





**EUROPEAN COMMISSION**  
**DIRECTORATE-GENERAL**  
**REGIONAL POLICY**  
**Audit**  
**The Director**

Brussels,  
REGIO.J2/DvD

**Subject: Technical Assistance Operational Programme**  
**CCI: 2007RO161PO005**  
**Final conclusions on mission n° 2011/RO/REGIO/J2/1089/1**

**Ref.: Member State letter n° 1840, dated 7 May 2012 (Ares(2012)686361)**  
**Member State e-mail, dated 11 May 2012 (Ares(2012)686395)**  
**Member State letter n° 1840, dated 1 August 2012 (Ares(2012)967214)**

Your Excellency,

I am writing to inform you that Directorate-General of Regional Policy has concluded the audit carried out on the operational programme Technical Assistance (CCI n. 2007RO161PO005).

Following the analysis of the information provided in the Member State's letter(s) 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) N° 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 Article 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 FOR AUDIT 2011/RO/REGIO/J2/1089/1

N°	Finding	Action to be taken/ Recommendation	Responsible body (Auditee)	Deadline	Priority High/ Medium/ Low	Acceptance by the member state/Comments from the member state.	
						Follow up of the MS	DG Regio Final Position
<b>Changes in the set-up of the legal framework</b>							
1.	<p>The set-up of the Managing Authority for Technical Assistance changed on 4 May 2011, by prime minister's decision 315/2011 published in the Romanian Official Journal on 6 May 2011, as a measure to increase the absorption statistics and to respond to the recommendations of the EC for a better coordination between all institutions involved in the management of European funds. The 'overall coordination body' 'ACIS' together with MA for Technical Assistance (directorate inside ACIS) were moved from the Ministry of Finance to the Secretary General of the prime minister.</p> <p>Subsequent to the establishment of the Ministry of European Affairs (by Decision 967 of 29 September 2011), the two entities were transferred once more to the newly created Ministry.</p> <p>In addition, it was noted that the modifications operated within the system caused delays in the normal workflow of the MA Technical Assistance mainly due to the fact that even daily processes/basic documents needed the approval of the highest</p>	<p>It is recommended to streamline the decisional process for the activities of the MA Technical Assistance in order to obtain a more efficient management.</p> <p>Possible options could include delegating power to the director of the managing authority or separating the MA from ACIS.</p>				<p>Regarding the first recommendation and related action, it should be mentioned that the function of Managing Authority for the Operational Programme Technical Assistance (OPTA), meaning that the director has the power to:</p> <ul style="list-style-type: none"> <li>- approve all the projects for financing following their evaluation by the Strategy Unit staff;</li> <li>- sign all the financing contracts/decisions, as well as any modifications of these documents;</li> <li>- approve the eligible expenditures from the OPTA after the required verifications were performed by the Financial Management Unit staff according to the procedures;</li> <li>- authorize the payments made from OPTA.</li> </ul> <p>This delegation has been</p>	<p>The Commission takes note of the explanations provided by the national authorities.</p> <p>This finding is considered <b>closed</b> in the context of the running contradictory procedure</p>

	level in the decisional workflow (i.e. state secretary).					<p>approved by the minister of public finance in March 2008, after the launching of the operational programme in February 2008. Since then, this delegation has been maintained, also during the period when ACIS was in the direct subordination of the Prime Minister.</p> <p>The delegation has also been made by the minister of European affairs according to the Order no. 23 of 7 October 2011.</p> <p>Taking into account that at the level of the MA OPTA, the director is authorized to contract and to make the payments for the OPTA, we do not consider necessary the separation of MA from ACIS.</p> <p>Both transfers that occurred last year (from the Ministry of Public Finance to the direct subordination of the Prime Minister and then to the newly created Ministry of European Affairs) caused delays due to the administrative burden and necessary steps that such institutional changes imply. The delays in the workflow of the documents requiring approval of the highest level have affected mainly ACIS, as beneficiary of OPTA (in terms of launching public procurement, submitting projects and payment claims to the Managing Authority).</p>	
<b>Segregation of functions</b>							

