

Commission Regulation (EC) No 498/2007 of 26 March 2007
laying down detailed rules for the implementation of Council
Regulation (EC) No 1198/2006 on the European Fisheries Fund

CHAPTER VII

MANAGEMENT, MONITORING AND CONTROL

SECTION 1

General provisions

Article 38

Intermediate bodies

1 Where one or more of the tasks of a managing authority or certifying authority are performed by an intermediate body, the relevant arrangements shall be formally recorded in writing.

2 The provisions of this Regulation concerning the managing authority and certifying authority shall apply to the intermediate body.

Article 39

Managing authority

1 For the purposes of the selection and approval of operations, under Article 59(a) of the basic Regulation, the managing authority shall ensure that beneficiaries are informed of the specific conditions concerning the products or services to be delivered under the operation, the financing plan, the time limit for execution, and the financial and other information to be kept and communicated. It shall satisfy itself that the beneficiary has the capacity to fulfil those obligations before the approval decision is taken.

2 The verifications to be carried out by the managing authority under Article 59(b) of the basic Regulation shall cover the administrative, financial, technical and physical aspects of operations, as appropriate.

Verifications shall ensure that the expenditure declared is real, the products or services have been delivered in accordance with the approval decision, the applications for reimbursement by the beneficiary are correct and that expenditure complies with Community and national rules. They shall include procedures to avoid double-financing of expenditure with other Community or national schemes and with other programming periods.

The verifications shall include the following procedures:

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

3 Where on-the-spot verifications under paragraph 2(b) are carried out on a sample basis for the operational programme, the managing authority shall keep records describing and justifying the sampling method and identifying the operations or transactions selected for verifications.

The managing authority shall determine the size of the sample in order to achieve reasonable assurance as to the legality and regularity of the underlying transactions having regard to the level of risk identified by the managing authority for the type of beneficiaries and operations concerned.

The managing authority shall review the sampling method each year.

4 The managing authority shall establish written standards and procedures for the verifications carried out under paragraph 2 and shall keep records for each verification, stating the work performed, the date and the results of the verification and the measures taken in respect of any irregularities detected.

5 Where the managing authority is also a beneficiary under the operational programme, arrangements for the verifications referred to in paragraphs 2, 3 and 4 of this Article shall ensure the adequate separation of functions in accordance with Article 57(1)(b) of the basic Regulation.

Article 40

Data on operations to be communicated on request to the Commission

1 The accounting records of operations and the data on implementation, referred to in Article 59(c) of the basic Regulation, shall include at least the information set out in Annex III to this Regulation. That information shall be disaggregated where relevant on the basis of age and gender of beneficiaries.

2 The managing, certifying and audit authorities and the bodies, referred to in Article 61(3) of the basic Regulation, shall have access to the information referred to in paragraph 1 of this Article.

3 At the written request of the Commission, the Member State shall provide the Commission with the appropriate information referred to in paragraph 1 within fifteen working days of receipt of the request or any other agreed period, for the purpose of carrying out documentary and on-the-spot checks. The Commission may require the information referred to in paragraph 1 at the level of the operations, measures, priority axes or of the operational programme.

Article 41

Audit trail

For the purposes of Article 59(f) of the basic Regulation, an audit trail shall be considered adequate where, it complies with the following criteria:

- (a) it permits the aggregate amounts certified to the Commission to be reconciled with the detailed accounting records and supporting documents held by the certifying authority, managing authority, intermediate bodies and beneficiaries as regards operations co-financed under the operational programme;
- (b) it permits verification of payment of the public contribution to the beneficiary;

- (c) it permits verification of the application of the selection criteria established by the monitoring committee for the operational programme;
- (d) it contains, in respect of each operation, as appropriate, the technical specifications and financing plan, documents concerning the grant approval, documents relating to public procurement procedures, progress reports and reports on verifications and audits carried out.

Article 42

Audits of operations

1 The audits referred to in Article 61(1)(b) of the basic Regulation shall be carried out each 12-month period from 1 July 2008 on a sample of operations selected by a method established or approved by the audit authority in accordance with Article 43 of this Regulation.

The audits shall be carried out on-the-spot on the basis of documentation and records held by the beneficiary.

- 2 The audits shall verify that the following conditions are fulfilled:
- a the operation meets the selection criteria for the operational programme, has been implemented in accordance with the approval decision and fulfils any applicable conditions concerning its functionality and use or the objectives to be attained;
 - b the expenditure declared corresponds with the accounting records and supporting documents held by the beneficiary;
 - c the expenditure declared by the beneficiary is in compliance with Community and national rules;
 - d the public contribution has been paid to the beneficiary in accordance with Article 80 of the basic Regulation.

