



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
REGIONAL AND URBAN POLICY
 The Director-General

Brussels,
 REGIO F1/MG/dd

Subject: 'Increase of Economic Competitiveness' Programme (CCI
 2007RO161PO002)
 Procedure to suspend ERDF interim payments (Article 92 of Regulation
 (EC) No 1083/2006)

Ref.: *see list at end of letter*

Your Excellency

I refer to the audit authority's report submitted to the Commission services on 29 June 2012 on the assessment of the management and control system for public procurement. The report was sent in the context of the action plan implemented in 2011 by the Romanian authorities. The action plan was meant to address the deficiencies detected in the area of management verifications focused on public procurement performed by the Romanian authorities (letters of 28 July 2011 and 4 April 2012).

I refer to the audit carried out by the Commission's auditors from 5 to 17 July 2012, to follow-up the above-mentioned action plan implemented in 2011 by the Romanian authorities. The mission consisted in performing audit work related to the effective functioning of the bodies involved in the ex-ante public procurement verifications (ANRMAP¹ and UCVAP²) and the effectiveness of public procurement management verifications carried out by the managing authorities.

I write to inform you that, after an in-depth analysis of the report of 29 June 2012 provided by the national audit authority and the Commission audit work carried out in July 2012, the Commission services have concluded that, for the programme in question, part of the interim payments may be suspended by the Commission.

The above-mentioned national audit report and Commission audit work show that there is (at least) a serious deficiency in the management and control system of the programme in question within the meaning of Article 92(1) of Regulation (EC) No 1083/2006.

The reasons for reaching these conclusions are described hereafter:

¹ National Authority for Regulating and Monitoring Public Procurement
² Unit for Coordination and Verification of Public Procurement

His Excellency Mr Mihnea MOTOC
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I. DESCRIPTION OF THE ASSISTANCE

On 12 July 2007, the Commission adopted Decision C(2007)3472 for the "Increase of the Economic Competitiveness in Romania" for Community assistance from the European Regional Development Fund (ERDF) under the convergence objective (CCI No 2007RO161PO002). The total budget of the programme is EUR 3 billion and the Community assistance amounts to EUR 2.55 billion (85% of the programme's budget and 13% of the total EU funds invested in Romania under cohesion policy 2007-2013).

The managing authority is the Ministry of Economy, Trade and Business Environment. The implementation of priority 5 (technical assistance) is coordinated by the managing authority while different entities act as intermediate bodies for the other priorities:

- Ministry of Economy, Trade and Business Environment for priorities 1 and 4 ,
- Ministry of Education, Research, Sports and Youth for priority 2 ,
- Ministry of Communications and Information Society for priority 3.

The certifying authority is the Ministry of Public Finance and the audit authority is the Audit Authority linked to the Romanian Court of Account.

To date, an amount of EUR 402,794,320 has been paid by the Commission as pre-financing and interim payments within the framework of this programme, which is 15.7% of the total ERDF contribution for the programme. The last payment claim was submitted on 12 April 2012.

No expenditure has been declared since September 2010 for the operations managed by the 'Intermediate Body for SMEs following serious deficiencies identified by the audit authority and the Commission auditors in 2009-2010 in the functioning of the management and control system of this intermediate body.

Additionally, a warning letter was sent on 5 July 2012 following allegations of fraud in relation to the implementation of the operations managed by the intermediate body for SMEs. The Commission services are currently assessing the partial replies received from the Romanian authorities on 6 and 11 September 2012.

Breakdown budget of the programme by priority:

Priority	ERDF Contribution	National Public Contribution	Total Public Contribution
1. An innovative and eco-efficient productive system	928,651,290	151,175,785	1,079,827,075
2. Research, Technological Development and Innovation for competitiveness	536,395,116	109,864,060	646,259,176
3. ICT for private and public sectors	383,170,104	80,130,331	463,300,435
4. Increasing energy efficiency and security of supply, in the context of combating climate change	638,475,370	87,064,824	725,540,194
5. Technical Assistance	67,530,229	22,510,078	90,040,307
Total	2,554,222,109	450,745,078	3,004,967,187

II. PROCEDURE

Two audit missions were carried out by the Commission services in November 2010 (mission no. 2010/RO/REGIO/J2/934) and in March 2012 (mission no. 2012/RO/REGIO/J2/1084). The first audit mission included operations from Priority 2. The second audit mission included operations from Priority 3. These audits revealed serious deficiencies in the management and control system of the programme which affect the reliability of the procedure for certification of payments and for which corrective measures have not been taken in relation to the set up and functioning of the management verifications for public procurement procedures for priorities 2 and 3.

