cases in the current programmes, requirements like this have been 'lost' in the large amounts of information provided or have not been properly communicated from Lead Partners to partners. It may be worth drawing up a checklist of absolutely essential requirements for distribution to all approved project partners.

- Ensuring evaluations are carried out and meet the quality standards defined in 1083/2006 §47 (1083/2006, §60 (e))

Parts of the fixed evaluation timetable in place in the current period have been dropped. Ex ante evaluation still has to be carried out as part of programme preparation. Ex post evaluation is the responsibility of the Commission (1083/2006, §49.3). A requirement remains for on-going evaluation of the programme but programmes may choose to carry out limited evaluation activities each year or to carry out an evaluation at the programme mid-point (when enough results are available to provide evaluators with material for analysis but there is still time to implement recommendations) or to combine the two approaches.

It should be noted that any change to the Operational Programme (including changes to the financial tables) will need to be supported by evaluation findings. It may be possible for internal experts to carry out some evaluation activities to support minor changes as long as they are functionally independent of the programme management bodies. Other activities will still be best carried out by external experts (1083/2006, §48.3). Further guidance on evaluation methods and the quality standards mentioned will be provided by the Commission at a later date but effective programme monitoring systems will be the key to providing the quick and accurate information on the programmes' implementation status required for some of these rapid evaluations.

- Setting up procedures to ensure that all documents regarding expenditure and audits are held to secure the audit trail (1083/2006, §60 (f))

This requirement covers the audit trail for programme bodies and projects. Failure of parts of the audit trail (particularly at project level) has been one of the most frequent critical findings of control and audit visits in the current period with projects often reporting that they were unaware of the full requirements. Programmes may again want to consider checklists for the most important documents. It should also be noted that one of the new responsibilities of the Managing Authority is to maintain a list of all organisations holding documents forming part of the audit trail. This information should be collected from projects no later than before the first interim payment is made.

- Ensuring that all necessary information on procedures and verifications is provided to the Certifying Authority (1083/2006, §60 (g))

See section 4.

- Guiding the Monitoring Committee and providing it with documents allowing monitoring of the quality of progress towards specific programme goals (1083/2006, §60 (h))

Monitoring Committee meetings should focus on assessing and adjusting programme strategy, and the decisions required for programme management bodies to carry out their functions effectively. The MA should establish a monitoring system that allows verifiable conclusions to be made about the programme's progress towards achieving its objectives.

- Drawing up and submitting annual and final reports to the Commission after Monitoring Committee approval (1083/2006, §60 (i))

Templates are provided in the Implementing Regulation (Annex XVIII).

- Ensuring compliance with information and publicity requirements (1083/2006, §60 (j))

The requirements for information and publicity are contained in the Implementing Regulation (1828/2006 §2-9). These include programme responsibilities to prepare and submit to the Commission a communication plan within four months of approval of the programme and to monitor and evaluate the implementation of this plan. The Managing Authority is required to provide the Monitoring Committee with examples of information products. The MA must also fulfil a number of more detailed requirements when addressing potential beneficiaries and as a minimum provide clear and detailed information on:

- The eligibility criteria for obtaining funding in the programme
- The procedures for assessing project applications and the time required for this
- The selection criteria for projects
- Contacts on national, regional and / or local level who can provide further information about the programme
- The fact that all beneficiaries and the names of the operations they are involved in will be published in a list together with the amount of funding granted to them, and that acceptance of funding is also acceptance of inclusion in this list.

The Managing Authority must also ensure that a launch event is held for the Operational Programme and that there is at least one major information activity each year to present the achievements of the programme. Furthermore, the MA must ensure that the European flag is flown in front of its premises for one week starting from 9 May every year. Finally, the MA should also ensure that the project level publicity requirements listed in 1828/2006 §8 are fulfilled.

It is worth noting that Commission auditors regard procedures for fulfilment of publicity requirements as being equally important as all other programme systems. Particularly in the case of information on the possibility of funding to potential beneficiaries, poor communication will lead to decreased competition among applicants and as a result the funds available may not be used in the most efficient way.

- Providing the Commission with information required to appraise major projects

As a rule Territorial Cooperation programmes will not implement major projects (as defined in 1083/2006 §39-41) so the additional requirements for these projects are not covered in this document.

5. The Managing Authority in Territorial Cooperation programmes is ***not*** required to ensure compliance of individual items of expenditure incurred with national and Community rules (1083/2006 §60 (b)). This is made clear in 1080/2006 §15.1, where it is clearly stated that this task is the responsibility of the controllers designated by each Member State. Nevertheless, the Managing Authority remains responsible for ensuring that project partners comply with these rules throughout the project lifetime. The MA should therefore ensure with Member States that the systems set up in each country provide sufficient guarantees and meet all requirements set out in the regulations (and in particular in 1828/2006 §13).

6. In addition to the basic requirements laid out in the General Regulation, there are other MA tasks identified in the other regulations. These are:

- Ensuring that project partners are aware of the terms under which grants are awarded and that they have sufficient capacity to fulfil these conditions (Implementing Reg. §13.1)

The requirement to make clear the terms for awarding the grant links back to the advisability of ensuring that essential information is available to all potential partners in easy to use checklists. Confirmation of every partner's acceptance of these minimum conditions could then be required as part of the application documentation. Programmes may also want to establish and check additional criteria.

Capacity checks of partners are more complex. Collecting relevant data should almost certainly form part of the application process and may address financial, technical and administrative capacity. The financial capacity of Lead Partners should be stressed because they are still required to make the preliminary repayment of any irregularity. All partners need sufficient funds to begin implementation before the first programme payments are received. Capacity declarations by each partner based on an overview of requirements and responsibilities may be the most pragmatic approach.

- Lay down the implementing arrangements for each project (i.e. contracting) (1080/2006 §15.2)

*An overview of the contracting arrangements in different programmes is already available from INTERACT. A key lesson from the current period is to ensure that contracts are standardised as far as possible in order to ensure minimal delays in issuing them. Programmes considering the INTERACT study should also note that it was prepared before finalisation of the new regulations and some new requirements should be included (many of which are suggested in the text below). **All programmes should also include a clause to allow reduction or cancellation of project grants in the event of poor performance as a way of managing the de-commitment threat.***

It should be noted that only one contract is envisaged between each project and the programme and that this is signed by the Managing Authority and the Lead Partner. Although separate agreements are normal for national/regional co-financing, programmes are rarely involved in this procedure.

