

ESPON 2013 Programme – Member State's Description of the First Level Control System according to Article 16 of Regulation 1080/2006

Territorial Cooperation Programme, ESPON 2013
CCI 2007CB163PO022

SECTION	DESCRIPTION
<p>1. General</p> <p>1.1. Information submitted by:</p> <ul style="list-style-type: none"> • Member State • The main contact point <ul style="list-style-type: none"> ○ Name of the institution ○ Responsible unit ○ Address ○ Telephone, fax ○ E-mail address ○ Title (Mr/Mrs) ○ Name and Surname ○ Position within the unit 	<p>Member State: AUSTRIA Austrian Federal Chancellery Division IV/4 (Coordination – Spatial Planning and Regional Policy) Baillhausplatz 2 1014 Vienna Phone: +43-1-531 15 2910 Fax: +43-1-531 15 2180 iv4@bka.gv.at Wolf Huber Head of Division IV/4</p>
<p>1.2. The information provided describes the situation on :</p>	<p>18/12/07</p>
<p>2. System Structure</p> <p>What kind of system did you opt for?</p> <ul style="list-style-type: none"> - a <u>centralized control system</u>: a control body appointed at central level to carry out the control for all beneficiaries on the territory (please continue with question 2.1) or - a <u>decentralized control system</u>: the beneficiaries proposes a controller who is authorized by a central MS body or selects a controller from a short list provided by the MS (please continue with question 2.2)? 	<p>A decentralized control system has been applied</p>

2.1 Centralised Control System	
<p>Please describe the system.</p> <p>Please indicate if the control is carried out by civil servants or by an external audit firm appointed for this specific mission. In case of an external audit firm, please explain how it was/will be appointed.</p> <p>Contact details of the controller</p> <p>Please provide the contact details of the designated body who will undertake the controls.</p>	<p><u>Control Body 1</u></p> <ul style="list-style-type: none"> <input type="checkbox"/> Name of the institution <input type="checkbox"/> Responsible unit <input type="checkbox"/> Address <input type="checkbox"/> Telephone, fax <input type="checkbox"/> E-mail address <input type="checkbox"/> Title (Mr/Mrs) <input type="checkbox"/> Name and Surname <input type="checkbox"/> Position within the unit
<p>Contact details supervisory body</p> <p>In case of an external controller, please specify the body fulfilling the supervisory duties and the contracting.</p>	<p><u>Supervisory Body 1</u></p> <p>Name of body,</p> <ul style="list-style-type: none"> <input type="checkbox"/> Name of the institution <input type="checkbox"/> Responsible unit <input type="checkbox"/> Address <input type="checkbox"/> Telephone, fax <input type="checkbox"/> E-mail address <input type="checkbox"/> Title (Mr/Mrs) <input type="checkbox"/> Name and Surname <input type="checkbox"/> Position within the unit
<p><u>Controller's qualification</u></p> <p>Which minimum requirements (degrees, work experience, national qualifications, and/or registration in professional organisations) does the controller under the centralized system described above shall fulfil?</p>	

2.2 Decentralized Control System

Please describe the system.

- Will the beneficiary select a controller from a list of several public and/or private control bodies established on MS level beforehand

Or

- will the beneficiary propose an independent controller (internal or external), who is then authorized at central level before the first expenditure is reported and confirmed (please also refer to the guidance note established by the CU attached)?

In both cases, please explain the procedure for establishing the shortlist or authorizing the controller.

If appropriate, please give also examples of types of possible control bodies.

In case of use of shortlist of controllers, please provide the list (if not available yet, please indicate date of publication of shortlist).

For ESPON II the Austrian Federal Chancellery pursuant to national law (Agreement between the Republic of Austria and the Länder pursuant to Art. 15a of the Federal Constitutional Act on the Management and Control System in Austria for the EU Structural Funds in the period of 2007 – 2013; in the following: the Agreement between the Republic of Austria and the Länder) is the so called "coordinating control body" – which is assigned to coordinate the control tasks pursuant to art. 16 of regulation (EC) No. 1080/2006 and to serve as contacts for the relevant managing authorities, certifying authorities and audit authorities:

As regards the administration of control tasks the following has been established in abovementioned agreement (note that only the ESPON specific points are mentioned in the following):

- a) The control tasks are carried out by an appropriate body of the responsible federal ministry, if bodies within the authority or on behalf of the Republic of Austria participate in the programme as beneficiaries.
- b) The control tasks are carried out by an appropriate body of the responsible Land, if bodies within the authority or on behalf of a Land participate in the programme as beneficiaries.
- c) With all other beneficiaries the responsibility for the control lies with the Austrian Federal Chancellery.

The bodies mentioned under a) – c) can assign the operative implementation of the control to a "suitable third party" (external controllers). For controls in its own responsibility the Federal Chancellery will draw on a pool of external private controllers which will be established during the first quarter 2008 on the basis of a public tender procedure.

Possible costs for external controllers can be invoiced at the expense of the beneficiary. The liability for the correctness of the control pursuant to art. 70 § 2 of regulation (EC) No. 1083/2006 remains with the responsible federal or Land body, which thus has to issue the control certificates pursuant art. 15 § 1 of regulation (EC) No. 1080/2006.

As for the control bodies indicated under a) and b) the Federal Chancellery will establish within the next weeks a list of nominated controllers. The control bodies will have to sign a confirmation on the proper fulfilment of control task according to Article 13 of Regulation 1028/2006.

Finally, the Austrian representative in the monitoring committee must reach agreement with the control body and the competent coordinating control body pursuant to § 1 over the execution of control tasks, before the operation is approved.

<p><u>Controllers' qualification:</u></p> <p>Please explain the <u>minimum requirements</u> for a controller to act as Project partner/Lead partner controller (e.g. degrees, work experience, national qualifications, and/or registration in professional organisations).</p> <p>For the approbation/selection of controllers at central level, we suggest using the checklist provided in Annex 4 of the guidance note. Please confirm the use of this document or explain what kind of other document(s) (which has to be at least equivalent) you will use instead. Copy of the equivalent documents should be provided to the ESPON Coordination Unit.</p>	<p>For external controllers:</p> <ul style="list-style-type: none"> - Formal qualification (such as university degree) - Work experience in the field of financial control and audit (in particular certification of public expenditures) - Registration in professional organisations (Chamber for Certified Public Accountants, germ. Kammer der Wirtschaftstreuhänder) - Knowledge of EU regulatory framework for Structural Funds - Good understanding of English language <p>For internal controllers (within public administration):</p> <ul style="list-style-type: none"> - Long standing experience in controlling of public expenditures - Knowledge of EU regulatory framework for Structural Funds - Good understanding of English language - proven independence from the units that are implementing the project activities and are involved in the project management (included the financial management) <p>The Austrian Federal Chancellery will designate the controllers through the Annex 4 checklist. A signed copy of the Annex 4 checklist will be sent to the ESPON CU either by the Federal Chancellery or by the controller, or by the beneficiary controlled.</p>
<p><u>Contact details of the central approbation body</u></p> <p>Please indicate the contact details of the central body in charge of establishing the shortlist of selected control bodies or the body in charge of authorizing the controller proposed by a project partner.</p>	<p>The relevant body will be the same body as under Interreg III (2000-2006 period). It has relevant experience in the domain of the controls according to the Structural Funds regulations and has the necessary knowledge in EU legal framework, national rules and also Programme requirements.</p> <p>Austrian Federal Chancellery Division IV/4 Officer in charge of FLC: Luise FASCHING Telephone: 0043-1-53115-2915 FAX: 0043-1-53115-2180 e-mail: luise.fasching@bka.gv.at Ballhausplatz 2 1014 Vienna</p>

4. Separation of Functions

Please explain how your Member State will ensure a clear separation of functions between the different bodies having responsibilities for the management and control of project(s) and/or the programme. If appropriate, please provide an organisation chart to document the separation of functions between the bodies or units in charge of

- project activities and finances
- the verification of the project expenditure and delivery of the products and services (so-called "first level control" according to Article 16 of Regulation 1080/2006)
- the sample checks on operations (the so-called "second level audit" according to Article 14 (2) of Regulation 1080/2006 and Article 62 of Regulation 1083/2006)
- and project approval/Monitoring Committee representation (according to Article 63 of Regulation 1083/2006)?

Ad project activities and finances:

It is not predictable yet whether the Austrian Federal Chancellery Division IV/4 will take part in ESPON II as beneficiary. If so, the control certification pursuant to art. 15 § 1 of regulation (EC) No. 1080/2006 will be issued by a division other than IV/4.

Ad "first level control":

Controllers will be either external private companies assigned by the Federal Chancellery or internal controlling units in public bodies at regional or national level. The Division IV/4 of the Austrian Federal Chancellery will coordinate the process acc. to Art. 16 of Regulation (EC) No 1080/2006. Controllers will be independent from project activities and finances.

Ad "second level audit":

The Austrian Federal Chancellery Division IV/3 is responsible for second level control.

Ad project approval/Monitoring Committee:

One member of the MC will be nominated by the Division IV/4 of the Austrian Federal Chancellery. The second member will be a representative nominated by the Austrian Länder.