2.	<p>According to the organizational chart, MA Technical Assistance is subordinated to ACIS. In practice, ACIS is, at the same time, final beneficiary for a number of projects. At the moment when the audit was carried out, the state secretary coordinating ACIS was approving as well the documents related to public procurement procedures (i.e. approval of tender dossier, decision on the appointment of the evaluation committee, evaluation report, and subsequent contracts).</p> <p>The Commission considers that this set up might lead to a potential lack of independence and potential conflict of interest.</p>	<p>Please describe the mitigating measures already taken / to be taken under the new set-up of the management and control system.</p>			<p>When designing the management and control system for OPTA during 2007-2008, the principle of separation between the MA and the beneficiary was taken into account by separating the</p> <ul style="list-style-type: none"> <li>- the director of MA OPTA for the OPTA funds, and</li> <li>- the state secretary coordinating the activity of ACIS for contracting and spending the funds allocated in the state budget for ACIS projects.</li> </ul> <p>Furthermore, the projects for which ACIS or other directorates within ACIS are beneficiary (the financing applications and payment claims) have been submitted to the MA OPTA-by the head of the Implementation Unit or by the directors of the other directorates in ACIS, in order to avoid any potential impact on the independence of the head of MA.</p> <p>Following the set-up of the Ministry of European Affairs and after the appointment of the secretary general of the ministry, the authorizing function for contracting and spending the funds allocated in the budget for all the projects of the ministry, including ACIS's projects has been delegated to the secretary general. Consequently, the documents related to the procurement procedures</p>	<p>The Commission takes note of the explanations provided by the national authorities.</p> <p>This finding is considered <b>closed</b> in the context of the running contradictory procedure</p>
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							(tender dossiers, decision regarding the appointment of the evaluation committee, etc.) are currently only endorsed by the secretary of state coordinating ACIS, as coordinator of the Beneficiary, prior to the approval of the secretary general.	
Segregation of functions between AA and MA								
3.	<p>The OP Technical Assistance finances projects entailing trainings and institutional support for all bodies involved in the management and control of operational programmes including the Audit Authority. The Romanian Audit Authority also benefits from the support for the 'partial financing of staff expenditure' and training of staff.</p> <p>According to Article 59(1)(c) of Regulation (EC) No 1083/2006 an audit authority have to be functionally independent of the managing authority and the certifying authority, designated by the Member State for each operational programme and responsible for verifying the effective functioning of the management and control system.</p> <p>The use of the funds under the OP TA and the contract signed between the AA (Court of Accounts) and the MA Technical Assistance may endanger this functional independence. Therefore, there is a risk of lack of independence embedded in the structure.</p> <p>Although, the occurrence of this risk was not detected by the Commission's auditors, preventive measures should</p>	<p>The Romanian authorities are invited to reflect on the concern raised by the Commission auditors and propose appropriate remedial actions.</p>				<p>The Audit Authority is an independent body associated to the Romanian Court of Accounts, which is ensuring the functioning of the Audit Authority.</p> <p>Currently, the Audit Authority is benefiting of 3 projects financed under OPTA, namely a project for supporting the functioning of AA, a project for training the AA staff and a project for reimbursing the salaries expenditures of AA staff. The implementation of these projects is done by specialized units in the Court of Accounts.</p> <p>Furthermore, the technical assistance is designed to support the management and control of the operational programmes. For this-purpose, the key area of intervention .1.4 of OPTA aims to "support both the functioning of the coordination structures which do not receive any support from the technical Assistance in the other operational programmes - such as ACIS,</p>	<p>The Commission takes note of the explanations provided by the national authorities.</p> <p>This finding is considered <b>closed</b> in the context of the running contradictory procedure</p>	

