COMMISSION REGULATION (EC) No 1386/2002

of 29 July 2002

laying down detailed rules for the implementation of Council Regulation (EC) No 1164/94 as regards the management and control systems for assistance granted from the Cohesion Fund and the procedure for making financial corrections

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund [1], as amended by Regulations (EC) No 1264/1999 and (EC) No 1265/1999 [2], and in particular Article 12(4) thereof and Article H(4) of Annex II thereto,

Whereas:

(1) Article 12(1) of Regulation (EC) No 1164/94 requires Member States to take a number of measures to ensure that the Cohesion Fund is used efficiently and correctly and in accordance with the principle of sound financial management.

(2) For this purpose, it is necessary for Member States to provide adequate guidance regarding the organisation of the relevant functions of the bodies responsible for the implementation of projects, for certifying expenditure and for the general management and coordination of Cohesion Fund operations in the Member State concerned.

(3) Regulation (EC) No 1164/94 requires the Member States to cooperate with the Commission in ensuring that they have smoothly running management and control systems and to give it all necessary assistance to undertake checks, including sample checks.

(4) In order to harmonise standards for the certification of expenditure for which payments from the Fund are claimed, the content of such certificates should be laid down and the nature and quality of the information on which they rely specified.

(5) To enable the Commission to carry out the checks referred to in Article 12(2) of Regulation (EC) No 1164/94, Member States should supply it on request with data which the bodies responsible for the implementation of projects and for the general management and coordination of Cohesion Fund operations require in order to fulfil the management, monitoring and evaluation requirements of that Regulation. It is necessary to lay down the content of such data and the format and means of transmission of computer files when data is supplied in electronic form. The Commission should ensure that computerised and other data is kept confidential and secure.

(6) This Regulation should apply 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 [3].

(7) This Regulation should apply without prejudice to the provisions of Commission Regulation (EC) No 1831/94 of 26 July 1994 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the Cohesion Fund and the organisation of an information system in this field [4].

(8) Detailed provisions should be laid down concerning the procedure under Article H of Annex II to Regulation (EC) No 1164/94, including the recovery of amounts paid unduly, repayment to the Commission and default interest,

HAS ADOPTED THIS REGULATION:

CHAPTER I

Subject matter and scope

Article 1

This Regulation lays down detailed rules for the implementation of Regulation (EC) No 1164/94 as regards the management and control systems for assistance granted from the Cohesion Fund (hereinafter referred to as the Fund) for eligible measures that fall within Article 3 of that Regulation and were first approved after 1 January 2000, and as regards the procedure for making financial corrections to such assistance.

CHAPTER II

Management and control systems

Article 2

1. Each Member State shall ensure that adequate guidance on the provision of management and control systems necessary to ensure the sound management of the Fund in accordance with generally accepted principles and standards is given to the following bodies and authorities:

(a) the bodies responsible for the implementation of projects under Article 10(4) of Regulation (EC) No 1164/94 (hereinafter called implementing bodies);

[1] OJ L 130, 25.5.1994, p. 1.
[2] OJ L 161, 26.6.1999, pp. 57 and 62.
[3] OJ L 292, 15.11.1996, p. 2.
[4] OJ L 191, 27.7.1994, p. 9.

(b) the authorities or bodies responsible for certifying statements of expenditure for which payments from the Fund are claimed under Article 12(1)(d) of Regulation (EC) No 1164/94 and Article D(4) of Annex II to that Regulation, including, where these are different, the authorities or bodies designated under Article D(1) of Annex II to the Regulation (hereinafter called paying authorities);

(c) the authorities responsible for the general management and coordination of Fund operations in the Member State (hereinafter called managing authorities), and

(d) public or private bodies or services acting under the responsibility of managing or paying authorities or performing tasks on their behalf in relation to implementing bodies (hereinafter called intermediate bodies).

In particular, that guidance shall assist those authorities or bodies in establishing the systems necessary not only to provide adequate assurance of the correctness, regularity and eligibility of claims on Community assistance but also to ensure that projects are carried out in accordance with the terms of the relevant decision and with the objectives assigned to those projects.

2. For the purposes of this Regulation, 'implementing bodies' shall include, where the implementing body is not the final recipient of funding, bodies and firms involved in the implementation of the project, whether as concession-holders, appointees or otherwise.

