

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 2064/97

of 15 October 1997

establishing detailed arrangements for the implementation of Council Regulation (EEC) No 4253/88 as regards the financial control by Member States of operations co-financed by the Structural Funds

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments⁽¹⁾, as last amended by Regulation (EC) No 3193/94⁽²⁾, and in particular the fourth subparagraph of Article 23 (1) thereof,

Having consulted the Advisory Committee on the Development and Conversion of Regions and the Committee set up pursuant to Article 124 of the Treaty,

Whereas Article 23 (1) of Regulation (EEC) No 4253/88 lays down the principles governing the financial control by Member States of the operations co-financed by the Structural Funds;

Whereas it is necessary, in order to ensure an acceptable level of financial control throughout the Community, for certain minimum control requirements to be specified in detail;

Whereas, in view of the specific constitutional and administrative characteristics of each Member State, it is necessary for this Regulation to be supplemented by appropriate administrative arrangements to be made between the Commission and each Member State;

Whereas this Regulation should apply to the forms of assistance provided for in Article 5 (2) of Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the

operations of the European Investment Bank and the other existing financial instruments⁽³⁾, as last amended by Regulation (EC) No 3193/94, provided that the forms of assistance are administered by the Member States;

Whereas the Member States' management and control systems should be such as to ensure efficient and proper implementation of the operations co-financed by the Structural Funds;

Whereas rules should be established for the conduct of controls by the Member States and arrangements should be made for periodic consultations between Member States and the Commission designed to maximize the useful effect of the overall resources devoted to control at national and Community level;

Whereas the Member States should ensure that apparent irregularities reported by national or Community controls are investigated and satisfactorily treated;

Whereas the Member States should present to the Commission, as part of the closure of forms of assistance, an independent statement providing an overall conclusion as to the validity of the request for final payment and allowing the identification and satisfactory treatment of any weaknesses or irregularities;

Whereas the Member States should report to the Commission annually on their application of this Regulation;

Whereas the Member States are required by the second subparagraph of Article 23 (1) of Regulation (EEC) No 4253/88 to notify the Commission of the description of their management and control systems; whereas these descriptions should where necessary be completed and updated;

Whereas, in the case of forms of assistance involving more than one Member State, provision should be made for administrative cooperation between the Member States concerned and the Commission;

⁽¹⁾ OJ L 374, 31. 12. 1988, p. 1.

⁽²⁾ OJ L 337, 24. 12. 1994, p. 11.

⁽³⁾ OJ L 185, 15. 7. 1988, p. 9.

Whereas the Member States should be free to apply national control rules more rigorous than those prescribed in this Regulation;

Whereas this Regulation should be without prejudice to the provisions of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities⁽¹⁾ and Council Regulation (EC) No 1681/94 of 11 July 1994 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the structural policies and the organization of an information system in this field⁽²⁾;

Whereas, in accordance with Article 214 of the EC Treaty, it is necessary to ensure that professional secrets obtained in the course of the controls provided for by this Regulation are not disclosed to unauthorized persons;

Whereas the measures laid down in this Regulation are in accordance with the opinion delivered by the Management Committee on Agricultural Structures and Rural Development and the Standing Management Committee for Fisheries Structures,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation shall apply to the forms of assistance provided for in Article 5 (2) of Regulation (EEC) No 2052/88 and administered by the Member States.

Article 2

1. Member States' management and control systems shall:
 - (a) ensure the proper implementation of the forms of assistance in accordance with the objectives of sound financial management;
 - (b) provide satisfactory certification of the validity of claims for advance payments and final payments based on expenditure actually incurred;
 - (c) provide a sufficient audit trail;
 - (d) specify the organization of responsibilities and in particular the controls applied at the different levels to guarantee valid certifications;
 - (e) facilitate the identification of possible weaknesses or risks in the execution of actions and projects;
 - (f) provide for corrective measures to be taken to eliminate weaknesses, risks or irregularities identified in

the course of project execution, in particular as regards financial management.

2. For the purposes of this Regulation, a sufficient audit trail is one which permits:
 - (a) reconciliation of the summary amounts certified to the Commission with the individual expenditure records and supporting documents at the various administrative and final beneficiary levels, and
 - (b) verification of the allocation and the transfers of the available Community and national funds.
3. An indicative description of the information requirements for a sufficient audit trail is given at Annex I.