- Maintaining a list of all bodies holding documentation in the audit trail (Implementing Reg. §19)

This information is again most easily collected at the application stage or just afterwards (and certainly before any payments are made). Contracts must ensure that projects are required to update this information whenever necessary as one of the conditions for receiving the grant.

- Keeping and publishing a list of beneficiaries, operations financed and amount of grant received (Implementing Reg. §7)

Required as part of the drive towards increased transparency. The list should be published on websites and in annual reports.

7. The responsibilities of the Managing Authority and its relations with the Member States participating in the programme and the Commission also need to be covered in a Memorandum of Understanding / Letter of Agreement (§59.3 EC 1083/2006).

2.2. Organisation of the managing authority

2.2.1. Organisation chart and specifications of the functions of the units (including indicative number of posts allocated)

Points to consider

1. No standard staffing level can be set for the MA, as resource requirements will depend on the tasks carried out directly by the MA and the size of the programme. In the current period the smallest MAs have employed only half a fulltime member of staff. The largest have included several fulltime staff.

2.2.2. Written procedures prepared for use by staff of the managing authority / intermediate bodies (date and reference)

Points to consider

1. Written procedures should describe in detail every step of the work carried out to complete all important tasks and as a minimum all tasks needed to adequately fulfil the obligations of 1083/2006 §60. The procedures should provide other management bodies with a transparent description of the work that is carried out and will be a main source of information for the authority carrying out the compliance check.

2. Staff turnover has been a significant problem in current programmes. The written procedures should therefore also be seen as a training manual that will give new staff a full overview of exactly what they are expected to do and what has been done in the past.

3. It should be expected that particular attention will be paid to the procedures covering the work of Intermediate Bodies and the controls in place to check the quality of this work in order to ensure that common standards are applied across the programme.

4. There is a requirement for ongoing system audits to be carried out by the Audit Authority or a delegated body each year as part of the preparation for the annual opinion on the programme. This means that written procedures must be regularly updated to reflect programme practices and new texts should be submitted to the Audit Authority.

2.2.3. Description of procedures for selecting and approving operations and for ensuring their compliance, for their whole implementation period, with applicable Community and national rules (Article 60(a) of Regulation (EC) No 1083/2006).

Points to consider

1. The Commission has made clear that it sees project assessment as a task best organised by the JTS. Although the JTS can and should consult other bodies as part of its assessment procedure, input should be coordinated by the JTS, which will also prepare the final statement on whether a project should be recommended for approval or rejection.

2. The description of procedures for selecting and approving projects should include:

Any formal pre-assessment activities, launching calls for proposals (including the option to launch calls focused on particular themes/priorities), deadlines and documentation required for applications, procedures for confirming receipt of applications, assessment procedures, drawing up recommendations for rejection/approval, the Selection (Steering) Committee, conditional approvals (if used) and procedures for notification of the result of the application.

3. The criteria for project selection should be mentioned with a reference to where they can be found.

4. The comment here on compliance 'with applicable Community and national rules' refers generally to the activities carried out rather than the eligibility of expenditure incurred (though most activities of course also have a financial impact). As such the Managing Authority of Territorial Cooperation programmes is not exempted from this requirement by 1080/2006 §15. Various procedures allow the MA to collect the necessary information. Firstly, Steering Committee decisions should include a statement that none of the activities described in the application are against national or Community rules. The approved application should then be included as part of the contract with only the approved actions eligible for expenditure (though with the possibility for projects to request changes). The Lead Partner will then check that only the activities agreed have been carried out and included in the statement of expenditure. Activity reporting to the programme should contain a declaration to this effect and the statements provided can be checked during on-the-spot checks.

2.2.4. Verification of operations (Article 60 (b) of Council Regulation (EC) No 1083/2006)

- Description of the procedures for verification
- Bodies carrying out such verifications
- Written procedures (reference to manuals) issued for this work

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Points to consider

1. This is a description of the programme's first level control systems. As is made clear in 1080/2006 §16, it is the responsibility of each Member State to set up a control system and report the arrangements it has made to the programme. As such, the requirement of 1828/2006 that the Managing Authority should carry out administrative and on-the-spot checks should not necessarily be regarded as applying to Territorial Cooperation programmes: These tasks are primarily a Member State responsibility though they may be delegated to the MA (and subsequently to the JTS). The MA still has a responsibility, however, to ensure that the Member State systems establish live up to all requirements in the regulations. Member States must also ensure that certification can be completed within three months (1080/2006, §16.2).

2. The final procedures established should allow for the checking of the 'administrative, financial, technical and physical aspects' of the projects. This means that an invoice check is clearly not enough.

3. Many programmes in the current period have split first level control responsibilities with one of the programme bodies (MA or JTS) remaining responsible for checking activity reports. Member States will have to decide the best approach to 'administrative checks' (e.g. is the audit trail secure) and how to 'verify the delivery of the products and services co-financed' and the reality of the expenditure incurred (sometimes called 'proof of existence'). The designated controllers are responsible for ensuring the compliance of expenditure incurred with Community and national rules (eligibility of expenditure).

4. Audits of current programmes by both second level control bodies and the Commission's audit unit have highlighted the need for procedures to check the quality of first level control work being carried out. Where this is done in the current period, it is generally part of on-the-spot checks carried out by one of the programme management bodies. If in the new period these checks are carried out by the same bodies responsible for the other aspects of first level control, some additional form of quality check may be necessary.

5. The formal role of the MA in first level control is limited to satisfying itself that 'the expenditure of each beneficiary participating in an operation has been validated by the controller [designated for the programme by each participating Member State]' (1080/2006 §15).

6. By the time that the Description of Management and Control Systems is submitted to the Commission, all first level control bodies that were subject to a selection procedure must have been confirmed and their names and contact details provided. It may be best to include this information in the Memorandum of Understanding between the Member State and the programme so that if names change during implementation it is not necessary to resubmit the Article 71 declaration. Some general principles have been suggested: The programme and not the projects should choose first level controllers. The list of approved controllers should be small enough to monitor and improve the quality of the work carried out. Longer lists or approval of all controllers with a certain level of qualification will probably result in rejection of the systems description.

