



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
REGIONAL POLICY
Audit
The Director

Brussels,
REGIO J2/REG/D(2012)448867

**Subject: ERDF and Cohesion Fund – Programming period 2007-2013
Final conclusions on missions n° 2010BG/REGIO/J2/813/1,2,3,4 and
2011BG/REGIO/J2/813/5 – Review of the work of the audit authority
pursuant to Article 62 of Council regulation (EC) No 1083/2006**

**Ref.: Member State letter Pv-3-28/03.01.2012 dated 3 January 2012
(Ares(2012)18245)**

Your Excellency


I am writing to inform you that Directorate-General of Regional Policy has concluded the audit carried out on the ERDF and Cohesion Fund programmes.

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 all findings have now been treated adequately, the audit is **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 90(2) of the Regulation.

Yours faithfully



Lena Andersson Pench

His Excellency Mr Dimitar TZANTCHEV
Ambassador Extraordinary and Plenipotentiary Permanent Representative
Permanent Representation of Bulgaria to the EU
Square Marie-Louise/Maria Louizasquare 49
1000 Bruxelles/Brussel

Enclosures: Annex I - Commission's conclusions

c.c.:

[REDACTED]
Executive Director
Audit of EU Funds Executive Agency
2, Lege Street
1040 Sofia
Bulgaria

Mr N. Popens, DG Regional Policy, DGA2
M. J. **[REDACTED]**, DG Regional Policy, A3
Mr **[REDACTED]**, DG Regional Policy, B3
Mr J.-M. Seyler, DG Regional Policy, I
Mr R. **[REDACTED]**, DG Regional Policy, I2
Mr **[REDACTED]**, DG Regional Policy, J1
Mr F. Merchan Cantos, DG Employment, Social Affairs and Inclusion, H
Mr **[REDACTED]**, DG Maritime Affairs and Fisheries, F
Mr G. Cipriani, Director, European Court of Auditors
OLAF

ANNEX I – DG REGIONAL POLICY'S CONCLUSIONS

GENERAL COMMENTS

In its letter of 19 December 2011 attached to the letter Ares(2012)18245, the audit authority raised concerns about the overall conclusions of the audit. The audit authority considers that remedial actions and improvements undertaken by it after the audits were carried out and before the final report was issued were not sufficiently taken into account when forming the final opinion.

In this regard, in respect of the key requirement 2 'Systems audits', we have based our opinion on the audit work we have carried out, which involved a review and re-performance of systems audits carried out by the audit authority in 2009. Subsequent systems audits were only available after the completion of our module 3 audit work and were therefore not taken into account when forming our final audit opinion.

We have nevertheless noted a significant improvement of the quality of the subsequent systems audit reports submitted by the audit authority and this was communicated to the audit authority on several occasions, including the assessment letter of the national system audit reports sent to the audit authority on 16 August 2011 (ref. Ares(2011)880378) in which we stated that: "We would like to acknowledge the significant improvement in the quality of these reports compared to those previously submitted in 2009".

FINDINGS

The following table sets out a summary of the status of the audit findings for all missions as set out in the final audit report of 15 July 2011 (Ares(2011)773359).

Key requirement	Mission	Findings	Status
1 - Clear definition, allocation and separation of functions	813/1	1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 12	Closed
		11 and 13	Open
2 - Adequate systems audits	813/2	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15	Closed
2 - Adequate systems audits	813/4	1, 2, 3 and 4	Open
		5 and 7	Withdrawn
		6	Closed
3 - Adequate audits of operations	813/3	1 and 4	Open
		2 and 3	Closed
4 - Adequate annual control report and opinion	813/5	No findings	

The open findings are treated below.

1. FINDING 11 (Key requirement 1 – Clear definition, allocation and separation of functions)

1.1 Audit report

Finding

The Audit Committee, which acted in an oversight and quality control role as regards the work of the audit authority, was abolished in mid-2009. The audit authority was closely involved in the appointment of the new Audit Committee. As the Audit Committee will oversee the work of the audit authority, the audit authority should not be involved in its establishment.

Action

The Ministry of Finance was requested to advise on the measures undertaken in order to ensure the nomination and appointment of an Audit Committee.

1.2 Member State Reply

The audit authority is well structured and there are sufficient legal safeguards to ensure its independence and the establishment of an Audit Committee is thus unnecessary. European legislation does not require Member States to establish such kind of body. Pursuant to the provisions of Article 46a of the Public Sector Internal Audit Act (ZVOPS), the power and authority to establish an audit committee lie with the Minister of Finance and therefore should not be taken into consideration in the evaluation of the work of the audit authority.

In August 2011, the audit authority has submitted a written request to the Minister of Finance for information on the actions that had been taken. The Minister of Finance states that in conjunction with the public administration reforms and in order to optimise public spending, he has reconsidered the necessity of a supervisory body to assist and guarantee the independence of the audit authority. The performance results, strong administrative capacity and established reputation of the audit authority have been also taken into account. The establishment of such a committee has not been expressly required by the European Commission. Accordingly, the legislative requirement for the establishment of an Audit Committee was abolished by the National Assembly on 30 November 2011.

