

Guidance Note 6a Project Implementation

Please be aware that the Programme has a zero-tolerance approach to Fraud of any form. The Programme will always seek to recover any payments found to be a result of fraud and will always pursue the harshest available penalty against individuals that commit fraud.

Please also note the Programme expects strict compliance from the Project Partners with regards to the processing of personal data as defined in all applicable EU and National Data Protection regulations.

I. Getting started

Following the approval of the project by the Selection Sub-Committee (SSC), the LP will be notified of the outcome and, if relevant, of the SSC's conditions and recommendations. These need to be taken into account by the partnership before the Grant Offer Letter (GOL) can be issued and project implementation can start.

The official start date of the project is the date of approval by the SSC and project expenditure related is eligible from that date. All costs incurred before this date are considered as preparation costs and covered by the preparation costs lump sum. **Therefore, they cannot be claimed as part of the eligible costs.**

The Partnership Agreement (PA)

Provided as a draft when submitting the Application Form, the PA shall be signed by the Lead Partner and the other Project Partners.

It governs the relationship between the Partners and covers, among other things: the definition of Partners' joint aims, responsibilities and mutual duties, the project's duration, the reporting duties and the procedures to resolve potential disputes and apply penalties.

The PA template should be used by all projects in its entirety. Applicants are, however, invited to tailor the PA to their needs by adding in the Annexes. Optional changes (if needed) can be added in Annexe 1 (for instance, the obligations of the LP/PPs, Intellectual Property Rights, shared cost, confidentiality, etc.). A mandatory provision should be added in Annex 2 (for the preparation costs allocation).

The completed and signed PA shall be sent to the JS by email.

The Grant Offer Letter (GOL) and payment of the lump sum

The Grant Offer Letter (i.e. the contract between the Managing Authority and the Lead Partner) **cannot be finalised in the absence of a signed PA.**

Once the signed PA has been received and verified, the MA issues the GOL and sends one electronic copy to the LP. The LP prints 2 copies, signs them and sends them back to the JS within 15 calendar days. The MA then signs the two copies and sends one back to the LP.

The JS will notify the LP once the signed GOL has been received and will notify the Certifying Authority to transfer the lump sum covering the preparation costs to the LP account. The preparation costs of all approved projects are reimbursed through a lump sum of up to 30 000 € ERDF per project and will be paid to the Lead Partner. There is a restriction where a Partner has been approved to take part in the project under the General Block Exemption Regulation (Commission Regulation (EU) no. 651/2014), which is that they are unable to receive a share of this lump sum. For further details please see the Guidance Note on “State Aid.”

The shares of the preparation costs lump sum must be transferred by the LP to the PPs within one month. The Lead Partner will need to send evidence to the JS that the lump sum has been correctly transferred to the PPs as planned in the Partnership Agreement within two months after receipt of the lump sum payment by the LP (e.g. bank statement, outputs from accounting system).

First Level Controller recruitment

Each Project Partner (not only the LP) will have to select a First Level Controller (FLC) following the relevant procurement rules (see also the section on “Public Procurement”). A FLC will need to be selected and approved by the MA and Member States as soon as possible and before the submission of the first Project Reports (for more information see section on “First Level Control”).

With the exception of the preparation cost lump sum, no payment can be made to a project without certification of the Project Reports by the FLCs.

Project’s first Monitoring Committee

The partnership shall organise their first Project Monitoring Committee within 60 calendar days¹ after signature of the GOL by the MA (as notified by the JS). The JS shall be invited to send a representative.

Initiation training for Project Partners

Following the project approval, the partnership will be required to arrange an initiation meeting with the JS. The partnership will be required to provide the venue for this meeting and all Project Partners are required to attend. This meeting will enable the JS to provide information required to support a project’s successful management:

- How projects are monitored, particularly the procedure to submit a Payment Claim;
- How to use eMS for monitoring and reporting purposes;
- Project’s obligations, and assistance which the JS can provide in matters of communication;

This meeting will give the opportunity for Project Partners to ask questions on expenditure eligibility and on the project management tools to be put in place.

Attendance at the meeting is **compulsory** for all Project Partners. FLCs can also be invited if their identity is already known. The date of the meeting will be arranged by the JS in discussion with the Lead Partner shortly after the project approval.

¹ Art.2.10 GOL

Initiation Training for First Level Controller

All First Level Controllers must attend a training session organised by the Programme. Separate training for French and UK based Controllers will take place.

II. Project Monitoring and Reporting

Important note: Every year the Certifying Authority (CA) has a window during which it does not make payments to project partners. This **non-payment window is from May 15 – June 30.**

This is the period at the end of the European Union's financial year to enable the Audit Authority to do its year-end work relating to the expenditure which has been processed for projects.

Therefore, the JS recommends that Lead Partners contact the JS if they plan to submit a payment claim to the JS between February and May.

Full details on how to create, complete and submit both Partner and Project Reports is available in the [eMS Technical Guidance Note](#).

Projects must submit their Project Reports, i.e. the Progress Report and Payment Claim to the JS twice a year, in accordance with the timeline set out in the GOL.

The Project Reports form the basis of the monitoring and assessment of a project's progress and performance. They allow the JS to monitor implementation of activities and the related expenditure as well as timely achievement of milestones and spending targets. Furthermore, they enable the JS to detect potential issues and delays in the implementation process.

It is up to the partnership to agree on an internal reporting procedure and to set internal deadlines to ensure that the documents reach the JS by the deadlines set in the GOL.

The JS will assess the Payment Claim and the Progress Report submitted by the project. The JS may ask the Project's coordinator or the Finance manager for clarifications or additional information. Once these two documents have been deemed satisfactory, the corresponding amount of ERDF will be paid to the Lead Partner by the Certifying Authority, within 90 calendar days of receipt of complete and correct project reports by the JS².

Once ERDF is received by the LP, the relevant shares of ERDF need to be transferred by the LP to the PPs within one month. The Lead Partner will need to send evidence to the JS that the ERDF has been correctly transferred to the PPS within two months after receipt of the ERDF payment by the LP (e.g. bank statement, outputs from accounting system).

Project Reports must be submitted on eMS by the LP.

Assessment by the JS will begin when the **complete** Project Reports are received, if they are received in due time.

² Art. 5.6 GOL

It is essential these Project Reports are submitted on time to ensure that the Programme calendar is respected.

N.B. As a general principle, a **project report** should include all partner's reports, covering all eligible expenditure incurred during the reporting period in question. In the case that the LP does not include all partners' partner reports when submitting the project report to the JS, the JS should be informed of the reasons why the partner reports in question are not included, and further justification may be required by the JS when assessing the project's delivery.

As another general principle, a **project report** should be submitted according to the calendar agreed in the GOL. Late reporting must be approved specifically by the JS on an ad hoc basis.

Late submission without approval may result in delays in the processing of the payment, and penalties may be imposed on the project.

Progress Report

Projects shall complete a Progress Report on the activities implemented twice a year. Project Partners should send a simplified activity report (Partner Report) to their FLC to demonstrate the link between costs and activities.

The Progress Reports shall be compiled by the LP based on Partners' Reports and submitted to the JS with the Payment Claims following the agreed time plan.

The Progress Report is a single document which focuses on the project activities including the achievement of the project deliverables and outputs. The Progress Report should be sufficiently detailed to allow FLCs and the JS to see the link between costs and activities, and to ensure that they are in accordance with the Application Form. Partners should attach to the Progress Report any publication published during the period in addition to the minutes of Project Monitoring Committee meeting(s) (if applicable).

Lead Partners should consider these reports as efficient communication tools: they should be concise and to the point while reflecting on the overall progress of the project. The main text of the reports should summarise the implementation of the actions and their outcome(s) as snapshots of the reporting period. In this respect, the reporting should focus on the implementation of the project itself, rather than on each Partner's activities. Evidence for the delivery of outputs and deliverables should be uploaded with the relevant project reports (in the report "Attachments" section).

Project Output Indicators

All project output indicator achievements must be validated with appropriate evidence, which should be retained for possible review by the JS, MA, FLC, AA and EC.