Following further audit work, a meeting between the Commission services and the Romanian authorities was held on 27 June 2011. The Commission services noted that:

- the system set up and functioning arrangements foreseen in relation to public procurement were similar for all programmes;
- the two ex-ante public procurement verification bodies (ANRMAP and UCVAP) were placed outside the management and control systems and their verifications did not effectively detect the irregularities;
- the managing authorities did not take responsibility over the decisions made on public procurement issues as foreseen in Article 58(a) and Article 59(2) of Regulation (EC) No 1083/2006;
- the managing authority and certifying authority for the programme "Regional Operational Programme" (CCI2007RO161PO001), as well as for the programmes "Increase of Economic Competitiveness" (CCI2007RO161PO002), "Transport" (CCI2007RO161PO003), "Environment" (CCI2007RO161PO004) failed to carry out ex-post verifications on public procurement and did not supervise the quality and efficiency of the ex-ante verifications carried out by the national bodies ANRMAP and UCVAP.

As a consequence, a warning letter was sent on 28 July 2011 by the Commission services to the Romanian authorities raising attention on these facts. A general action plan annexed to the warning letter valid for all programmes in Romania was launched in 2011 to address the deficiencies found in the management and control systems related to public procurement in Romania.

In respect of above mentioned action plan put in place by the Romanian authorities, the managing authority performed (re)verifications of public procurement procedures from July 2011 until June 2012. For this purpose a common checklist for all programmes was developed at national level to guide the re-verification work on public procurement.

On 1 October 2011, the Romanian authorities implemented part of the changes requested by the Commission services in the general action plan of July 2011. Namely the national public procurement bodies ANRMAP and UCVAP were integrated in the management and control system, making them auditable in this respect by the audit authority.

By letter of 23 November 2011, based on the analysis of the information provided by the Romanian authorities on modifications operated on the system, the Commission services expressed comments in relation to the role of UCVAP and ANRMAP in ex-post verifications and other areas of systemic nature in public procurement.

As a consequence, the Commission services called for a meeting with the managing authority, ACIS³ and the certifying authority which was held in Brussels on 29 November 2011. During this meeting between the Commission services and the Romanian authorities, the Romanian authorities undertook additional commitments which had been confirmed by the Romanian authorities' letter dated 2 December 2011. The main areas in which commitments were taken were: (1) decisions on the establishment of irregularities to be taken independently from the process of recovery from the final beneficiary; (2) decisions on the corrective mechanism to be implemented in cases of disagreements between managing authorities and the audit authority; (3) the Romanian authorities to undertake actions to better identify conflict of interests and possible fraud cases; (4) the Romanian authorities to undertake action for increasing administrative capacity by trainings on verifications on public procurement to be carried out by the managing authorities.

By email of 6 December 2011, the managing authority of the programme reported on the results of their re-verifications in the area of public procurement as requested by the general action plan. The managing authority reported irregularities only on 5 public procurement procedures. The 5 irregularities amounted to RON 1,336,521 (EUR 318,219).

In addition, the audit authority carried out the assessment of the verifications performed by managing authority and identified irregularities based on which financial corrections were proposed. By letter of 19 December 2011, the Romanian authorities communicated the assessment of the audit authority on the re-verifications performed by the managing authority as requested in the general action plan. The audit authority concluded that substantial improvements were necessary in relation to management verifications performed in the field of public procurement at the level of the programme. The audit authority selected 26 procurement procedures (mostly contracts which have been re-verified by the managing authority) for testing the effectiveness of management verifications by the managing authority. In this sample of 26 procurement procedures, the audit authority identified 8 additional public procurement irregularities as compared to the 5 identified by the managing authority. Therefore, the total amount of financial correction proposed by the audit authority on their sample was RON 3,953,668 (EUR 941,350). The audit authority concluded that substantial improvements were necessary in relation to management verifications performed in the field of public procurement at the level of the programme.

Following the analysis of the information received from the Romanian authorities on the verifications carried out by the managing authorities and the assessment made by the audit authority by letter of 19 December 2011, the Commission services decided to allow to the Romanian authorities time to put in place the new set-up of the management and control system in relation to public procurement and to demonstrate its effective functioning in the first semester of 2012.