An organisation chart is set out in Annex 1

5. First Level Control Delays

How do you ensure that the first level control is carried out within 2 months after receipt of the documents?

Three months are requested by the regulation 1080/2006, but the Lead Partner will also need two months after reception of the certification from the Project Partners to establish its own certification. This will allow the project to present a reimbursement claim four months after the completion of the six months reporting period)?

The "Coordinating control body" will clearly communicate this deadline when designating the internal and external controllers. The contract the Federal Chancellery enters in with external controllers will foresee a clause to carry out the control work in due time.

6. Quality Assurance /Guidance to FLC bodies	
<p>The programme will establish</p> <ul style="list-style-type: none"> - ESPON control guidelines - a template for a FLC checklist - a template for a FLC report. - A control certificate inside the progress report to be signed by the FLC. <p>The use of these standardized documents will be obligatory.</p> <p>Have you provided any additional guidance to the body/bodies in charge of first level control to ensure sound financial control (such as written guidelines, training)</p> <p>If yes please provide</p> <ul style="list-style-type: none"> - the reference - the date - related documentation (if applicable). 	<p>There are regular training sessions and exchange of experience among the bodies in charge of FLC envisaged. As written guidance there are national eligibility rules available in German and English translation (see Annex 2).</p>
<p>Please describe how you will ensure that the guidance is followed and the requirements resulting Article 60 b) of Regulation (EC) No 1083/2006 and from the ESPON 2013 control guidelines and ESPON 2013 control certificate are respected.</p>	<ul style="list-style-type: none"> - Own ad hoc checks of Division IV/4; - Ongoing exchange of experience with controlling bodies; - Full information about results of 2nd level control by Division IV/3; <p>Concerning operations where the relevant control bodies do not have sufficient experience with control according to the requirements of the Structural Fund and thus do not seem to allow for a duly done control, the Federal Chancellery will ensure that</p> <ol style="list-style-type: none"> a) the necessary control criteria are disclosed to the control body or b) in agreement with all parties involved, a different suitable control body assumes the control including the liability for its correctness or c) the payment of funds from the Structural Fund is barred.

7. Control Cost

Who will pay for the control? Will it be provided for free (by the MS) or will the cost be borne by the Lead/Project partner and thus reported as eligible cost within the project?

If the control cost is borne by the beneficiary and to be reported as eligible project cost, please provide details on how the cost is calculated, what is the basis for the payment (e.g. service contract) and to whom it has to be paid.



Costs will be borne by the Lead/Project Partner and be reported as eligible costs within the project
Costs are calculated according to the tendering documents which will be elaborated by the Federal Chancellery for the purpose of establishing a pool of external private controllers. Further details have to be clarified.

Name, Title + Organisation of Signatory for the MS

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Place, Date and Stamp

Vienna, 18.12.2007



Revision, Förderungs- und Verwaltungskontrolle, Verwaltungskontrolle

Abt. I/8
Rechts- und Vergabeangelegenheiten

Abt. I/10
Geschäftsführung der Disziplinarkommission & der Berufungskommission

Abt. I/44

Abt. I/42

Kinder- & Jugendliteratur

Abt. I/7
Bildende Kunst, Architektur, Design, Mode

Abt. I/8
Förd. reg. Kultur- & Kunstinitiativen, Kulturzentren, multikulturelle Aktiv., Ber. spartenübergreif. Projekte

Abt. I/9
Kunstlegistik, EU-Koord. der Kunstsektion

Abt. I/10
Bi- & multilaterale kulturelle Auslandsangelegenheiten

Koordinat. der Informationstechnik

Abt. IV/12
Kooperationsprogramme & -projekte Österreichs mit MOEL & GUS

Volksgruppenangelegenheiten

Veterinärverwaltung

Strahlenschutzrecht

Wirtschaftliche Koordinat., OECD, Energiewesen, Umweltschutz, Nuklearangelegenh.



Unofficial English working translation

**General Eligibility Rules
for expenditure co-financed from the
European Regional Development Fund (ERDF)
in Austria**

**Manual
for beneficiaries and control bodies in Austria**

participating in the following transnational and network programmes under objective "European territorial cooperation" of the EU Structural Funds 2007-2013:

- Alpine Space
- Central Europe
- South-Eastern European Space
- INTERREG IVC
- ESPON
- URBACT
- INTERACT

edited by the Federal Chancellery in its function as coordinating control body pursuant to Art. 7 of the Agreement between the Republic of Austria and the *Länder* pursuant to Art. 15a of the Federal Constitutional Act on the Management and Control System in Austria for the EU Structural Funds in the period of 2007-2013 of April 2007 (BGBl. I No. ...)

Version: 23.10.2007

1. INTRODUCTION

Legal basis

Reference must be made to the following legislation when considering if, and under which conditions, expenditure within the framework of an operational programme of the European territorial objective may be co-financed by the European Regional Development Fund:

1. General EU Legislation

(a) the provisions of EU budgetary law, inasmuch as they are directly applicable to the EU Structural Funds ("shared management" by the Commission and the Member States);

(b) the Regulations for the EU Structural Funds in the current programme period;

2. Programme-specific rules which apply to project partners ("beneficiary") in all Member States participating in a programme within the European territorial cooperation (ETC) objective:

(a) the provisions of the respective operational programme as amended at the time the co-financing contract is approved;

(b) the provisions of any programme-specific eligibility rules jointly agreed by the project partners;

(c) any project-specific criteria pursuant to the co-financing contract;

3. Provisions of budgetary law of the Republic of Austria and the *Länder*:

(a) If a body under the jurisdiction or on behalf of the Republic of Austria participates in the project as the beneficiary, the provisions of budgetary law of the Republic of Austria shall apply

(b) If a body under the jurisdiction or on behalf of a *Land* participates in a project as the beneficiary, the provisions of budgetary law of the respective Land shall apply;

(c) If the project share of an Austrian beneficiary is cofinanced by subsidies from federal funds the Outline Directive for the Award of Federal Subsidies, issued by the Federal Ministry of Finance (BMF) (BGBl. II No. 51/2004) and, if appropriate, the applicable aid schemes shall apply;

(d) If the project share of an Austrian beneficiary is cofinanced by subsidies from a *Land*, any applicable aid schemes and/or the Outline Directives of the respective Land shall apply.

4. Provisions of EU law governing state aid:

If the (federal or *Land*) subsidies pursuant to 3 c and d are business subsidies within the meaning of Articles 87-89 of the Treaty on the European Union, the funding guidelines (state aid schemes) or individually notified subsidies must have been notified to the competition authorities and declared compatible with the single market.

5. Subsidiary National Eligibility Rules for Expenditure co-financed from ERDF in Austria:

These were – following lengthy deliberations with the most important funding agencies of the Republic of Austria and the *Länder* and in consultation with the ERDF audit authority and the Federal Ministry of Finance – jointly agreed for these programmes on 14.9.2007 by the Federal Chancellery as the ERDF-certifying authority and the managing authorities of the Austrian ERDF programmes within the objectives "Convergence" and "Regional Competitiveness and Employment" of the EU Structural Funds in Austria. Strictly speaking they are not legally binding for programmes within the territorial objective; however, - given the broad incorporation of the expertise gained in funding practice – they do provide something approximating a shared basic understanding of the relevant bodies in Austria and also provide solid guidance for project organisers and control bodies within the framework of ETC programmes . The

Federal Chancellery, in its function of coordinating control body for transnational and network programmes under the ETC objective, will therefore apply these rules also for assessing the orderly implementation of controls for these programmes.

As all binding laws apply in equal measure, in the event of inconsistencies between them the strictest rule in each case shall apply.

In the case of any remaining ambiguities the following order of precedence shall apply: Firstly, provisions of EU law (primarily the EU Regulations, followed by those of the operational programme, followed by any programme-specific funding eligibility rules, followed by project-specific criteria pursuant to the co-financing contract), secondly, the provisions of national budgetary law and, where appropriate, national aid schemes including those of the Federal Outline Directive or comparable legislation of the *Länder*, thirdly, the subsidiary ERDF eligibility rules for Austria.

Responsibility for controlling eligibility in Austria is regulated by the Agreement between the Republic of Austria and the *Länder* pursuant to Art. 15a of the Federal Constitution Act on the Management and Control System in Austria for the EU Structural Funds in the period 2007-2013 of April 2007 (BGBl. I No. ...).

