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

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No. Cion prop.: COM(2011) 615 final/2, COM(2011) 611 final/2

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

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

The modifications highlighted in bold are for the Common Provisions Regulation those in comparison to the partial general approach reached at the General Affairs Council in April 2012 (ADD 1 REV 3, ADD 3 REV 2 and ADD 5 REV 2 to document 8207/12) and the ETC Regulation those in comparison to the revised version (corrigendum) presented by the Commission on 14 March 2012. Annex XX has been newly added.

Presidency Revised Compromise Text III

COMMON PROVISIONS REGULATION

TITLE VIII

MANAGEMENT AND CONTROL

CHAPTER I

Management and Control Systems

CHAPTER II

[...]

Article 64

[...]

CHAPTER III

Commission powers and responsibilities

Article 65 (GAC April)¹

Commission powers and responsibilities

1. The Commission shall satisfy itself on the basis of available information, including [...] **information on the designation of bodies responsible for the management and control, the documents provided each year by the designated bodies under Article 56 (5) of the Financial Regulation,** control reports, [...] annual implementation reports and audits carried out by national and Union bodies, that the Member States have set up management and control systems that comply with this Regulation and the Fund-specific rules and that these systems function effectively during the implementation of programmes.

¹ The text is the one agreed on April 2012 GAC on the basis of *partial general approach*.

2. Commission officials or authorised Commission representatives may carry out on-the-spot audits or checks upon giving at least fifteen working days notice to the competent national authority, subject to the on-the-spot audit or check except in urgent cases. The Commission shall respect the principle of proportionality by taking into account the need to avoid unjustified duplication of audits or checks carried out by Member States, the level of risk to the Union budget and the need to minimise administrative burdens for beneficiaries in accordance with the Fund-specific rules. The scope of such audits or checks may include, in particular, verification of the effective functioning of management and control systems in a programme or a part thereof, operations and assessment of the sound financial management of operations or programmes. Officials or authorised representatives of the Member State may take part in such audits or checks.

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

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

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

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

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

PART THREE

GENERAL PROVISIONS APPLICABLE TO THE ERDF, THE ESF AND THE CF

TITLE VI

MANAGEMENT AND CONTROL

CHAPTER I

Management and control systems

CHAPTER II

Management and control authorities

Article 113 (GAC April)

Designation of authorities

1. The Member State shall designate, for each operational programme, a national, regional or local public authority or body or a private body as managing authority. The same managing authority may be designated for more than one operational programme.
2. The Member State shall designate, for each operational programme, a national, regional or local public authority or body as a certifying authority, without prejudice to paragraph 3. The same certifying authority may be designated for more than one operational programme.
3. The Member State may designate for an operational programme a managing authority, which is a public authority or body, to carry out in addition the functions of the certifying authority.

4. The Member State shall designate, for each operational programme, a national, regional or local public authority or body, functionally independent from the managing authority and the certifying authority, as audit authority. The same audit authority may be designated for more than one operational programme.
5. For the Investment for growth and jobs goal, provided that the principle of separation of functions is respected, the managing authority, the certifying authority, where applicable, and the audit authority may be part of the same public authority or body. For those operational programmes for which the total amount of support from the Funds exceeds EUR 250 000 000, the audit authority may be part of the same public authority or body as the managing authority either if, pursuant to the applicable provisions for the previous programming period¹, the Commission has informed the Member State of its conclusion that it can rely principally on its audit opinion, or if the Commission is satisfied on the basis of the experience of the previous programming period that the institutional organisation and accountability of the audit authority provide adequate guarantees of its functional independence and reliability.
6. The Member State may designate one or more intermediate bodies to carry out certain tasks of the managing or the certifying authority under the responsibility of that authority. The relevant arrangements between the managing authority or certifying authority and the intermediate bodies shall be formally recorded in writing.
7. The Member State or the managing authority may entrust the management of part of an operational programme to an intermediate body by way of an agreement in writing between the intermediate body and the Member State or managing authority (a 'global grant'). The intermediate body shall provide guarantees of its solvency and competence in the domain concerned, as well as its administrative and financial management.

