



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
REGIONAL POLICY  
Audit  
The Director

Brussels,  
REGIO J2/T/D(2012)453578

**Subject: Environment OP (CCI N°: 2007BG161PO005)  
Final conclusions on mission n° 2011/BG/REGIO/J2/944 –  
Complementary EPM 'To obtain assurance on the functioning of the  
management and control systems through the audit of Operational  
Programmes / areas and horizontal themes (2010-2012)'  
Mission of 11 – 15 April 2011**

**Ref.: Member State letter Pv 3-1216/19.03.2012 dated 19 March 2012 (Ares(2012)  
329352)**

Your Excellency

I am writing to inform you that Directorate-General of Regional Policy has concluded the audit carried out on the Environment OP.

Following the analysis of the information provided in the Member State's letter above-mentioned, you will find in **annex I** our conclusions in this regard.

As no irregular expenditure has been detected by my services, I am pleased to inform you that no financial corrections are to be applied as a result of the audit. The audit is therefore closed.

I would like to remind you that under Article 90(1) of Council Regulation (EC) No. 1083/2006, the competent bodies and authorities are required to keep available all relevant documents for a period of three years following the closure of an operational programme as defined in Article 89(3) of the Regulation or three years following the year in which partial closure takes place, in case of documents regarding expenditure and audits on operations referred to in 90(2) of the Regulation.

Yours faithfully

  
Lena Andersson Pench

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Enclosures: Annex I - Commission's conclusions

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## ANNEX I – DG REGIONAL POLICY'S CONCLUSIONS

### 1. FINDING 1 – FINANCIAL CORRECTION MODULE OF UMIS IS NOT FUNCTIONING

#### 1.1 Audit report

##### *Finding*

The financial correction module of UMIS system (Unified Monitoring and Information System) is still not functioning. The absence of this element of the UMIS was identified during an audit mission carried out by DG Regio in 2010. Based on the information provided by the representative of the Council of Ministers (responsible for UMIS) in November 2010, the initial testing of the module was on-going at the time of DG Regio audit. The managing authorities were due to input relevant historical data at that time. However, on the date of the audit, the financial corrections module was still not functioning.

The managing authority maintains its own register of financial corrections, where all financial corrections imposed on the beneficiaries are recorded. Reconciliation was done for the sample of reviewed contracts/operations and no deficiencies were noted in relation to the completeness and accuracy of the data.

##### *Action*

The Bulgarian authorities were reminded, that commitments taken in relation to the functioning of the UMIS during the operational programmes approval and compliance assessment should be fulfilled. The absence of a fully operational information system represents serious non-compliance with the provisions of Regulation (EC) N°1083/2006 and Regulation (EC) N° 1828/2006 regarding information systems.

The financial correction module should be put into operation without any further delay. The Council of Ministers, in the framework of their comments on this report, is requested to submit to the Commission a written update on the state of operability of this module for all operational programmes.

In addition, a printout from the financial correction module for the Environment OP should be attached to the reply.

#### 1.2 Member State reply

The Member State reply explained that there was a technical problem with the functioning of the 'Financial corrections' module in the Unified Management Information System (UMIS). The technical problem made it impossible to reflect in the system the financial corrections generated in the verification and certification reports. As a result, if financial corrections were recorded in the 'Financial corrections' module, they could not be reflected in the generation of verification and certification reports, thus leading to irreconcilability of the hard copy data and the UMIS data. Therefore, the managing authority's approach was to maintain a register of imposed financial corrections within the managing authority, and the audit report clearly states that the sample reconciliation made did not identify any deficiencies in relation to the completeness and accuracy of the data. Nevertheless, when verifying a funding request at project level, the financial corrections had to be shown as non-verified amounts in the sub-module 'Verification of funds' in the UMIS financial module. After remedying the technical

problem, starting from the end of April 2011, all financial corrections were entered in the sub-module 'Financial corrections' of the UMIS financial module. A printout from the financial corrections module was enclosed with the reply.

### **1.3 Commission's view**

The financial correction module is operational and in use and the requested printout has been submitted as a proof. The finding is therefore **closed**.

## **2. FINDING 2 – DELAYED NOTIFICATION OF PUBLIC PROCUREMENT IRREGULARITY TO OLAF**

### **2.1 Audit report**

#### *Finding*

It was noted in the case of one verification procedure, that when the managing authority notified the Financial Control Agency (FCA) about the irregularity, the implementation of the financial correction was 'suspended' and the report on irregularities was not transmitted to AFCOS (Directorate 'Coordination of Fight against the Infringements Affecting the Financial Interests of the European Union' within the Ministry of Interior).

The reporting obligations in relation to the irregularities affecting operations co-financed by the EU budget are well defined. Managing authorities are obliged to send information on irregularities to AFCOS which then sends this information to OLAF. It is vitally important that notification on public procurement relating irregularities is made immediately.

#### *Action*

The managing authority is requested to ensure that notification to AFCOS of irregularities is done immediately after the ex-ante unit of the intermediate body establishes the irregularity. Since this modification will include modification of the existing procedure on application of the financial corrections in cases of public procurement irregularities, in its reply, the managing authority should include a reference to the Procedure Manual.