7. There is a clear reference here to the need to provide written guidelines on control procedures. These manuals should define minimum standards for control work and make clear the extent of the controls to be carried out. This is particularly important if all aspects of first level control (including administrative checks and on-the-spot checks) are also to be carried out by nationally designated controllers.

8. Note that where on-the-spot visits are conducted on a sample basis, the sample should be based on risk analysis and documentation should be kept justifying the selection of projects for checks (1828/2006, § 13). Even if checks are carried out on a national basis, the MA will need to coordinate the risk analysis.

9. Programmes which are making use of the option to use up to 20% of programme funds outside the programme area should include specific comments on the control of these amounts (including whether auditors from these countries should participate in the Group of Auditors, as it is likely that some of these transactions will be included in the audit sample). Programmes making use of the option to use up to 10% of programme funds outside the European Community should see section 7 on the Member State responsibility for ensuring the sound control of these funds.

2.2.5. Processing of applications for reimbursement

- Description of the procedures by which applications for reimbursement are received, verified and validated, and by which payments to beneficiaries are authorised, executed and accounted for (including flowchart indicating all bodies involved)

- Bodies carrying out each step in the processing of the application for reimbursement

- Written procedures (reference to manuals) issued for this work

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Points to consider

1. Procedures here will include information on reporting deadlines and documents, a description of the checks carried out by the JTS (often checking of the activity report and cross-referencing of activities with the expenditure claimed) and the MA (checking that claims have been properly certified and that reservations in controller statements have been satisfactorily resolved). Procedures should also extend to the Certifying Authority and the checks carried out before a payment is approved.

2. The Commission paper on good practice in Paying Authority checks in the current period outlines in detail a division of tasks that is reflected in the new regulations. These make clear that

the MA is responsible for approval of individual project claims but that the Certifying Authority is responsible when compiling programme claims to the Commission for checking the accuracy of the information on which it bases these claims.

3. In the regulations the CA is deliberately excluded from the list of organisations assisted by the JTS. This is because processing of project reports and claims, checking that designated controllers have signed all necessary declarations and entering figures in the programme accounting system are in many cases tasks delegated from the MA to the JTS. As a result, CA checks will often be a control of work carried out by the JTS. The JTS should of course continue to provide all necessary information to the CA but it is the responsibility of the CA to verify this information before certifying a claim to the Commission.

4. In the current period it has been felt that the Paying Authority has not always done enough checks of work presented by others. The good practice paper makes clear that the CA should carry out real and meaningful checks (see section 4).

5. The change in name from Paying Authority to Certifying Authority emphasises the fact that this kind of control and the subsequent certification of claims to the Commission are the primary task of the Certifying Authority.

2.2.6. Description of how information will be transmitted to the Certifying Authority by the Managing Authority

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Points to consider

1. The regulations make clear (§14.1 EC 1828/2006) that every programme should establish a common information system and that the MA, CA, AA and all other bodies carrying out audits of the programme and its projects should have access. All essential information on project claims should be available to the CA through this system.

2. Any additional forms and/or procedures for reporting e.g. the results of controls and audits should be described in this section (c.f. Section 6).

2.2.7. Eligibility rules laid down by the Member State and applicable to the operational programme

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Points to consider

1. Each Member State is required to provide the full rules rather than just references to documents. Informally it has been commented that the level of detail should probably build up from the old eligibility regulation (448/2004).

2. With the exception of the small number of cases covered in the regulations, all eligibility questions are governed by national rules. This means that beneficiaries from different countries will be subject to different eligibility rules unless participating Member States can agree common rules for the programme. There is actually very little change from the current period with many of the issues covered in the current eligibility regulation included in the new regulations but distributed in different articles.

3. It should be noted that 1080/2006 §13 stating that where Member States have different rules 'the most extensive eligibility rules shall apply throughout the programme area' only applies to spending on housing as provided for in Article 7 of the same regulation. The text is slightly confusing but results from significant changes to the text of Article 7 during the negotiation of the

regulations. If programmes develop joint eligibility rules they will almost certainly have to base these on the strictest national rules to avoid conflicts with national legislation.

4. Programmes and/or Member States should ensure that projects have access to clearly defined basic rules and a contact point for more detailed interpretations of these rules. Projects should be able to get quick and clear written answers to all eligibility questions.

2.3. In cases where the managing authority and the certifying authority are both designated in the same body, describe how separation of functions is ensured

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Points to consider

1. See section 1 above.

2.4. Public Procurement, State Aid, Equal Opportunities and Environment rules

2.4.1. Instructions and guidance issued on the applicable rules (date and reference)

2.4.2. Measures foreseen to ensure that applicable rules are complied with, for example, management checks, controls, audits

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Points to consider

1. Failure to fully comply with public procurement legislation has been a problem in some projects in the current period. Rules are set on a national level and an overview should be included if at all possible with the other rules provided by the Member States. Specialist training is required to develop a full understanding but it should be recalled that public bodies in different sectors should be familiar with the rules governing that sector.

2. Even if the programme does not allow direct funding to private partners, the inclusion of such partners in any capacity may have potential state aid implications. Indeed, even public bodies can be subject to state aid rules if and when they deliver services to the market. Some questions to consider are whether the grant will be used for purchase of assets or business start-up, whether a profit will be made, whether the grant improves the beneficiary's market position, whether outputs will be freely available to all, and whether the organisation has been given privileged access to funding (or whether it has been subject to open tendering).

It is difficult to get firm answers on state aid issues and because of the many factors that need to be considered such answers are only really available on a case-by-case basis. These rules should therefore be approached with caution. If programmes are using the *de minimis* rules, they should be aware that the rules are changing and advise projects on the new rules. Procedures should also include measures for ensuring that *de minimis* limits are not breached.

3. The General Regulation (1083/2006 §16) makes clear that equal opportunities should be understood to cover not just gender discrimination but also discrimination based on '…racial or ethnic origin, religion or belief, disability, age or sexual orientation…' with additional particular concern to be shown for '…accessibility for disabled persons…'. It should be ensured that on the programme level there are no barriers to particular groups accessing the funds and that on the project level there is, as a minimum, no negative impact on these issues.