General eligibility rules

This Manual summarises the following **general** provisions regarding the eligibility of expenditure and its control which apply to **all** programmes within the European territorial objective in **Austria** and – where in the interests of convenience – also provides explanations:

<i>Legal Basis</i>	<i>Abbreviation</i>
Council Regulation (EC, Euratom) No 1605/2002 of 25.6.2002 on the Financial Regulation applicable to the general budget of the European Communities, as amended by Council regulation No 1995/2006 from 13.12.2006	EU FinReg
Council Regulation (EC) No 1083/2006 of 11.7.2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999	General SFReg
Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5.7.2006 on the European Regional Development Fund (ERDF) and repealing Regulation (EC) No 1783/1999	ERDF Reg
Commission Regulation (EC) No 1828/2006 of 8.12.2006 Setting out rules for the implementation of Regulation (EC) No 1083/2006 and 1080/2006	ImplReg
Agreement between the Republic of Austria and the <i>Länder</i> pursuant to Art. 15a of the Federal Constitutional Act on the Management and Control System in Austria for the EU Structural Funds in the period of 2007-2013 of April 2007 (BGBl. I Nr. ...)	15a Agreement
Subsidiary national eligibility rules for expenditure co-financed from ERDF in Austria for ERDF programmes within objectives "Convergence – Phasing-out" and "Regional Competitiveness and Employment" of the EU Structural Funds in Austria - Version 01 (14.9.2007)	AT Elig. Rules ERDF

It does not therefore include any specific eligibility rules of single ETC programmes or the aid schemes of the Republic of Austria and the Austrian *Länder*.

In terms of content, the structure of this Manual is based on that of the National Funding Eligibility Rules for ERDF. Articles which are of no relevance for programmes within the European territorial objective have been omitted from the following summary.

Documentation and publicity

The National Contact Point for transnational and network programmes under objective "European territorial cooperation" established at the Secretariat of the Austrian Conference on Spatial Planning (ÖROK) will inform funding applicants and project partners from Austria regarding the applicable general and programme-specific selection criteria and eligibility rules in an appropriate manner.

The Federal Chancellery as the co-ordinating control body in Austria for the transnational and network programmes under the European Territorial Co-operation objective will – subject to the availability of information – attempt to review over the entire programming period which legal basis applied to the granting of ERDF funding for the respective project and individual activities.

2. BUDGETARY PRINCIPLES

Principle of Legality

EU FinReg Article 49 (1)

A basic act shall first be adopted before the appropriations entered in the budget for any action by the Communities or by the European Union may be used.

A basic act is a legal act which provides a legal basis for the action and for the implementation of the corresponding expenditure entered in the budget.

General SFReg, Article 56

(3) Expenditure shall be eligible for a contribution from the Funds only where incurred for operations decided on by the managing authority of the operational programme concerned or under its responsibility, in accordance with criteria fixed by the monitoring committee.

New expenditure, added at the moment of the modification of an operational programme referred to in Article 33, shall be eligible from the date of the submission to the Commission of the request for modification of the operational programme.

General SFReg, Article 2

For the purposes of this Regulation, the following terms shall have the meanings assigned to them here:

(7) '**irregularity**': any infringement of a provision of Community law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the European Union by charging an unjustified item of expenditure to the general budget.

AT Elig. Rules ERDF, Article 3

Expenditure shall only be eligible for funding from the European Regional Development Fund, if –

- a) the assistance is based on a **funding decision**, which was made **in a legal manner** on the basis of the procedures for processing applications and selection by the competent body,
- b) the funding criteria were **agreed** with the beneficiary with **legally binding effect** and
- c) the project to be financed will be carried out in accordance with the applicable Community and National **legislation**.

Principle of sound financial management*EU FinReg, Article 27*

1. Budget appropriations shall be used in accordance with the principle of sound financial management, namely in accordance with the principles of economy, efficiency and effectiveness.
2. The principle of **economy** requires that the resources used by the institution for the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price. The principle of **efficiency** is concerned with the best relationship between resources employed and results achieved. The principle of **effectiveness** is concerned with attaining the specific objectives set and achieving the intended results.

AT Elig. Rules ERDF, Article 4

- (1) In accordance with the principles of economy, efficiency and effectiveness (Art. 27, Council Regulation No. 1605/2002) expenditure shall only be eligible for funding inasmuch as it is commensurate in terms of its type and amount for achieving the purpose of the project as laid down in the respective operational programme or in the funding guideline. The commensuratness of the co-financing is (taking into account Paragraph 2) and in accordance with the specific circumstances in each case (amount of assistance, type of beneficiary, industry etc.) to be verified, especially with regard to such projects where more than 50%¹ of the funding is provided by ERDF and/or matching funds provided by the Republic of Austria or the *Länder*.
- (2) The administrative management and control of ERFD co-financing must also take into account the principles of economy, efficiency and effectiveness. ...

In order to limit to an acceptable degree the time required to verify the eligibility of expenditure in the interests of both the beneficiary (project organiser) and the bodies involved with the verification process, the Federal Chancellery as the co-ordinating control body for the transnational and network programmes within the European territorial cooperation objective is considering the following approach for these programmes in Austria – similar to the further provisions of the aforementioned Art. 4 Paragraph 2 of the national eligibility rules for ERDF cofinance within the objectives “Convergence” and “Regional Competitiveness and Employment”:

- a) If possible the beneficiaries (Austrian project partners) must be notified of the type, appropriate amount and area of expenditure which is eligible for co-financing under the various relevant laws as soon as the project is approved. If this is not done by the

¹ See § 21 para. 2 point 9 of the Outline Directive for the Award of Federal Subsidies, BGBl. II No. 51/2004: “predominantly.”

- managing authority in the ERDF co-financing contract, the Federal Chancellery as the co-ordinating control body shall provide this information in consultation with the respective competent Austrian control body which, pursuant to Art. 7 para. 2 of the Agreement between the Republic of Austria and the *Länder* according to Article 15a of the Federal Constitutional Act on the Management and Control System in Austria for the EU Structural Funds in the period 2007-2013, is responsible for the control pursuant to Art. 13 of the Commission Regulation (EC) No. 1828/2006 (First Level Control). In particular it must be stated which expenditure is definitely not eligible for co-financing. Attention must be explicitly drawn to the necessity for accounting on the basis of documented costs and (if applicable) compliance with legislation regarding public procurement.
- b) The Austrian control body may agree with the beneficiary that expenditure of a type, which experience has shown results in disproportionately² high administrative and/or control expenses in order to obtain documentary evidence and/or verify its eligibility, shall be excluded from ERDF co-financing, even if it was in principle eligible under EU legislation or the common programme-specific funding guideline.

Basically these budgetary principles could suffice for the appraisal of eligibility if all project partners and controllers (a) understood the same terms to mean the same thing, (b) had a detailed knowledge of cost accounting and book-keeping and (c) were willing to choose a restrictive interpretation in cases of doubt. As this is not the case, all eligibility rules try to reduce administrative discretion (which has sometimes been criticised as bureaucratic), and consequently uncertainty, by means of more detailed provisions.

3. BASIC ELIGIBILITY RULES

General SFReg, Article 56 Eligibility of expenditure

- (1) Expenditure, including for major projects, shall be eligible for a contribution from the Funds if it has actually been paid between the date of submission of the operational programmes to the Commission or from 1 January 2007, whichever is earlier, and 31 December 2015. Operations must not have been completed before the starting date for eligibility.
- (2) By way of derogation from paragraph 1, in-kind contributions, depreciation costs and overheads may be treated as expenditure paid by beneficiaries in implementing operations under the following conditions:
- the eligibility rules laid down under paragraph 3 provide for the eligibility of such expenditure;
 - the amount of the expenditure is justified by accounting documents having a probative value equivalent to invoices;

² It is certainly "disproportionate" if the estimated time and expense (processing time * estimated costs per unit of time) for processing (by the beneficiary) and control (by the funding agency) are approximately as high as or even higher than the co-financing to be obtained (Expenditure * subsidy rate). This is especially true of overheads, certain categories of relatively low expenditure which are hard to allocate proportionally to specific projects (e.g. for photo-copying, telephone), work on a small scale, entertainment expenses with an image-building nature or foreign VAT for petty expenses (e.g. bus tickets and taxi bills).

- c) in the case of in-kind contributions, the co-financing from the Funds does not exceed the total eligible expenditure excluding the value of such contributions.

(3) Expenditure shall be eligible for a contribution from the Funds only where incurred for operations decided on by the managing authority of the operational programme concerned or under its responsibility, in accordance with criteria fixed by the monitoring committee.

New expenditure, added at the moment of the modification of an operational programme referred to in Article 33, shall be eligible from the date of the submission to the Commission of the request for modification of the operational programme.

(4) The rules on the eligibility of expenditure shall be laid down at national level subject to the exceptions provided for in the specific Regulations for each Fund. They shall cover the entirety of the expenditure declared under the operational programme.

ERDF Reg, Article 13

Rules on eligibility of expenditure [for ETC programmes]

The relevant national rules agreed by the participating Member States in an operational programme under the European territorial cooperation objective shall apply to determine the eligibility of expenditure except where Community rules are laid down.

The Commission shall lay down, in accordance with Article 56(4) of Regulation (EC) No 1083/2006 and without prejudice to Article 7 of this Regulation, common rules on the eligibility of expenditure in accordance with the procedure referred to in Article 103(3) of Regulation (EC) No 1083/2006.

Where Article 7 provides for different rules of eligibility of expenditure in different Member States³ participating in an operational programme under the European territorial cooperation objective, the most extensive eligibility rules shall apply throughout the programme area.