1.3 Commission's View

An audit committee would positively contribute to the improvement and strengthen the governance of the audit of EU funds in Bulgaria. Nevertheless, we accept that establishment of such body is at the discretion of the Member State. The finding is **closed**.

2. FINDING 13 (Key requirement 1 – Clear definition, allocation and separation of functions)

2.1 Audit report

Finding

No IT tool is used for monitoring and follow-up of audits carried out. At the moment of the audit, the number of audits carried out by the audit authority was not high. However, there will be a substantial increase in terms of the number of audit reports to be followed-up by the responsible principal auditors and by the management of the audit authority in the future.

Action

The audit authority was requested to provide updated information regarding the status of the IT tool facilitating audit work.

2.2 Member State Reply

The audit authority signed a contract on 14 April 2011 for a new IT system to allow it to monitor the follow up of audit findings. The new IT system has been put in place for audits launched after September 2011.

2.3 Commission's View

As the IT tool facilitating audit work has been established, is operational and is being used by the audit authority, the finding is **closed**.

3. FINDING 1 (Key requirement 2 – Adequate systems audits)

3.1 Audit report

Finding

The impact of individual findings on the systems functioning was not adequately assessed in some cases.

Action

When performing the systems audits, the audit authority should pay particular attention to the issue of the assessment of the key requirements. The audit authority is reminded that Category 3 'works partially; substantial improvements are needed' is foreseen to be used in relation to serious deficiencies that have led or may lead to irregularities and where their impact on the effective functioning of key requirements is significant.

3.2 Member State Reply

The audit authority accepts the principled recommendation and adheres to and implements this approach in its work. When conducting system audits under the international standards on auditing, the audit authority collects, analyses and evaluates reliable and relevant information and based on its professional judgement, taking into account all relevant facts and circumstances, including those revealed in the period between the preliminary and the final

report, formulates final conclusion on the objectives and scope of the audit and presents final assessment of the key requirements.

3.3 Commission's View

As the audit authority has accepted the recommendation and committed to adhere to and implement the approach, this finding is closed.

4. FINDING 2 (Key requirement 2 – Adequate systems audits)

4.1 Audit report

Finding

There was no procedure in place for the situation when the agreement on the finding with the auditee was not possible (e.g. non acceptance of the finding by the auditee at the contradictory procedure stage).

Action

The audit authority should introduce an effective contradictory procedure in order to ensure that a final position regarding audit findings, including a procedure for implementing proposed financial corrections where appropriate (i.e. for more serious breaches), is introduced.

4.2 Member State Reply

The audit authority implements an adequate and effective procedure for discussing the results of the audit engagements, as well as rules for follow-up activities to monitor the management's response to the risks identified. These procedures have been presented and all managing authorities as well as the certifying authority are familiar with them. At present, after the conclusion of the objection procedure and upon final confirmation of the financial corrections, the latter are recorded by the managing authorities as irregularities and their offsetting is monitored both by the certifying authority and the audit authority. The managing authorities and the certifying authority have been informed that if in the future a proposed financial correction is not accepted by a managing authority (this has not happened so far) and the certifying authority fails to take corrective action based on the audit report, then the audit authority shall present the proposed financial correction in the Annual Control Report and shall take it into account when the error rate of the respective programme is calculated. This procedure is also included in the Guide for the Audit of EU Funds.

4.3 Commission's View

The procedure described by the audit authority is acceptable. The finding is therefore closed.

5. FINDING 3 (Key requirement 2 – Adequate systems audits)

5.1 Audit report

Finding

The financial correction module of UMIS system was not fully operational. The IT systems audit report issued in December 2009 did not address the issue of the functioning of the financial corrections module. This deficiency should have been identified by the audit authority and included in the respective systems audit reports.

Action

The completeness and correctness of data included in the financial correction module should be tested by the audit authority during the future audit work performed at the level of managing authorities and certifying authority.

5.2 Member State Reply

A systems audit report of the audit authority on key requirement 6 'Reliable accounting, monitoring and financial reporting systems in computerised form' identified the need for further development of the financial module with respect to the reconciliation of expenditure in final payments (Finding 3 of the report). As a result of the audit authority's recommendations, the part of the financial module concerning financial corrections was further developed. The audit authority has continued to monitor the progress in the development of the financial module and the relevance of the data therein in its next IT audit in 2011. After the results have been communicated, the audit report will be submitted to the European Commission.

5.3 Commission's View

The problem with the financial correction module has been subject of an audit performed after the Commission audit. This subsequent audit performed by the audit authority has appropriately addressed the problem with the financial correction module of the UMIS system. The finding is **closed**.