	be taken in this respect.					<p>the Certifying and Paying Authority and the Audit Authority - as well as the functioning of the structures involved in the management of OPTA"</p> <p>The Audit Authority is a key structure in the management and control of the implementation of the Structural and Cohesion Funds and its administrative capacity should be improved.</p> <p>For this purpose, the projects mentioned above were submitted and approved for financing from OPTA and the segregation of functions between AA and MA OPTA was ensured by the fact that the beneficiary function of AA is performed by the Romanian Court of Accounts.</p> <p>The Romanian audit authority submitted also a reaction on this finding by e-mail of 11 May 2012, explaining that the Audit authority is beneficiary for three projects in OP Technical Assistance, namely SMIS 24224, 25272, 20162</p> <p>In order to respect independence from the OP TA, the audit authority undertook following measures:</p> <ul style="list-style-type: none"> <li>• The projects are managed at the level of three directorates within the Court of Accounts, but outside the</li> </ul>	
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							<p>Audit Authority;</p> <ul style="list-style-type: none"> <li>The projects are audited by auditors from PHARE directorate within the Audit Authority, therefore a separate one from the one which is normally auditing OPTA.</li> </ul>	
<b>Public procurement issues</b>								
4.	<p>4.1 Minor errors in the public procurement process</p> <p>As concerns the contracts sampled to be audited, certain minor errors were found (delay in the signature of a contract and late publication of the award notice due to administrative gaps, mistakes in the calculation of the score for the award criterion). Nonetheless, these errors did not influence the outcome of the public procurement process for the contracts selected.</p> <p>4.2 Management verifications process</p> <p>Taking into account that several projects are implemented directly by the MA or ACIS to which the payment verification department is subordinated, there is a risk of lack of independence in performing their tasks concerning checks of public procurement procedures.</p>	Please describe the mitigating measures already taken / to be taken under the new set-up of the management and control system.					<p>In the case when MA OPTA or ACIS are beneficiaries of OPTA, the separation between the public procurement process and the management verifications has been done;</p> <ul style="list-style-type: none"> <li>- <u>at operational level</u>, by two different units (the Implementation Unit is undertaking the public procurement process, while the management verifications are performed by the Financial Management Unit), and</li> <li>- <u>at management level</u>, by delegating the authorizing function for the public procurement to the secretary general of the Ministry of European Affairs and for the OPTA (including approval of the management verifications) to the director of MA OPTA as described above.</li> </ul>	<p>The Commission takes note of the explanations provided by the national authorities.</p> <p>This finding is considered <b>closed</b> in the context of the running contradictory procedure</p>
<b>Quality of management verification on 'partial financing of staff expenditure'</b>								
5.	<p>5.1 Approval of financing applications</p> <p>'Partial financing of staff expenditure' is an instrument which is available, paid from Technical Assistance,</p>	<p>5.1 Approval of financing applications</p> <p>Commission recommends to MA Technical Assistance to perform a thorough assessment</p>					<p>5.1 Approval of financing applications</p> <p><u>For the period 14.04.2009 - 31.12.2011</u>, the 30 projects financing the staff</p>	<p>The Commission takes note of the explanations provided by the national authorities.</p> <p>This finding is considered</p>