Article 3

1. Member States shall organize controls of projects or actions (hereinafter referred to as controls) on an appropriate sampling basis, designed in particular to:
 - (a) verify the effectiveness of the management and control systems in place;
 - (b) verify selectively, on the basis of risk analysis, expenditure declarations made at the various levels concerned.
2. The controls carried out before the closure of each form of assistance shall cover at least 5 % of the total eligible expenditure and a representative sample of the projects or actions approved, taking account of the requirements of paragraph 3.

For forms of assistance approved before the entry into force of this Regulation, the percentage may be reduced proportionally.

Member States shall seek to spread the implementation of the controls evenly over the period concerned.

3. The selection of the sample of projects or actions to be subject to controls shall take into account:
 - (a) the need to control an appropriate mix of types and sizes of projects or actions;
 - (b) any risk factors which have been identified by national or Community controls;
 - (c) the concentration of projects under certain implementing authorities or certain final beneficiaries, so that the main implementing authorities and final beneficiaries are subject to at least one control before the closure of each form of assistance.

Article 4

Through the controls, the Member States shall seek to verify the following:

- (a) the practical application and effectiveness of the management and control systems;
- (b) for an adequate number of accounting records, the correspondence of those records with the supporting documents at the level of the final beneficiary and the intermediate authorities;

⁽¹⁾ OJ L 292, 15. 11. 1996, p. 2.

⁽²⁾ OJ L 178, 12. 7. 1994, p. 43.

- (c) the presence of a sufficient audit trail;
- (d) for an adequate number of expenditure items, that the nature and timing of the relevant expenditure (commitments and payments) correspond to the Community requirements, to the approved physical characteristics of the project and to the works actually executed;
- (e) that the use or intended use of the project is consistent with the use described in the application for Community co-financing;
- (f) that the Community financial contributions are within the limits provided for in Article 13 of Regulation (EEC) No 2052/88 and any other applicable Community provisions and are paid to final beneficiaries without any reductions or unjustified delays;
- (g) that the appropriate national co-financing has in fact been made available;
- (h) that the co-financed actions have been implemented in accordance with the requirements of Article 7 (1) of Regulation (EEC) No 2052/88.

Article 5

The controls shall establish whether any problems encountered are of a systemic character, carrying a risk for other projects sponsored by the same final beneficiary or administered by the same implementing authority; they shall also identify the causes of such situations, any further examination which may be required and the necessary corrective and preventive action.

Article 6

Each Member State and the Commission shall consult at least once a year with a view to coordinating their programmes of controls so as to maximize the useful effect of the overall resources devoted to controls at national and Community level. These consultations shall cover the risk analysis techniques to be applied and shall take account of recent controls, reports and communications by national authorities, the Commission and the European Court of Auditors.

Article 7

1. Member States shall ensure investigation and satisfactory treatment of apparent irregularities reported following national or Community controls.
2. If an apparent irregularity has not received satisfactory treatment within six months of being reported to the implementing authority concerned, the Member State shall inform the Commission of the situation, unless it has already done so pursuant to Regulation (EC) No 1681/94.
3. For the purposes of paragraphs 1 and 2, 'satisfactory treatment' shall mean the presentation, by the final beneficiary or the implementing authority to the appropriate

person or organization responsible for control in the Member State, of sufficient evidence that the apparent irregularity does not exist or has been corrected.

If an irregularity is of a systemic character, satisfactory treatment shall further mean the adoption of the necessary steps for the correction of the cases which have not been individually identified by the controls and for the prevention of recurrence.

4. The evidence referred to in paragraph 3 may consist of copies of the accounting records and supporting documents or any other necessary element.

Article 8

1. No later than at the time of the request for the final payment and the final declaration of expenditure in respect of each form of assistance, Member States shall present to the Commission a statement, of which an indicative model is given at Annex II, drawn up by a person or organization functionally independent of the implementing service. The statement shall summarize the conclusions of the control examinations made in the previous years and provide an overall conclusion as to the validity of the request for the final payment and the legality and regularity of the operations underlying the final declaration of expenditure.