4. It is important to remember that the sustainability goals of the Gothenburg Agenda are an important companion to the economic development objectives of the Lisbon Agenda and that

almost all project activities can be expected to leave some environmental footprint. Applications and reports should therefore address specific actions taken by each project to reduce negative effects and/or promote positive environmental impacts. This is particularly relevant in light of the requirement for programmes to carry out a Strategic Environmental Assessment and monitor resulting environmental indicators.

Control should also check that, where relevant, additional environmental legislation has been complied with such as the need to carry out Environmental Impact Assessments.

5. While procurement documentation can be checked relatively easily as part of first level control procedures, ensuring compliance with the other rules can be more complex. Programmes should therefore collect specific information on project activities related to equal opportunities and the environment in the application form and include a commitment to respect these rules in the project contract. Ensuring compliance with these rules should form part of first level control checks while reporting information should also provide an adequate basis for sample checking of project actions in on-the-spot checks and audits.

2.5. Audit Trail

2.5.1. Description of how the requirements under Article 15 will be implemented for the programme and/or for individual priorities

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Points to consider

1. 1828/2006 §15 sets out the requirements for securing an adequate audit trail down to beneficiary level. It should be noted that this part of the description of management and control systems requires that programmes define the steps they will take to ensure that the audit trail is actually secured.

2. The new requirement for the MA to keep a list of all organisations holding documents that form part of the audit trail (1828/2006 §19.1) will be part of this definition.

3. The introduction to the Implementing Regulation (9) makes clear that '…it is necessary to set out the criteria with which an audit trail should comply so as to be considered adequate.' Member State input may be needed here on national rules. Making sure that this information reaches all partners will also be necessary. In addition to actual proof of expenditure, the audit trail needs to demonstrate who decided what, when, why and with which result? Programmes should try and establish criteria for this type of supporting documentation as experience has shown that audit requirements are often much stricter than the information normally retained by projects.

4. 1828/2006 §13.2 also calls for procedures 'to avoid double financing of expenditure with other Community or national schemes and with other programming periods'. Programmes that already operate such procedures require that every invoice included in a claim to the programme is stamped by the first level controller to identify the costs as having been paid from the ERDF.

5. Note that the audit trail also applies to TA expenditure and provisions for securing the relevant documentation in programme management bodies should be included.

2.5.2. Instructions given on retention of supporting documents by beneficiaries (date and reference)

- Indication of the retention period
- Format in which the documents are to be held

Points to consider

1. The minimum retention period specified in the new regulation is three years following the closure of an Operational Programme (1083/2006 §90). This could easily be until 2020 or later. This figure may be used as a guideline to projects to clearly communicate this essential but often misunderstood information (the requirement often goes against project organisations' standard procedures). Contracts should, however, clearly state the period of time stated in the regulations rather than a date, which may change due to closure delays. When the programme is finally closed, this information should be communicated to all of the projects that have been funded so they can start counting down the three years! Some Member States have longer retention periods and this information should be included in the eligibility rules supplied by each participating Member State.

2. Regulation 1828/2006 §19.4 contains rules on document formats. In general, photocopies, microfiches and electronic versions of original documents as well as documents existing in electronic version only are considered as 'accepted data carriers'. Each Member State must lay down the procedures for confirming that copies conform with any original documents, that they meet national rules and can be relied on for audit purposes.

2.6. Irregularities and recoveries

2.6.1. Instructions issued on reporting and correction of irregularities and recording of debt and recoveries of undue payments (date and reference)

2.6.2. Description of the procedure (including flowchart) to comply with the obligation to report irregularities to the Commission in accordance with Article 28.

Points to consider

1. There are rules in the Implementing Regulation regarding the reporting of irregularities. Firstly it should be noted that the definition of irregularities is very broad and does not just cover deliberate or criminal acts:

"… any infringement of a provision of Community law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the Communities by charging an unjustified item of expenditure to the Community budget;" [2]

2. All irregularities must be reported to OLAF within two months following the end of each quarter (or immediately if the irregularity may spread or involves a new malpractice). Reporting is the responsibility of the Member State in which the expenditure was paid by the beneficiary. 1828/2006 §28 contains a detailed list of the information to be reported (1828/2006 §28.4). The trigger for including an irregularity in the report is that it has 'been the subject of a primary administrative or judicial finding' (1828/2006, §28.1). 1828/2006, §27 (b) contains a definition of such findings and

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[2] *(EC) 2035/2005, §1 concerning irregularities and the recovery of sums wrongly paid*

makes clear that they may originate from competent administrative bodies. In this context, programmes should consider the role of reports from the Managing Authority, JTS, Certifying Authority and Audit Authority and how and when these will be integrated into formal irregularity procedures. In Territorial Cooperation programmes there will also be a need to define procedures for communicating updated information on irregularities to the relevant Member States.

3. The Member State must inform the MA, CA and AA at the same time it reports the irregularity to OLAF.

4. A number of irregularities do not, however, need to be reported. These are:

- Cases where the only irregularity is the failure to complete part or all of a project due to the bankruptcy of one of the partners
- Cases where a partner has voluntarily informed the MA or CA about an irregularity before it was detected by the programme (and regardless of whether the funds have already been paid to the partner or not)
- Cases detected and corrected by the Managing Authority before the payment of funds to the partner and before the inclusion of the amount involved in a claim to the Commission
- Cases where the amount involved is less than €10.000 ERDF unless information is specifically requested by the Commission.

Irregularities occurring before a bankruptcy or involving suspected fraud must, however, be reported in all cases. It should also be noted that all cases should be reported to the Member States involved. The Commission can at any time request full information including amounts below the reporting threshold and provides only a short deadline. It is important therefore to keep an up-to-date record.

5. Even if a Member State has no irregularities to report, it must still inform the Commission of this (i.e. every Member State participating in a programme must provide an irregularity report including that programme every quarter).

6. In addition to the requirement to report irregularities to the Commission, every Certifying Authority must keep a full record ('debtors ledger') of all amounts awaiting recovery or previously recovered regardless of whether these amounts fall outside the irregularity reporting requirements.

7. Where the funds involved in the irregularity have already been paid to a project partner, the programme will have to initiate a recovery procedure. In many cases this will involve deduction of the amount involved from the next payment to the project. Where this is not considered safe or is not possible, programmes must follow the procedure laid out in 1080/2006 §17. The Certifying Authority recovers funds from the Lead Partner who in turn recovers the money from the partner committing the irregularity (this procedure must be covered in the project partnership agreement). If the Lead Partner fails to recover the funds from the partner concerned, that partner's Member State shall pay back the funds to the Certifying Authority (which then refunds the amount to the Lead Partner).