A full list of output indicators and potential evidence is detailed below. The list is not exhaustive and the project partners will need to collect evidence throughout the project implementation phase to justify the reporting of output achievements.

| Priority | Specific Objectives | Indicator | Description | Potential evidence |
|---|---------------------|----------------------------------|--|--|
| 1 Innovation, Social Innovation) | 1.1 | 1.1 | Number of innovative products, services, processes or systems designed | Proof of product designs, system design specifications, processes or manuals |
| | | 1.2 | Number of innovative products, services, processes or systems produced | Proof of products process or system in final format |
| | | 1.3 | Number of businesses and business intermediaries cooperating with research institutions | Contact lists, registers, correspondence |
| | | Common Indicator 27 | Private investment matching support in innovation or R&D projects | Application form, eMS |
| | | Common Indicator 42 | Number of research institutions participating in cross-border, transnational or interregional research projects | Application form, eMS, Contact lists, Registers, Correspondence |
| | 1.2 | Common Indicator Number 45 | Number of participants in projects promoting gender equality, equal opportunities and social inclusion across borders | Registers, Attendance Lists, Photos, Correspondence, Forms |
| | | 1.4 | Number of skill development and professional training schemes for disadvantaged people. | Evidence of scheme, evidence of skills development, registers, attendance records, evidence of target group, e.g. NEET, Single parent, low income, health issues, disability |
| | | 1.5 | Number of institutions (public or private) supported to increase the quality and effectiveness of service delivery to disadvantaged population | Contact lists, Registers, Correspondence |
| | | 1.6 | Number of Socially Innovative services designed | Proof of service, flyers, posters, adverts, manuals, processes |
| | | 2 Low Carbon Technologies | 2.1 | 2.1 |

| | | | | |
|---|------------|---------------------------|---|---|
| | | 2.2 | Number of new or enhanced low carbon products, services, processes or systems produced | Proof of low carbon products, processes or systems in final format |
| | | 2.3 | Number of supported LCT multisectoral networks | Proof of network, correspondence, registers, attendance list, contact list, agendas |
| | | 2.4 | Number of participants in awareness raising or training events for take up and development of low carbon technologies | Agendas, attendance lists, contact lists, registers, publications, photos |
| 3 Natural & Cultural Heritage, Coastal and Transitional Water Ecosystems | 3.1 | 3.1 | Number of new or enhanced products/services that result from projects promoting cultural & natural assets | Proof of new or enhanced product or service, adverts, flyers, manuals, processes |
| | | Common Indicator Number 9 | Increase in expected number of visits to supported sites of cultural or natural heritage and attractions | Proof of increase: benchmark and current data, externally sourced data |
| | 3.2 | 3.2 | Number of institutions (public or private) supported to enhance and protect the coastal and transitional water ecosystems | Contact lists, attendance lists, registers |
| | | 3.3 | Number of pilot operations aimed at the enhancement and protection of the coastal and transitional water ecosystems | Photos, publications, press releases |

Payment Claim

A Payment Claim (PC) must be submitted to the JS at the date agreed in the GOL.

All expenditure included in the PC must have been checked and certified by a FLC.

The Payment Claim shall correspond to the Progress Report and show the eligible expenditure incurred during the reporting period.

Any unjustified delay in reporting or in the clarification process of the Project Reports, either by LP

or by PPs, can lead to a reduction or ending of the Grant payments.

The three following documents comprise the Payment Claim:

1. Each Partner's List of Expenditure
2. FLCs certificate for each Partner's claim (more information on the section on "First Level Control")
3. Consolidated Payment Claim (edited by the LP)

Partner Report

- Each Partner describes the activities they have carried out during the reporting period in their Partner Report;
- The LP and all PPs enter all their expenditure in eMS. Each Partner records their expenditure on eMS, invoice by invoice, along with the following information: Budget Line, Work Package, Internal Reference Number, Invoice Number, Date of Payment, Currency, Total Value in Original Currency, VAT, Declared Amount in Original Currency, Activities Outside the Programme Area, Nature of Expenditure (in-kind), and Description and Comments;
- Once all the expenditure for the period has been entered on eMS, PPs edit their List of Expenditure and annex it to their Partner Report. **The Partner Report is signed** to certify the expenditure has been incurred for the implementation of the project' activities. The signatory of the Partner Report must be a person who has the authority to certify the expenditure is related to the project. Ideally, the signatory should be the same person who signed the Letter of Intent and/or Application Form during the application stage;
- LP and all PPs send their Partner Report including their List of Expenditure to their FLCs for verification and certification.

The EC monthly exchange rate³ will be applied on the date a Project Partner submits their list of expenditure to their FLC, if the list contains costs incurred in a currency other than euros.

One of the key changes from the previous programme is that supporting documentation will have to be kept on LP and PPs premises. Only electronic copies will need to be provided to the FLCs and JS. It will help to reduce the administrative burden.

FLC certificate

- FLC checks 100% of the PP's expenditure
- FLC issues the FLC certificate
- Each PP sends its claim to the LP

The FLC verifies that all the expenditure is project related, eligible and that all the supporting documents have been provided. The FLC also checks that the expenditure claimed refers to the correct reporting period and can disallow Partner's expenditure.

³ http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/index_en.cfm

The FLC have access to eMS and perform their certification through the software.

Once the expenditure has been checked and certified, the FLC will issue two original certificates and send one copy to the Project Partner and one to the LP.

Consolidated Payment Claim

- The Lead Partner checks the Partner's expenditure on eMS making sure that each expenditure relates to the project implementation. The LP checks the overall consistency and general eligibility of Partners' expenditure (no double claiming, expenditure corresponding to the right reporting period, etc.) The LP must report Partners' expenditure which would not meet these requirements to the JS.
- The LP compiles the FLC certificates;
- The LP edits the consolidated Payment Claim;
- The LP submits the consolidated Payment Claim to the JS.

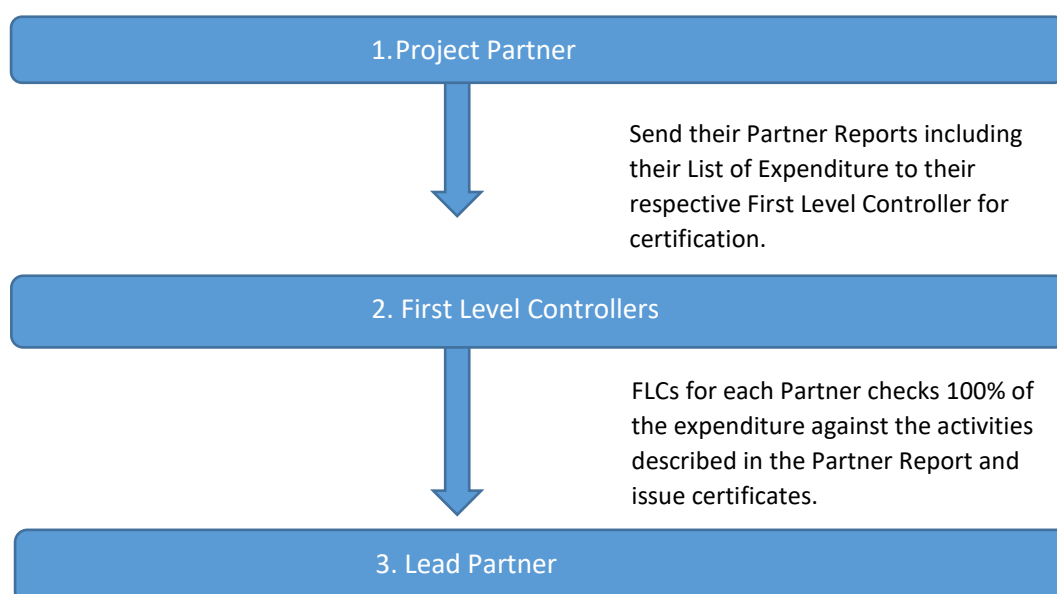
Upon reception of all the certificates, the LP edits and keeps an original of the consolidated Payment Claim, and uploads a scanned copy on eMS, along with the Project Partners' Reports (including their Lists of Expenditure) and FLC Certificates.

After the completion of the assessment of the Project Reports by the JS, and if these documents are deemed satisfactory, the Certifying Authority will make a final check before making the payment. All payments will be made in Euros and deposited into the bank account of the LP as indicated on the Application Form.

It is the LP's responsibility to transfer money received to the other Partners as soon as possible. These arrangements should be made clear in the Partnership Agreement.

Please see further guidance on the [eMS – Technical guidance](#), available on the Programme website.

Scheme 1: Partner Reporting Process



LP compiles the Partners' Reports including the List of Expenditure of each Partner, and the FLCs certificates.

LP edits the consolidated Payment Claims and forwards the entire Project Report to the JS.

Retention of documents

Both the LP and the PP must retain the evidence of the costs claimed for a project for audit purposes.

The following guidance covers:

- (1) the period of retention
- (2) the format of the documents retained

Retention period

After the end of the project, the LP and the PP must retain and keep accessible all supporting documents for a project (including evidence of payments to beneficiaries) **for a period of 4 years** after the project is completed⁴. **Please note that a project's website is also considered as a supporting document of the project activities and same rule applies.** This period runs from the 31/12 of the year in which the final ERDF balance is paid to the project. The LP will be informed in writing or by email of the start date and of the end date of the retention period when the final ERDF payment is made.

If a project is receiving State Aid, specific rules apply, and all supporting documents will be retained and kept accessible by the Lead Partner and the PP **for a period of 10 years** from the date on which the aid was granted⁵.