AT Elig. Rules ERDF, Article 5

Expenditure actually paid

(1) Expenditure shall be eligible for a contribution from the Funds only if it has actually been paid for the purpose of implementing operations and unless arrangements to the contrary are set out below.⁴

(2) Contributions in kind, depreciation costs and overhead costs incurred by the beneficiaries for the purpose of implementing operations may be treated as eligible pursuant to the conditions set out in Art. 51 to 53 Regulation (EC) No. 1828/2006 in accordance with Art. 56 para. 2 of Regulation (EC) Nr. 1083/2006 unless the provisions of Art. 4 para. 2 [= inappropriately high cost for the provision and verification of documentary evidence] bar this.

(3) ...

(4) Generally the expenditure actually paid by the beneficiary must be documented by invoices including payment receipts (each in original). In cases in which this is not possible, the expenditure

³ This applies only to the eligibility of expenditure on housing, which – pursuant to Article 7(2) ERDF Reg - is restricted to new Member States.

⁴ EU law does not in principle forbid the agreement of lump-sum rates as a means of avoiding disproportionate administrative and/or auditing expense for categories of spending which are difficult to verify (see also Art. 108a of EU Financial Regulation No. 1995/2006). However, they are only compatible with Art. 56 of Regulation No. 1083/2006 ("Co-Financing only for expenses actually paid") if – through suitable calculations and documents – it can be proven that the lump-sum rate is under no circumstances higher than the eligible expenditure actually incurred in this category of expenditure on average within the framework of an activity or operational programme. However, due to this obligation to produce supporting documents the administrative simplification that could be achieved is only obtained if the lump-sum arrangement can be applied to a large number of similar cases.

must be documented by means of accounting documents having a probative value equivalent to invoices⁵ or tamper-proof electronic documents.

ImplReg, Article 51
In-kind contributions

1. In-kind contributions of a public or private beneficiary shall be eligible expenditure if they fulfil the following conditions:

- a) they consist of the provision of land or real estate, equipment or raw materials, research or professional work or unpaid voluntary work;
- b) their value can be independently assessed and audited.

2. In the case of the provision of land or real estate, the value shall be certified by an independent qualified valuer or duly authorised official body.

3. In the case of unpaid voluntary work, the value of that work shall be determined taking into account the time spent and the hourly and daily rates of remuneration for equivalent work.

ImplReg, Article 52
Overheads

See chapter 4

ImplReg, Article 53
Depreciation

See chapter 5

ERDF Reg, Article 7
[non-eligible expenditure]

- (1) The following expenditure shall not be eligible for a contribution from the ERDF:
- a) interest on debt;
 - b) the purchase of land for an amount exceeding 10% of the total eligible expenditure for the operation concerned. In exceptional and duly justified cases, a higher percentage may be permitted by the managing authority for operations concerning environmental conservation;
 - c) decommissioning of nuclear power stations;
 - d) recoverable value added tax.

ImplReg, Article 49

... Fines, financial penalties and expenditure on legal disputes shall not be eligible.

⁵ e.g. Materials requisition slips, personnel account form plus documentation of the corresponding payments or confirmation of receipt from the recipient etc.

AT Elig. Rules ERDF, Article 6
Non-eligible expenditure

(1) The following expenditure [in addition to those types stated in Art. 7 para. 1 of the ERDF Regulation] shall not be eligible for funding:

- a) The purchase of moveable goods that are not clearly project related⁶
- b) Entertainment costs⁷
- c) Expenditure invoiced to third parties and thus not borne by the project organiser;
- d) Invoiced expenditure which cannot be clearly allocated to one of the beneficiaries (project partner)⁸
- e) Invoiced costs which do not conform to the authorised content of the project
- f) Double invoicing of costs
- g) Unpaid sub-amounts of invoices (e.g. claims for damages, guarantees, discounts etc.).

(2) Expenditure relating to the following sub-contracts is ineligible for co-financing by the Structural Funds:

- a) Sub-contracts which add to the cost of execution without adding recognisable value;
- b) Sub-contracts in which the payment is defined as a percentage of the total cost of the operation, unless such payment is justified by the beneficiary.

(3) Expenditures for internal working meals of the project organiser and entertainment costs related to investment projects shall not be eligible. Expenditure for catering at events with third parties to a reasonable extent shall be eligible in relation to projects which have as their subject public information, networking and the exchange of experience, provided that the project-specific necessity (with a statement of the particulars of the event including an attendance list) and the commensurateness of the costs and the qualitative standard (by means of sufficiently detailed invoice) can be plausibly justified and this evidence does not violate the provisions of Art. 4 para. 2 lit. b.

Note: The programme-specific eligibility rules of several ETC programmes contain additional specific categories of expenditure which are generally ineligible for ERDF co-financing (in order to, inter alia, meet the criteria of the proportionality of the administrative and control expenses).

[Prohibition of Excessive Funding and Multiple Funding from EU Funds]

General SFReg, Article 54

- (3) During the period of eligibility referred to in Article 56(1):
- a) a priority axis may receive assistance from only one Fund and one objective at a time;
 - b) an operation may receive assistance from a Fund under only one operational programme at a time;
 - c) an operation shall not receive an assistance from a Fund higher than the total public expenditure allocated.

(4) ...

⁶ e.g. china/cutlery; mobile telephones, vehicles

⁷ e.g. flowers, gifts

⁸ e.g. invoices addressed to another person or institution or invoices not paid by the beneficiary

(5) An expenditure co-financed by the Funds shall not receive assistance from another Community financial instrument.

General SFReg, Article 56

(2) ...

- c) in the case of in-kind contributions, the co-financing from the Funds [must] not exceed the total eligible expenditure excluding the value of such contributions.

AT Elig. Rules ERDF, Article 7

Contracting

(1) Beneficiaries which meet the criteria of a "public principal" within the meaning of Art. 1 para. 9 of the Directive 2004/18/EC must comply with the provisions of legislation governing public procurement.

(2) In projects where (calculated according to cash value) more than 50% of the funding is provided by ERFD and/or matching funds provided by the Republic of Austria or the *Länder*, and even if public procurement law does not apply, it must be ascertained that expenditure for contracting supplies and services reflects the usual market rates (e.g. by requesting comparable offers from other providers, insofar as it is practical to do so given the estimated order value and the type of supplies and services contracted; further offers do not have to be obtained if the same services are commissioned several times in a row at the same conditions and comparability with usual market rates has already been confirmed).

(3) In the case of projects where (calculated according to cash value) more than 50% of the funding is provided by ERFD and/or matching funds provided by the Republic of Austria or the *Länder*, internal transactions between formally independent legal entities which are nevertheless related in terms of staff and functions (e.g. identity of the owners or association bodies, parent companies and subsidiaries etc.) and where public procurement law does not apply, may only receive funding for the documented cost price invoiced excluding any surcharges. If these cannot be established at reasonable effort and expense, the costs of the internal transaction must be verifiably lower than those of commissioning to external providers.

General SFReg, Article 55

Revenue-generating projects

(1) For the purposes of this Regulation, a revenue-generating project means any operation involving an investment in infrastructure the use of which is subject to charges borne directly by users or any operation involving the sale or rent of land or buildings or any other provision of services against payment.

(2) Eligible expenditure on revenue-generating projects shall not exceed the current value of the investment cost less the current value of the net revenue from the investment over a specific reference period for

- a) investments in infrastructure; or
b) other projects where it is possible to objectively estimate the revenues in advance.

Where not all the investment cost is eligible for co-financing, the net revenue shall be allocated pro rata to the eligible and non-eligible parts of the investment cost.

In the calculation, the managing authority shall take account of the reference period appropriate to the category of investment concerned, the category of project, the profitability normally expected of the

category of investment concerned, the application of the polluter-pays principle, and, if appropriate, considerations of equity linked to the relative prosperity of the Member State concerned.

(3) Where it is objectively not possible to estimate the revenue in advance, the revenue generated within five years of the completion of an operation shall be deducted from the expenditure declared to the Commission. The deduction shall be made by the certifying authority at the latest at partial or at final closure of the operational programme. The final payment claim shall be corrected accordingly.

(4) Where, at the latest three years after closure of the operational programme, it is established that an operation has generated revenue that has not been taken into account under paragraphs 2 and 3, such revenue shall be refunded to the general budget of the European Union in proportion to the contribution from the Funds.

(5) Without prejudice to their obligations under Article 70(1), Member States may adopt procedures proportionate to the amounts concerned for monitoring revenues generated by operations whose total cost is below EUR 200 000.

[Relation to EU legislation on State aid]

General SFReg, Article 54

(4) For State aid to enterprises within the meaning of Article 87 of the Treaty, public aid granted under operational programmes shall observe the ceilings on state aid.

General SFReg, Article 55

(6) This Article [on revenue generating projects] shall not apply to projects subject to the rules on state aid within the meaning of Article 87 of the Treaty.

4. THEMATIC PRIORITIES OF ERDF

The National Eligibility Rules for ERDF in Austria contain no general provisions whatsoever with regard to the thematic priorities of ERDF funding. The thematic eligibility criteria for projects in Austria rather ensue from the provisions of the ERDF Regulation, although not from these alone but only in combination with the priorities of the respective operational programme (which in turn must be consistent with the ERDF Regulation).