By letter of 22 December 2011, the Commission services accepted for the Romanian authorities to submit payment claims for programmes in Romania with an approach which would safeguard the EU budget. One of the key elements was the confirmation by the certifying authority to apply a provisional withholding of expenditure expressed in a percentage applied to the certifiable expenditure. In respect of the Increase of Economic Competitiveness programme, the precautionary level of withholding was established at 10%. The deadline for implementation of the action plan was the end of June 2012. This deadline was formally communicated by Commission services letter of 1 March 2012. The

³ ACIS – Authority for the Coordination of Structural Instruments

letter stipulated that after the end of June 2012, any further payment claims should not be submitted by the Romanian authorities, until the Romanian audit authority had given its positive assessment of the proper functioning of the management and control system (at the level of managing authorities, certifying authority and all the actors intervening in the management and control system, including the role and capacity of ANRMAP and UCVAP).

By letter of 4 April 2012, the Commission services reminded the Romanian authorities the three main areas for which corrective actions had still to be implemented:

- the effective implementation of the running action plan in progress and requests,
- the assessment by the audit authority of the proper functioning of the Management and Control System (at the level of managing authorities, certifying authority and all the actors intervening in the management and control system, including the role and capacity of ANRMAP and UCVAP),
- the communication of the final corrections of the verifications made within the context of the action plan.

In May 2012, the managing authority updated their re-verifications on public procurement. The managing authority reported public procurement irregularities for an amount of RON 2,944,203 (EUR 701,001). This is following the acceptance of only part of the errors signalled by the audit authority in its letter of 19 December 2011 addressed to the Commission services.

In the framework of the general action plan defined in July 2011 (warning letter from the Commission services of 28 July 2011) and the additional commitments taken by Romanian authorities in December 2011 (letter of 2 December 2011), the Commission services invited the managing authority to Brussels on 14-15 June 2012. The objective of the meeting was to review and assess the results of the management verifications in the field of public procurement performed by that date. The meeting was attended by representatives of the managing authority of the intermediate body Research and auditors of the audit authority in charge of auditing the programme. During the meeting of 14-15 June 2012, the Commission auditors reviewed nine public procurement procedures. All nine procurement procedures were carried out for operations in priorities 2 and 3. All nine procurements had passed the national control level without significant irregularities being detected. Nevertheless, during their review, the Commission services identified public procurement irregularities related to restrictive selection criteria (e.g. bank guarantee from a Romanian bank, technical certificates without allowing an equivalent), to un-justified shorting of the deadline for submission of tender, to modification of the tendering documentation altering the selection/award criteria without extending the time for submission of tenders, etc. in particular the use of discriminatory selection criteria in the tender notice. These public procurement irregularities were identified in *6 out of 9* contracts in the Commission services sample and constitute a breach of Directive 2004/18/EC, of national Ordinance no. 34/2006 and of national Government Decision no. 925/2006. This shows that the management verifications were not properly carried out by the managing authorities or intermediate bodies as requested by Articles 58(c), (h), 59(2), 60(b) and 70 of Regulation (EC) No 1083/2006 and Articles 13(2)-(4) of Regulation (EC) No 1828/2006.

On 29 June 2012, the Commission services received the follow-up of the assessment of the audit authority on the functioning of the management and control system in respect to public procurement for priorities 2 and 3. The audit authority's report concludes that the verifications performed by the managing authority and intermediate bodies did not manage

to identify all irregularities in respect to public procurement and audit authority assessed the functioning of the management and control system for the programme as "working partially, substantial improvements are needed" in the area of the verifications performed in relation to public procurement.

As concerns the functioning of the two ex-ante public procurement bodies ANRMAP and UCVAP, the audit authority issued a positive opinion on 29 June 2012.

By letter of 4 July 2012, the Romanian authorities communicated the measures put in place in order to address the general action plan regarding the establishing of irregularities independent from the recovery process, conflict of interest and increasing administrative capacity. The Commission services analysed the reply provided and acknowledged that the management verifications start to focus more on risky areas of the public procurement process and on the substance of the operations, especially following the review meetings in November 2011 and June 2012 with the Commission services on correction of past expenditure.

By the same letter, the Romanian authorities informed the Commission services on the final proposed level of correction. The Romanian authorities increased the corrections to be applied from RON 2,944,203 (EUR 701,001) (as communicated in May 2012) to RON 3,671,789 (EUR 874,235). This corresponds to 9.11% of contract value. The increase of 727,586 RON from 2,944,203 RON to 3,671,789 RON is mainly due to the corrections from the six irregularities identified in the review meeting of 14-15 June 2012 by the Commission services and the corrections for the three irregularities identified by the Commission audit of November 2010.