Format of documents retained

During the implementation of their project, the LP and the PP are responsible for retaining original documents of the supporting evidence as part of their audit trail. Supporting documents can be retained either in hard copy as **originals** or **certified true copies** of the originals, or in **electronic format** on commonly accepted data carriers, which includes electronic versions of original documents scanned and saved as PDF or equivalent formats. Supporting documents either in electronic version only or as scanned copies of originals are uploaded into the eMS system as part of the process to evidence costs included in a payment claim.

At the end of the project, the project's website, if existing, should be archived onto a CD-ROM, USB disk (or other drive) or online permanent storage.

The LP and the PP should ensure that information kept on commonly accepted data carriers is kept secure and can be relied upon for audit purposes. Therefore, the underlying computer system on which the electronic versions are held must meet accepted security standards which ensure that the documents held can be relied upon for audit purposes, i.e. secured access limited to authorised users, regular back up, common electronic format not allowing modification such as PDF. All electronic documents also need to have the relevant equipment/software available to the Partner to ensure the information is

⁴ In accordance with Article 140 (1) of the Regulation (EU) No 1303/2013

⁵ In accordance with Article 12 of Commission Regulation (EU) No 651/2014

accessible for the retention period i.e. 4 years following the last ERDF payment to the project (or 10 years under State Aid scheme).

PP should have procedures in place within their organisation to certify that a copy is a true copy of an original document. A declaration containing the following information is the minimum requirement to satisfy this condition:

I certify that this is a true copy of the original document:

Signed

Date

Position in organisation

Name of organisation

Each PP is responsible for ensuring the authenticity of the electronic copy and for ensuring that the document can be retrieved and relied upon for audit purposes.

In instances where an organisation is using an electronic Document Management System which involves the scanning of invoices and other documentation at the point of receipt, it is acceptable for the processes outlined above to be undertaken at the initial point of scanning by either the beneficiary or a third party acting on behalf of the organisation provided that the organisation is satisfied with the procedures in place at the third party organisation.

III. First Level Control

Before a project submits a Payment Claim, it is required that the expenditure is checked to ensure that it is correct and meets the Programme eligibility rules.

This process is known as “First Level Control,” as it is the first check carried out on Programme expenditure. Later checks carried out on Programme expenditure are sometimes referred to as Second Level Control and Third Level Control. These are described later in this document.

These checks are required by EU Regulations and include;

- Ensuring the claimed expenditure is real
- Ensuring that the goods and services paid for have been delivered
- Ensuring that the expenditure is in accordance with the Programme Rules
- Ensuring that the expenditure is in accordance with applicable law (For example Public Procurement and State Aid rules)

These checks are carried out by individuals who are external to the Project, known as First Level Controllers (FLC).

In the France (Channel) England Programme each individual Project Partner will be responsible for procuring a FLC for their expenditure in the Project. This is a change from the previous programming period where the Lead Partner was responsible for ensuring that there was a FLC, who would check the entire expenditure of the Project.

These FLC will carry out a verification of all expenditure claimed by the Project Partner as a part of the process described in the above section “Payment Claims,” in accordance with the checklists and guidance provided by the Programme Authorities. These checks must be carried out on 100% of expenditure.

Each individual partner is responsible for recruiting the controller for their element of the overall payment claim, in accordance with the terms of reference provided by the Programme and the Programme Procurement rules. They are required to ensure that the FLC has the qualifications required by the Member State that the Partner is located in.

A. Recruiting a Controller in the UK

In the UK the process of recruiting a FLC is overseen by the Ministry for Housing, Communities and Local Government (MHCLG), who have set a common standard for recruiting controllers across all ETC programmes in which the UK is a part.

If a Beneficiary is located in the Public Sector, and intending to recruit an external controller, they should follow their own procurement policy. If a beneficiary is outside the Public Sector, they will as a minimum be expected to obtain three written quotes and select the one that represents the best value for money. They must meet the qualifications set out by MHCLG, which are listed in an Annex to this document.

If the partner is in the Public Sector or a University, it is permitted for the Controller to be Internal, provided they are independent and have no role in any part of the accounting, management or delivery of the project. There must be a clearly defined code of practice at the organisation that guarantees their independence. For example, an internal audit department of a Local Authority could meet this requirement.

Once they have been selected the Partner must send an FLC appointment application to MHCLG, who will determine if the selected Controller is suitable, and if so will designate the Controller.

B. Recruiting a Controller in France

In France the process of recruiting an FLC is overseen by the Prefecture of the Normandy region.

The FLC selection will be done through the award of a framework agreement and its subsequent contracts. Following the signature of the Grant Offer Letter between projects and the Managing Authority, a group of orders including the French Programme beneficiaries will be established by the Prefecture of the Normandy region. To constitute the grouping, an agreement defining its operating rules must be signed by all its members.

Each member of the group order will have to select its FLC from the list of successful tenderers of the framework agreement. This choice will be made by signing a subsequent contract, after all successful tenderers have returned to competition.

This procedure is applicable to all French beneficiaries, private or public.

C. JS Requirements

The final step of the process before the FLC is granted access to eMS to allow them to view Project Partner claims, is for them to attend training provided by the JS on the work they will be required to carry out, including the checklists they will use and the standards they must adhere to.

In order to support projects in recruiting Controllers, the Programme has produced a standard form Terms of Reference and will provide further documentation on the role of a First Level Controller in the form of Guidance and the checklists they will be required to use. The Terms of Reference and the Guidance for Controllers include the quality standards that the Controllers must meet when carrying out their checks on project expenditure. The Terms of Reference and Guidance for Controllers will be available on the Programme Website.

The process of procurement needs to be completed sufficiently early in the Project lifetime for the Controller to have undergone the necessary training provided by the Programme Bodies before the first Payment Claim of the partner is submitted. Ideally this recruitment should be carried out before the project initiation meeting, however this may not be possible depending on the procurement procedures of the partner. The expectation is that the recruitment of the First Level Controllers will be completed within six months after the start of the project.

Subject to compliance with procurement processes, project Partners may use the same Controller to carry out Controls for multiple Partners in a project. However, Partners should consider the workload that a single controller has in relation to the project as this may affect the speed at which a Controller can check their expenditure, which will slow down the overall Payment Claims Process. Partners should also be aware that as the First Level Controller will be required to carry out on-site inspections if Controllers are based a long distance from the Partner this may lead to increased costs for carrying out these controls.

D. Types of Check

There are two types of check that must be carried out by the First Level Controllers. The first is a so called “desk based” check, which consists of checking the Payment Claim as submitted on eMS by the Project Partner. The second is an “on-the-spot” check consisting of a site visit to the Project Partner to inspect the project delivery, the accounting systems used by the beneficiary, and any other checks that are required that can only be made on site.

IV. Other Controls

In addition to the First Level Controls, there are other forms of Control that the Programme expenditure will be subjected to that Partners need to be aware of. Partners should be aware that if errors are discovered in claims in later audits financial corrections will be made, which may include

recovering expenditure already paid to the partner. This is one of the reasons it is important to ensure the FLC is capable of detecting these errors before the Payment Claim is submitted.