However, as in practice, questions repeatedly arise regarding the eligibility for ERDF assistance of specific subjects of funding, the relevant articles of the ERDF Regulation are set out below for the sake of completeness.

ERDF Reg, Article 3 **Scope of assistance**

(1) The ERDF shall focus its assistance on thematic priorities. The type and range of actions to be financed within each priority shall reflect the different nature of the Convergence, Regional

competitiveness and employment and European territorial cooperation objectives in accordance with Articles 4, 5 and 6.

(2) The ERDF shall contribute towards the financing of:

- a) productive investment which contributes to creating and safeguarding sustainable jobs, primarily through direct aid to investment primarily in small and medium-sized enterprises (SMEs);
- b) investment in infrastructure;
- c) development of endogenous potential by measures which support regional and local development. These measures include support for and services to enterprises, in particular SMEs, creation and development of financing instruments such as venture capital, loan and guarantee funds, local development funds, interest subsidies, networking, cooperation and exchange of experience between regions, towns, and relevant social, economic and environmental actors;
- d) technical assistance as referred to in Articles 45 and 46 of Regulation (EC) No 1083/2006.

The range of investments and measures listed above under points (a) to (d) shall be available to implement the thematic priorities in accordance with Articles 4, 5 and 6.

ERDF Reg, Article 6 **European territorial cooperation**

Under the European territorial cooperation objective, the ERDF shall focus its assistance on the following priorities:

1. the development of **cross-border** economic, social and environmental activities through joint strategies for sustainable territorial development, and primarily:
 - a) by encouraging entrepreneurship, in particular the development of SMEs, tourism, culture, and cross-border trade;
 - b) by encouraging and improving the joint protection and management of natural and cultural resources, as well as the prevention of natural and technological risks;
 - c) by supporting links between urban and rural areas;
 - d) by reducing isolation through improved access to transport, information and communication networks and services, and cross-border water, waste and energy systems and facilities;
 - e) by developing collaboration, capacity and joint use of infrastructures in particular in sectors such as health, culture, tourism and education.

In addition, the ERDF may contribute to promoting legal and administrative cooperation, the integration of cross-border labour markets, local employment initiatives, gender equality and equal opportunities, training and social inclusion, and sharing of human resources and facilities for R&TD.

As regards the PEACE Programme between Northern Ireland and the border counties of Ireland as envisaged under paragraph 22 of Annex II to Regulation (EC) No 1083/2006, the ERDF shall in addition to the abovementioned actions contribute to promote social and economic stability in the regions concerned, notably by actions to promote cohesion between communities;

2. the establishment and development of **transnational** cooperation, including bilateral cooperation between maritime regions not covered under point 1, through the financing of networks and of actions conducive to integrated territorial development, concentrating primarily on the following priority areas:
 - a) innovation: the creation and development of scientific and technological networks, and the enhancement of regional R&TD and innovation capacities, where these make a direct contribution to the balanced economic development of transnational areas. Actions may include: the establishment of networks between appropriate tertiary education and research institutions and SMEs; links to improve access to scientific knowledge and technology transfer between R&TD facilities and international centres of RTD excellence; twinning of

- technology transfer institutions; and development of joint financial engineering actions directed at supporting R&TD in SMEs;
- b) environment: water management, energy efficiency, risk prevention and environmental protection activities with a clear transnational dimension. Actions may include: protection and management of river basins, coastal zones, marine resources, water services and wetlands; fire, drought and flood prevention; the promotion of maritime security and protection against natural and technological risks; and protection and enhancement of the natural heritage in support of socio-economic development and sustainable tourism;
 - c) accessibility: activities to improve access to and quality of transport and telecommunications services where these have a clear transnational dimension. Actions may include: investments in cross-border sections of trans-European networks; improved local and regional access to national and transnational networks; enhanced interoperability of national and regional systems; and promotion of advanced information and communication technologies;
 - d) sustainable urban development: strengthening polycentric development at transnational, national and regional level, with a clear transnational impact. Actions may include: the creation and improvement of urban networks and urban-rural links; strategies to tackle common urban-rural issues; preservation and promotion of the cultural heritage, and the strategic integration of development zones on a transnational basis.

Assistance to bilateral cooperation between maritime regions may be extended to the priorities referred to in point 1;

3. reinforcement of the effectiveness of regional policy by promoting:
 - a) interregional cooperation focusing on innovation and the knowledge economy and environment and risk prevention in the sense of Article 5(1) and (2);
 - b) exchanges of experience concerning the identification, transfer and dissemination of best practice including on sustainable urban development as referred to in Article 8; and
 - c) actions involving studies, data collection, and the observation and analysis of development trends in the Community.

5. SPECIFIC ELIGIBILITY RULES FOR RUNNING COSTS

AT Elig. Rules ERDF, Article 8 Staff costs

(1) Eligible staff costs are gross salaries and the related social security contributions for those employees of the beneficiary who work on the co-financed project. Other payments or cash equivalents for personnel shall only be eligible if they have a formal legal basis (law or contract). Payments to employees without such a legal basis⁹ are ineligible.

(2) The commensurateness of staff costs pursuant to Paragraph 1 for projects where (calculated according to cash value) more than 50% of the funding is provided by ERFD and/or matching funds provided by the Republic of Austria or the *Länder* must be verified with regard to the qualifications of the personnel and those qualifications required for the services to be carried out for the project.¹⁰ If co-

⁹ e.g. voluntary bonus payments, company car and other individual gratuities

¹⁰ Comparable publicly-funded services (e.g. public sector wage levels) must be used as criteria. If staff costs substantially and for no justifiable reason (e.g. surcharges for special qualifications or service abroad) exceed the comparable level to be considered commensurate in terms of price (wage level in relation to standard local costs for the same qualifications; qualifications in relation to the requirements of the projects) and/or quantity (number of staff and time required in relation to the requirements of the project), the part of the expenditure which exceeds the acceptable level cannot be recognised as eligible.

financing from ERFD Funds is granted in combination with national funds provided by the Republic of Austria or one of the *Länder*, verification of commensurateness and any related funding ceiling in this regard shall be carried out according to the budgetary rules of the Republic of Austria or the respective *Land*.

- (3) Besides the exceptional cases pursuant to Paragraphs 4 and 5, evidence must also be furnished of actual payments made in relation to staff costs (net salary payments to employees, payments of taxes and contributions to the tax office and social insurance funds etc.).
- (4) In the case of company severance payments (provided they have a legally binding basis in either law or contract and their funding is not precluded or otherwise regulated by stricter provisions of the budgetary law of the Republic of Austria governing the respective funding agency) it is not the payment itself but the expense entry for the pro rata accrual of the legal claim during the assisted term of the project that must be invoiced.
- (5) Voluntary unpaid work (Art. 51 Paragraph 3 of Regulation No. 1828/2006) must be valued at hourly or daily rates which (to take account of the voluntary element) must be significantly below the usual market time-wages. These rates should already be laid down in the ERDF co-financing agreement.¹¹ Lump-sum standard rates for fees (e.g. as recommended in guidelines of the Chambers) may not be accepted as they include calculatory cost elements. If unpaid work is taken into account in the eligible costs, the ERDF co-financing pursuant to Art. 56 Paragraph 2 c of Regulation No. 1083/2006 may under no circumstances be higher than the actual cash items. Gratuitous services must therefore be identified as such in the settlement of accounts.
- (6) The eligibility of staff costs is undisputed if staff is employed entirely and exclusively for a single project co-financed under only one programme. In those cases in which staff is employed only in part for a specific project and, at the same time, also for other projects with EU co-financing or in other work that does not receive co-financing, evidence of the project-specific services and eligible staff costs must be furnished as follows:
- a) Transparent records of the working hours for the entire work period of the individuals participating in the project with an authoritative description of the assisted activities allocated to the individual projects; the total volume must be credible and a well-founded explanation must be provided for work which significantly exceeds normal working hours;
 - b) Calculation of an average daily or hourly rate for each individual participating in the project arrived at by dividing the total staff costs (salary including any remuneration for overtime and social security contributions) by the total number of working hours (including overtime). This means that any remuneration for overtime must be allocated proportionally to single projects and not in its entirety or overproportionally.¹²
- (7) Costs for public sector employees (e.g. university lecturers) shall only be recognised as eligible if double-invoicing at the expense of public budgets can be ruled out.

¹¹ Self-employed private beneficiaries who do not have contractually regulated salary costs which are effective as payment (the same applies to persons who work outside their regular employment as private project partners on a co-financed project), may apply for funding for acceptable staff costs providing they furnish well-documented evidence of the "opportunity costs" ("what would it cost if the service were rendered by a dependent employee?") On account of the considerable problems which arise in connection with the evidence to be furnished, this type of project partnership should be avoided as far as possible.