By letter of 5 July 2012, following confirmation from Minister Isar that one of the reasons for the abnormally slow implementation of the measures in favour of SME's co-financed under priority 1 of the programme was widespread collusion between applying companies and public officials in charge of approving applications for funding, the Commission services requested the Romanian authorities to refrain from submitting payment claims which include expenditure from the intermediate body for SMEs under priority 1 of the programme until corrective measures were taken.

Between 5 and 17 July 2012, the Commission services carried out a follow-up review announced on 25 June 2012. The mission consisted in performing audit work related to:

- the effective functioning of the bodies involved in the ex-ante public procurement verifications - ANRMAP and UCVAP;
- the effectiveness of public procurement management verifications carried out by the managing authorities at the level of operations verified after 1 July 2011 under the programmes Transport, Regional, Environment and Increase of Economic Competitiveness.

During this audit mission, the Commission auditors reviewed public procurement files under 4 projects from priorities 4 and 5. In three of the projects (two in priority 4 and one in priority 5), the Commission auditors found public procurement irregularities which had not been detected by the management verifications. This shows that the scope of the deficiencies in the area of public procurement management verifications is not limited to priorities 2 and 3, but deficiencies also occur in other priorities of the programme where public procurement procedures apply.

By letter of 3 August 2012 and in compliance with Article 99 of Regulation (EC) No 1083/2006, the Commission services proposed financial corrections for the Programme Increase of Economic Competitiveness, based on serious deficiencies in the management and control system of the programme which have put at risk the Union contribution already paid to the programme and on irregular expenditure contained in certified statement of expenditures which has not been previously corrected by the Romanian authorities. The financial correction proposed has to be applied at the level of the contracts with public procurement launched in SEAP before 1 October 2011.

Deficiencies found by the Commission

The Commission considers that there are **serious deficiencies in the management and control system** of the Programme Increase of the Economic Competitiveness which affect the reliability of the procedure for management verifications and certification of payments for public procurement procedures and for which the corrective measures are not sufficient.

These deficiencies are mainly related to:

- The **first-level management verifications of the managing authority** (Article 58(c),(h), 60(b), 70 of Regulation (EC) No 1083/2006; Article 13(2)-(4) of Regulation (EC) No 1828/2006).
- The **organisation of the management bodies** (Articles 58(e) and 59(2) of Regulation (EC) No 1083/2006 and Articles 12 and 13(2) of Regulation (EC) No 1828/2006).

III. Legal assessment

- 1) The Commission considers that there are **serious deficiencies with the first-level verifications of the managing authority for public procurement procedures** and for which the corrective measures are not sufficient.

In the audit report sent by the audit authority on 29 June 2012 as regards the follow-up of the assessment of the audit authority on the functioning of the management and control system in respect to public procurement for priorities 2 and 3, the audit authority concludes that the verifications performed by the managing authority and intermediate bodies did not manage to identify all irregularities in respect to public procurement. The audit authority assessed the functioning of the management and control system for the programme as "working partially, substantial improvements are needed" in the area of the management verifications performed in relation to public procurement.

During its follow-up review audit mission in July 2012, the Commission auditors reviewed public procurement files under 4 projects from priorities 4 and 5. In three of the projects (two in priority 4 and one in priority 5), the Commission auditors found public procurement irregularities which had not been detected by the management verifications. This confirms the evaluation performed by the audit authority and shows that the scope of the deficiencies in the area of public procurement management verifications are not limited to priorities 2 and 3 but occur in other priorities of the programme where public procurement procedures apply.

As a consequence, the first-level management verifications of the managing authority and intermediate bodies acting by delegation of the managing authority cannot be considered to be effective and reliable and thus do not fulfil the requirements of Article 58(c) of Regulation (EC) No 1083/2006 (procedures for ensuring the correctness and regularity of

expenditure declared under the programme), Article 60(b) of Regulation (EC) No 1083/2006 (verification that the expenditure declared by the beneficiary for operations has actually been incurred and complies with Union and national rules), and Article 13(2), (3) – (4) of Regulation (EC) No 1828/2006 (verifications that the operations and expenditure comply with Union and national rules); Articles 58(h) and 70 of Regulation (EC) No 1083/2006 (investigating irregularities and making financial corrections required; recovering amounts unduly paid);

2) **The Commission considers that there are serious deficiencies in the organisation of the management bodies.**

The serious deficiencies in the management and control systems of the intermediate bodies acting by delegation of the managing authorities have not been identified by the managing authorities. It follows from the insufficient management verifications performed by the intermediate bodies as regards operations where public procurement was applicable that the supervision of the intermediate bodies by the managing authorities is not functioning effectively. The managing authorities have delegated tasks to the intermediate bodies but have not supervised adequately the work of the intermediate bodies to ensure that the first level management verifications in public procurement are properly performed.