8. Where a Member State is unable to recover an amount, it may ask the Commission to bear part of the cost. The Commission will generally require a report on the recovery procedure (according to 1828/2006 §30.2) and may share the loss provided that it is the not the result of fault or negligence by the Member State (1083/2006 §70.2). Such cases are, however, exceptional and in general Member States must pay back amounts in full.

Section 3 – Intermediate Bodies

3. INTERMEDIATE BODIES

NB: This section should be completed separately for each intermediate body. Indicate the authority which has delegated the function to the intermediate bodies.

3.1. The intermediate body and its main functions

3.1.1. Specification of the main functions and tasks of the intermediate bodies

3.2. Organisation of each intermediate body

3.2.1. Organisation chart and specifications of the functions of the units (including indicative number of posts allocated)

3.2.2. Written procedures prepared for use by staff of the intermediate body (date and reference)

3.2.3. Description of procedures for selecting and approving operations (if not described under 2.2.3)

3.2.4. Verification of operations (Article 60 (b) of Council Regulation (EC) No 1083/2006) (if not described under 2.2.4)

3.2.5. Description of procedures for processing of applications for reimbursement (if not described under 2.2.5)

Points to consider

1. 1083/2006 §59.2 allows for the designation of Intermediate Bodies to carry out some or all of the tasks of the Managing and/or Certifying Authority. In Territorial Cooperation programmes this should not be allowed to create a national division of responsibilities.

2. The Joint Technical Secretariat, its operations and responsibilities should be described in detail here.

Section 4 – Certifying Authority

> **4. CERTIFYING AUTHORITY**
>
> **4.1. Certifying authority and its main functions**
>
> *4.1.1. The date and form of the formal designation authorising the certifying authority to carry out its functions*
>
> *4.1.2. Specification of the functions carried out by the certifying authority*
>
> *4.1.3. Functions formally delegated by the certifying authority (functions, intermediate bodies, form of delegation)*
>
> **4.2. Organisation of the certifying authority**
>
> *4.2.1. Organisation chart and specification of the functions of the units (including indicative number of posts allocated)*
>
> *4.2.2. Written procedures prepared for use by staff of the certifying authority (date and reference)*

Points to consider

1. The tasks assigned to the Certifying Authority are primarily defined in 1083/2006 §61. They are:

- Drawing up and submitting to the Commission certified statements of expenditure

As noted above, certification should be regarded as the most important function of the Certifying Authority.

- The certification should cover two aspects. Firstly, that the statement of expenditure is accurate, results from reliable accounting systems and is based on verifiable supporting documents

This check will rely on information provided by Lead Partners, first level controllers and the programme management bodies responsible for monitoring project implementation. The accounting systems and verifiable supporting documents mentioned here are those held by the programme. Documents would include all of the evidence held by the programme relating to each project.

- Secondly, that the expenditure declared complies with Community and national rules and has been incurred only for operations approved in compliance with the programme's selection criteria and complying with Community and national rules

*Ensuring the compliance of **expenditure** with Community and national rules is a task of the nationally established first level control systems in Territorial Cooperation programmes in cooperation with the Managing Authority. Checks here will therefore probably be limited to ensuring that the designated controller has signed the controller's declaration for each partner and that any reservations have been addressed. Checks on compliance with the programme's selection criteria will be carried out through studying the project assessment documentation. Certification of the compliance of project **activities** with Community and national rules will rely on Lead Partner statements submitted during activity reporting.*

- Ensuring that its certification is based on adequate information from the Managing Authority

The information required is outlined above. It would also include reports on the findings and follow-up of controls and audits.

- Taking account of the results of all audits carried out under the responsibility of the Audit Authority

- Maintaining computerised accounting records of all expenditure declared to the Commission

- Maintaining the 'debtors ledger' with a record of all amounts recoverable

See section 2.6.

2. The payment function of the Certifying Authority is covered in 1080/2006 §14:

- The Certifying Authority receives payments made by the Commission and as a general rule makes payments to the Lead Partners

In rare cases it is possible for another body to make the payments. There should not, however, be any division of certification tasks as this poses a significant risk of creating inconsistencies in programme accounting information and standards.

3. The Certifying Authority is also required to submit to the Commission an annual statement (by 31 March from 2008 onwards) covering for each priority of the programme:

- The amounts withdrawn from statements of expenditure submitted during the previous year following cancellation of all or part of the grant to a project

- The amounts recovered and deducted from statements of expenditure in the previous year

- A statement of amounts still awaiting recovery at 31 December of the previous year classified according to the year in which the recovery order was issued

4. The Certifying Authority also plays a role in recovering amounts unduly paid out (1080/2006 §17.2):

- Ensuring that any amount paid as a result of an irregularity is recovered from the Lead Beneficiary

It should be noted that in the new period it is the partners themselves rather than the Lead Partner that bear ultimate financial responsibility. The Lead Partner makes the initial repayment to the Certifying Authority but then recovers this from the partner concerned.

5. Delegation of Certifying Authority tasks to other bodies needs to be approached with extreme care. The CA has a supervisory role towards the work of the MA, JTS and any other intermediate bodies and cannot therefore reasonably delegate this control function to one of these bodies. In addition, the need to ensure that the programme maintains one completely reliable set of accounts strongly suggests that accounting and payment functions should also be centralised. Frequent project budget changes and adjustments of amounts actually paid compared to amounts claimed need to be addressed as important risks if Certifying Authority functions are delegated.

6. The responsibilities of the Certifying Authority and its relations with the Member States participating in the programme and the Commission also need to be covered in a Memorandum of Understanding / Letter of Agreement (§59.3 EC 1083/2006).

7. The good practice paper also makes clear that standard checklists should be used to ensure consistent standards and adequate quality of certification work and to provide proper documentation of the work done.