¹² It is generally advisable to calculate the daily or hourly rates on the basis of the actual costs. If in order to cancel out fluctuations in the actual working time (due to illness or differing consumption of vacation time) the average working time over a period of several years is to be taken as the basis for the calculation, this must be done separately for each employee and must also take into account the actual time worked in the reference years. Standard rates for actual working time per year are only permissible if estimates are sufficiently high (approximately more than 2,200 hours per year) to ensure that the actual working time is definitely lower. At any rate, the benchmarks usually used to calculate staff costs (in the magnitude of 1,600-1,700 hours per year) are not suitable for such calculations.

- a) If the assisted work is conducted outside the scope of the employment contract on a fee-basis, evidence must be furnished that the public sector employer has agreed to this secondary employment and that the scope and required attendance for the work on the project are obviously outside regular working hours (i.e. on weekends and holidays)
- b) If the work is carried out during regular working hours, the public sector employer must be proportionately reimbursed – on the basis of time-sheets – from the project budget.

ImplReg, Article 52

Overheads

Overheads shall be eligible provided they are based on real costs attributable to the implementation of the operation concerned or on the average real costs attributable to operations of the same type.

Flat rates based on average costs may not exceed 25% of those direct costs of an operation which can affect the level of overheads. The calculation of flat rates shall be properly documented and periodically reviewed.

AT Elig. Rules ERDF, Article 9

Overheads

(1) Any additional payments for overhead costs (e.g. for rent, power, cleaning, office supplies, secretariat) are basically eligible for funding – unless barred by the provisions of Art. 4 para. 2 [= inappropriately high cost for the furnishing and verification of documentary evidence] subject to the following conditions:

- a) The allocation of the overhead costs must be transparent and plausible. The overhead costs must be allocated (e.g. according to working hours, salaries, office space) to all cost centres for the whole company or public institution and not only to single co-financed projects.
- b) Overhead costs allocated to a ERDF co-financed project must not contain costs which are not eligible for ERDF co-financing (e.g. financing costs, calculatory costs).
- c) Overhead costs must not contain costs which are also calculated as direct project costs.

(2) Evidence of overhead costs must also be furnished in the form of actual payments. If a project is discontinued during the financial year before the annual balance sheet has been prepared, invoice data from the previous year may be used if justifiable. In the case of interim accounts planning data may be used; in the final accounts these must be replaced by the actual data and the interim accounts corrected.

AT Elig. Rules ERDF, Article 10

Travel costs

(1) Travel expenses (per diem payments, accommodation and transportation costs) are eligible if they are recognised as operating expenses according to Austrian tax legislation or correspond to the relevant legal provisions for civil servants.

(2) In the case of projects where (calculated according to cash value) more than 50% of funding is provided by ERFD and/or matching funds provided by the Republic of Austria or the *Länder*, travel expenses pursuant to Paragraph 1 must be assessed to verify that they are commensurate.¹³ If co-

¹³ The following criteria must be observed when verifying the commensurate nature of expenditure:

- a) Business travel is defined as travel from the workplace to the destination where work is to be carried out and back, unless it is cheaper to travel from home to the destination where work is to be carried out.

financing from ERDF is granted in combination with national funds provided by the Republic of Austria or one of the *Länder*, verification of commensurateness and any related funding ceiling shall be carried out according to the relevant budgetary rules of the Republic of Austria or the respective *Land*.

(3) Invoice amounts for private consumption are not eligible as travel costs.

(4) The travel time claimed for the per diem allowance for the assisted project must be grounded in the facts (e.g. duration of an event) and must match the travel documentation (e.g. flight times). The prolongation of a trip in order to benefit from cheaper flight prices is permissible provided it does not lead to an increase in costs.

ImplReg, Article 49

Financial charges and guarantee costs

The following charges and costs shall be eligible from a contribution from the ERDF:

- a) Charges for transnational financial transactions;
- b) where the implementation of an operation requires a separate account or accounts to be opened, the bank charges for opening and administering the account or accounts;
- c) legal consultancy fees, notarial fees, costs of technical and financial experts, and accountancy and audit costs, if they are directly linked to the co-financed operation and are necessary for its preparation or implementation or, in the case of accounting and audit costs, if they relate to requirements imposed by the managing authority;
- d) the cost of guarantees provided by a bank or other financial institution to the extent to which the guarantees are required by national or Community legislation.

Fines, financial penalties and expenditure on legal disputes shall not be eligible.

ImplReg, Article 50

Expenditure by public authorities relating to the implementation of operations

1. In addition to technical assistance for the operational programme pursuant to Article 46 of Regulation (EC) No 1083/2006, the following expenditure paid by public authorities in the preparation or implementation of an operation shall be eligible:
 - a) the costs of professional services provided by a public authority other than the beneficiary in the preparation or implementation of an operation;
 - b) the costs of the provision of services relating to the preparation and implementation of an operation provided by a public authority that is itself the beneficiary and which is executing an operation for its own account without recourse to outside service-providers.
2. The public authority concerned shall either invoice the costs referred to in point (a) of paragraph 1 to the beneficiary or certify those costs on the basis of documents of equivalent probative value which permit the identification of real costs paid by that authority for that operation.

3. The costs referred to in paragraph 1 (b) shall be eligible if they are additional costs and relate either to expenditure actually and directly paid for the co-financed operation or to in-kind contributions, as referred to in Article 51.

- b) Wherever possible means of mass transport with the lowest fares must be used on the shortest route. Costs which are not in line with this principle must be explained in writing on the corresponding receipts.
- c) In the case of justified use of one's own car or a company car project-related travel must be documented in a log book and the mileage allowance charged must be in accordance with recognised tax regulations. Recognition may be denied in the case of an inadequate or implausible explanation. This mileage allowance includes all costs relating to the use of the vehicle (i.e. toll fees, parking fees, insurance etc.) and these must not be additionally invoiced.

Those costs shall be certified by means of documents which permit the identification of real costs paid or in-kind contributions provided by the public authority concerned for that operation.

6. SPECIFIC ELIGIBILITY RULES FOR PHYSICAL INVESTMENTS

AT Elig. Rules ERDF, Article 11

Purchase of new equipment

- (1) Subject to the exceptions indicated in Paragraph 2 the net amount of expenditure for purchasing new equipment less any discounts offered shall be eligible for funding, provided the equipment was purchased from third-parties at market prices. In the case of beneficiaries that prepare balance sheets this expenditure must be capitalised as assets.
- (2) Provided they are clearly traceable, payments between affiliated companies
 - a) for assets manufactured within the group shall be eligible provided that the amounts of the payments do not exceed the current net market value of such an underlying asset. In case of doubt, proof must be furnished by the beneficiary.
 - b) for assets which are passed on without the creation of any additional value shall be eligible up to the amount of the documented production costs without surcharges.

AT Elig. Rules ERDF, Article 12

Purchase of second-hand equipment

Unless explicitly precluded by the individual aid schemes ... the purchase costs of second-hand equipment shall be eligible under the following three conditions:

- a) The seller of the equipment shall provide a declaration stating its origin, and confirm that at no point during the previous seven years has it been purchased with the aid of national or Community grants,
- b) the price of the equipment shall not exceed its market value and shall be less than the cost of similar new equipment, and
- c) the equipment shall have the technical characteristics necessary for the operation and comply with applicable norms and standards.

AT Elig. Rules ERDF, Article 13

Purchase of land and real estate

Unless explicitly precluded by the individual funding guidelines pursuant to Art. 1 Paragraph 1 No. 3 the purchase costs of land and buildings shall be eligible for funding under the following conditions and within the limits laid down in Art. 7 para. 1b of the Council Regulation (EC) No. 1080/2006:

- a) There shall be a direct link between the purchase and the objectives of the co-financed project;
- b) a certificate shall be obtained from an independent qualified valuer or duly authorised official body confirming that the purchase price does not exceed the market value;
- c) The building shall not have received within the previous ten years a national or Community grant which would give rise to a duplication of aid in the event of co-financing of the purchase by the Structural Funds.

AT Elig. Rules ERDF, Article 14
Other provisions concerning the eligibility of investments

(1) Own performances of the beneficiary for the production of equipment shall be eligible provided they can be documented with records (e.g. transparent and authoritative time-sheets, wage lists, materials requisition slips, calculation) and their valuation complies with the provisions of Articles 5 to 8 in terms of personnel and material costs. In the case of beneficiaries that prepare balance sheets this expenditure must be capitalised; evidence of this must be furnished in the form of a certificate from an auditor, business trustee or tax consultant.

(2) If running activities of the beneficiary/beneficiaries constitute the subject of the funding, expenditure for the purchase of any equipment according to Art. 11 to 13¹⁴ that is necessary for these running activities shall only be proportionally eligible (depreciation for the duration of the project) and not in its entirety.

ImplReg, Article 53
Depreciation

The depreciation expenditure of depreciable assets directly used for an operation, and incurred during the period of its co-financing, shall be eligible, provided that the acquisition of the assets is not declared as eligible expenditure.

7. ELIGIBILITY RULES FOR FINANCING INSTRUMENTS

Articles 15 (on venture capital and loan funds) and 16 (on guarantee funds) of the AT Elig. Rules ERDF are not relevant for ETC programmes.