3. For the purposes of this Regulation, and except where otherwise specified, 'project' means any individual project, stage of a project or group of projects falling within Article 1(3) of Regulation (EC) No 1164/94, or any measure falling within Article 3(2) of that Regulation which is the subject of a decision taken under Article 10(6) thereof (hereinafter referred to as a granting Decision).

Article 3

The management and control systems of managing and paying authorities, intermediate bodies and implementing bodies shall, subject to proportionality in relation to the volume of assistance administered, provide for:

(a) a clear definition, a clear allocation and, insofar as it is necessary for sound management, an adequate separation of functions within the organisation concerned;

(b) effective systems for ensuring that the functions are performed in a satisfactory manner;

(c) in the case of intermediate bodies, reporting to the authority responsible on the performance of their tasks and the means employed.

Article 4

1. The management and control systems referred to Article 3 shall include procedures to verify the authenticity of the expenditure claimed and execution of the project from its preparatory stage through to the entry into service of the financed investment in accordance with the terms of the relevant granting Decision, with the objectives assigned to the project, and with applicable national and Community rules on, in particular, the eligibility of expenditure for support from the Fund, protection of the environment, transport, trans-European networks, competition and public procurement.

Verifications shall cover all aspects, whether of a financial, technical or administrative nature, that determine the effective utilisation of the funds committed.

2. The procedures shall require the recording of verifications of projects on the spot. The records shall state the work done, the results of the verification and the measures taken in respect of discrepancies. Where any physical or administrative verifications are not exhaustive, but are performed on a sample of works or transactions, the records shall identify the works or transactions selected and shall describe the sampling method.

Article 5

1. Member States shall, in respect of projects first approved after 1 January 2000, inform the Commission, within three months of the entry into force of this Regulation, of the organisation of the managing and paying authorities and intermediate bodies responsible for Fund operations in their country, of the management and control systems in place in these authorities and bodies and of improvements planned pursuant to the guidance referred to in Article 2(1).

2. The communication shall contain the following information in respect of each managing and paying authority and intermediate body:

(a) the functions vested in them;

(b) the allocation of functions between or within their departments, including between the managing and paying authority where they are the same body;

(c) the procedures for the inspection and acceptance of works and by which claims for reimbursement of expenditure are received, verified and validated, and by which payments to beneficiaries are authorized, executed and accounted for;

(d) the provisions for the audit of management and control systems.

3. The Commission shall, in cooperation with the Member State, satisfy itself that the management and control systems presented under paragraphs 1 and 2 meet the standards required by Regulation (EC) No 1164/94 and by this Regulation, and shall make known any obstacles which they present to the transparency of checks on the operation of the Fund and to the Commission's discharge of its responsibilities under Article 274 of the Treaty. Reviews of the operation of the systems shall be undertaken on a regular basis.

Article 6

1. The management and control systems shall provide a sufficient audit trail.

2. An audit trail shall be considered sufficient where it permits:

(a) reconciliation of the summary amounts certified to the Commission with the individual expenditure records and supporting documents held at the various administrative levels and by implementing bodies;

(b) verification of the allocation and transfer of the available Community and national funds;

(c) verification of the correctness of the information supplied on the execution of the project in accordance with the terms of the granting Decision and the objectives assigned to the project.

3. An indicative description of the information requirements for a sufficient audit trail is given in Annex I.

4. The managing authority shall satisfy itself on the following points:

(a) that there are procedures to ensure that documents that are relevant to specific items of expenditure incurred, payments made, works undertaken and verifications of them carried out in connection with the project, and which are required for a sufficient audit trail, are held in accordance with the requirements of Article G(3) of Annex II to Regulation (EC) No 1164/94 and with Annex I to this Regulation;

(b) that a record is maintained of the body holding them and its location;

(c) that the documents are made available for inspection by the persons and bodies who would normally have the right to inspect such documents.

5. The persons and bodies referred to in paragraph 4(c) shall be:

(a) the staff of the managing and paying authority, of intermediate bodies and of the implementing body who process payment claims;

(b) the services undertaking audits of management and control systems;

(c) the person or department of the paying authority responsible for certifying interim and final payment claims under Article 12(1)(d) of Regulation (EC) No 1164/94 and Article D(2)(d) of Annex II to that Regulation, and the person or department which issues the declaration under Article 12(1)(f) of the Regulation;

(d) mandated officials of national audit institutions and the Community.

They may require that extracts or copies of the documents or accounting records referred to in paragraph 4 be supplied to them.

