

Commission Regulation (EC) No 718/2007 of 12 June
2007 implementing Council Regulation (EC) No 1085/2006
establishing an instrument for pre-accession assistance (IPA)

PART II

SPECIFIC PROVISIONS

TITLE II

CROSS-BORDER COOPERATION COMPONENT

CHAPTER III

Implementation

Section 2

Cross-border programmes between beneficiary countries and Member States

Sub-section 1

Management and control systems

Article 101

General principles

The management and control systems of cross-border programmes set up by participating countries shall provide for:

- (a) the definition of the functions of the bodies concerned in management and control and the allocation of functions within each body;
- (b) compliance with the principle of separation of functions between and within such bodies;
- (c) procedures for ensuring the correctness and regularity of expenditure declared under the cross-border programme;
- (d) reliable accounting, monitoring and financial reporting systems in computerised form;
- (e) a system of reporting and monitoring where the responsible body entrusts the execution of tasks to another body;
- (f) arrangements for auditing the functioning of the systems;
- (g) systems and procedures to ensure an adequate audit trail;

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- (h) reporting and monitoring procedures for irregularities and for the recovery of amounts unduly paid.

Article 102

Designation of authorities

1 The countries participating in a cross-border programme shall appoint a single managing authority, a single certifying authority and a single audit authority, all to be located in one of the Member States participating in the cross-border programme. The certifying authority shall receive the payments made by the Commission and, as a general rule, shall make the payments to the lead beneficiary, in accordance with the provisions laid down in Article 104.

The managing authority, after consultation with the countries participating in the programme, shall set up a joint technical secretariat. The joint technical secretariat shall assist the managing authority and the joint monitoring committee referred to in Article 110 and, where appropriate, the audit authority and the certifying authority, in carrying out their respective duties.

The joint technical secretariat may have antennae established in other participating countries.

2 The audit authority for the cross-border programme shall be assisted by a group of auditors comprising a representative of each country participating in the cross-border programme carrying out the duties provided for in Article 105. The group of auditors shall be set up within three months of the decision approving the cross-border programme at the latest. It shall draw up its own rules of procedure. It shall be chaired by the audit authority for the cross-border programme.

The participating countries may decide by unanimity that the audit authority is authorised to carry out directly the duties provide for in Article 105 in the whole of the territory covered by the programme without the need for a group of auditors as defined in the first subparagraph.

The auditors shall be independent of the control system referred to in Article 108.

3 Each country participating in the cross-border programme shall appoint representatives to sit on the joint monitoring committee referred to in Article 110.

4 Where one or more of the tasks of a managing authority or certifying authority are performed by an intermediate body, the relevant arrangements shall be formally recorded in writing.

The provisions of this Regulation concerning the managing authority, the audit authority and the certifying authority shall apply to that intermediate body.

Article 103

Functions of the managing authority

1 The managing authority shall be responsible for managing and implementing the cross-border programme in accordance with the principle of sound financial management and in particular for:

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- a ensuring that operations are selected for funding in accordance with the criteria applicable to the cross-border programme and that they comply with applicable Community and national rules for the whole of their implementation period;
- b ensuring that there is a system for recording and storing in computerised form accounting records of each operation under the cross-border programme and that the data on implementation necessary for financial management, monitoring, verifications, audits and evaluation are collected;
- c verifying the regularity of expenditure. To this end, it shall satisfy itself that the expenditure of each final beneficiary participating in an operation has been validated by the controller referred in Article 108;
- d ensuring that the operations are implemented according to the public procurement provisions referred to in Article 121;
- e ensuring that final beneficiaries and other bodies involved in the implementation of operations maintain either a separate accounting system or an adequate accounting code for all transactions relating to the operation without prejudice to national accounting rules;
- f ensuring that the evaluations of cross-border programmes are carried out in accordance with Article 109;
- g setting 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 134;
- h ensuring that the certifying authority receives all necessary information on the procedures and verifications carried out in relation to expenditure for the purpose of certification;
- i guiding the work of the joint monitoring committee and providing it with the documents required to permit the quality of the implementation of the cross-border programme to be monitored in the light of its specific goals;
- j drawing up and, after approval by the joint monitoring committee, submitting to the Commission the annual and final reports on implementation referred to in Article 112;
- k ensuring compliance with the information and publicity requirements laid down in Article 62.

2 The managing authority shall lay down the implementing arrangements for each operation, where appropriate in agreement with the lead beneficiary.

Article 104

Functions of the certifying authority

The certifying authority of a cross-border programme shall be responsible in particular for:

- (a) drawing up and submitting to the Commission certified statements of expenditure and applications for payment;
- (b) certifying that:
 - (i) the statement of expenditure is accurate, results from reliable accounting systems and is based on verifiable supporting documents;
 - (ii) the expenditure declared complies with applicable Community and national rules and has been incurred in respect of operations selected for funding

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- in accordance with the criteria applicable to the programme and complying with Community and national rules;
- (c) ensuring for the purposes of certification that it has received adequate information from the managing authority on the procedures and verifications carried out in relation to expenditure included in statements of expenditure;
 - (d) taking account for certification purposes of the results of all audits carried out by or under the responsibility of the audit authority;
 - (e) maintaining accounting records in computerised form of expenditure declared to the Commission. The managing authorities and the audit authorities shall have access to this information. At the written request of the Commission, the certifying authority shall provide the Commission with this information, within ten working days of receipt of the request or any other agreed period for the purpose of carrying out documentary and on the spot checks;
 - (f) 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 European Union prior to the closure of the cross-border programme by deducting them from the next statement of expenditure;
 - (g) sending the Commission, by 28 February each year, a statement, identifying the following for each priority axis of the cross-border programme:
 - (i) the amounts withdrawn from statements of expenditure submitted during the preceding year following cancellation of all or part of the public contribution for an operation;
 - (ii) the amounts recovered which have been deducted from these statements of expenditure;
 - (iii) a statement of amounts to be recovered as at 31 December of the preceding year classified by the year in which recovery orders were issued.