AT Elig. Rules ERDF, Article 17
Leasing

(1) Expenditure by a beneficiary as lessee shall be eligible within the scope of the Structural Funds subject to the following conditions:

1. The leasing payments paid to the lessor by the lessee, supported by a receipted invoice or an accounting document of equivalent probative value, constitute the expenditure eligible for co-financing.
2. In the case of leasing contracts which include an option to purchase or which provide for a minimum leasing period equal to the useful life of the asset to which the contract relates, the maximum amount eligible for Community co-financing shall not exceed the market value of the asset leased. Other costs connected with the leasing contract (tax, lessor's margin, interest refinancing costs, overheads, insurance charges etc) do not constitute eligible expenditure.
3. The Community aid in respect of leasing contracts referred to under point 2 is paid to the lessee in one or more tranches on the basis of leasing payments effectively paid. Where the term of the leasing contract exceeds the final date for taking account of payments under the Community assistance, only expenditure in relation to leasing payments falling due and paid by the lessee up to the final date for payment under the assistance can be considered eligible.

¹⁴ e.g. Investments in office furnishings: purchase of equipment for research projects

4. In the case of leasing contracts which do not contain an option to purchase and whose duration is less than the period of the useful life of the asset to which the leasing contract relates, the leasing rentals are eligible for co-financing by the Community in proportion to the period of the eligible operation. However, the lessee must be able to demonstrate that leasing was the most cost-effective method for obtaining the use of the equipment. Where the costs would have been lower if an alternative method (for example hiring the equipment) had been used, the additional costs shall be deducted from the eligible expenditure.
- (2) Leasing payments paid by a lessee under a sale and lease-back scheme may be eligible expenditure under the rules set out in Paragraph 1. The acquisition costs of the asset are not eligible for Community co-financing.
- (3) Expenditure by lessors is not eligible.

8. CONTROL SYSTEM FOR ETC PROGRAMMES IN AUSTRIA

EU FinReg, Article 28a

- (1) The budget shall be implemented in compliance with effective and efficient **internal control** as appropriate in each management mode, and in accordance with the relevant specific regulations.
- (2) For the purposes of the implementation of the budget, internal control is defined as a process applicable at all levels in the management and designed to provide reasonable assurance of achieving the following objectives:
- effectiveness, efficiency and economy of operations;
 - reliability of reporting;
 - safeguarding of assets and information;
 - prevention and detection of fraud and irregularities;
 - adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multi-annual character of programmes as well as the nature of the payments concerned.

EU FinReg, Article 53b

1. Where the Commission implements the budget by **shared management**, implementation tasks shall be delegated to Member States. That method shall apply in particular to the actions referred to in Titles I and II of Part Two.
2. Without prejudice to complementary provisions included in relevant sector-specific regulations, and in order to ensure in shared management that the funds are used in accordance with the applicable rules and principles, the **Member States** shall take all the **legislative, regulatory and administrative or other measures** necessary for protecting the Communities' financial interests. To this effect they shall in particular:
- satisfy themselves that actions financed from the budget are actually carried out and to ensure that they are implemented correctly;
 - prevent and deal with irregularities and fraud;
 - recover funds wrongly paid or incorrectly used or funds lost as a result of irregularities or errors;

d) ensure, by means of relevant sector-specific regulations and in conformity with Article 30(3), adequate annual *ex post* publication of beneficiaries of funds deriving from the budget. To that effect, the Member States shall conduct checks and shall put in place an effective and efficient internal control system, according to the provisions laid down in Article 28a. They shall bring legal proceedings as necessary and appropriate.

3. Member States shall produce an annual summary at the appropriate national level of the available audits and declarations.

4. In order to ensure that the funds are used in accordance with the applicable rules, the Commission shall apply clearance-of-accounts procedures or financial correction mechanisms which enable it to assume final responsibility for the implementation of the budget.

General SFReg, Article 60
Functions of the managing authority

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

- a) **ensuring** that operations are **selected** for funding in accordance with the criteria applicable to the operational programme and that they comply with applicable Community and national rules for their whole implementation period;
- b) **verifying** that the co-financed products and services are delivered and that the expenditure declared by the beneficiaries for operations has actually been incurred and complies with Community and national rules;

...

ImplReg, Article 13
Managing authority

1. For the purposes of the selection and approval of operations under Article 60 (a) of Regulation (EC) No 1083/2006, the managing authority shall ensure that beneficiaries are informed of the specific conditions concerning the products or services to be delivered under the operation, the financing plan, the time-limit for execution, and the financial and other information to be kept and communicated.

It shall satisfy itself that the beneficiary has the capacity to fulfil these conditions before the approval decision is taken.

2. The **verifications** to be carried out by the managing authority under Article 60 (b) of Regulation (EC) No 1083/2006 shall cover administrative, financial, technical and physical aspects of operations, as appropriate.

Verifications shall ensure that the expenditure declared is real, that the products or services have been delivered in accordance with the approval decision, that the applications for reimbursement by the beneficiary are correct and that the operations and expenditure comply with Community and national rules. They shall include procedures to avoid double-financing of expenditure with other Community or national schemes and with other programming periods.

Verifications shall include the following procedures:

- a) administrative verifications in respect of each application for reimbursement by beneficiaries;
- b) on-the-spot verifications of individual operations.

3. Where on-the-spot verifications pursuant to paragraph 2(b) are carried out on a sample basis for an operational programme, the managing authority shall keep records describing and justifying the **sampling method** and identifying the operations or transactions selected for verification.

The managing authority shall determine the size of the sample in order to achieve reasonable assurance as to the legality and regularity of the underlying transactions, having regard to the level of risk identified by the managing authority for the type of beneficiaries and operations concerned. It shall review the sampling method each year.

4. The managing authority shall establish written standards and procedures for the verifications carried out under paragraph 2 and shall keep records for each verification, stating the work performed, the date and the results of the verification, and the measures taken in respect of irregularities detected.

5. Where the managing authority is also a beneficiary under the operational programme, arrangements for the verifications referred to in paragraphs 2, 3 and 4 shall ensure adequate separation of functions in accordance with Article 58 (b) of Regulation (EC) No 1083/2006.

ERDF Reg, Article 15

Function of the managing authority [in ETC programmes]

(1) The managing authority shall perform the duties provided for in Article 60 of Regulation (EC) No 1083/2006, with the exception of those concerning the regularity of operations and expenditure in relation to national and Community rules, as set out under point (b) of that Article. In this connection, it shall satisfy itself that the expenditure of each beneficiary participating in an operation has been validated by the controller referred to in Article 16(1) of this Regulation.

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

ERDF Reg, Article 16

Control system [for ETC programmes]

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

For this purpose each Member State shall designate the controllers responsible for verifying the legality and regularity of the expenditure declared by each beneficiary participating in the operation. Member States may decide to designate a single controller for the whole programme area.

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

(2) Each Member State shall ensure that the expenditure can be validated by the controllers within a period of three months.

Explanation: Basically it is the Member States which are responsible for controlling the proper use of funds in the area of EU "shared management" (which includes the Structural Funds), and specified in more detail in the Structural Funds as: the management authority of the individual programmes (which may delegate this task to "intermediate bodies"). This system implies: the management authorities are part of a specific Member State which bears ultimate responsibility for their proper functioning.

However, in the case of programmes within the European territorial objective the general competence of the management authority is at variance with the ultimate financial responsibility of the Member States, as in these programmes the management authority is

not within a specific Member State and subordinate to it, but is instead responsible for several Member States and thus quasi superordinate to them. Not least of all in response to pressure from Austria, this inconsistency in the ERDF Regulation 2007-2013 has been resolved in that the control tasks in European territorial objective tasks pursuant to Art. 60b of the General Structural Fund Regulation and specified in greater detail in 13 of the Implementation Regulation, are to be transferred to a separate **control system** in each case to be established by the Member States for their own area.

15a Agreement, Article 7

Control system pursuant to Art. 16 ERDF Regulation

(1) For programmes pursuant to Art. 1 Paragraph 2 the following bodies – hereafter referred to as “coordinating control bodies” – are assigned to coordinate the control tasks pursuant to Art. 16 ERDF Regulation and to serve as contacts for the relevant managing authorities, certifying authorities and audit authorities:

- a) for cross-border cooperation programmes pursuant to Art. 7 Paragraph 1 of the General Regulation: *Länder* or bodies assigned by the *Länder* for those parts of the cross-border operation, whose beneficiaries are domiciled in the territory of the respective *Land* or who are located within the territory of the *Land* or whose scope extends over the territory of the *Land*, unless something else has been agreed on for specific operational programmes in accordance with the managing authority and the participating *Länder*. In any case such an agreement shall be reached for such operations which cannot be clearly assigned to a territory of a *Land* or which extend over several *Länder*, before co-financing from funds of the Structural Fund is approved.
- b) for programmes pursuant to Art. 7 § 2 and 3 of the General Regulation: Federal Chancellery

(2) For the administration of control tasks pursuant to Art. 13 [of the 15a Agreement, also corresponds to Art. 13 of the Implementation Reg] concerning beneficiaries in Austria the following is established:

- a) The control tasks are carried out, taking account of Art. 13 para 3, by an appropriate body of the responsible federal ministry, if bodies within the authority or on behalf of the Republic of Austria participate in the programme as beneficiaries. The control tasks are carried out, taking account of Art. 13 § 3, by an appropriate body of the responsible *Land*, if bodies within the authority or on behalf of a *Land* participate in the programme as beneficiaries.
- b) If the respective beneficiary also receives subsidies from federal or *Länder* funds, the control of an operation is carried out by the respective funding body responsible for the national funds. If a beneficiary receives aid for its operation from several federal or *Länder* bodies, the control is carried out by that federal or *Land* body which contributes the largest share of the national aid – unless agreed otherwise by the participating funding agencies and set out in writing in the co-financing contract.
- c) In the case of all other beneficiaries responsibility for the control lies with the competent coordinating control body pursuant to Paragraph 1.
- d) The Austrian representatives in the Monitoring Committee must reach agreement with the control body and the competent coordinating control body pursuant to § 1 over the execution of control tasks, before the operation is approved.