Article 7

The paying authority shall keep an account of amounts recoverable from payments of Community assistance already made, and ensure that the amounts are recovered without unjustified delay. After recovery, it shall repay the irregular payments recovered, together with interest received on account of late payment, by deducting the amounts concerned from its next statement of expenditure and request for payment to the Commission in respect of the project concerned. If this is insufficient, the Commission may request that the excess amount be refunded to it.

The paying authority shall send the Commission once a year, in annex to the fourth quarterly report on recoveries supplied under Regulation (EC) No 1831/94, a statement of the amounts awaiting recovery at that date, classified by the year of initiation of the recovery proceedings.

CHAPTER III

Certification of expenditure

Article 8

1. The certificates of statements of interim and final expenditure referred to in Article 12(1)(d) of Regulation (EC) No 1164/94 and in the fourth indent of Article D(2)(d) of Annex II thereto shall be drawn up in the form prescribed in Annex II to this Regulation by a person or department within the paying authority that is functionally independent of any services that approve claims.

2. Before certifying any statement of expenditure, the paying authority shall satisfy itself that the following conditions are fulfilled:

(a) the managing authority, intermediate bodies and the implementing body have fulfilled the requirements of Regulation (EC) No 1164/94, in particular Article 12(1)(c) and (e) thereof and Article D(2)(b) and (d) of Annex II thereto, and observed the terms of the granting Decision;

(b) the statement of expenditure includes only expenditure:

(i) that has been actually effected within the eligibility period laid down in the granting Decision and can be supported by receipted invoices or accounting documents of equivalent probative value;

(ii) relating to works that had not been essentially completed at the time the application for assistance was lodged;

(iii) that are justified by the progress or completion of the project in accordance with the terms of the granting Decision and the objectives assigned to the project.

3. So that the sufficiency of the control systems and the audit trail can always be taken into account before a statement of expenditure is presented to the Commission, the managing authority shall ensure that the paying authority is kept informed of the procedures operated by it, by intermediate bodies and by the implementing body to:

(a) verify the authenticity of expenditure claimed and execution of the project in accordance with the terms of the relevant granting Decision and the objectives assigned to the project;

(b) ensure compliance with the applicable rules;

(c) maintain the audit trail.

4. In cases where the managing authority and the paying authority are or belong to the same body, this body shall ensure that procedures offering equivalent standards of control to those stipulated in paragraphs 2 and 3 are applied.

CHAPTER IV

Sample checks

Article 9

1. Member States shall organise checks on projects 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 checks carried out for the period 2000-2006 shall cover at least 15 % of the total eligible expenditure incurred on projects first approved during that period. This percentage may be reduced in proportion to the expenditure incurred before the entry into force of this Regulation. The checks shall be based on a representative sample of transactions, taking account of the requirements of paragraph 3.

Member States shall endeavour to spread the implementation of the checks evenly over the period concerned. They shall ensure an appropriate separation of tasks as between such checks and implementation or payment procedures concerning projects.

3. The selection of the sample of transactions to be checked shall take into account:

(a) the need to check an appropriate mix of types and sizes of projects;

(b) any risk factors which have been identified by national or Community checks;

(c) the need to ensure that the different types of body involved in the management and implementation of projects and the two sectors of activity (transport and the environment) are satisfactorily checked.

Article 10

Through the checks, the Member States shall endeavour to verify the following:

(a) the practical application and effectiveness of the management and control systems;

(b) the execution of projects in accordance with the terms of the granting Decision and the objectives assigned to the projects;

(c) for an adequate number of accounting records, the correspondence of those records with supporting documents held by intermediate bodies, and the implementing body;

(d) the presence of a sufficient audit trail;

(e) for an adequate number of expenditure items, that the nature and timing of the relevant expenditure comply with Community provisions and correspond to the approved specifications of the project and the works actually executed;

(f) that the appropriate national co-financing has in fact been made available; and

(g) that the cofinanced projects have been implemented in accordance with Community rules and policies as required by Article 8 of Regulation (EC) No 1164/94.

Article 11

The checks shall establish whether any problems encountered are of a systemic character, entailing a risk for other or all projects carried out by the same implementing body or in the Member State concerned. They shall also identify the causes of such situations, any further examination which may be required and the necessary corrective and preventive action.