As a consequence, the organisation of the management and control bodies cannot be considered appropriate and/or effective and does not fulfil the requirements of Article 58(e) of Regulation (EC) No 1083/2006 (the management and control systems of programmes set up by Romanian authorities must provide a system of reporting and monitoring where the responsible body entrust the execution of tasks to another body), Article 59(2) of Regulation (EC) No 1083/2006 (for each programme, the Romanian authorities may designate one of more intermediate bodies to carry out some of all of the tasks of the managing authority under the responsibility of that authority), and Articles 12 and 13(2) of Regulation (EC) No 1828/2006 (the provisions of the Regulation concerning the managing authority must apply to the intermediate body who them must carry out verifications pursuant to Article 60(b) of Regulation (EC) No 1083/2006).

IV. CONCLUSIONS AND NEXT STEPS IN THE PROCEDURE

In view of the above, the Commission services are of the opinion that the conditions for the application of Article 92 of Regulation (EC) No 1083/2006 for the whole Programme Increase of Economic Competitiveness are fulfilled.

Pursuant to Article 92 of Regulation (EC) No 1083/2006, the Romanian authorities are requested to submit, **within two months** of receipt of the national language of this letter, their **observations** together with a description of the **measures** taken to improve their effective functioning of the management and control system of the assistance in question for the future and the **related opinion of the audit authority**. The Romanian authorities have also to **demonstrate the effective functioning** of the measures described above.

The measures to improve the functioning of the management and control system for the future must be such as to prevent the recurrence of the identified deficiencies and may be subject to verification by the Commission services.

In this context the Romanian authorities are requested to implement the following corrective measures:

1. Related to the **general action plan** included in the warning letter of 28 July 2011 and the additional commitments taken by the Romanian authorities (see Commission services letter

of 23 November 2011, and Romanian authorities letters of 2 December 2011 and 4 July 2012), the measures that still need to be implemented and the deliverables presented in the Annex I of this letter.

2. Related to the **specific measures** that still need to be implemented at the level of the Programme Increase of Economic Competitiveness:

a) For public procurement procedures launched in SEAP after 1 October 2011, the managing authority and/or intermediate bodies must take appropriate procedural, organisational and operational measures in order to ensure the effectiveness and quality of the management verifications on public procurement. The authorities must prepare and implement an action plan, specific to the programme, to strengthen the management and control system at the level of managing authority and intermediate bodies.

b) For those parts of the programme which were not part of the re-verification process on public procurement (priorities 1, 4 and 5), for the public procurement procedures launched in SEAP before 1 October 2011, the managing authority and/or intermediate bodies must carry out re-verifications, as highlighted in the Commission letter of 3 August 2012.

3. The **audit authority** must assess the implementation of the measures proposed above and the effective functioning of the management and control system. In this respect, the **audit authority's opinion** has to take into account both:

- the general corrective measures to ensure the effectiveness of the management and control system on public procurement according to Commission services assessment, as presented in Annex I (as described at point 1 above); and
- the specific measures that still need to be implemented at the level of the Programme Increase of Economic Competitiveness (as described at point 2 above).

The audit authority's opinion on the proper functioning of the management and control system in place must only be based on the review of public procurement procedures launched in SEAP after 1 October 2011.

As the withholding mechanism applied during the 1st semester 2012 is no longer applicable (see letters of 22 December 2011 and 1 March 2012), the Commission might be in a position to reimburse the full amount of certified expenditure. However, the Romanian authorities are requested to confirm, with regard to future applications for payment, that the new expenditure declared to the Commission results from a management and control system which is free from the deficiencies identified and complies with the requirements of all applicable rules, in particular Regulation (EC) No 1083/2006 and 1828/2006.

Notwithstanding the position outlined above, I remind you that, as announced in my letter of 5 July 2012, interim payments from priority 1 will not be processed by the Commission until a satisfactory resolution of the issues (widespread collusion between applying companies and public officials in charge of approving applications for funding) raised in that letter.

Moreover, the Romanian authorities are asked to ensure that the beneficiaries and any third parties, for whom a suspension or reduction of the EU assistance could have negative consequences, are duly informed.