6. FINDING 4 (Key requirement 2 – Adequate systems audits)

6.1 Audit report

Finding

Reports on expenditure certified to the Commission are not generated by UMIS. They are prepared by the financial expert on the basis of separately maintained excel sheets containing information on financial corrections. This deficiency should have been included in the respective report by the audit authority.

Action

The audit authority should include verifications to identify this kind of deficiency within the scope of its future audits.

6.2 Member State Reply

Within the system audits of the certifying authority and the IT systems, the audit authority verifies the accuracy of the data generated in the certificates submitted to the Commission and whether this data is consistent with the information entered in the UMIS by the managing authorities and the certifying authority.

In the system audits of the certifying authority, we perform detailed tests and verify the overall cost certification process using all control layers until a certificate is issued to the European Commission. On the other hand, in the IT system audits we verify the accuracy of the information in the UMIS, including information on certified costs. In confirmation of the above, the system audit report of the audit authority on key requirement 6 'Reliable accounting, monitoring and financial reporting systems in computerised form' established deficiencies in the information entered by the certifying authority that have been remedied during the audit (Finding 8 of the cited report).

The audit authority will continue in its future audits to monitor whether the managing authorities and the certifying authority have ensured the correct entry of data in the UMIS that is consistent with the data on the certificates submitted to the European Commission.

6.3 Commission's View

The problem with the reports on expenditure has been subject of an audit performed after the Commission audit. This subsequent audit performed by the audit authority has addressed the problem with the reports on expenditure. The finding is **closed**.

7. FINDING 1 (Key requirement 3 – Adequate audits of operations)

7.1 Audit report

Finding

The audit authority prepares 'mini reports' for each audited operation. The audit authority does not include findings from its earlier systems audits where it has identified errors for the same audited operations in these 'mini reports'.

For example, in its draft system audit report for the Environment OP the audit authority has a finding in relation to BG161PO005-1.0.02-0086 Primorsko for VAT amounting to 276 978,70 BGN incorrectly paid in advance to the contractor, instead of being paid after the taking over certificate for the works carried out. This was not included in the 'mini report' for Primorsko even though this operation was audited as part of the systems audit.

As a result, the information used to calculate the error rate per individual operation is incomplete and the error rate calculated per operation and globally per operational programmes is not correct. This represents a deficiency in the audit methodology.

Action

The audit authority should review the audit files from all of the systems audits it has carried out and identify all findings which relate to the expenditures certified as at 31.12.2009. Individual and consolidated error rates have to be re-calculated in order to reflect the real

value of irregular expenditures and the related error rate for the reference year. The audit authority is requested to provide evidence that errors from system audits have been taken into account in the overall report per programme.

7.2 Member State Reply

During the audit of operations, the audit authority established that all liabilities to the contractor under the construction contract had been settled by the beneficiary and recorded in its accounting system. In this regard, at the time the inspection was carried out as part of the audit of operations, all costs were eligible and paid in accordance with the contractual provisions. Given the above, the audit authority regards the established deficiency as remedied and believes that it should not be considered an error and reflected in the error rate. This approach complies with the International Standard on Auditing and with the latest guidelines issued by the European Commission on Guidance Treatment of Errors Disclosed in the Annual Control Reports (Annex to the Guidance on ACRs and Opinions of 18/02/2009, ref. COCOF 09/0004/01-EN).

7.3 Commission's View

Although the advance payment represents a formal breach of the contract terms, it is acknowledged that the eligibility of this item relates to the timing of the payment to the contractor (i.e. it was made in advance of the date foreseen in the contract). As the payment subsequently became eligible no further action is proposed by the Commission and it is accepted that, due to the nature of the error, it does not need to be included in the error rate calculation. The finding is therefore **closed** within the context of this audit mission.

8. FINDING 4 (Key requirement 3 – Adequate audits of operations)

8.1 Audit report

Finding

In the case of operation BG161PO001-2.1.02-0014-C0001 (Sozopol) it was noted that the contracting authority did not include the amount of 970 BGN (i.e. the amount of the tender guarantee retained from a tenderer who was placed first, but subsequently refused to sign the contract thus forfeiting the guarantee) as revenue and subsequently, did not deduct it from the final expenditure claim. This finding was not identified by the audit authority.

Action

A recommendation should be given to the managing authority requesting improvement of the instructions provided to beneficiaries concerning the tendering process (e.g. examples of good practice in line with sound financial management could be provided).

The audit authority should also ensure that it checks for all types of revenue when carrying out audits of operations.

8.2 Member State Reply

In line with the principle of sound financial management the European Commission recommends that the instructions to beneficiaries on tender procedures be updated (e.g.

examples of sound financial management can be included) and the audit authority has brought the comment on the finding to the attention of the managing authority. When carrying out audits of operations, the audit authority examines the revenue generated in connection with the implementation of the project.

8.3 Commission's View

As the requested action had been taken, the finding is **closed**.