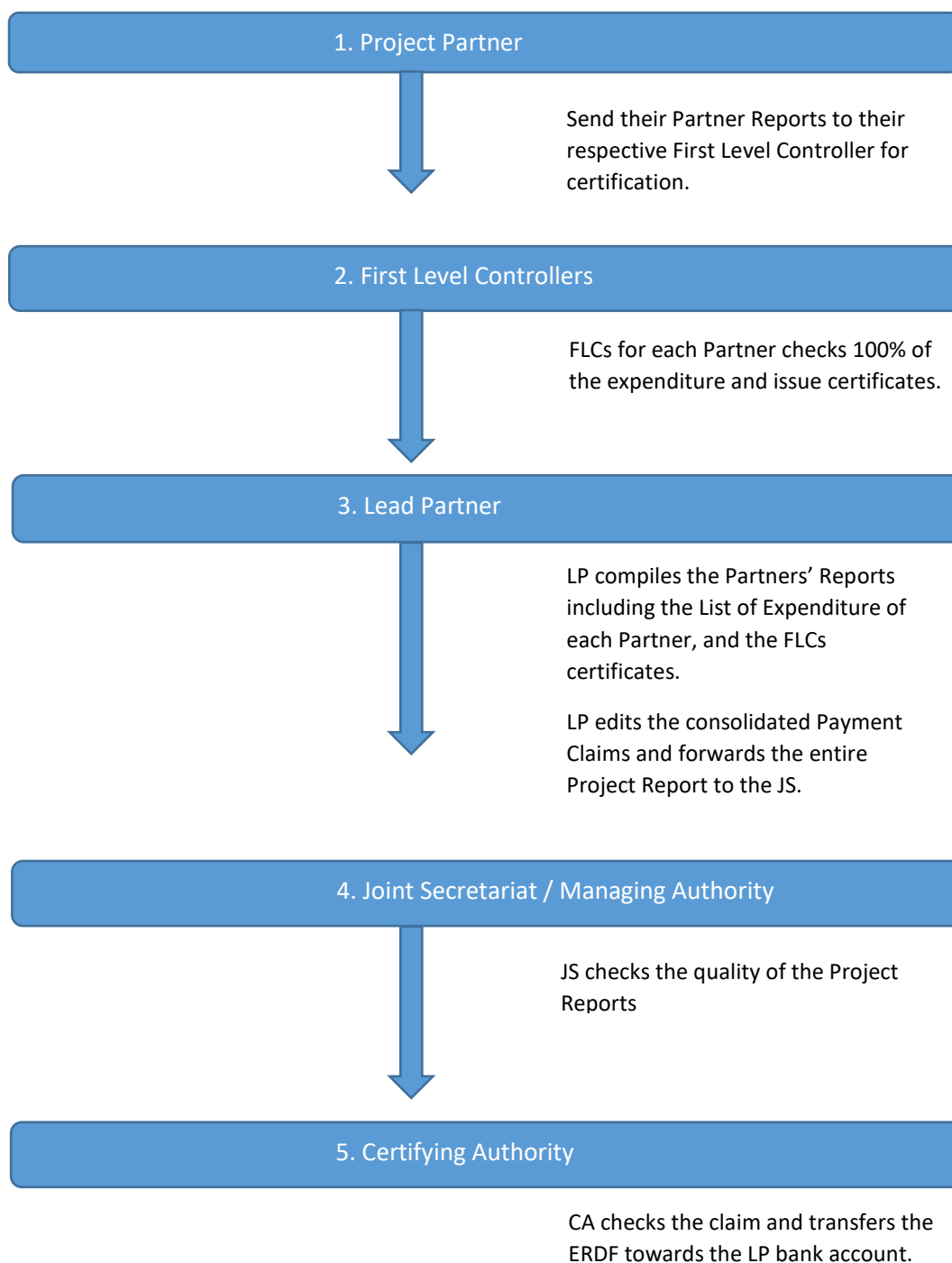
A. Second Level Control

Second Level Control is the term used to describe the work carried out by the Audit Authority of the Programme to check the overall performance of the programme management and control systems, including the system of First Level Control. To do this work they will audit a sample of Project Payment Claims each year and may visit projects to carry out their own on-site checks. For this reason, projects need to ensure that once they have submitted their Payment Claim they retain the evidence in a place that is accessible. This will have to be kept in accordance with the retention schedule set out in the Grant Offer Letter.

B. Commission/Court of Auditors

Both the European Commission and the European Court of Auditors have the right to audit the FCE Programme and may inspect individual Payment Claims in a similar manner to the Audit Authority, including carrying out on-site inspections of projects. This is sometimes referred to as, “Third Level Control.”

Scheme 2: Project Reporting Process



V. Performance Monitoring

By signing the GOL, the LP commits to delivering outputs that contribute to performance framework as has been set out in the Application Form. The performance framework is the targets the Programme has for what projects will achieve during the programming period.

During project implementation, the Programme has in place a series of systems and measures to monitor:

- projects are being implemented in accordance with the Application Form;
- projects are delivering the necessary outputs to achieve impact in the Programme Area;
- if necessary, act in case of issues in delivery.

Several actions can be taken to manage issues within project implementation. These are set out in the section "Deviation". However, if these issues cannot be managed and result in projects not delivering outputs as described in the Application Form, Financial Penalties may apply (see point C of this section).

A. Reviewing project progress

Performance Review

Starting with a project's second project report, the JS will conduct a performance review of the project. This review will correspond to the project's reporting calendar which is set out in the GOL. The **purpose of the performance review** is

- (1) To monitor progress of implementation, identifying and monitoring issues which may impact on implementation, and
- (2) To verify that the project is delivering in accordance with the Application Form

The **progress report** is the main tool for monitoring project performance, it being the sole official tool for the project to demonstrate the progress towards the achievement of the foreseen project performance. Information in the progress report will also be used for the purposes of reporting to the European Commission on the Programme's progress, and for Programme Evaluation activities.

The progress report will consist of the following:

- A summary of the financial progress of the project

It will be automatically provided to the Lead Partner by the Online Monitoring System and will consist of the cumulative costs claimed by the end of the reporting period.

- A description of progress of activities and towards project's targets

In the Progress Report, the Lead Partner is required to ensure the consistency between the financial information and description of progress of activities as well as the conformity of the progress of the project (as reported in the report) with its original targets (as foreseen in the application form).

- Justifications in case of deviation

In case of lack of consistency between the financial information and description of progress of activities, and/or in case of deviation from the original targets foreseen in the Application Form, the Lead Partner is required to provide thorough and detailed explanations and justifications in the Progress Report.

It is **highly important that partners meet set deadlines for these reports**. It is via the Progress Report that the project shall officially demonstrate the compliance with performance and it is only via the analysis of the latest submitted Progress Report that the JS will carry out the performance review. In absence of the expected Progress Report, the claim will be considered incomplete which will induce delays in the process of the claim reimbursement.

Contact with JS

Projects should not wait for progress reports to raise issues that may affect project delivery. Rather, partners – via the LP – should immediately contact their contact person within the JS, who will be introduced to all partners at the Kick-Off meeting. It is by working with their contact person that projects can find solutions for issues and avoid the risk of financial penalties applied for not meeting performance targets (see subsection below).

B. Managing Deviation

If a project is not delivering as set out in the Application Form, then costs for activities may not be eligible and the project risks financial penalties for late or non-delivery of outputs.

Additionally, during project implementation, unexpected occurrences may take place meaning that partners cannot deliver the project exactly as set out. These occurrences include those affecting the composition of the partnership, the project budget, the actions planned or the timetable.

In order, despite these deviations from the applications, for costs to continue being eligible and to avoid risk of penalties, different actions can be taken. This sub-section sets out:

- Deviations that may necessitate project modification
- The type of modifications that apply
- The process to request a modification
- Actions when modifications either are not or cannot be applied.

| Deviation / Changes | Action to Take |
|--|-----------------------------|
| Changes to administrative information | Administrative modification |
| Changes to the project duration: up to 6 months | Technical Modification |
| Changes to the work plan: allocations of tasks between Project Partners, addition or removal of expenditure | |
| Minor changes to the project activities and deliverable which do not have a significant impact to the objectives, outcomes and results of the project | |
| Changes to the budget with no increase of ERDF with an amount representing less than 20% of the total eligible budget (including funds moved from one budget line to another) | |
| Changes to the financial plan: changes to the match funding where the changes requested by project partners to their financial plan represent an amount of less than 20% of the project budget | |
| Changes to the claim periods (dates and amounts) | |
| Changes to the partnership: Partners addition or withdrawal; | Fundamental Modification |
| Changes to the number and nature of outputs: substantial changes to planned actions; | |
| Changes to the project duration: more than 6 months | |
| Changes to the budget with an increase in ERDF and/or an amount representing 20% or more of the total eligible budget (including funds moved from one budget line to another); | |

Administrative modification

Administrative modifications are changes in administrative data, such as contact details or a change in the LP's bank account details. The LP, or the relevant PP with the LP in copy, should inform the JS by email of any administrative modification, with any supporting documentation attached to the email (where relevant). The JS will then make the necessary changes on eMS.

If the modification is a change in the LP bank account, then the LP should provide supporting documents such as a RIB for the French LP or a headed signed letter for English LP.

Technical and Fundamental Modifications

Prior to making any modification, the proposed modifications must be discussed with the JS. A request is then submitted to the JS to justify the modification along with supporting documents where necessary. LP should use the project change request template provided by the Programme.

If the modification requires an increase/decrease in the amount of funding a partner will receive from an external source, then a new Letter of Engagement will be required. This includes the situation where the new match-funding comes from another project partner (shared costs).

A distinction needs to be made between fundamental and technical modifications. These are detailed below.

Fundamental modifications will have to be submitted for decision to the Programme Monitoring Committee (PMC) or its Selection Sub Committee (SSC). For technical modifications, the decision is taken by the JS who informs the PMC.

Once approved, the modified Application Form becomes the new official reference for the project, the FLC and the Programme bodies.

Technical Modifications

Changes brought to the project as mentioned in the summary table here-above are considered as technical modification on a cumulative basis. For example, a first request for an extension of 4 months will be considered as a technical modification, however an additional request for second extension of 3 months, bringing the modification to the initial Application Form to 7 months, will fall under the category of a Fundamental Modification.

Projects can request technical modifications up to the latest 2 months before the end of the project implementation (to allow sufficient time to process the modification and avoid generating delays in the project's closure).

To avoid unnecessary administrative burden, projects are encouraged not to submit more than 1 technical modification per year. It will be up to the JS to judge on the necessity of a technical modification proposed by the LP.