3 Where any problems detected appear to be systemic in nature and therefore entail a risk for other operations under the operational programme, the audit authority shall ensure that further examinations are carried out, including additional audits where necessary, to establish the scale of any such problems. The necessary preventive and corrective action shall be taken by the responsible authorities.

4 Only expenditure falling within the scope of the audit in accordance with paragraph 1 shall be counted towards the amount of expenditure audited, for the purposes of reporting in the tables in point 9 of Part A of Annex VI and point 9 of Part A of Annex VII.

Article 43

Sampling

1 The sample of operations to be audited each 12-month period shall in the first instance be based on a random statistical sampling method as set out in paragraphs 2, 3 and 4. Additional operations may be selected as a complementary sample as set out in paragraphs 5 and 6.

2 The method used to select the sample and to draw conclusions from the results shall take account of internationally accepted audit standards and be documented. Having regard to the amount of expenditure, the number and type of operations and other relevant factors, the audit authority shall determine the appropriate statistical sampling method to apply. The technical parameters of the sample shall be determined in accordance with Annex IV.

3 The sample to be audited in each 12-month period shall be selected from those operations for which expenditure has been declared to the Commission for the operational programme during the year preceding the year in which the annual control report, provided for in Article 61(1)(e)(i) of the basic Regulation, is communicated to the Commission. For the first twelve month period, the audit authority may decide to group the operations for which expenditure has been declared to the Commission in 2007 and 2008 as a basis for the selection of the operations to be audited.

4 The audit authority shall draw conclusions on the basis of the results of the audits relating to expenditure declared to the Commission during the period referred to in paragraph 3 and communicate them to the Commission in the annual control report. In operational programmes for which the projected error rate is above the materiality level, the audit authority shall analyse its significance and take the necessary actions, including making appropriate recommendations which shall be communicated in the annual control report.

5 The audit authority shall regularly review the coverage provided by the random sample, having regard in particular to the need to have sufficient audit assurance for the declarations to be provided at partial and final closure of the operational programme. It shall decide on the basis of its professional judgment whether it is necessary to audit a complementary sample of additional operations in order to take account of specific risk factors identified and to guarantee for the programme sufficient coverage of different types of operation, beneficiaries, intermediate bodies and priority axes.

6 The audit authority shall draw conclusions on the basis of the results of the audits of the complementary sample and communicate them to the Commission in the annual control report. Where the number of detected irregularities is high or where systemic irregularities have been detected, the audit authority shall analyse the significance thereof and take the necessary actions including making recommendations which shall be communicated in the annual control report. The results of the audits on the complementary sample shall be analysed separately from those of the random sample. In particular, irregularities detected in the complementary sample shall not be taken into account when the error rate of the random sample is calculated.

Article 44

Documents presented by the audit authority

1 The audit strategy referred to in Article 61(1)(c) of the basic Regulation shall be established in accordance with the model set out in Annex V to this Regulation. It shall be updated and reviewed annually and, if necessary, during the course of the year.

2 The annual control report and the opinion referred to in Article 61(1)(e)(i) of the basic Regulation shall be based on the systems audits and audits of operations carried out under Article 61(1)(a) and (b) of that Regulation in accordance with the audit strategy for the operational programme and shall be drawn up in accordance with the models set out in Annex VI to this Regulation.

3 The closure declaration referred to in Article 61(1)(f) of the basic Regulation shall be based on all the audit work carried out by or under the responsibility of the audit authority in accordance with the audit strategy. The closure declaration and final control report shall be drawn up in accordance with the model set out in Annex VII to this Regulation.

4 If there is limitation in the scope of examination or if the level of irregular expenditure detected does not allow the provision of a unqualified opinion for the annual opinion referred to in Article 61(1)(e) of the basic Regulation or in the closure declaration referred to in

Article 61(1)(f) of that Regulation, the audit authority shall give the reasons and estimate the scale of the problem and its financial impact.

5 In the event of partial closure of an operational programme, the declaration relating to the legality and regularity of the transactions covered by the statement of expenditure referred to in Article 85 of the basic Regulation shall be drawn up by the audit authority in accordance with the model set out in Annex VIII to this Regulation and submitted with the opinion referred to in Article 61(1)(e)(iii) of the basic Regulation

Article 45

Availability of documents

1 For the purposes of Article 87 of the basic Regulation, the managing authority shall ensure that a record is available of the identity and location of bodies holding the supporting documents relating to expenditure and audits, which includes all documents required for an adequate audit trail.

2 The managing authority shall ensure that the documents referred to in paragraph 1 of this Article are made available for inspection by, and extracts or copies thereof are supplied to, persons and bodies entitled thereto, including at least authorised staff of the managing authority, certifying authority, intermediate bodies, audit authority and the bodies referred to in Article 61(3) of the basic Regulation and authorised officials of the Community and their authorised representatives.