2. If the presence of important management or control weaknesses or the high frequency of irregularities encountered does not allow the provision of a positive overall assurance as to the validity of the request for final payment and the final declaration of expenditure, the statement shall refer to these circumstances and shall estimate the extent of the problem and its financial impact.

In such a case the Commission may ask that a further control be carried out with a view to the identification and rectification of irregularities within a specified period of time.

Article 9

Member States shall inform the Commission by 30 June each year and for the first time by 30 June 1998 of their application of this Regulation in the previous calendar year, with special reference to the requirements of Article 2 and including any necessary completion or updating of the description of their management and control systems required by the second subparagraph of Article 23 (1) of Regulation (EEC) No 4253/88.

Article 10

The Commission and the Member States shall work together to ensure that the objectives of this Regulation are achieved within the framework of the administrative arrangement drawn up with each Member State.

Article 11

In the case of forms of assistance in which more than one Member State participates or where there are beneficiaries in more than one Member State, the Member States concerned and the Commission shall provide one another with any administrative assistance necessary for ensuring proper control.

Article 12

1. The persons or organizations responsible for the implementation of the Community co-financed operations shall ensure that all documents and accounting records required for the controls are supplied to the officials responsible for the controls or to the persons empowered for that purpose.

2. The officials responsible for the controls or the persons empowered for that purpose may require that extracts or copies of the documents or the accounting records referred to in paragraph 1 be supplied to them.

Article 13

Information collected in the course of the controls shall be protected by professional secrecy, in accordance with the relevant provisions of national and Community law. It may not be communicated to any persons other than those who, by reason of their duties in the Member States or in the institutions of the Community, are required to

have knowledge thereof for the purposes of performing those duties.

Article 14

In accordance with the relevant national laws, Commission officials shall have access to all documents prepared either with a view to or following the controls carried out under this Regulation and to the data held, including those stored in data-processing systems.

Article 15

Nothing in this Regulation shall prevent Member States applying national control rules more rigorous than those prescribed herein.

Article 16

In so far as they relate to EAGGF Guidance Section, the controls carried out pursuant to Council Regulation (EEC) No 3508/92⁽¹⁾ and Commission Regulation (EEC) No 3887/92⁽²⁾ may also be regarded as carried out pursuant to this Regulation.

Article 17

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

Article 8 shall apply from 1 January 1998.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 15 October 1997.

For the Commission

Anita GRADIN

Member of the Commission

⁽¹⁾ OJ L 355, 5. 12. 1992, p. 1.

⁽²⁾ OJ L 391, 31. 12. 1992, p. 36.

ANNEX I

INDICATIVE DESCRIPTION OF INFORMATION REQUIREMENTS FOR AUDIT TRAIL

(Article 2 (3))

A sufficient audit trail, as referred to in Article 2 (3), is present when, for a given form of assistance:

1. Accounting records kept at the appropriate management level provide detailed information about expenditure actually incurred by final beneficiaries for each co-financial project, including the date of the accounting record, the amount of each expenditure item, the identification of the supporting document and the date and method of payment; the records are supported by the necessary documentary evidence (e.g. invoices).
 2. In cases of expenditure items relating only partly to the Community co-financed operation, sufficient justification is present of the accuracy of the allocation of the amount between the Community co-financed and the other operations. Similar justification is present also for types of expenditure which are recognized as eligible within limits or in proportion to other costs.
 3. The technical and financial plans of the project, the progress reports, the documents concerning the grant approval, the tendering and contracting procedures, etc., are kept available at the appropriate management level.
 4. In reporting expenditure actually incurred to an intermediate authority, the information referred to in paragraph 1 is aggregated in a detailed statement of expenditure indicating for each Community co-financed project all individual expenditure items with a view to composing the total certified amount. These detailed statements of expenditure constitute the supporting documents of the accounting records of the intermediate authorities.
 5. The intermediate authorities keep accounting records for each individual project and for the summary amounts of expenditure certified each time by the final beneficiaries. In reporting to the designated authority referred to in Article 21 (5) of Regulation (EEC) No 4253/88, intermediate authorities present a list of the projects approved under each form of assistance, together with information for each individual project comprising at least a complete identification of the project and the final beneficiary, the date of approval of the grant, the amounts committed and paid, the expenditure period covered and the sums of expenditure by measure and by sub-programme. This information constitutes the supporting documentation of the accounting records of the designated authority and is the basis for the preparation of the declarations of expenditure to be presented to the Commission.
 6. In cases of final beneficiaries reporting directly to the designated authority, the detailed statements of expenditure referred to in paragraph 4 constitute the supporting documentation of the accounting records of the designated authority, which is responsible for drawing up the list of projects referred to in paragraph 5.
 7. In cases of more than one intermediate authority intervening between the final beneficiary and the designated authority, each intermediate authority for its area of responsibility requires detailed statements of the expenditure amounts processed at the lower level to be used as supporting documentation for its own accounting records of which it reports upwards at least a summary of the expenditure amounts for each individual project.
 8. In cases of other models of organization of the management and information procedures, including computerized data transfers, all authorities concerned obtain sufficient information from the lower level to justify their accounting records and the sums reported upwards, thus ensuring a satisfactory audit trail from the summary amounts certified to the Commission to the individual expenditure items and the supporting documents at the final beneficiary level.
-