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

7bis The Member State may, at its own initiative, designate a coordinating body whose responsibility is to liaise with and provide information to the Commission, to coordinate activities of the other relevant designated bodies and to promote the harmonised application of Union rules.

8. The Member State shall lay down in writing rules governing its relations with the managing authorities, certifying authorities and audit authorities, the relations between such authorities, and the relations of such authorities with the Commission.

Article 113 bis

Procedure for the designation of the managing authority and the certifying authority

- 1. The Member State shall notify the Commission of the date and form of the designation, carried out at an appropriate level, of the managing authority and, where appropriate, of the certifying authority prior to the submission of the first application for interim payment to the Commission.**

- 2. The designation referred to in paragraph 1 shall be based on a report and an opinion of an independent audit body that assesses the compliance of the designated authorities with the criteria relating to the internal control environment, risk management, control activities, and monitoring set out in Annex XX. The independent audit body shall be the audit authority, or another public or private law body with the necessary audit capacity, which is independent of the managing authority and, where applicable, of the certifying authority, and which shall carry out its work taking account of internationally accepted audit standards. Where the independent audit body concludes that the part of the management and control system, concerning the managing authority or the certifying authority, is essentially the same as for the previous programming period, and that there is evidence, on the basis of audit work done in accordance with the relevant provisions of Council Regulation (EC) No 1083/2006, of their effective functioning during that period, it may conclude that the relevant criteria are fulfilled without carrying out additional audit work.**

- 3. Where the total amount of support from the Funds to an operational programme exceeds EUR 250 000 000, the Commission may request, within one month of notification of the designation referred to in paragraph 1, the report and the opinion of the independent audit body referred to in paragraph 2 and the description of the functions and procedures in place for the managing authority or, where appropriate, the certifying authority. The Commission shall decide whether to request these documents on the basis of its risk assessment, taking into account information on significant changes in the functions and procedures of the managing authority or, where appropriate, the certifying authority compared to those in place for the previous programming period, and relevant evidence of their effective functioning.**

The Commission may make observations within two months of receipt of these documents.

Without prejudice to the application of Article 74, the examination of these documents shall not interrupt the treatment of applications for interim payments.

- 4. Where the total amount of support from the Funds to an operational programme exceeds EUR 250 000 000 and there are significant changes in the functions and procedures of the managing authority or, where appropriate, of the certifying authority compared to those in place for the previous programming period, the Member State may, at its own initiative, submit to the Commission, within two months of the notification of designation referred to in paragraph 1, the documents referred to in paragraph 3. The Commission shall make observations on these documents within three months of receipt of these documents**
- 5. Where existing audit and control results show that the designated authority no longer complies with the criteria referred to in paragraph 2, the Member State shall, at an appropriate level, fix, according to the severity of the problem, a period of probation, during which the necessary remedial action shall be taken.**

Where the designated authority fails to implement the required remedial action within the period of probation determined by the Member State, the Member State, at an appropriate level, shall end its designation.

The Member State shall notify the Commission without delay when a designated authority is put under probation, providing information on the respective probation period, when following implementation of remedial actions the probation is ended, as well as when the designation of an authority is ended. The notification that a designated body is put under probation by the Member State, without prejudice to the application of Article 74, shall not interrupt the treatment of applications for interim payments.

- 6. Where the designation of a managing authority or a certifying authority is ended, Member States shall designate, following the procedure foreseen in paragraph 2, a new body which will, following its designation, take over the functions of the managing authority or of the certifying authority, and shall notify the Commission thereof.**

- 7. The Commission shall adopt, by means of implementing act, in accordance with the examination procedure referred to in Article 143(3), uniform conditions on the model for the report and opinion of the independent audit body and the description of the functions and procedures in place for the managing authority and, where appropriate, the certifying authority.**

Article 114 (GAC April)