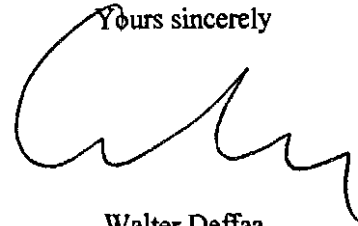
Following your reply or in the absence of a reply within two months of the letter in the Romanian language, the Commission may, in accordance with Article 92 of Regulation (EC) No 1083/2006, without any further delay, take a decision to suspend ERDF interim

payments for the Programme Increase of Economic Competitiveness in relation to the programme in question, on the basis of the information at its disposal.

The Commission may then, pursuant to Articles 99 and 100 of Regulation (EC) No 1083/2006, initiate the procedure to make financial corrections by cancelling all or part of the ERDF contribution to the programme in question.

The Romanian authorities can at any point of the procedure avoid such a financial correction by taking the necessary measures themselves. The amounts released in this way can be re-used by the Romanian authorities for the programme concerned (Articles 100(4) and 98(2) of Regulation (EC) No 1083/2006). It should however be stressed that, according to Article 98(3) of Regulation (EC) No 1083/2006, the contribution cancelled by the national authorities may not be re-used for the operation or operations that were the subject of the correction, nor, where a financial correction was made for a systemic irregularity, for existing operations within the whole or part of the priority axis where the systemic irregularity occurred.

Yours sincerely



Walter Deffaa

Enclosures: Annex I – General corrective measures to be implemented by the Romanian authorities

Copy:

DG Regional and Urban Policy: Mr Seyler, Ms Martinez Sarasola , Ms Andersson Pench, Ms de Buggenoms, Mr Sébert, Mr Grant, Mr López Lledó, Mr Gilland

Mr Jutte (DG Employment, Social Affairs and Inclusion, Unit H1)
Mr Johnston (DG Maritime Affairs and Fisheries, Unit F1)
Mr Wiedner (DG Internal Market and Services, Unit C3)

Mr Cipriani - European Court of Auditors (Chamber II - Structural Policies, Transport and Energy) – functional mailbox ECAP_ETE@eca.europa.eu
Mr Xenakis, Head of Unit D.4, OLAF

Refs:

- draft audit report of 21 March 2011 - Commission audit mission (no. 2010/RO/REGIO/J2/934) – (ARES (2011)305556)
- 27 June 2011 - Meeting between the Commission and the Romanian authorities
- 28 July 2011 – Warning letter (ARES(2011)823545) sent by the Commission to the Romanian authorities
- Romanian authorities letter no 653 of 31 October 2011
- 23 November 2011 – Commission letter to the Romanian authorities ARES(2011)1252930
- 29 November 2011 – Meeting between the Commission and the Romanian authorities (ARESS2011)1278366)
- 2 December 2011 – Romanian authorities' letter Ares(2011)1304614 sent by the Minister of European Affairs, concerning the measures undertaken by the Romanian authorities, in order to address the remaining issues in respect of public procurement procedures, following the discussions held on November 29th.
- 9 December 2011 – email from the Romanian authorities (ARES(2011)1332578) with additional information regarding the verifications performed
- 19 December 2011 (ARES(2011)1378460) – evaluation performed by the Audit Authority on the activity performed by Managing Authorities regarding Action no.5 from Commission letter ARES (2011) 823545 - 28/07/2011
- 22 December 2011 (ARES(2011)1399042) – letter from the Commission to the Romanian authorities related to the precautionary level of correction rate to be applied to the expenditure certified to the Commission
- 1 March 2012– Letter from the Commission (ARES(2012)242234)
- March 2012 - Commission audit mission (no. 2012/RO/REGIO/J2/1084) – notification letter of 6 March 2012 (ARES(2011)264167)
- 22 May 2012 - MS letter Ares(2012)609715 - 22/05/2012 situation of the corrective measures applied by the Romanian authorities
- 14-15 June 2012 – Meeting between the Commission and the Romanian authorities (ARES(2012)602229)
- 19 June 2012 –Email of the Romanian authorities (ARES(2012)743861)
- 25 June 2012 – Notification of Commission audit mission (ARES(2012)759203)
- 29 June 2012 – email of the Romanian authorities (letter no 50334/29.06.2012) on the Audit Authority opinion on the functioning of the management and control systems
- 4 July 2012 – ARES(2012)810018 Letter from the Romanian authorities on the measures addressing the deficiencies in the management and control system related to public procurement procedures for EU co-financed projects in Romania.
- Public procurement study: meetings 25 April 2012 (ARES(2012)544898), 31 May 2012 (ARES(2012)664295) and 6 July 2012 (Ares(2012)875836)
- EC letter Ares(2012)815431 of 05 July 2012 following allegations of fraud in relation to the implementation of the operations managed by the Intermediate Body for SMEs and the reply of 6 September of the Romanian authorities
- 3 August 2012 - Commission letter Ares(2012)944610
- Romanian authorities' letter of 7 August 2012 (Ares(2012)965923)
- 9 August 2012 – EC draft report n° 2012/RO/REGIO/J2/1084/1 (Ares(2012)962041)
- 5 July 2012 – EC warning letter related to Priority 1 (Ares(2012)815431)