<p>according OUG 35 of 14 April 2009. Depending on performance an additional allowance (of 25%, 50% or 75%) is paid. In reality only 25% and 75% are used.</p> <p>Based on the decision, the eligible institutions (MA, CA, AA) drafted financing applications which were approved almost automatically by MA Technical Assistance. At the level of MA Technical Assistance, the audit team could not make proof of an assessment of the workload analysis and eligibility of staff included in the applications before their approval. The MA Technical Assistance signed contracts with the eligible institutions indicating the units and number of persons/positions which qualify for the allowance.</p> <p>It is only at payments verifications stage, that MA Technical Assistance verifies the eligibility of staff related expenditure based on job descriptions and timesheets. In the job description should be at least one EU funds related task.</p> <p>5.2 Management verifications</p> <p>The audit team selected for verifications one payment request under project SMIS code 24692. The selected payment request showed to be the first declaration from the MA for OP Competitiveness for this kind of expenditure, which means a complex payment request, with many monthly salary declarations.</p> <p>The MA Technical Assistance should be in the position to demonstrate, through adequate documentation of the management verifications carried</p>	<p>of the needs of eligible institutions as a basis of the financing applications to be submitted for future contracts.</p> <p>5.2 Management verifications</p> <p>Before starting the management verifications, an overall reconciliation should be made, especially when the checks performed are done by sampling and in order to justify the sample taken.</p> <p>When a sample is used to verify a total population, evidence of the full scope of checks should be properly documented in the MA file.</p> <p>Continuous attention is asked to guarantee the availability of evidence of management verifications carried out, in an easy accessible way.</p>				<p>expenditures for the institutions involved in the coordination, management and control of Structural Instruments included as eligible only the salary increase provided by the Law no.490/2004 regarding financial incentives for the staff managing Community funds.</p> <p>This salary increase is given to the staff working on EU funds based on an endorsement issued by the Directorate for System Coordination in ACIS, after checking the regulation of organization and functioning and the job descriptions. The number of staff endorsed is centralized within this directorate.</p> <p>When preparing the financing applications for this type of projects, the beneficiary was requested to include information about the number of staff working on Structural Instruments, in the chapter 2.3.2 <i>Justification of the need for the project implementation.</i></p> <p>Also, in estimating the budget, the beneficiary took into account only the salary increase actually received in a previous month by the staff involved in the coordination, management and control of Structural Instruments, which meant that the staff had the endorsement for receiving the increase under the Law</p>	<p>closed in the context of the running contradictory procedure</p>
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	<p>out, that the overall intensity of administrative and on-the-spot verifications is sufficient to give reasonable assurance of the legality and regularity of the expenditure co-financed under the programme.</p> <p>The MA Technical Assistance should take into account the level of risk identified for the type of beneficiaries and operations concerned.</p> <p>Selection of the expenditure items to be verified, where justified, may be done on a sample of transactions, taking account of risk factors (value of items, type of beneficiary, past experience), and complemented by a random sample where considered necessary.</p> <p>MA Technical Assistance claimed to perform 100% administrative checks on the payment claim and 10% on the spot checks. The audit team found evidence of the verifications carried out by MA Technical Assistance but the relevant documentation was not easy accessible and a full reconciliation of the total expenditure of the payment claim, was not made before starting the management verifications.</p>					<p>no.490/2004. The actual payroll and a simulated calculation of the staff expenditure without- applying the salary increase under Law no.490/2004 were attached to the financing applications as supporting documents for the budget estimation. The difference between the amount in the payroll and the simulated calculation represented the effect of the salary increase on the staff expenditure of the institution for the staff working on Structural Instruments and the eligible value of the project.</p> <p>Furthermore, when evaluating the financing applications, one of the items checked was if the responsibilities of the structures included in the financing applications (according to the attached regulation of organization and functioning) were responsibilities specific for a managing authority/ intermediate body or a certifying and paying authority, audit authority or the authority for coordination of structural instruments.</p> <p>For the period 01.01.2012 - 31.12.2015, the eligible expenditure is the revenue related to the actual worked days on the Structural Instruments - the Convergence Objective.</p> <p>The beneficiary institutions are requested to include in the</p>	<p>DG REGIO would like to underline that by letter Ares(2011)1033602 - 29/09/2011 it agreed to an extension of the staff incentive scheme and not to a scheme to reimburse base salaries of employees.</p>
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						<p>financing applications, among other information, the number of <u>active</u> staff involved in in coordination, management and control of Structural Instruments - Convergence Objective and the indicator of the project is calculated based on this number. The situation is reported for the month previous to the submission of the financing application and is supported by documents attached to the financing application (namely the payroll for that month).</p> <p>Also, the basis for the budget estimation is the actual revenue for the worked days, received by the .active staff involved in the coordination, management and control of Structural Instruments — Convergence Objective, in the month previous to the submission of the financing application. In order to obtain the eligible value per month, a percentage of time spent on Structural Instruments - Convergence Objective is applied to the actual revenue, if the related staff also has other responsibilities than the ones related to Structural Instruments.</p> <p>The situation of the staff is constantly changing: changes in the job description and in the position in the organization, suspensions, leaves of absence, resignations, transfers etc. When applying for financing,</p>	
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						<p>the most accurate approach to estimate the needs in terms of number of staff working on Structural Instruments and financial resources for the related staff expenditure was considered to be through reporting to the actual situation in a month previous to the moment of submitting the application. In estimating the indicator and the budget of the project, the number of staff working on Structural Instruments and endorsed under Law no.490/2004, and the related staff expenditure supported by the actual payroll attached to the financing application were taken into account.</p> <p>5.2 Management verifications</p> <p>The management verifications for the projects on 'partial financing of staff expenditure' are done as follows:</p> <ul style="list-style-type: none"> <li>- administrative verifications of all payment claims, where it is verified also that the calculations are correctly made, including that the eligible amount determined for each individual add up to the total eligible amount in the payment claim.</li> </ul> <p>For the first set of projects financing only the salary increase, the eligible amounts are determined for each individual by subtracting from the actual salary paid by the institution, the simulation of the salary without the</p>	
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						<p>increase, in order to determine the actual effect of the increase over the salary paid.</p> <p>This method of calculation caused additional burden on the administrative verification, when checking the correctness of the amounts included in the payment claim.</p> <p>For the second set of projects, the format of the payment claim has been changed; all the data will be included in Excel' sheets that will allow an easier verification and reconciliation of the amounts. Also, the eligible expenditure is the revenue for the worked days, which can be easily found in the payroll</p> <ul style="list-style-type: none"> <li>- on the spot verifications performed 100% on all payment claims received until 28 May 2010 and on a sampling basis after that.</li> </ul> <p>The on the spot verifications for the projects on 'partial financing of staff expenditure' consist of verifying for a 10% of the staff included in the payment claim, the following documents;</p> <ul style="list-style-type: none"> <li>- the job description,</li> <li>- the evaluation report,</li> <li>- the endorsement for receiving the salary increase.</li> </ul> <p>It is a random sampling based on the list of staff included in the payment claim and the method of sampling is described in the manual of</p>	
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						<p>procedures for OPTA. If the number of staff is small (e.g. structures with 5-7 employees involved in the Structural Instruments), all the staff is included in the on the spot verification.</p> <p>In case of detecting problems in the verification of the documents for the number of staff verified, the sampling has to be extended. Until now, no problem has been identified in the documents verified for the staff included in the sample and there was no justification for extending the sample.</p> <p>Also, except for the cases when the documents have been verified for all the staff, the selection of the sample has been done so that there are not the same employees verified in two consecutive on the spot missions.</p>	
<b>Single Management Information System (SMIS) verifications</b>							
6.	<p>6.1 SMIS action plan</p> <p>The audit team reviewed the state of play of the action plan implemented by the Romanian authorities in 2010.</p> <p>With regard to action no. 7, progress has been made, but the contract with the external contractor for data input was to be ended in November 2011. In order to conclude a new contract, the new European Affairs Ministry first needed to be established. Meanwhile, the lack of external 'help' might have resulted in a new backlog in the entry of key data in the SMIS. This risk was identified</p>	<p>The Romanian authorities should ensure permanent update of SMIS which should be used as a management tool for reporting.</p> <p>Differences between SMIS and SFC 2007 (as reported in the 'Annual Summary 2011') should be prevented as much as possible.</p>				<p>6.1 The documentation necessary for contracting external support for the data entry in SMIS-NSRF was finalized by the Beneficiary in December 2011. The open tender was launched on 29 February 2012 the offers have been opened on 19 April 2012 and are under evaluation. The contract ensures that during 18 months, 32 contracted experts will provide assistance to the managing authorities and intermediate bodies regarding the registration of data in</p>	<p>The Commission takes note of the explanations provided by the national authorities.</p> <p>This finding is considered <b>closed</b> in the context of the running contradictory procedure</p>