ANNEX II

Indicative model for the statement at the closure of forms of assistance
(Article 8)

To the European Commission, Directorate-General

INTRODUCTION

- 1. I, (state name, title and service), have examined the final declaration of expenditure for (indicate the form of assistance, the Structural Fund concerned and the period covered) together with the request to the Commission for payment of the balance of the Community aid.

SCOPE OF THE CONTROLS

- 2. I conducted the control examination in accordance with the provisions of Regulation (EC) No 2064/97. I planned and performed the examination with a view to obtaining reasonable assurance about whether the final declaration of expenditure and the request for the payment of the balance of the Community aid are free of material misstatement (Describe briefly the practical steps taken for the execution of the control).

OBSERVATIONS

- 3. The scope of the control examination has been limited by the following:

- (a)
- (b)
- (c), etc.

(Indicate any limitations to the control examination for example systemic problems, management weaknesses, lack of audit trail, lack of supporting documentation, cases under legal proceedings, etc.; estimate the amounts of expenditure affected by these limitations and the corresponding Community aid).

- 4. The control examination, together with the conclusions of any other national or Community controls to which I have had access, revealed a low/high (indicate as appropriate; if high, explain) frequency of errors/irregularities. Any reported errors/irregularities have been satisfactorily treated by the management authorities and they do not appear to affect the amount of the Community aid payable, with the following exceptions:

- (a)
- (b)
- (c), etc.

(Indicate the errors/irregularities which have not been satisfactorily treated, and for each case, the possible systemic character and extent of the problem and the amounts of Community aid which appear to be affected).

CONCLUSION

Either

If there are no limitations to the control examination, the frequency of errors found is low and all problems have been satisfactorily treated:

- 5(a) In the light of the control examination and the conclusions of any other national or Community controls to which I have had access, it is my opinion that the final declaration of expenditure presents fairly, in all material respects, the expenditure made in accordance with the regulatory and the programme provisions, and the request to the Commission for the payment of the balance of the Community aid appears to be valid.

Or

If there are certain limitations to the control examination but the frequency of errors is not high, or if there are problems which have not been satisfactorily treated:

- 5(b) Except for the matters referred to at point 3 above and (or) the errors/irregularities which do not appear to have been satisfactorily treated as referred to at point 4, it is my opinion, based on the control examination and the conclusions of any other national or Community controls to which I have had access, that the final declaration of expenditure presents fairly, in all material respects, the expenditure made in accordance with the regulatory and the programme provisions, and that the request to the Commission for the payment of the balance of the Community aid appears to be valid.

Or

If there are important limitations to the control examination or the frequency of errors found is high, even if the reported errors/irregularities have been satisfactorily treated:

- 5(c) In view of the matters referred to at point 3 and (or) given the high frequency of errors revealed at point 4, I am not in a position to express an opinion on the final declaration of expenditure and the request to the Commission for the payment of the balance of the Community aid.

Date, signature