Annex I

Corrective measures to be implemented by the Member State

General corrective measures to ensure the effectiveness of the management and control system on public procurement

Actions (ref ARES(2011)823545, ARES(2011)1252930, Ares(2011)1304614 and Arcs(2012)810018)	Corrective measures that still need to be implemented	Actual implementation of deliverables to be assessed by the audit authority
General action plan included in the warning letter of 28 July 2011(ARES(2011)823545)		
<p>Action 1: Align and detail the role and functions of all existing institutions involved in the public procurement verifications, with the provisions of Regulation (EC) No 1083/2006 and the COCOF Note 08/0020/04 'Guidance document on management verifications to be carried out by Member States'.</p>	<p>Commission considers this Action as being partially implemented</p> <p><u>1. Cooperation between ANRMAP and managing authorities:</u> In order to avoid duplications of controls and to ensure the segregation of duties between ANRMAP as ex-ante control body and managing authorities, as ex-post control bodies, managing authority should no longer request to ANRMAP to perform ex-post verifications for public procurement contracts co-financed from ERDF/CF funds.</p> <p><u>2. At the level of ANRMAP:</u> ANRMAP should have the ability to assess relevance and adequacy of the selection and award criteria foreseen in the tender documentation. The verification should allow for a sufficient understanding of the object and specific requirements of the project. This verification does not imply that the technical solutions proposed in the tender documentation need to be assessed in detail by ANRMAP. A possible alternative could be that Contracting Authorities thoroughly justify the relevance and adequacy of the selection and award criteria foreseen in the tender documentation (in the Justifying Note) and make references (attach) to any relevant supporting documents. If needed, external contractors can be used to ensure adequate technical expertise.</p> <p><u>3. At the level of ANRMAP and ACIS:</u> coherent approach and similar interpretation of legal provisions should be ensured for all bodies involved in acting in public procurement area (managing authority, certifying authority, UCVAP, ANRMAP, CNSC, audit authority) through adequate dissemination of interpretative notes and guidance issued by ANRMAP.</p>	<p>1 and 2. Confirmation to be received together with the procedural provisions.</p> <p>3. Proof of dissemination of interpretative notes and guidance and proof of any other measures taken to ensure coherent approach between all the relevant bodies.</p>
<p>Action 2: Ensure due accountability of the national ex ante organisations (ANRMAP/UCVAP), through their formal integration within the management and control system, making them in this respect auditable by the audit authority.</p>	<p>Commission considers this Action as being implemented</p>	<p>No further information is needed</p>
<p>Action 3: Reinforce the</p>	<p>Commission considers this Action as being partially</p>	

efficiency of the public procurement verifications by avoiding unnecessary overlapping and correctly addressing all risks throughout the procurement cycle.	<p>implemented</p> <p>1. See comment 1 under action 1.</p> <p>2. Commission has been informed during the July audit mission that several managing authorities were foreseeing a new set-up for the verification of public procurement contracts, planned to take place before the approval of the first payment claim received from the final beneficiaries. In this light, managing authorities shall amend the relevant operational procedures and should ensure adequate staffing and expertise. The procedural provisions shall avoid overlapping of verifications at the level of the managing authorities.</p>	2. Assessment of the audit authority of the implementation of the measures proposed by the managing authorities (adequate staffing and application of modified procedural provisions)
Action 4: Ensure the functioning of the corrective capacity mechanism at the level of managing authorities and certifying authority, clarifying, if necessary, the legal background to reflect the decision process and the institutions responsible to take the ultimate decision in terms of corrective measures.	Commission considers this Action as being implemented	No further information is needed
Action 5: Managing authorities were requested to perform appropriate risk assessment of the expenditure already declared to the Commission, concerned by public procurement procedures and appropriate and tailored management verifications. At the same time, the audit authority was requested to perform its own analysis of the work done by the managing authorities and to perform, on a sample basis, its own checks, proposing accordingly the appropriate corrective measures, if needed	The summary of the proposed financial corrections by the Commission for the Regional Operational Programme are set out in the Commission letter Ares(2012)944610 of 3 August 2012.	Implementation of the financial corrections proposed by the Commission in letter 3 August 2012 (to be reported annually in the annual control report procedure)
Additional commitments taken by the Member State (ARES(2011)1252930, Ares(2012)810018 and Ares(2011)1304614)		
Area 1: Decisions on the establishment of irregularities should be taken independently from the process of recovery from the final beneficiary	<p>Commission considers that additional measures need to be implemented:</p> <p>1. see action 1 under area 2 below</p>	
Area 2: Decisions on the corrective mechanism to be implemented in cases of disagreements between managing authorities and the audit authority	<p>Commission considers that additional measures need to be implemented :</p> <p>1. <u>At the level of audit authority:</u> the contradictory procedure should allow sufficient time for the auditees (managing authorities) to provide a substantiated opinion. Final reports should reflect final positions of the auditees (and not a non-binding opinion).</p> <p>2. <u>At the level of managing authority:</u> possible control activities of the managing authority should be carried out within the contradictory procedure in order to feed into the position expressed by the managing authority.</p> <p>3. <u>At the level of the certifying authority:</u> operational procedures of the certifying authority should provide</p>	<p>1. Audit authority's procedures concerning the contradictory procedure</p> <p>2. Managing authority's procedures concerning the contradictory procedure</p> <p>3. Certifying authority's procedures concerning the follow</p>