4.3. Certification of statements of expenditure

4.3.1. Description of the procedure by which statements of expenditure are drawn up, certified and submitted to the Commission

4.3.2. Description of the steps performed by the certifying authority to ensure fulfilment of requirements under Article 61 of Council Regulation (EC) No1083/2006

4.3.3. Arrangements for access of the certifying authority to the detailed information on operations and verifications and audits held by the managing authority, intermediate bodies and audit authority

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Points to consider

1. Most of this information is covered above. Additional information on good practice procedures for certifying statements of expenditure for the Commission is available in the Article 9 paper relating to the current period (but also entirely relevant to the new period). This suggests that all certification should start with a reconciliation of the amount declared with the relevant accounting and monitoring documents. Secondly, there should be a review of the project files held by the MA and/or Intermediate Bodies to ensure that procedures are actually in place and that the necessary checks have been carried out. The Certifying Authority should also check control and audit reports and ensure that negative findings have been satisfactorily addressed.

2. The Certifying Authority should, however, avoid duplication of control and will in most cases be able to rely for information about procedures on the Audit Authority's annual updates of its opinion on programme management and control systems. It may also limit its own control work based on satisfactory reports on the functioning of programme systems but must still make 'meaningful checks' that 'include an appropriate number of file reviews'.[3] These points are now requirements under 1083/2006 §61.

3. In addition to having access to the programme's monitoring system, arrangements will also have to be made for access to documents that are not stored on this system – particularly if they are stored in multiple locations. In particular, audit reports must be made available to the Certifying Authority without delay, as results may effect payments, claims and/or reporting to the Commission.

4. As a general rule, the Certifying Authority can make three claims to the Commission each year (1083/2006 §87.1)

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[3] The comments here draw on the 'Working document setting out good practice with regard to the certification function of the Paying Authority'.

4.4. Accounting system

4.4.1. Description of the accounting system to be set up and used as a basis for certification of expenditure to the Commission

- Arrangements for forwarding aggregated data to the certifying authority in case of decentralised system
- The link between the accounting system and the information system to be set up (point 6)
- Identification of Structural Funds transactions in case of common system with other Funds

4.4.2. Level of detail of the accounting system:

- Total expenditure by priority and by Fund

Points to consider

1. Generally speaking, two levels can be identified in the accounting system. The first stores information on individual projects, such as the claims they have made and the payments they have received. It is normally linked to programme monitoring systems. The second stores aggregated data on, for example, amounts claimed from the Commission and paid out by priority. This system should also be used to monitor the split between public and private co-financing (if used) and any funds entered under 'Other' in the financial tables (such as payments from and to non-Member States like Norway). Where these are separate systems rather than separated elements of the same system, secure data transfer needs to be ensured.

2. If a decentralised system is used, a key requirement is to consider how to bring together different national data sources and ensure that they are entirely compatible.

3. Procedures for all systems should include checks to verify the accuracy and validity of the data entered.

4.5. Recoveries

4.5.1. Description of the system for ensuring the prompt recovery of Community assistance

4.5.2. Arrangements made to maintain a debtors' ledger and to deduct amounts recovered from expenditure to be declared

Points to consider

1. Recovery procedures require the coordination of Lead Partners, the Certifying Authority and Member States. In the first instance the recovery order is issued to the project Lead Partner (1080/2006 §17).

2. The Lead Partner then recovers the funds from the partner that has declared the irregular expenditure. If this is not possible, the Member State of the partner should pay the funds concerned to the Certifying Authority, which then refunds them to the Lead Partner.

3. Some discussion is required about the point at which Member States should reasonably take over recovery procedures from the Lead Partner if repayments are not made.

4. For the debtors' ledger see section 2.6 above.

Section 5 – Audit Authority

5. AUDIT AUTHORITY AND AUDIT BODIES

5.1. Description of the main tasks and inter-relationships of the audit authority and audit bodies under the responsibility of the audit authority

Points to consider

1. The main functions of the Audit Authority are set out in 1083/2006 §62. They are:

• Ensuring that audits are carried out to ensure the effective functioning of the management and control system of the programme

The compliance assessment procedure is fundamentally a check of the documentation provided for the Article 71 declaration to ensure that the systems described fulfil the requirements of the regulations. Many compliance assessment bodies will, however, already want to begin systems audit work at this point to ensure that the systems described are actually in place and functioning. Annual systems audit work is then required to prepare the yearly opinion on the effectiveness of these systems for the Commission. Even where the systems audit is carried out by another audit body, the Audit Authority remains responsible for the timely completion of this work.

The compliance assessment report must be submitted with the description of management and control systems no later than 12 months after programme approval (though see the introduction). Negative audit findings in the current period have pointed to the failure to begin systems audit work on time as a major cause for concern and problems. After the initial systems audit, subsequent systems audit work should focus on problems identified in the initial audit and any new systems and/or procedures.

• Ensuring audits of an appropriate sample of operations to verify the expenditure declared

The 5% sample in the current period is replaced with a requirement to audit a sample that allows a confidence level of at least 60% (or 90% when weaknesses have been detected in programme systems). In effect this will probably mean auditing significantly more than 5% of project expenditure. It should also be noted that in the new period, sampling focuses less on projects and more on transactions, with the focus of each audit being one transaction (i.e. claim to the programme) rather than the total project expenditure to date.

Whereas sampling for the on-the–spot visits carried out as part of first level control (1828/2006, § 3) are risk based, selection of projects for audit is based on random statistical sampling aimed at achieving a representative picture of the programme (1828/2006, §17.1). There is an option to audit a complementary sample based on risk analysis but the results of such audits should be separately analysed and should not influence the calculation of the error rate for the random sample (1828/2006, §17.5 & 6).

• Preparing and submitting to the Commission within 9 months of approval of the programme an Audit Strategy. This should identify the bodies that will perform the audits, the methods to be used, the method for selecting the sample of operations and indicative planning of audits to ensure that the main bodies are audited and audits are spread evenly throughout the programme lifetime.

The audit strategy is considered to be accepted if no Commission comment has been received within three months of the Commission receiving the audit strategy. Note that audits clearly need to

be carried out throughout the programme rather than just covering expenditure incurred at different periods in the programme lifetime.

- Submitting by 31 December each year from 2008 to 2015
- An annual control report
- An opinion on the effective functioning of the programme's management and control systems
- If relevant, a declaration for partial closure of the programme

In Territorial Cooperation programmes it seems unlikely that the effort required for preparing a partial closure would be worthwhile – though clarification is required on whether it is necessary to close a whole priority or whether it is possible to close a number of projects from different priorities. In the latter case, partial closure may be interesting for some larger programmes. The content of these documents is covered in detail in the Implementing Regulation.