Article 12

In accordance with Article G(1) of Annex II to Regulation (EC) No 1164/94, Member States shall inform the Commission by 30 June each year, and for the first time by 30 June 2003, of their application of Articles 9 to 11 of this Regulation in the previous calendar year and in addition provide any necessary amplification or updating of the description of their management and control systems communicated under Article 5(1).

CHAPTER V

Declaration at winding-up of projects

Article 13

The person or department designated to issue declarations on the winding-up of projects under Article 12(1)(f) of Regulation (EC) No 1164/94 shall have a function independent of:

(a) the managing authority, the implementing body and intermediate bodies;

(b) the person or department within the paying authority responsible for drawing up the certificates referred to in Article 8(1).

It shall conduct its examination according to internationally accepted auditing standards. It shall be supplied by the implementing body, the managing and paying authority and intermediate bodies with all information required and shall be given access to the records and supporting evidence necessary for drawing up the declaration.

Article 14

Declarations shall be based on an examination of the management and control systems, of the findings of checks already carried out and, where necessary, of a further sample check of transactions, and of the final report drawn up under Article F(4) of Annex II to Regulation (EC) No 1164/94. The person or department issuing the declaration shall make all necessary enquiries to obtain reasonable assurance that the certified statement of expenditure is correct, that the underlying transactions are legal and regular and that the project has been carried out in accordance with the terms of the granting Decision and the objectives assigned to the project.

Declarations shall be drawn up on the basis of the indicative model shown in Annex III and shall be accompanied by a report which shall include all relevant information to justify the declaration, including a summary of the findings of all checks carried out by national and Community bodies to which the declarant has had access.

Article 15

If the presence of important management or control weaknesses, or the high frequency of irregularities encountered or doubt about whether the project has been properly implemented does not allow the provision of a positive overall assurance as to the validity of the request for payment of the final balance and the final certificate of expenditure, the declaration 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 check be carried out with a view to the identification and rectification of irregularities within a specified period of time.

CHAPTER VI

Form and content of accounting information to be held and communicated to the Commission on request

Article 16

1. The accounting records on projects referred to in Annex I shall as far as possible be held in computerised form. Such records shall be made available to the Commission at its specific request for the purpose of carrying out documentary and on-the-spot checks, without prejudice to the requirement to supply annual reports under Article F(4) of Annex II to Regulation (EC) No 1164/94.

2. The Commission shall agree with each Member State the content of computer records to be made available under paragraph 1, the means by which they are communicated, and the length of the period required to develop any necessary computer systems. The scope of the information that may be requested, and the preferred technical specifications for the transfer of computer files to the Commission, are indicated in Annexes IV and V.

3. At the written request of the Commission, the Member States shall deliver to the Commission the records referred to in paragraph 1 within 10 working days of receipt of the request. A different period may be agreed between the Commission and the Member State, particularly where the records are not available in computerised form.

4. The Commission shall ensure that the information forwarded by the Member States or collected by it in the course of on-the-spot inspections is kept confidential and secure, in accordance with Article 287 of the Treaty.

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

CHAPTER VII

Financial corrections

Article 17

1. The amount of financial corrections made by the Commission under Article H(2) of Annex II to Regulation (EC) No 1164/94 for individual or systemic irregularities shall be assessed, wherever this is possible and practicable, on the basis of individual files and shall be equal to the amount of expenditure wrongly charged to the Fund, having regard to the principle of proportionality.

2. When it is not possible or practicable to quantify the amount of irregular expenditure precisely, or when it would be disproportionate to cancel entirely the expenditure in question, and the Commission therefore bases its financial corrections on extrapolation or a flat rate, it shall proceed as follows:

(a) in the case of extrapolation, it shall use a representative sample of transactions with like characteristics;

(b) in the case of a flat rate, it shall assess the importance of the infringement of rules and the extent and financial implications of any shortcomings in the management and control system that have led to the irregularity established.

3. Where the Commission bases its position on the facts established by auditors other than those of its own services, it shall draw its own conclusions regarding their financial consequences, after examining the measures taken by the Member State concerned under Article 12(1) and (2) of Regulation (EC) No 1164/94 and Article G(1) of Annex II thereto, the reports supplied under Regulation (EC) No 1831/94, and any replies from the Member State.

Article 18

1. The period of time within which the Member State concerned may respond to a request under the first subparagraph of Article H(1) of Annex II to Regulation (EC) No 1164/94 to submit its comments shall be two months, except in duly justified cases where a longer period may be agreed by the Commission.