Technical modifications include:

- Changes to the project duration: up to and including 6 months;
- Changes to the work plan: allocations of tasks between Project Partners, addition or removal of expenditure
- Minor changes to the project activities and deliverable which do not have a significant impact to the objectives, outcomes and results of the project.
- Changes to the budget with no increase of ERDF with an amount representing less than 20% of the total eligible budget (including funds moved from one budget line to another);
- Changes to the financial plan: changes to the match funding where the changes requested by project partners to their financial plan represent an amount of less than 20% of the project budget;
- Changes to the claim periods in the GOL (dates and amounts);

Procedure

After the submission of the project request for change form, the JS carries out an assessment of the impact of the requested change(s). The assessment may result in one of the following outcomes:

- a) A positive assessment and the approval of the change request;
- b) Insufficient/unclear information to carry out an assessment. In this case the JS launches a clarification process with the LP. If the clarification process is concluded with a positive outcome, the change is approved;
- c) A negative assessment and the rejection of the change request.

The PMC will be informed, and the LP notified about the outcome of the request for the technical change.

In the case of a positive outcome, the JS will to modify the Application Form on eMS.

Fundamental modifications

Whether in case of a deviation for which action needs to be taken, or in case of a need or opportunity for a change identified by the project, the Lead Partner in cooperation with the JS can decide to carry out a fundamental modification. The fundamental modification is a more structural plan. It can be used to tackle deviations that affect negatively the performance targets of the project and in case these cannot be avoided through a technical modification. In most cases, a fundamental modification will necessarily lead to a change in the project performance (for instance, decrease to the number of outputs).

Changes to the budget allocations per reporting period require a fundamental modification due to the potential impact on the measurement of project performance.

It should be noted that when one or more cases of fundamental modification apply, it is very likely that this will entail one or more cases of changes listed under the technical modification. For example, a change to the nature of outputs will most likely lead to a change in the content of activities and nature of deliverables.

Additionally, changes in the budget allocations per reporting period without any changes in the total ERDF or because of a reduction of ERDF do not require a fundamental modification.

A fundamental modification covers the following changes:

- Changes to the partnership: Partners addition or withdrawal;
- Changes to the number and nature of outputs: substantial changes to planned actions;
- Changes to the project duration: more than 6 months;
- Changes to the budget with an increase in ERDF and/or an amount representing 20% or more of the total eligible budget (including funds moved from one budget line to another);

Procedure

The LP should liaise with the JS to ensure that the timeline of the modification request does not create delays in the project delivery.

After the submission of the project “request for change” form, the JS shall evaluate the fundamental modification and give an opinion. The JS carries out an assessment of the impact of the requested change(s).

The fundamental modification request form, together with the JS opinion, shall be submitted to the PMC for decision.

The JS and the Programme Monitoring Committee (PMC) shall evaluate the fundamental modification. The PMC shall approve or reject the fundamental modification.

The LP will be notified about the outcome of the request for the fundamental change.

In the case of a positive outcome, the JS will modify the Application Form on eMS.

Once approved, the modified AF is the new official reference for the project, the FLC and all the Programme bodies.

A fundamental modification can also imply changes to the Grant Offer Letter and to the partnership agreement.

At the time of the project progress report and performance review, if the project does not provide sufficient evidence of the compliance with the performance framework as defined in the application form and Grant offer Letter, **the Programme Monitoring Committee and the MA will be entitled to adopt a financial correction** based on a specific methodology detailed under “corrective measures”.

The procedure for the corrective measures is reported in the next sub-section.

C. Corrective measures

If a modification is not or cannot be applied and the **performance review** finds that targets in terms of outputs, deliverables and financial spending have not been achieved, then the project may be subject to financial penalties (known as Corrective Measures)⁶.

Performance of project’s activities and deliverables progress

If the project fails to reach the performance targets, it will receive a **first warning** from the Programme. This will take the form of an official communication sent by the MA/JS (practicalities to be confirmed). The communication will contain the analysis of the project performance and will remind of the Programme rules regarding the corrective measures in case of underperformance.

At the stage of a first warning, the Programme will propose any relevant action to tackle the deviation (e.g. technical or fundamental modification). No financial penalty will be applied.

The warning can apply at any reporting period of implementation of the project.

If despite the above-mentioned actions, the project shows a second consecutive period of underperformance, the Programme may impose, upon decision by the PMC, a series of financial penalties which are detailed below.

The underperformance is determined on the basis of the average of the cumulative performance rate for all Work Packages (WP), with the exception of Work Packages 0 and 1. Within each Work Package, each activity will be considered as delivering 1 unit, which will be considered as a target to achieve in the reporting period of the activity’s end date⁷.

The Performance rate will be calculated as following:

- a) For each unit, the value of achievement will be calculated based on the information in progress report. E.g.: an activity that plans to deliver a training to 500 people and by the end of its implementation has reached 400 people will have a value of achievement of 0.8.
- b) For each WP, the value of achievement shall be determined by the total of the values of the achieved units for that reporting period.
- c) For the Cumulative Performance rate, the total of the cumulative achieved units of all WP per reporting period will be divided by the total of the cumulative targets for all WP for that same reporting period.

⁶ Art. 7.10 GoL

⁷ The last day of the month indicated in the Application Form will be considered as the end date of an activity

Depending on the level of underperformance, the following reduction of ERDF will apply:

- a) 1 % of the cumulative financial target of the project by the given period in case of a Performance rate below 65 % but not less than 60 %,
- b) 2,5 % of the cumulative financial target of the project by the given period in case of a Performance rate below 60 % but not less than 50 %,
- c) 5 % of the cumulative financial target of the project by the given period in case of a Performance rate below 50 %.

| Cumulative Performance rate (CPR) | ERDF reduction |
|--|-----------------------|
| $65\% \leq \text{CPR}$ | None |
| $65\% < \text{CPR} \geq 60\%$ | 1% |
| $60\% < \text{CPR} \geq 50\%$ | 2,5% |
| $50\% < \text{CPR}$ | 5% |

Corrective measures based on performance review

| SIMULATOR OF CORRECTIVE MEASURES | | | | | | |
|--|----------|--------------------|----------------------------|---------------------------|------------------|----------------------------|
| Monitoring of activities / deliverables | | | | | | Corrective measures |
| Period 1 | Target | Cumulative targets | Units achieved this year | Cumulative achieved units | Performance rate | |
| WP 3 | 1 | 1 | 1 | 1 | | |
| WP 4 | 1 | 1 | 1 | 1 | | |
| WP 5 | 0 | 0 | 0 | 0 | | |
| WP 6 | 0 | 0 | 0 | 0 | | |
| Cumulative performance | 2 | 2 | 2 | 2 | 100% | NO |
| Period 2 | Target | Cumulative targets | Units achieved this period | Cumulative achieved units | Performance rate | |
| WP 3 | 0 | 1 | 0 | 1 | | |
| WP 4 | 0 | 1 | 0 | 1 | | |
| WP 5 | 1 | 1 | 0 | 0 | | |
| WP 6 | 0 | 0 | 0 | 0 | | |
| Cumulative performance | 1 | 3 | 0 | 2 | 67% | NO |
| Period 3 | Target | Cumulative targets | Units achieved this period | Cumulative achieved units | Performance rate | |
| WP 3 | 1 | 2 | 1 | 2 | | |
| WP 4 | 1 | 2 | 1 | 2 | | |
| WP 5 | 1 | 2 | 0 | 0 | | |
| WP 6 | 1 | 1 | 0 | 0 | | |
| Cumulative performance | 4 | 7 | 2 | 4 | 57% | FIRST WARNING |
| Period 4 | Target | Cumulative target | Units achieved this period | Cumulative achieved units | Performance rate | |
| WP 3 | 0 | 2 | 0 | 2 | | |
| WP 4 | 0 | 2 | 0 | 2 | | |
| WP 5 | 0 | 2 | 1 | 1 | | |
| WP 6 | 1 | 2 | 0 | 0 | | |
| Cumulative performance | 1 | 8 | 1 | 5 | 63% | 1% ERDF cut |

| Example: | | |
|--------------------------|-------------------|-----------------|
| <i>cumulative budget</i> | <i>budget cut</i> | <i>ERDF cut</i> |
| 4,874,000 € | 48,740 € | 33,630.60 € |

| Period 5 | Target | Cumulative target | Units achieved this period | Cumulative achieved | Performance rate | |
|-------------------------------|----------|-------------------|----------------------------|---------------------|------------------|-----------|
| WP 3 | 1 | 3 | 1 | 3 | 100% | |
| WP 4 | 1 | 3 | 1 | 3 | | |
| WP 5 | 1 | 3 | 2 | 3 | | |
| WP 6 | 0 | 2 | 2 | 2 | | |
| Cumulative performance | 3 | 11 | 6 | 11 | | NO |

Performance of project's financial progress

The assessment of project spending will be made based on the Project Progress Report from the **third** reporting period. The Project can underspend up to 10% of its budget foreseen for the cumulative periods concerned. Underspending beyond the set limits is only acceptable in cases where individual costs have been delayed due to reasons beyond the control of the PPs⁸.