- Submitting to the Commission no later than 31 March 2017 a closure declaration

Whereas different bodies have often been responsible for audit and programme closure in the current period, these two tasks are now brought under the Audit Authority.

- Ensuring that audit work takes account of internationally accepted audit standards

- Ensuring the functional independence of bodies carrying out audits if these are not conducted by the Audit Authority

- Develop its own rules or procedure

2. The audit bodies under the responsibility of the audit authority are the Member State representatives on the Group of Auditors and/or any auditors contracted to carry out actual audit work. The Group of Auditors must be set up within 3 months of approval of the programme and is chaired by the Audit Authority unless participating Member States authorise the Audit Authority to carry out directly all audits in the programme area (1080/2006 §14.2).

4. The responsibilities of the Audit Authority and its relations with the Member States participating in the programme and the Commission also need to be covered in a Memorandum of Understanding / Letter of Agreement (§59.3 EC 1083/2006).

5. Where the Audit Authority also acts as the Compliance Assessment Body, it will not of course be able to provide an objective assessment of this part of the description. In these cases a separate 'Declaration of Competence and Operational Independence' should be supplied (1828/2006, Annex XIII, second footnote). This declaration may be issued by a higher audit body in the Member State concerned. If there is no higher audit body, it has been suggested that the Audit Authority for e.g. European Social Fund programmes could provide the ERDF Audit Authority declaration and vice versa. If this is also impossible, it may be necessary to contract preparation of the declaration to an external audit firm.

5.2. Organisation of the audit authority and audit bodies under its responsibility

5.2.1. Organisation charts (including the number of posts attributed)

5.2.2. Arrangements for ensuring independence

5.2.3. Required qualification or experience

5.2.4. Description of procedures for monitoring the implementation of recommendations and corrective measures resulting from audit reports

5.2.5. Description of the procedures (where appropriate) for the supervision of the work of other audit bodies under the responsibility of the audit authority

Points to consider

1. 1828/2006 §23 contains detailed requirements for the information to be supplied about the Audit Authority and any other bodies actually carrying out audits. The key requirement is to demonstrate the independence of these bodies from the rest of the control system.

2. In very general terms the Audit Authority can be 'a national, regional or local public authority or body, functionally independent of the Managing Authority and the Certifying Authority' (1083/2006 §59.1). More detailed qualifications are based primarily on the ability of the Audit Authority or any audit bodies carrying out audits on its behalf to understand and implement internationally accepted audit standards.

3. The Audit Authority is also required to ensure that 'recommendations and corrective measures' have been properly addressed. This is important not least because the closure declaration (also to be submitted by the Audit Authority) requires confirmation that satisfactory action has been taken on all audit findings. Critical findings in project audits should be quantified and the Audit Authority should ensure that the necessary financial corrections have been made. The correction of critical findings from system audits can be checked when drafting the next annual opinion for the Commission unless the seriousness of these findings requires more urgent action.

4. The Audit Authority may make use of the JTS to communicate its findings and follow-up on the implementation of corrective action (as allowed for in 1080/2006 §14.1). In such cases procedures should be established to ensure that satisfactory action has indeed been taken.

5. Even where actual audits are contracted to an external body, the Audit Authority must ensure that the work carried out fulfils the conditions set in terms of scope and quality. The same requirement for quality control applies if a Group of Auditors has been established and some audit work is carried out by nationally designated auditors in other Member States. The experience of some Financial Control Groups in the current period has demonstrated the need to discuss and agree on audit standards and the procedures to be employed. Note also that reliance on the work of other auditors (as will normally be required when preparing aggregated audit reports covering different Member States) is covered by international audit standards.

5.3. Annual control report and closure declaration

5.3.1. Description of the procedures for preparation of the annual control report, annual opinion and closure declaration

5.4. Designation of the coordinating audit body

5.4.1. Description of the role of the coordinating audit body, if applicable

Points to consider

1. In Territorial Cooperation programmes it will be necessary to designate a coordinating audit body to coordinate the work of the Group of Auditors designated by the Member States. As an exception to this rule, the Member States may agree unanimously to allow the Audit Authority itself to carry out all audits in the whole programme area (1080/2006 §14.2).

2. Where audit is carried out in each participating Member State by the members of the Group of Auditors or contracted external auditors, the Audit Authority needs to make arrangements for the compilation of all findings into an annual report that covers all participating Member States. Where outside contractors are used, they should carry out this work but procedures for agreeing the content of the report and submitting it need to be described in all cases.

3. The annual opinion focuses on the functioning of the programme's management and control systems. This means that some system audit work will be required each year though this will probably focus on changes to the initial systems with some checking of the continuing functioning of the basic systems. This work may also need coordination if programme bodies are located in more than one country.

Section 6 – Information System

6. INFORMATION SYSTEM (Article 60 (c) of Council Regulation (EC) No 1083/2006)

6.1. Description of the information system including flowchart (central or common network system or decentralised system with links between the systems) Indication as to whether the system is already operational to gather reliable financial and statistical information on implementation of the 2007-2013 programmes. If not, indication of the date when it will be operational.

Points to consider

1. This requirement refers to the programme information system rather than the SFC 2007 system for exchange of data with the Commission. It may however be useful to draw links between the data in each system.

2. Accounting records and data on implementation (as laid out in Annex 3 to 1828/2006) must be accessible to the Managing, Certifying and Audit Authority and any other bodies carrying out audits of the programme or its projects (1828/2006 §14.1).

3. Delays in establishing monitoring systems have been criticised in the current period. Completion dates long after the time of submission of the description of management and control systems are likely to attract Commission comment.

Section 7 – Additional requirements for Territorial Cooperation programmes

1828/2006 §24 contains additional requirements for the Description of Management and Control Systems for Territorial Cooperation programmes. These requirements are not specifically addressed in the Commission template and focus particularly on Member State responsibilities.