	<p>by the Romanian authorities, as well.</p> <p>6.2 New developments</p> <p>A new feature of the software is planned to be developed in order to allow the final beneficiaries to input data into SMIS. This should ensure the update of the system in real time. Nevertheless, due to increased risk of errors, the MAs should allocate resourced for the verification of the correctness of the data when performing the management verifications.</p>					<p>SMIS-NSRF. ACIS constantly monitors the data entry level, for each operational programme.</p> <p>6.2 In order to keep the information in SMIS-NSRF up to date, ACIS is currently developing a web-based application, MySMIS, meant to collect data regarding financing proposals, reimbursement claims and progress reports, directly from applicants and beneficiaries and input it into SMIS-NSRF.</p> <p>This is achieved under "MySMIS - Extension of SMIS-NSRF to beneficiaries" project, financed by OPTA.</p> <p>This application will provide quick access to information at all institutions involved in the management of structural instruments, beneficiaries and potential beneficiaries. Also, it will significantly reduce the administrative burden for the MAs and IBs regarding the data entry process in SMIS-NSRF, ensuring the possibility to monitor in detail the processes, and improve relationships with applicants/ beneficiaries of projects.</p> <p>Following the examination of the existing implementation system of structural instruments, the analysis phase of the project was completed. According to this analysis, MySMIS will allow backoffice users (SMIS users from MAs and IBs) to focus</p>	
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							<p>on data quality verifications, as the front-office users (i.e. applicants and beneficiaries) will introduce their data in MySMIS. Also, the application includes some preliminary checks that prevent users from making the most frequent mistakes such as arithmetical errors. The high quality of data will also be ensured by using the contextual help and common parameters lists with SMIS, supporting the users in filling in the relevant data fields.</p>	
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