Based on the payment claim, the underspending will be monitored against the limit of 10% of the cumulative budget. If the Project has underspent more than 10% of the cumulative budget, the amount exceeding the set limit will be deducted from the Project Budget and the Grant (subject to the project ERDF rate), upon decision by the MA.

For example (see table below, in reporting period 3):

- If the project cumulative target is €3,710,000;
- If the project cumulative spend is €3,300,000;
- The set limit of 10% represents €3,339,000 (= 3,710,000 - 371,000);
- Therefore, the budget reduction will consist of €39,000 (= 3,339,000 - 3,300,000);
- And the ERDF reduction will consist of €26,910 (for a project with a 69% ERDF rate).

Where relevant, the LP will be contacted by the JS on behalf on the MA to clarify the spending of each period and the required deductions from the Budget. Where the MA determines there is a required deduction from the Grant in such circumstances, the MA may issue an amendment to the Grant Offer Letter which will take effect immediately upon issue by the MA⁹.

⁸ Art. 2.4 b) GOL

⁹ Art. 2.4 c) GOL

Corrective measures based on spending review

| SIMULATOR OF CORRECTIVE MEASURES | | | | | | | | | | |
|---|---------------------|-------------------|----------------------|---------------------|-------------|----------------------------|---|-------------------|-----------------|----------|
| Monitoring of spending | | | | | | Corrective measures | | | | |
| Reporting Period 1 | Target | cumulative target | achieved this period | cumulative achieved | Performance | | | | | |
| | Cumulative spending | 1,600,000 € | 1,600,000 € | 800,000 € | 800,000 € | 50% | NO CORRECTIVE MEASURES | | | |
| Reporting Period 2 | Target | cumulative target | achieved this period | cumulative achieved | Performance | | | | | |
| | Cumulative spending | 1,060,000 € | 2,660,000 € | 1,100,000 € | 1,900,000 € | 71% | NO CORRECTIVE MEASURES | | | |
| Reporting Period 3 | Target | cumulative target | achieved this period | cumulative achieved | Performance | <i>underspend</i> | <i>threshold of 10%</i> | <i>budget cut</i> | <i>ERDF cut</i> | |
| | Cumulative spending | 1,050,000 € | 3,710,000 € | 1,400,000 € | 3,300,000 € | 89% | CORRECTIVE MEASURE: Art. 2.4 GOL: ERDF cut of underspend above 10% limit | 410,000 € | 371,000 € | 39,000 € |
| Reporting Period 4 | Target | cumulative target | achieved this period | cumulative achieved | Performance | | | | | |
| | Cumulative spending | 1,203,000 € | 4,874,000 € | 1,200,000 € | 4,500,000 € | 92% | NO CORRECTIVE MEASURES | | | |
| Reporting Period 5 | Target | cumulative target | achieved this period | cumulative achieved | Performance | | | | | |
| | Cumulative spending | 1,360,000 € | 6,234,000 € | 1,734,000 € | 6,234,000 € | 100% | NO CORRECTIVE MEASURES | | | |

Justification of Force Majeure¹⁰

If a project's performance encounters Force Majeure, the project should inform the JS as soon as possible, explaining what actions are planned to overcome the Force Majeure, and keep the Programme informed of developments. It should also mention the issue(s) encountered through its Progress reports.

The following is a non-exhaustive list of cases that could be considered as Force Majeure:

- a. Bankruptcy of one or more partner
- b. Loss of one or more partners following the closure of the organization in case of a fundamental administrative reform
- c. Unforeseen adverse macro-economic conditions leading to strong unforeseen budgetary cut (e.g. a serious revision of the GDP growth forecast of a N year compared to the GDP growth forecasted at the time of the project's submission).
- d. Unforeseen extreme fluctuation of the £/€ conversion rate
- e. Unforeseen and extraordinary weather conditions delaying or preventing the delivery of one or more project outputs (notably in case of investments).

In any of the above-mentioned cases, it is up to the project to prove the existence of the external factor(s) and its/their impact on the project's implementation.

External factors contributing to a serious failure to achieve the targets shall be considered on a case-by-case basis.

In case of delay in performance, a notification after review of the progress report is issued by the JS. If the delay in performance is not resolved within 3 months after this notification, the PMC¹¹ will decide what action to take, which may include, if necessary, actions mentioned above.

The reduction or cancellation of the financial penalties is subject to the decision of the Programme authorities.

D. Termination of the Grant Offer Letter

In exceptional cases, where a project does not fulfil its contractual obligations and it is evident that the successful project delivery is compromised, the MA is legally entitled to terminate the contract and to demand repayment of funds as set out in Article 12 of the Grant Offer Letter.

¹⁰ Art. 16.2 GoL

¹¹ Art. 16.2 GoL

Guidance Note 6b Project Implementation

VI. Public Procurement ¹²

During the implementation of a project whenever purchases are made, and contracts are awarded to external suppliers, project partners must ensure good value for public money is achieved. The principles of transparency, non-discrimination, equal treatment must be respected to ensure effective competition. Three levels of rules must be taken into consideration:

- the EU public procurement directives
- national procurement law that incorporate EU law
- internal rules of the partner's organisation

As a matter of principle, the strictest rules must always be applied.

A. Introduction

Almost all projects will need to make procurements during their implementation. Procurement covers the purchasing of any goods, services or building work which are needed for the implementation of the project. In general, this expenditure will be under the External Expertise and Services, Equipment, Travel and Accommodation and Infrastructure Budget lines.

Following the rules in this Guidance note is essential to secure Project expenditure complies with European Union and National Law relating to procurements, and that value for money is delivered for the programme. In the 2007-13 programme period, Public Procurement has been found to account for over 40% of errors in payment claims to ETC projects across Europe. To avoid mistakes, projects should familiarise themselves with the rules that apply to them, and then ensure that they allow sufficient time to carry out their procurement procedures in accordance with these rules.

This document should not be treated as a definitive guide to Procurement, as the rules can vary depending on the item being procured and the organisation procuring it. For higher value procurements where the organisation does not have its own procurement department with experience of handling public procurements it may be advisable to for Project Partners to seek legal advice.

¹² Rules for public procurement and entry into the markets, including regulations made under [Directive 2014/24/EU](#) on public procurement being the [Public Contract Regulations 2015](#) for England and the [decree 2006-975 of 1 August 2006](#) and Statutory Instrument of 3 August 2006 on public procurement and any successor legislation of these for France to implement the above directive.

B. What is Public Procurement?

A Public Procurement is, in the simplest of terms, a procurement made by a Public-Sector Organisation, referred to as a “contracting authority” in the European Union Directives which set out the rules on procurement.

The definition of a Public-Sector Organisation in EU procurement law is not determined by the legal form of the organisation or its ownership, so even if a Project Partner does not believe they are a Public sector organisation they should consider the definition below to consider if they need to apply Public Procurement Rules or not.

Definition of a Contracting Authority

This definition includes any organisation which are general considered to be a part of the public sector, such as State, Regional or Local Authorities, and organisations formed by these bodies. It also includes organisations which are, “governed by public law,” which means any organisation that meets the three following criteria;

- a) Established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
- b) Having legal personality (i.e. Is incorporated);
- c) Receives over half its finance from state, regional or Local Authorities;

or

Is subject to management supervision by those authorities.

For example, some charities which receive over 50% of their financing from public sources (including the ERDF grant from the programme) may be considered, “contracting authorities.”

If a Project Partner is unsure whether its organisation falls within the definition of a contracting authority, then they should seek further advice. To help the Partner in determining their status there is a questionnaire entitled “Characterisation of the legal type of an organisation” on the [FCE website](#) within the useful documents section: Documents for applicants. The legal standing is a determination that Project Partners need to make ahead of completing their Application Form as it may have an impact on their timeline, and they will also need to be aware of which rules they need to follow to avoid making inadvertent breaches.

Public bodies

Public bodies frame their internal public procurement rules within the overall remit and scope of their national law. The public procurement rules define the processes for obtaining goods and services and the measures that are proportionate to the monetary value of the contract.

For example, lower value purchases could be carried out by obtaining written quotes whereas higher value contracts would require following formal tender and publicity procedures. Where the subject matter of contracts is likely to be of **cross border interest** then the offer must be advertised in a manner that allows interested parties in other Member States to consider bidding. This can be achieved by advertising on the project partner’s own website and/or on any dedicated national websites for this purpose. Contracts above the EU thresholds are advertised in the Official Journal of the European Union (OJEU) and follow procedures laid out in the EU public procurement directives. Following their own internal procurement rules and national rules, where these are applied, project

partners would be complying with EC public procurement directives, so they don't have to perform any additional tasks.