	for reconciliation between the stipulations of the audit reports and the debt notes issued by the managing authorities. The correction to be applied should be the one agreed in the final audit report.	up of irregularities
Area 3: The Member State would undertake actions to better identify conflict of interests and possible fraud cases	<p>Commission considers that additional measures need to be implemented:</p> <p>1. <u>At the level of UCVAP</u>: UCVAP should take the necessary measures in order to effectively implement the new procedural framework with regard to the mechanism of verification and prevention of the conflicts of interest within the awarding procedure as explained in letter of 7 August 2012 (Ares(2012)965923).</p> <p>UCVAP shall report immediately the cases suspected to be affected by conflict of interest to the relevant managing authority and to the institutions empowered to investigate the cases.</p> <p>2. <u>At the level of the managing authority</u>: managing authority shall revise the operational procedures with regard to verifications on conflict of interest in order to be harmonised with UCVAP procedures.</p> <p>For example:</p> <ul style="list-style-type: none"> - when the awarding procedure is covered by UCVAP observers, the managing authority should analyse UCVAP report and ensure that the verifications performed by UCVAP are in line with their methodology as described in the letter mentioned above (checks regarding the decision staff of the contracting authorities, the members of the evaluation commissions and the economic operators based on criteria as: personal identification number, names and birthplace, residence). In case UCVAP report describes problems, the managing authority should ensure that the adequate corrective measures were taken at the level of the final beneficiary during the procedure and if it was not the case, to verify if the adequate corrective measures were taken at the level of the IBs or to take the necessary corrective measures. - when the awarding procedure is not covered by UCVAP observers, the ex-post management verifications performed should be based on risk assessment taking into account value of contract, red flags or other information available. <p>As UCVAP controls are ex-ante controls performed as at the date of publishing the participation notice/invitation, the managing authority should verify during their checks if significant changes were done at the level of parties implied in the process at the moment of their management verifications. If red flags are spotted, additional verifications should be done and if applicable, corrective actions should be implemented.</p> <p>3. <u>At the level of ACIS</u>: ACIS shall ensure that the same databases are used by all actors involved in the verification of conflict of interest. Should be ensured that the databases available provide the necessary information in order to perform effective checks.</p>	<p>1 and 2. Assessment of the implementation of the modified operational procedures of UCVAP and managing authorities</p> <p>3. Databases used by all the institutions involved.</p>
Area 4: the Member State would undertake action for increasing administrative capacity by trainings on verifications on public	<p>Commission considers that additional measures need to be implemented:</p> <p><u>At the level of ACIS</u>:</p> <p>1. ACIS shall ensure adequate dissemination of the</p>	<p>1. Training actions taken (e.g.</p>

procurement to be carried out by the managing authorities	<p>information gathered from various trainings (including 3 May 2012 seminar organised together with the Commission services)</p> <p>2. Ensure recurrent training actions at the level of the managing authorities and intermediate bodies, according to the needs</p> <p>3. Planning and organise training actions at the level of the final beneficiaries acting as contracting authorities</p>	<p>compendium of case studies, training materials)</p> <p>2 and 3 Training actions planned and organised</p>
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NOTE: the corrective measures that are to be implemented need to be in agreement with the actions under the 'Action Plan for the implementation of the recommendations included in the Deloitte Report regarding the strengthening of the public procurement system'