### **2.2 Member State reply**

The managing authority does not accept this recommendation. The managing authority takes the following view:

1) Not every illegality/error detected by the Ex-ante Control Unit (ECU) of the intermediate body of the Environment OP must be registered as an irregularity as not all infringements noted in the ECU opinion have or would have a financial implication, which is one of the prerequisites for the existence of an irregularity referred to in the definition of an irregularity under Regulation (EC) No. 1083/2006;

2) Under Regulation (EC) No. 1083/2006 and in accordance with the Regulation laying down procedures for handling irregularities involving funds and programmes co-financed by the European Union, irregularities are to be reported immediately where there are new practices that would have repercussions outside a Member State or where there is a suspicion of fraud within the meaning of the Convention on the protection of financial interests of the EU. According to Article 1(1)(a) of the Convention on the protection of the financial interests of

the European Communities, fraud affecting the financial interests of the European Communities shall consist of any intentional act or omission relating to:

- The use or presentation of false, incorrect or incomplete statements or documents which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities and of budgets managed by, or on behalf of, the European Communities;
- Non-disclosure of information in violation of a specific obligation, with the same effect;
- The misapplication of such funds for purposes other than those for which they were initially granted.

In the particular case of Municipality of Elena, since the facts do not explicitly suggest that the infringements observed were intentional, the irregularity was only recorded as an alert until the necessary checks by a competent authority were completed. Given that the Ministry of Environment and Water has not yet received a financial inspection report for the municipality, so that no findings of a control body are to hand referring to a suspicion of fraud, the irregularity has not been reported to OLAF. In addition, given the need for supplementary checks of the contract concluded by the Municipality of Elena, no expenditure under the contract has yet been refunded and a financial correction has not yet been imposed, even if its amount has been approved.

The managing authority imposes financial corrections in cases of irregularities ascertained in connection with the placement of public procurement contracts. Financial corrections adjust the actual or potential loss to the Community budget and the State budget and are imposed before the beneficiaries are reimbursed for incurred costs; therefore the managing authority is of the opinion that no prerequisites are met for immediate reporting.

### **2.3 Commission's view**

The EU legislation (Article 28(1) of Regulation (EC) No 1828/2006) requires the Member States to communicate, during the two months following the end of each quarter, cases of irregularities which have been the subject of primary administrative or judicial findings.

Article 27(b) of Regulation (EC) No 1828/2006 defines the 'primary administrative or judicial finding' as follows:

*'primary administrative or judicial finding' means a first written assessment by a competent authority, either administrative or judicial, concluding on the basis of specific facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedures.*

The 'primary finding' is not necessarily the formal document closing an administrative or judicial procedure, according to which the existence of an irregularity has actually been established, since the Member States must communicate at a later date any information relating to the irregularity which were not available when the facts were first reported (see Article 28(3) of Regulation (EC) No 1828/2006). The Member State must also inform the Commission subsequently of the initiation, conclusion or abandonment of any procedures imposing administrative or criminal penalties related to the reported irregularities as well as of the outcome of such procedures (see Article 30 (1) of Regulation (EC) No 1828/2006).

It follows from this that the reporting requirement for the Member State already exists well before all the facts establishing the irregularity have been gathered; it applies from the moment of detection.

This approach is an integral part of the aim of the notification system set up by Community legislation to facilitate rapid intervention by the Commission (see Article 29 of the above mentioned regulation).

To give the communication system full effect, the primary finding of fact must be taken to be the first demonstration by the administration or the courts that an irregularity exists, even if this is merely an internal document, as long as it is based on actual facts. This does not prevent the administrative or judicial authorities from subsequently withdrawing or correcting this first finding on the basis of developments in the administrative or judicial procedure (see article 28(3) of the above mentioned regulation).

We also note that "fraud" is a specific type of "irregularity". The reporting requirements for irregularities are valid for all the irregularities and not only to those arising from fraud.

Therefore it can be concluded that the particular case under scrutiny (Operation 58-131-175-175 – Completion of the water supply and sewerage network of Elena) should have been reported as irregularity.

It appears from the reply of the Bulgarian authorities and from their interpretations of the regulatory requirements that the system for reporting irregularities in place is not fully compliant with the requirements specified in Regulation (EC) No 1828/2006. As a result, the finding is maintained and the managing authority is requested to fully comply with the requirements specified in Regulation (EC) No 1828/2006.

The finding is **closed** in the context of this audit mission. The Commission will continue to monitor this issue in relation to all the programmes. The audit authority is requested to cover this issue in its future systems audits to facilitate the Commission's monitoring.

### **3. OTHER POINTS FOR THE CONSIDERATION OF THE MANAGING AUTHORITY/ INTERMEDIATE BODY**

There were three other points for consideration of the managing authority/intermediate body raised in the audit report. These related to:

1. The need to improve beneficiaries' capacity to prepare tender documentation to reduce risks associated with public procurement at the level of the contracting authorities;
2. The reinforcement of the ex-ante control unit of the intermediate body or new contract with external consultant for the verifications of public procurement; and
3. The update of the procedure Manual of the managing authority/intermediate body.

The managing authority informed that the following actions have been implemented to address these points. These actions include:

1. Information about possible errors in the public procurement documentation is included on the website of the operational programme and this website is regularly updated. At

the request of beneficiaries, an ex-ante review of public procurement documentation can be earned out by the managing authority/intermediate body. Public procurement is one of the most important aspects tackled in the consultations and the training courses organised by the managing authority/intermediate body.

2. The recruitment of additional staff to the unit was launched and procedures were amended to focus on the most risky aspects of the documentation. One expert in legal relations and one expert from the technical unit have been appointed. For all new grant contracts, the unit will focus on the ex-ante control of tender procedures for the selection of contractors for construction, supervision and auditing activities in relation to the co-financed projects. Beneficiaries are obliged to hire external contractors to carry out an on-going audit of their projects
3. The new Procedures Manual was approved on 9 September 2011. It sets out the procedures for ex-ante and ex-post controls of the procurement process.

The Commission considers the actions implemented by the managing authority adequately address the points raised in the audit report.