To be noted that enterprises may be Contracting Authorities. This is the case for public enterprises, or organisations of private law that deliver network operator activities in the sectors of energy (gas, heating, electricity, etc.), water, transports and postal services.

A non-exhaustive list of contracting authorities annexed to the former directive 2004/17/CE of 31st of March 2004 was not included in the new directive 2014/25/UE of 26th of February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors.

A case by case analysis is therefore required for their qualification with regards the criteria defined by the directive 2014/25/UE and the applicable national rules ("Code de la commande publique" for the French partners).

Private bodies

Partners that are bodies of private character participating in a project are **not** required to follow public procurement procedures unless these are prescribed for them in the national rules. However, all project partners must demonstrate compliance with the EU Treaty principles described in section D (non-discrimination, equal treatment, transparency) in the selection process used to determine a supplier of goods, services and work. In this context partners deemed to be of private character also need to assess whether their contract would be of interest to suppliers in other Member States and, if so, ensure that they include adequate measures in their purchasing process to ensure compliance with these principles. There is no specific procedure set by the EC how it should be done so it is for each project partner to decide based on an evaluation of their own circumstances such as:

- The subject matter of the contract
- Its estimated value
- The specifics of the sector concerned (size and structure of the market, commercial practices)
- The geographic location of the project activities and relevant market condition

Where a partner concludes that there would be cross-border interest in their contract they need to consider how they would advertise. Adequate and commonly used means of publication are:

- The project partner's own website in a way that potential bidders can easily become aware of the information
- Portal websites specifically created for contract advertisements, making full use of internet's possibilities to increase transparency
- National/regional newspapers and journals
Local means of advertising – for small contracts for which there is only a local market

The requirement of transparency does not necessarily imply an obligation to hold a formal invitation to tender. The advertisement may therefore be limited to a short description of the essential details of the contract to be awarded and of the award method together with an invitation to contact the project partner. The information should be sufficient to enable any potential supplier from other Member State to make a decision on whether to express an interest in the contract.

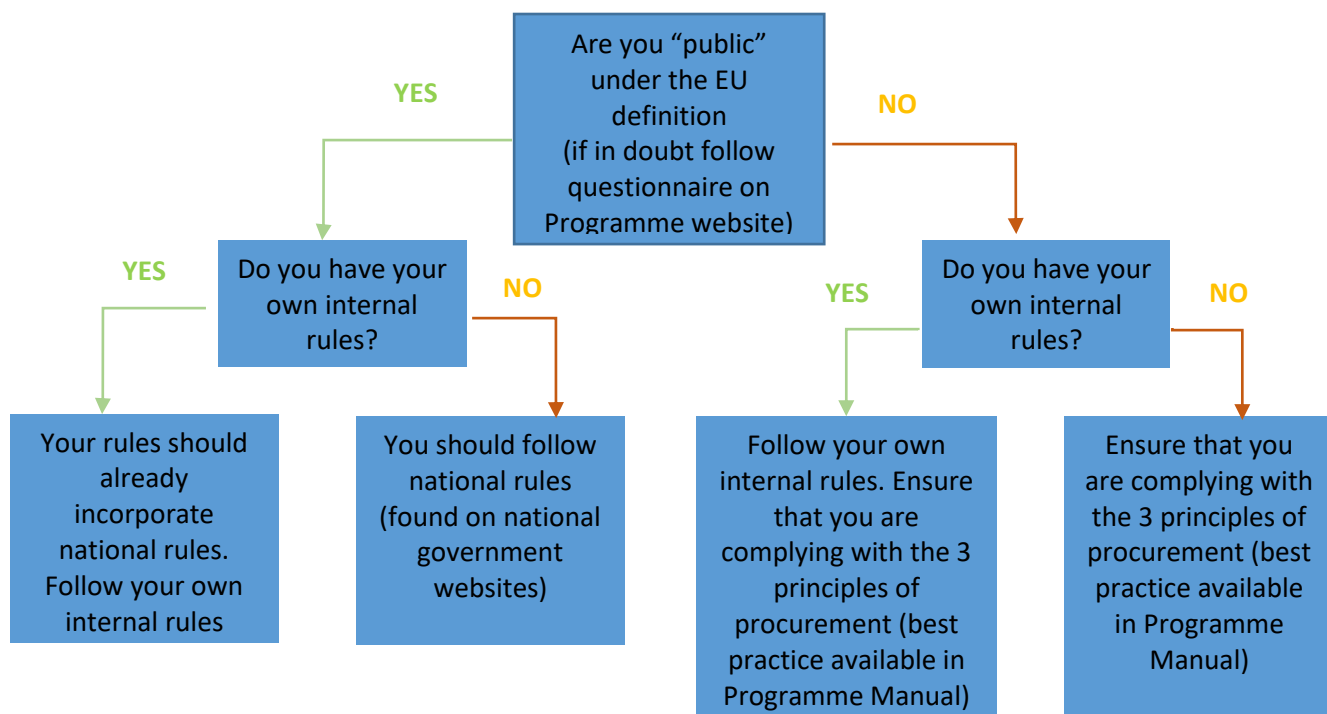
A selective practice of contacting a few potential suppliers would not be considered sufficient. Also, passive publicity, where there is no active advertising but simply responding to those who find out about the opportunity through own means would not be considered acceptable.

Award of a contract must be based on procedures set out at the start of the process. The entire process should be documented as this would be required as evidence in any future audit.

If the project partner has internal rules for procurement and these include certain thresholds above which the market must be tested for competitive bids, then these should be followed. When establishing the contract value, the project partner must take into consideration all potential contracts of the same type that the partner organisation has implemented or will implement during the life of the project. A procurement may not be divided into several smaller procurements with the purpose of fitting them individually into the value range applicable to direct awarding without testing the market.

If a direct award procedure is used for reasons of urgency, it has to be proven that the urgency is due to unforeseeable circumstances. Insufficient planning by the project partner does not justify a direct award. If a direct award procedure is used for technical/ exclusivity reasons, it must have been ruled out that any other supplier than the one being contracted is capable of providing the requested services. This elimination procedure must be based on objective criteria. The fact of having already worked with a certain external provider in the past, having been satisfied by the work quality and wanting to benefit from the knowledge the provider acquired does not represent sufficient justification for a direct award.

Using the correct rules (subject to the principle that the strictest rules apply):



C. Where to find advice?

Lead Partner- the Lead Partner has responsibility to ensure the regularity of expenditure of its Partners, and has a role in providing advice on Public Procurement to the other members of the Partnership. As a part of this role, where appropriate, they should support other organisations in procurement activities.

First Level Controller-As the First Level Controller will be required to check the procurement, it may be better to have their approval before the procedure to avoid having the expenditure later declared ineligible.

Legal Advice- For especially complex procurements or procurements with a high value where the contracting organisation does not have substantial capacity or experience in carrying out Public Procurements, then it may be advisable for them to seek independent legal advice on the requirements for their procurement. Such advice is an eligible cost under the Programme Rules, and should be built into the budget as a part of planning the project.

D. General Principles

Although these requirements appear onerous the steps taken to ensure that a procurement is in line with these principles should always be proportionate to the size of the procurement, and for most procurements a simple quote gathering exercise will be sufficient.

Non-discrimination

For a procurement to be non-discriminatory all suitable suppliers should have a chance to supply the goods or services in question. Therefore, product descriptions should not refer to a specific manufacturer or model. For example, if purchasing a van, the specification should not require that it be a Ford Transit 2015 model, as this means other suppliers of suitable vehicles would be unable to compete.

Equal Treatment

All suppliers across the European Union must have an equal opportunity to bid for the work. Therefore, procurements should not require a specific location of a supplier unless this is strictly necessary (for example, if procuring conference facilities in Canterbury then only organisations with conference facilities in Canterbury need be contacted). This also is dependent on the size of procurement, for smaller procurements local organisations may be the only organisations interested in the contract. Therefore, there are different standards required for different values of procurement, which are set out below.

Transparency

In this context transparency means that the decision-making process should be clear. Whenever an organisation is invited to submit a quote or take part in a Tendering Exercise the selection criteria should be clear to all those involved, and the same information should be provided to each interested provider.

So that it can be evidenced that these principles have been followed, it is vitally important that Project Partners retain the evidence of their procurement process.

E. Rules applicable to projects

There are 3 sets of rules that can apply to a project: European Union, National Rules and Internal Rules. The national rules are set out by the Member states and should incorporate all the requirements of EU Law, so in most cases complying with National Law will mean also complying with EU Law by default.

It is important to always apply the **strictest rules that apply**. If the national rules for taking part in ERDF Programmes are stronger than the internal rules of an organisation, then that organisation must apply the national rules.