Article 105

Functions of the audit authority

- 1 The audit authority of a cross-border programme shall be functionally independent of the managing authority and the certifying authority and shall be responsible in particular for:
- a ensuring that audits are carried out to verify the effective functioning of the management and control system of the cross-border programme;
 - b ensuring that audits are carried out on operations on the basis of an appropriate sample to verify expenditure declared;
 - c by 31 December each year from the year following the adoption of the cross-border programme to the fourth year following the last budgetary commitment:
 - (i) submitting to the Commission an annual control report setting out the findings of the audits carried out during the previous twelve month period ending on 30 June of the year concerned and reporting any shortcomings found in the systems for the management and control of the programme. The first report, to be submitted by 31 December of the year following the adoption of the programme, shall cover the period from 1 January of the year of adoption to 30 June of the year following the adoption of the programme. The information

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concerning the audits carried out after 1 July of the fourth year following the last budgetary commitment shall be included in the final control report supporting the closure declaration referred to in point (d) of this paragraph. This report shall be based on the systems audits and audits of operations carried out under points (a) and (b) of this paragraph;

- (ii) issuing an opinion, on the basis of the controls and audits that have been carried out under its responsibility, as to whether the management and control system functions effectively, so as to provide a reasonable assurance that statements of expenditure presented to the Commission are correct and as a consequence reasonable assurance that the underlying transactions are legal and regular.

When a common system applies to several IPA cross-border programmes, the information referred to in point (i) may be grouped in a single report, and the opinion and declaration issued under point (ii) may cover all the cross-border programmes concerned;

- d submitting to the Commission at the latest by 31 December of the fifth year following the last budgetary commitment a closure declaration assessing the validity of the application for payment of the final balance and the legality and regularity of the underlying transactions covered by the final statement of expenditure, which shall be supported by a final control report. This closure declaration shall be based on all the audit work carried out by or under the responsibility of the audit authority.

2 The audit authority shall ensure that the audit work takes account of internationally accepted audit standards.

3 Where the audits and controls referred to in paragraph 1 points (a) and (b) are carried out by a body other than the audit authority, the audit authority shall ensure that such bodies have the necessary functional independence.

4 If weaknesses in management or control systems or the level of irregular expenditure detected do not allow the provision of an unqualified opinion for the annual opinion referred to in paragraph 1 point (c) or in the closure declaration referred to in paragraph 1 point (d), the audit authority shall give the reasons and estimate the scale of the problem and its financial impact.

Article 106

Audit trail

For the purposes of the audits referred to in Article 105(1)(b), an audit trail shall be considered adequate where, for the cross-border programme concerned, it complies with the following criteria:

- (a) it permits the aggregate amounts certified to the Commission to be reconciled with the detailed accounting records and supporting documents held by the certifying authority, managing authority, intermediate bodies and lead beneficiaries as regards operations co-financed under the cross-border programme;
- (b) it permits verification of payment of the public contribution to the lead beneficiary and each final beneficiary;
- (c) it permits verification of application of the selection criteria established by the joint monitoring committee for the cross-border programme;

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- (d) it contains, in respect of each operation, the technical specifications and financing plan, documents concerning the grant approval, documents relating to public procurement procedures, progress reports and reports on verifications and audits carried out.

Article 107

Audits of operations

1 The audits referred to in Article 105(1)(b) shall be carried out each twelve-month period from 1 July of the year following the adoption of the cross-border programme on a sample of operations selected by a method established or approved by the audit authority in agreement with the Commission.

The audits shall be carried out on the spot on the basis of documentation and records held by the final beneficiary.

The participating countries shall ensure the appropriate repartition of those audits over the implementation period.

- 2 The audits shall verify that the following conditions are fulfilled:
- a the operation meets the selection criteria for the cross-border programme and has been implemented in accordance with the approval decision and fulfils any applicable conditions concerning its functionality and use or the objectives to be attained;
 - b the expenditure declared corresponds to the accounting records and supporting documents held by the final beneficiary;
 - c the expenditure declared by the final beneficiary is in compliance with Community and national rules;
 - d the public contribution has been paid to the final beneficiary in accordance with Article 40(9).

3 Where problems detected appear to be systemic in nature and therefore entail a risk for other operations under the cross-border programme, the audit authority shall ensure that further examination is carried out, including additional audits where necessary, to establish the scale of such problems. The necessary preventive and corrective action shall be taken by the relevant authorities.

4 No less than 5 % of the total expenditure declared by lead beneficiaries and certified to the Commission in the final statement of expenditure shall be audited in accordance with paragraph 2 before the closure of a cross-border programme.

Article 108

Control system

1 In order to validate the expenditure, each participating country shall set up a control system making it possible to verify the delivery of the products and services co-financed, the soundness of the expenditure declared for operations or parts of operations implemented on its territory, and the compliance of such expenditure and of related operations, or parts of those operations, with Community, when relevant, and its national rules.

For this purpose each participating country shall designate the controllers responsible for verifying the legality and regularity of the expenditure declared by each final

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beneficiary participating in the operation. Participating countries may decide to designate a single controller for the whole programme area.

Where the verification of the delivery of the products and services co-financed can be carried out only in respect of the entire operation, such verification shall be performed by the controller of the participating country where the lead beneficiary is located or by the managing authority.

2 Each participating country shall ensure that the expenditure can be validated by the controllers within a period of three months from the date of its submission by the lead beneficiary to the controllers.

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