Functions of the managing authority

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

2. As regards the management of the operational programme, the managing authority shall:

- (a) support the work of the monitoring committee referred to in Article 41 and provide it with the information it requires to carry out its tasks, in particular data relating to the progress of the operational programme in achieving its objectives, financial data and data relating to indicators and milestones;
- (b) draw up and, after approval by the monitoring committee, submit to the Commission annual and final implementation reports referred to in Article 44;
- (c) make available to intermediate bodies and beneficiaries information that is relevant to the execution of their tasks and the implementation of operations respectively;
- (d) establish a system to record and store in computerised form data on each operation necessary for monitoring, evaluation, financial management, verification and audit, including data on individual participants in operations, where applicable;
- (e) ensure that the data referred to in point (d) is collected, entered and stored in the system, and that data on indicators is broken down by gender where required by Annex I of the ESF Regulation.

3. As regards the selection of operations, the managing authority shall:

- (a) draw up and, once approved, apply appropriate selection procedures and criteria that:
 - (i) ensure the contribution of operations to the achievement of the specific objectives and results of the relevant priority axes;
 - (ii) are non-discriminatory and transparent;
 - (iii) take into account the general principles set out in Articles 7 and 8;
- (b) ensure that a selected operation falls within the scope of the Fund or Funds concerned and can be attributed to a category of intervention identified in the priority axis or axes of the operational programme;

- (c) ensure that the beneficiary is provided with a document setting out the conditions for support for each operation including the specific requirements concerning the products or services to be delivered under the operation, the financing plan, and the time-limit for execution;
- (d) satisfy itself that the beneficiary has the administrative, financial and operational capacity to fulfil the conditions defined in point (c) before approval of the operation;
- (e) satisfy itself that, where the operation has started before the submission of an application for funding to the managing authority, **[applicable Union and national rules]** relevant for the operation have been complied with;
- (f) ensure that an applicant does not receive support from the Funds where it has been, or should have been, subject to a procedure of recovery in accordance with Article 61 following the relocation of a productive activity within the Union;
- (g) determine the category of intervention to which the expenditure of an operation shall be attributed.

4. As regards the financial management and control of the operational programme, the managing authority shall:

- (a) verify that the co-financed products and services have been delivered and that expenditure declared by the beneficiaries has been paid and that it complies with **[applicable Union and national law]**, the operational programme and the conditions for support of the operation;
- (b) ensure that beneficiaries involved in the implementation of operations reimbursed on the basis of eligible costs actually incurred maintain either a separate accounting system or an adequate accounting code for all transactions relating to an operation;
- (c) put in place effective and proportionate anti-fraud measures taking into account the risks identified;

- (d) set up procedures to ensure that all documents regarding expenditure and audits required to ensure an adequate audit trail are held in accordance with the requirements of Article 62(g);
- (e) draw up **the management declaration and annual summary referred to in Article 56 (5) (a) and (b) of the Financial Regulation.** [...]

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

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

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

- 6. On-the-spot verifications of individual operations pursuant to paragraph (5)(b) may be carried out on a sample basis.
- 7. Where the managing authority is also a beneficiary under the operational programme, arrangements for the verifications referred to in paragraph 4(a) shall ensure adequate separation of functions.
- 8. The Commission shall adopt implementing acts, in accordance with the examination procedure referred to in Article 143 (3), laying down uniform conditions on the modalities of the exchange of information in paragraph 2(d).
- 9. The Commission shall adopt implementing acts, in accordance with the examination procedure referred to in Article 143 (3), laying down uniform conditions concerning arrangements for the audit trail referred to in paragraph 4(d) of this Article.

10. The Commission shall adopt [...] implementing acts, **in accordance with the examination procedure referred to in Article 143(3) laying down uniform conditions on the model for the management declaration referred to in paragraph 4 (e) of this Article.** [...]