3 The managing authority shall keep the information necessary for the purposes of evaluation and reporting, including the information referred to in Article 40, in relation to operations referred to in Article 87(2) of the basic Regulation for the whole of the period referred to in paragraph (1)(a) of that Article.

4 The following at least shall be considered as commonly accepted data carriers, as referred to in Article 87 of the basic Regulation:

- a photocopies of original documents;
- b microfiches of original documents;
- c electronic versions of original documents;
- d documents existing in electronic version only.

5 The procedure for certification of conformity of documents held on commonly accepted data carriers with the original document shall be laid down by the national authorities and shall ensure that the versions held comply with national legal requirements and can be relied on for audit purposes.

6 Where documents exist in electronic version only, the computer systems used must meet accepted security standards that ensure that the documents held comply with national legal requirements and may be relied on for audit purposes.

Article 46

Documents submitted by the certifying authority

1 Certified statements of expenditure and applications for payment, as referred to in Article 60(a) of the basic Regulation, shall be drawn up in the format set out in Annex IX to this Regulation and transmitted to the Commission.

Status: This is the original version (as it was originally adopted).

2 By 31 March each year, as from 2008, the certifying authority shall submit to the Commission a statement in accordance with the model set out in Annex X identifying for each priority axis of the operational programme:

- a the amounts withdrawn from statements of expenditure submitted during the preceding year following cancellation of all or part of the public contribution for an operation;
- b the amounts recovered which have been deducted from those statements of expenditure;
- c a statement of amounts to be recovered as at 31 December of the preceding year, classified by the year in which recovery orders were issued.

3 In order to proceed to the partial closure of the operational programme, the certifying authority shall submit to the Commission a statement of expenditure referred to in Article 85 of the basic Regulation in the format set out in Annex XI to this Regulation.

Article 47

Description of management and control systems

The description of the management and control systems for the operational programme referred to in Article 71(1) of the basic Regulation shall contain information on the points referred to in Article 57 of that Regulation, and the information set out in Articles 48 and 49 of the present Regulation.

That information shall be submitted in accordance with the model set out in Part A of Annex XII to this Regulation.

Article 48

Information concerning the managing authority, the certifying authority and intermediate bodies

As regards the managing authority, the certifying authority and each intermediate body, the Member State shall provide the Commission with the following information:

- (a) a description of the tasks entrusted to them;
- (b) an organisation chart of each of them, a description of the allocation of tasks between or within their departments, and the indicative number of posts allocated;
- (c) the procedures for selecting and approving operations;
- (d) the procedures by which beneficiaries' applications for reimbursement are received, verified and validated, and in particular the rules and procedures laid down for verification purposes in Article 39, and the procedures by which payments to beneficiaries are authorised, executed and entered in the accounts;
- (e) the procedures by which statements of expenditure are drawn up, certified and submitted to the Commission;
- (f) a reference to the written procedures established for the procedures referred to in points (c), (d) and (e);
- (g) the eligibility rules laid down by the Member State and applicable to the operational programme;

- (h) the system for keeping the detailed accounting records of operations and data on implementation referred to in Article 40(1) under the operational programme.

Article 49

Information concerning the audit authority and the bodies referred to in Article 61(3) of the basic Regulation

As regards the audit authority and the bodies, referred to in Article 61(3) of the basic Regulation, the Member State shall provide the Commission with the following information:

- (a) a description of their respective tasks and their inter-relationships;
- (b) the organisation chart of the audit authority and of each of the bodies involved in carrying out audits concerning the operational programme, describing how their independence is ensured, the indicative number of posts allocated and the qualifications or experience required;
- (c) the procedures for monitoring the implementation of recommendations and corrective measures resulting from audit reports;
- (d) the procedures, where appropriate, for the supervision by the audit authority of the work of the bodies involved in carrying out audits concerning the operational programme;
- (e) the procedures for the preparation of the annual control report and the closure declaration.

Article 50

Assessment of the management and control systems

1 The report, referred to in Article 71(2) of the basic Regulation, shall be based on an examination of the systems description, of relevant documents concerning the systems and of the system for keeping accounting records and data on the implementation of operations and on interviews with the staff in the main bodies considered important by the audit authority, or other body responsible for the report, in order to complete, clarify or verify the information.

2 The opinion on the compliance of the systems, referred to in Article 71(2) of the basic Regulation, shall be drawn up in accordance with the model set out in Part B of Annex XII to this Regulation.

3 Where the management and control system concerned is essentially the same as that in place for assistance approved under Council Regulation (EC) No 1083/2006⁽¹⁾, account may be taken of the results of audits carried out by national and Community auditors in relation to that system for the purposes of establishing the report and opinion under Article 71(2) of the basic Regulation.

(1) [OJ L 210, 31.7.2006, p. 25.](#)