EU Rules

The EU rules for Public procurement are set out in the European Union's Public Procurement directives, which are then implemented (transposed) into national law.

These apply to contracts awarded by contracting authorities (as defined above) at a value above the thresholds set out below. In these situations, there are strictly defined rules relating to the running of procurements. The general thresholds are set out below. Project Partners should be aware that if they are a central government organisation in some cases lower thresholds apply.

These thresholds are set out on the [European Commission website](#).

At the time of publication (June 2019) the main thresholds are;

| Type of Procurement | Threshold |
|---------------------|------------|
| Works | 5,548,000€ |
| Goods and Services | 221,000€ |

When considering these Thresholds, it is important to consider the total requirements rather than just the specific purchase which is being made. So, if you will require 20,000€ of service each month for 11 months, the total value of that procurement should be regarded as being 220,000€ rather than 20,000€. In this case it would exceed the threshold for services above and should be treated as a single procurement of that value. It is strictly forbidden to artificially break down a contract into smaller "lots" to avoid a threshold.

If a Partner is unsure of the total value of their procurement they should seek further advice.

National Rules

These rules will implement the EU directives above, and set national standards for Public Procurement. All project Partners will need to ensure that they comply with these rules.

Internal Rules

If a Project Partner has internal rules on procurement, then they must obey these rules, unless national or EU rules are stricter than their internal rules.

F. Advice for audit trail purposes

The first action which should be taken is to determine the value of the procurement, as the procedure to be followed will depend on the value of the item to be procured. If the procurement value is close to threshold and it is not clear whether the procurement will be above or below the threshold then the procedure for the higher value should be used.

Single Quote

When using this procedure, the Partner Organisation may contact just one supplier for the provision of the Product. They must still ensure that they obtain value for money on the product. For example, a purchase of a pen normally worth 0.10€ that is procured for 999€ would not be a satisfactory procurement.

This is a minimum requirement for these procurements, if a Partner believes that they can get better value for money through requesting more quotes then they should do so.

Audit Trail

There is no specific Audit trail requirement for a single quote. However, Project Partners must ensure that they record all the required information set out in the Guidance Note on Budget Lines and Eligibility.

Three quotes

Obtaining three quotes is only a minimum requirement. If a Project Partner believes that they can obtain better Value for Money by obtaining more quotes or by running a Tendering exercise, then they are free to do so.

The steps to be followed for this procedure are;

1. The partner creates a shortlist of potential suppliers to be invited by submitting quotes. This can be as simple as searching the internet for providers of the required goods, depending how common the goods or services required are.
2. The partner sends a request for a quote to each of the suppliers. This request for a quote should set out the requirements of the contract, the quantity required (if applicable), the timeframe, the conditions of contract that will apply, the date the quote needs to be received by, and how the quote will be assessed (For example best quality product or lowest price). Unless there are exceptional circumstances the date should not be less than 5 working days from the time when the request for a quote is sent to the potential suppliers. If there are particularly complex requirements, then the Partner should allow a longer period for responses.
3. When the quotes are received a selection will be made, and the reason for the selection should be recorded. This can be as simple as, "lowest price."
4. The Successful supplier shall receive the order. The unsuccessful suppliers shall be informed of the decision, and if they request, informed of the reason they were unsuccessful (within the limits of commercial confidentiality).

Catalogue Listing

For some items which are commonly available and have public price listings (such as on a website or in trade catalogues) it is acceptable for these to be used in the place of quotes. This includes trade catalogues, print outs of websites and similar evidence, provided that the items shown all have the same or similar characteristics and meet the requirements of the project.

Audit Trail

- The requests for quotes sent to all the potential suppliers
- The responses from the suppliers
- The rationale for selecting the chosen supplier
- The notification to the selected supplier and the notification to those not selected setting out why they were rejected.

If public price listings were used, then copies of these should be used in place of the request for quotes and the responses from the suppliers.

Additionally, the normal audit trail for this type of expenditure as set out in the Guidance Note on Budget lines and Eligibility must be kept.

Tender

The information in this section only relates to Tenders which are above the relevant threshold but below the EU thresholds, where these apply.

The first step in a Tendering exercise is to develop the specification and the evaluation criteria. The specification should clearly establish the requirements of the procurement. Great care should be taken to ensure that it accurately reflects the needs of the purchasing organisation, as not only will suppliers develop their Tenders based on it, it will often become a part of the contract between the purchasing organisation and the supplier.

The next step is to advertise the procurement. The advertisement should include details of how to make an expression of interest in the Procurement, and how long interested organisations must register their interest.

The advert should be posted at least 10 working days before the deadline or expressions of interest. It needs to be placed on a location which offers a wide visibility to potential suppliers. Potential sites include;

www.contractsfinder.service.gov.uk

www.boamp.fr

Once organisations have registered their interest, they should be sent an Invitation to Tender (ITT) including the specification and evaluation criteria. This must also include information on how to submit the Tender, and the deadline to do so.

The closure of expressions of interest and the deadline for the submission of an ITT must be at least 10 days apart. However, if the Tender is for a particularly complicated Purchase then Project Partners may wish to extend the deadline to ensure that Applicants have sufficient time to develop their Tender.

The next step is the Evaluation of the Tenders. This should be done based on the criteria circulated with the Tender, and on an objective basis. The scores awarded in the evaluation must then be used to select the supplier.

All applicants shall be informed of the decision, and on request they should be provided with the reasons for their rejection (within the limits of commercial confidentiality).

Audit Trail

- Copy of the Advertisement advertising the Tender
- The Expressions of Interest Received
- Copy of the Invitation to Tender
- Tenders Received
- Evaluation Scores
- Notification to applicants of contract award

Additionally, the normal audit trail for this type of expenditure as per the Guidance Note on Budget lines and Eligibility must be kept.

EU Thresholds

EU tendering processes have strict time requirements, so Partners must ensure they have planned sufficient time to work through the process to meet the requirements. Given the high value which is automatically attached to such a procurement, it presents risks to the partners if it is later deemed ineligible. Therefore, it might be advisable that large scale procurements are handled by Partners with dedicated procurement teams who are used to dealing with EU tenders.

Project partners should refer to the relevant National Guidance on performing an OJEU tender.

For French partners only:

Procurement with a value lower than €25,000

In line with article 30-8° of the French Decree n° 2016-360 of 25 March 2016 on public procurement, for public procurement with a value lower than €25,000 without VAT, the buyer shall select the relevant offer, make good use of public monies and shall not systematically contract with the same economic operator when many offers exist that might fulfil the requirements.

Tenders

The following applies (thresholds from date of publication June 2019):

| | | |
|---------------------|---|--------------------------|
| Supply and services | Amended procedure contracts (MAPA) | Formal tender |
| Amounts | From €25,000 without VAT up to €144,000 without VAT | > €144,000 without VAT |
| Works | Amended procedure contracts (MAPA) | Formal tender |
| Amounts | From €25,000 without VAT up to €5,548,000 without VAT | > €5,548,000 without VAT |

Audit Trail

- Copy of the Advertisement advertising the Tender
- The Expressions of Interest Received
- Copy of the Invitation to Tender;
- Tenders Received;
- Evaluation Scores;
- Notification to applicants of contract award.

Additionally, the normal audit trail for this type of expenditure as per the Guidance Note on Budget lines and Eligibility must be kept.

On publication thresholds, the following applies:

| | Advertising not compulsory | Free or relevant advertising | Advertising in BOAMP or in a JAL | Advertising in BOAMP and in OJEU |
|---------------------|----------------------------|-----------------------------------|------------------------------------|----------------------------------|
| Supply and services | below €25,000 | from €25,000 and up to €89,999.99 | from €90,000 up to €143,999.99 € | from €144,000 |
| Works | above €25,000 | from €25,000 and up to €89,999.99 | from €90,000 up to €5,547,999.99 € | from €5,548,000 |

G. Risks in Public Procurement

In the past Public Procurement failings have been a common failure detected in Audits of Interreg programmes. Common errors include;

- Failure to consider repeat purchases as a single procurement, meaning the procurement thresholds are exceeded and incorrect procedures are used.
- Partners artificially splitting procurements to avoid procurement thresholds
- Insufficient Publicity for Procurements
- Amendments to contracts without considering whether an extension/addition is permissible under the original procurement or whether a new procurement process is required
- Award of contracts made using different criteria to those published in the Tender, meaning the competition is not fair

H. Penalties for improper Procurement procedures

If you fail to adhere to procurement rules, there may be financial corrections applied to your claim. The programme will follow the Commission rules for corrections for Public Procurement Errors.¹³ These apply a penalty of between 5% and 100% of the value of the procurement, depending on the severity of the fault.

¹³ Commission Decision of 19.12.2013, C(2013) 9527 ; update 14.05.2019, C(2019) 3452