Article 115 (GAC April)

Functions of the certifying authority

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

- (a) drawing up and submitting to the Commission payment applications and certifying that these result from reliable accounting systems, are based on verifiable supporting documents and have been subject to verifications by the managing authority;
- (b) drawing up the [...] accounts **referred to in Article 56 (5) (a) of the Financial Regulation**;
- (c) certifying the completeness, accuracy and veracity of the [...] accounts and that the expenditure entered in the accounts complies with [**applicable Union and national rules**] and has been incurred in respect of operations selected for funding in accordance with the criteria applicable to the operational programme and complying with [Union and national rules];
- (d) ensuring that there is a system which records and stores, in computerised form, accounting records for each operation, and which supports all the data required for drawing up payment applications and [...] accounts, including records of amounts recoverable, amounts recovered and amounts withdrawn following cancellation of all or part of the contribution for an operation or operational programme;
- (e) ensuring for the purposes of drawing up and submission of payment applications that it has received adequate information from the managing authority on the procedures and verifications carried out in relation to expenditure;
- (f) taking account when drawing up and submitting payment applications of the results of all audits carried out by or under the responsibility of the audit authority;

- (g) maintaining accounting records in a computerised form of expenditure declared to the Commission and the corresponding public contribution paid to beneficiaries;
- (h) keeping an account of amounts recoverable and of amounts withdrawn following cancellation of all or part of the contribution for an operation. Amounts recovered shall be repaid to the general budget of the Union prior to the closure of the operational programme by deducting them from the next statement of expenditure.

Article 116 (GAC April)

Functions of the audit authority

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

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

2. Where audits are carried out by a body other than the audit authority, the audit authority shall ensure that any such body has the necessary functional independence.
3. The audit authority shall ensure that audit work takes account of internationally accepted audit standards.

4. The audit authority shall, within eight months of adoption of an operational programme, prepare an audit strategy for performance of audits. The audit strategy shall set out the audit methodology, the sampling method for audits on operations and the planning of audits in relation to the current accounting year and the two subsequent accounting years. The audit strategy shall be updated annually from 2016 until and including 2022. Where a common management and control system applies to more than one operational programme, a single audit strategy may be prepared for the operational programmes concerned. The audit authority shall submit the audit strategy to the Commission upon request.
5. The audit authority shall draw up:
 - (i) an audit opinion **in accordance with Article 56 (5) (b) of the Financial Regulation** [...].
 - (ii) a control report setting out the main findings of the audits carried out according to paragraph 1 and the suggested and implemented corrective measures.

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

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

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

CHAPTER III

[...]

Article 117

[...]

TITLE VIII

Proportional control of operational programmes

Article 140 (GAC April)

Proportional control of operational programmes

1. Operations for which the total eligible expenditure does not exceed EUR 200 000 shall not be subject to more than one audit by either the audit authority or the Commission prior **[to the submission of the accounts for the accounting year in which the operation is completed]**¹. Other operations shall not be subject to more than one audit per accounting year by either the audit authority or the Commission prior **[to the submission of the accounts for the accounting year in which the operation is completed]**. These provisions are without prejudice to paragraph 4. Operations shall not be subject to an audit by the Commission or the audit authority in any year if there has already been an audit in that year by the European Court of Auditors.
2. For operational programmes for which the most recent audit opinion indicates that there are no significant deficiencies, the Commission may agree with the audit authority in the subsequent meeting referred to in Article 118(3) that the level of audit work required may be reduced so that it is proportionate to the risk established. In such cases, the Commission **shall** not carry out its own on-the-spot audits unless there is evidence suggesting deficiencies in the management and control system affecting expenditure declared to the Commission in an accounting year for which the accounts have been **accepted by the Commission**.

¹ The text in brackets in paragraph 1 of this Article is subject to review after an agreement is reached on the Financial management bloc.

3. For operational programmes for which the Commission concludes that it can rely on the opinion of the audit authority, it may agree with the audit authority to limit **the Commission's** own on-the-spot audits to audit the work of the audit authority unless there is evidence of deficiencies in the work of the audit authority work for an accounting year for which the accounts have been **accepted by the Commission**.

4. The audit authority and the Commission may carry out audits of operations in case a risk assessment establishes a specific risk of irregularity or fraud, in case of evidence of serious deficiencies in the management and control system of the operational programme concerned, and, during the **period referred to in Article 132 (1)**. [...] The Commission may at any time carry out audits of operations for the purpose of assessing the work of an audit authority by reviewing the audit trail of the audit authority or taking part in the on-the-spot audits of the audit authority. Only if the Commission does not obtain necessary assurance as to the effective functioning of the audit authority by these means, may it carry out a re-performance of its audit activity.