The description of management and control system shall include the arrangements agreed between the Member States for the following purposes:

1. To provide the Managing Authority with access to all the information which it requires to discharge its responsibilities under Article 60 of Regulation (EC) No 1083/2006 and Article 15 of Regulation (EC) No 1080/2006;

2. To provide the Certifying Authority with access to all the information which it requires to discharge its responsibilities under Article 61 of Regulation (EC) No 1083/2006;

3. To provide the Audit Authority with access to all the information which it requires to discharge its responsibilities under Article 62 of Regulation (EC) No 1083/2006 and Article 14(2) of Regulation (EC) No 1080/2006;

4. To ensure compliance by the Member States with their obligations as regards the recovery of amounts unduly paid as set out in Article 17(2) of Regulation (EC) No 1080/2006;

5. To ensure the legality and regularity of expenditure paid outside the Community and included in the statement of expenditure, where the Member States taking part in a programme avail themselves of the flexibility allowed by Article 21(3) of Regulation (EC) No 1080/2006, in order to allow the Managing Authority, the Certifying Authority and the Audit Authority to exercise their responsibilities as regards expenditure paid in third countries and the arrangements for recovering amounts unduly paid relating to irregularities.

Points to consider

1. The information covered in 1-3 covers everything required for fulfilling the main tasks of each body as outlined in 1083/2006.

2. Member States are ultimately responsible for any misuse of funds by beneficiaries located on their territory. The provisions under point 4 should therefore cover as a minimum a commitment to act promptly following notification of any irregularity and criteria for when the Member State will take over the recovery procedure from the Lead Partner of the project concerned. In these cases, Member States should also repay the funds involved to the Certifying Authority as soon as they take over the recovery procedure so Lead Partners do not have to wait unreasonably long periods for repayment.

3. Point 5 in 1828/2006 §24 directly addresses liability for funds used outside the Community (the 10% rule). Due to the absence of agreements with non-Member States covering Territorial Cooperation funds, there is no guarantee that programme control and audit requirements will be met or that unduly paid funds can be recovered. As a result, the Member States participating in the programme must define workable procedures for managing such funds and the extent of each participating Member State's financial liability in the result of the failure of these procedures. Such procedures need a solid legal framework (such as formal bilateral agreements with the non-

Member State concerned) transferring the relevant regulatory requirements to the non-Member State. This requirement can be expected to limit the use of this rule.

Annex 1 – Example standard procedure - Payments to projects

The example below was prepared for a programme in the current period (the transnational North Sea programme) and we would like to thank them for giving permission to include the slightly modified version below. It is not our intention that this procedure should be copied, as requirements will of course vary from programme to programme. We do, however, think that it provides a good overview of the type of information that can be included in such standard procedures.

Person responsible: Deputy Head of Secretariat

Background:
Projects are approved by the Steering Committee. Once approved a subsidy contract is issued stating the conditions under which the project is to be implemented and on what terms payments will be made to the project. In cases where an addendum to the subsidy contract Letter has been made, the conditions stated in the addendum take precedence. The maximum grant rate for all projects is 50% of the total expenditure.

Projects become eligible for payment when they can document significant ERDF expenditure. This is typically the case when a project has incurred eligible expenditure of Euro 50,000 but there is no fixed threshold.

Requests for payment are in the form of a financial periodic report. In order for it to constitute a valid payment request it has to be accompanied by an activity report, which can be approved by the Project Development Unit (PDU). Periodic report forms are sent to projects before the end of the reporting period. Projects have six weeks to report back to the secretariat.

Each project has been assigned two desk officers: one from finance and one from the project development unit. They are responsible for daily contact with the project and monitoring its progress. They are also responsible for checking the periodic reports.

The data reported is first registered in the programme database. Each unit has its own forms and checklists. The checklists are interconnected and the Finance Unit (FU) can see the PDU's comments and whether the activity report has been approved (the checklist has been signed). The Finance Unit cannot sign its checklist before the PDU signs.

The reports are checked by the Finance and Project Development Units. After this check the project receives an Initial Check Letter (ICL), which either requests clarification or gives comments on the report and announces that the payment procedure has started. The ICL contains comments from both units.

When both units can approve the report, the desk officers from each unit sign their respective checklist. Payment papers (signed finance checklist, comments form the PDU, financial periodic report, the relevant correspondence, the pre-filled red Expenses Transfer Form and the project bank account as sent in by the LP) are passed on to the Senior Finance and Accounting Officer, who for this purpose acts as Quality Assurance Officer (QAO).

If the quality check results in no critical comments, the Quality Assurance Officer can co-sign the finance checklist. It is then passed on to the Deputy Head of Secretariat for his check and co-signature on the finance checklist and the red Expenses Transfer Form.

Procedure:

Trigger Point:	Activity and finance periodic reports are received at the programme secretariat.
Action:	File the reports in the relevant project file.

Register reports in the programme database (Support Unit). ☐
Register financial data in the programme database (FU).
Check the report and register the check in the checklist (PDU & FU). ☐
Send an ICL to the project (FU).
Clarify all the outstanding issues, which prevent the payment. ☐
Sign the checklist (PDU).
Check that the PDU signed their checklist (FU).
Sign the checklist and pass on the payment papers to the Quality Assurance ☐
Officer (FU).
Carry out the quality check, co-sign the finance checklist and pass on the payment ☐
papers to the Deputy Head of Secretariat (QAO).
Carry out the check, co-sign the finance checklist and the pre-filled red Expenses ☐
Transfer Form (Deputy Head).
Pass the payment papers on to the Paying Authority (Deputy Head) ☐
The Certifying Authority carries out the check and the Head of the Accounts
Department at the Region co-signs the pre-filled red Expenses Transfer Form.

When the amount has been paid, the secretariat receives a "transfer notification" ☐
(Appendix **) from the bank.
Check that the amounts stated in the transfer notification agree with the amounts
expected. ☐
The Head of Secretariat and the Senior Finance and Accounting Officer put their
initials on the transfer notification as proof of checking. ☐
Finish the sections of the red Expenses Transfer Form covering confirmation of
payment and pass it on to the Certifying Authority with a copy of the payment ☐
papers.
Check that the amount is now posted in the relevant account in the EURO account ☐
system.

Inform the project Lead Partner and the National Authorities (if so ☐
requested in the Memorandum of Understanding) of the transfer of
funds.

☐
☐
Documentation: File the reports in the relevant project file.
File the correspondence with the project regarding the report in the relevant project
file.
File the PDU checklist (PDU).
File the FU checklist with a copy of the payment papers, payment cover letter, and
the original transfer notification in the relevant project file.
File a copy of the above set in the "Payments to Projects" folder.
File the correspondence with the national authorities about the project payment.

END OF PROCEDURE