The bodies mentioned in lit. a, b and c may assign the operative implementation of the control to a suitable third party. Possible costs may be invoiced at the expense of the beneficiary. Liability for the correctness of the control pursuant to Art. 70 para. 2 of the General Regulation remains with the responsible federal or *Land* body, which must thus issue the control certificates pursuant Art. 15 § 1 of the ERDF-Regulation.

(3) Concerning operations where the relevant control bodies pursuant to § 2 lit. a and b do not have sufficient experience with control according to the requirements of the Structural Fund and thus do not appear to allow for a due and proper control, the coordinating control body will ensure that

- a) the necessary control criteria are disclosed to the control body or
- b) in agreement with all parties involved, a different suitable control body assumes responsibility for carrying out the control, including liability for its correctness or
- c) the payment of funds from the Structural Fund is barred.

The coordinating control bodies must inform in writing the bodies responsible for the programme administration (managing authority, technical secretariat, certifying authority) as well as the lead beneficiary, of the authorisation of a control body, a change in the control responsibility or the denial of certification for expenditures eligible for subsidies in the absence of a suitable control body.

- (4) The co-ordinating control bodies are responsible for the collection and the forwarding of the reporting of irregularities pursuant to Art. 14 Paragraph 3.

15a Agreement, Article 13 **Clearance, Control and Payment**

(1) Structural Funds shall only be paid for operations which have been actually carried out according to the conditions of the co-financing. Therefore, before the final balance for an operation is paid, the managing authority or the intermediate body responsible according to an operational programme or separate agreement or specified for that task in the co-financing contract or the control authority pursuant to Art. 7 taking account of Art. 13 of the Implementing Regulation shall verify and confirm the actual provision of investments or services as stipulated by the co-financing contract by on-the-spot verifications, submitted reports or other suitable measures. The result of the examination is to be documented in writing in a traceable manner.

(2) Structural Funds shall only be paid out for actual expenditures (or costs deemed equal according to EU law) which are directly associated with the implementation of an operation duly approved pursuant to Art. 12 and eligible and whose amount is appropriate for the operation and the co-financed purpose. Possible revenues from the operation are to be deducted from expenditures before the co-financing is computed. Therefore, before Structural Funds are paid out for an operation, the managing authority or the intermediate body responsible according to an operational programme or a separate agreement or stipulated for that task in the co-financing contract or the control authority pursuant to Art. 7 taking account of Art. 13 of the Implementing Regulation shall verify - by means of invoices and payment documents (if needed the original), time records or other evidence of equal probative value - and confirm the following:

- a) the nature, amount and commensurateness of the actual expenditures (or costs deemed equal), attributable to the operation and the beneficiary and eligible according to the co-financing contract in factual, spatial and temporal regard;
- b) the nature and amount of possible revenues attributable to the operation and the resulting (net) expenditures eligible according to the stipulations of Art. 55 General Regulation;
- c) for private beneficiaries, on the basis of funding contracts and verified eligible expenditures, the federal or *Länder* funds or funds of other public bodies which are due as well as - at the latest at clearance - their actual payment.

The result of the examination is to be documented in writing in a traceable manner.

(3) Individuals who conduct the checks pursuant to Paragraphs 1 and 2, must not be involved in the implementation of the operations under review.

(4) After completion of the checks pursuant to Paragraphs 1 and 2 and given a positive result, the fulfilment of all conditions for co-financing pursuant to Art. 11 and 12 and thus the factual and calculatory correctness of the balance are to be confirmed in writing by the body conducting the control. ...

15a-Agreement, Article 14
Notification requirements

(3) If the managing authority, the certifying authority, the intermediate bodies or the control bodies pursuant to Art. 7 discover irregularities during their control work, these are to be reported together with the remedies initiated according to the procedures stipulated by the respective audit authorities pursuant to Art. 6 concerning the implementation of Regulation (EC) No. 1681/1994 in the version of Regulation No. 2035/2005 in Austria.

AT Elig. Rules ERDF, Article 19
Formalities for accounts and their verification

(1) In order to provide documentary evidence of the proper use of the funds in accordance with their dedication, the beneficiary must submit the following documents (also on a suitable electronic data carrier, e.g. Excel):

1. A target-performance comparison (i.e. a comparison of the planned and actual expenditure, broken down according to the cost schedule in the funding contract)
2. A detailed list of all invoices and payments for the project expenditure for which co-financing has been requested (register of invoices and receipts, list of costs, proof of employment of funds)
3. Original invoices or accounting documents of equivalent probative value including documents which confirm the corresponding payment flows (payment documentation, bank statements etc.)
4. Documentary evidence that all other conditions pursuant to the co-financing contract have been fulfilled.

(2) The register of invoices and receipts should possess the following minimum content:

1. Beneficiary (funding recipient), contract number, date
2. Allocation to a cost item according to the structure in the funding contract
3. Subject of the invoice
4. Identity of supplier/payment recipient
5. If required by EU laws governing state aid: date of the binding order or start of construction work (details according to regional guidelines)
6. Invoice and payment amount (gross and net)
7. Date of invoice and payment
8. Discounts in percent
9. Amount/costs which are relevant to the funding (net, less discounts and rebates)
10. Any certificates (e.g. capitalisation certificates, control certificates etc)
11. Beneficiary's signature in accordance with company and/or banking practice.

(3) The competent body pursuant to Art. 13 of Commission Regulation (EC) No. 1828/2006 (management authority, ... control body ...) shall audit the accounts of the project on the basis of the documents which have been presented (register of receipts/costs, original invoices, payment documents, bank statements etc.) and, depending on the type of the project, in the form of on-the-spot checks to verify that the conditions for ERDF co-financing pursuant to the provisions of the relevant Community and national law (mathematical and substantive accuracy) have been met. The audit of the accounts presented must – with documentary evidence (audit or control report) - take into particular account the following points:

1. The audit and comparison was carried out on the basis of original invoices (or tamper-proof accounting documents with equivalent probative value) and if necessary on-site,
2. Original receipts were rendered worthless or marked on the face as audited so that there is no possibility of their further use for assistance outside the scope of the project,
3. Invoices must be made out to the beneficiary

4. Payment to suppliers were rendered by the beneficiary
5. Invoice and payment dates conform to the prescribed periods
6. (If required by EU law on state aid) that the first binding order/start of work was effected after the cut-off date for recognition in accordance with the co-financing contract
7. Deduction of any discounts
8. The content of the invoice is substantively related to the subject of the funding pursuant to the co-financing contract
9. Mathematical accuracy of the accounts
10. Documentary evidence was provided for own performances (staff and/or material costs) in the form of transparent, project-related time-sheets, calculations, capitalisation etc.
11. All part-invoices and payments were recorded (project completeness)
12. The project for which accounts have been submitted has indeed been completed and on the whole complies with the requirements of the co-financing contract

ERDF Reg, Article 20

Responsibilities of the lead beneficiary and the other beneficiaries [= project partners]

- (1) For each operation, a lead beneficiary shall be appointed by the beneficiaries among themselves. The lead beneficiary shall assume the following responsibilities:
- a) it shall lay down the arrangements for its relations with the beneficiaries participating in the operation in an agreement comprising, inter alia, provisions guaranteeing the sound financial management of the funds allocated to the operation, including the arrangements for recovering amounts unduly paid;
 - b) it shall be responsible for ensuring the implementation of the entire operation;
 - c) it shall ensure that the expenditure presented by the beneficiaries participating in the operation has been incurred for the purpose of implementing the operation and corresponds to the activities agreed between those beneficiaries;
 - d) it shall verify that the expenditure presented by the beneficiaries participating in the operation has been validated by the controllers;
 - e) it shall be responsible for transferring the ERDF contribution to the beneficiaries participating in the operation.
- (2) Each beneficiary participating in the operation shall:
- a) assume responsibility in the event of any irregularity in the expenditure which it has declared;
 - b) inform the Member State in which it is located about its participation in an operation in case this Member State as such is not participating in the operational programme concerned.