European Territorial Cooperation Regulation

CHAPTER VII

MANAGEMENT, CONTROL AND ACCREDITATION

(Articles 20-23 GAC April)

Article 24

Designation of the managing authority and the certifying authority

The procedure for the designation of the managing authority **and, where appropriate, of the certifying authority, set out in Article 113 bis [CPR], shall be carried out** by the Member State in which the [...] authority is located.

Common Provisions Regulation

Article 87 (GAC April)

Content, adoption and amendment of operational programmes under the Investment for growth and jobs goal

5. The Operational Programme shall identify:
- (a)** [...] the managing authority, the certifying authority, where applicable, and the audit authority;

Annex XX

Designation Criteria for the Managing and Certifying Authority

1. Internal control environment

- (i) Existence of an organisational structure covering the functions of managing and certifying authorities and the allocation of functions within each of them, ensuring that the principle of separation of functions, where appropriate, is respected.
- (ii) Framework for ensuring, in case of delegation of tasks to intermediate bodies, the definition of their respective responsibilities and obligations, verification of their capacities to carry out delegated tasks and the existence of reporting procedures.
- (iii) Reporting and monitoring procedures for irregularities and for the recovery of amounts unduly paid.
- (iv) Plan for allocation of appropriate human resources with necessary technical skills, at different levels and for different functions in the organisation.

2. Risk management

Taking into account the principle of proportionality, a framework for ensuring that an appropriate risk management exercise is conducted when necessary, and in particular, in the event of major modifications to the activities.

3. Management and Control activities

A. *Managing authority*

- (i) Procedures regarding grant applications, appraisal of applications, selection for funding, including instructions and guidance ensuring the contribution of operations to achieving the specific objectives and results of the relevant priority axes in accordance with the provisions of Article 114(3)(a)(i).**
- (ii) Procedures for management verifications including administrative verifications in respect of each application for reimbursement by beneficiaries and the on-the-spot verifications of operations.**
- (iii) Procedures for treatment of applications for reimbursement by beneficiaries and authorisation of payments.**
- (iv) Procedures for a system to collect, record and store in computerised form data on each operation, including, where appropriate, data on individual participants and a breakdown of data on indicators by gender when required, and to ensure that systems security is in line with internationally accepted standards.**
- (v) Procedures established by the managing authority to ensure that beneficiaries maintain either a separate accounting system or an adequate accounting code for all transactions relating to an operation.**
- (vi) Procedures for putting in place effective and proportionate anti-fraud measures.**
- (vii) Procedures to ensure an adequate audit trail and archiving system.**
- (viii) Procedures to draw up the management declaration of assurance, report on the controls carried out and weaknesses identified, and the annual summary of final audits and controls.**

- (ix) **Procedures to ensure the provision to the beneficiary of a document setting out the conditions for support for each operation.**

B. *Certifying authority*

- (i) **Procedures for certifying interim payment applications to the Commission.**
- (ii) **Procedures for drawing up the accounts and certifying that they are true, complete and accurate and that the expenditure complies with [applicable Union and national rules] taking into account the results of all audits.**
- (iii) **Procedures for ensuring an adequate audit trail by maintaining accounting records including amounts recoverable, recovered and withdrawn for each operation in computerised form.**
- (iv) **Procedures, where appropriate, to ensure that it receives adequate information from the managing authority on the verifications carried out, and the results of the audits carried out by or under the responsibility of the audit authority.**

4. Monitoring

A. *Managing authority*

- (i) **Procedures to support the work of the monitoring committee.**
- (ii) **Procedures to draw up and submit to the Commission annual and final implementation reports.**

B. *Certifying authority*

- (i) **Procedures on the fulfilment of its responsibilities for monitoring the results of the management verifications and the results of the audits carried out by or under the responsibility of the audit authority before submitting payment applications to the Commission.**