

**GUIDELINES FOR CERTIFICATION
ACCORDING TO ART. 16 OF REG.
1080/2006**

(First Level Financial Control)

VERSION 2009 02 17

Abbreviations

CA: Certifying Authority
CAB: Central Approbation Body
CU: ESPON Coordination Unit
EC: European Commission
FLC: First Level Control
LP: Lead Partner
MA: Managing Authority
MS: Member State
PP: Project Partner
PS: Partner States
SLA: Second Level Audit

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1. Introduction

This document intends to provide information and guidelines to national authorities responsible for the implementation of controls and to controllers implementing the controls on the requirements in the context of certification and on the scope of their work.

This document can as well be used by Lead and Project Partners as an information tool for the constitution of their progress reports.

1.1 Introduction of Control and Audit System

In the programming period of 2007 - 2013, the terms “audit” and “control” (and thus auditor and controller) are not interchangeable since they refer to two different categories of controls.

The word **control** refers to the check performed by the first level controller (FLC) in compliance with Art.16 of Regulation of the European Parliament and Council (EC) No. 1080/2006 (ERDF Regulation). The duty of the first level controllers designated by the Member and Partner States is to validate the expenditure declared by each beneficiary participating in the operation ⁽¹⁾.

The word **audit** (or second level auditing (SLA)) refers to the checks performed in compliance with Art. 62, (1), a and b of Council Regulation (EC) No 1083/2006. The duty of the second level auditors is to carry out the audits on operations on the basis of an appropriate sample to verify the expenditure declared.

The word **controlled beneficiary** refers to the terminology used by Art. 16(1) of Regulation of the European Parliament and Council (EC) No. 1080/2006 (ERDF Regulation). The term *beneficiary* thus addresses both LP and Project Partners (PPs).



¹ The term **operation** stands for project. The two terms, operation and project, are by all way equivalent.

First level financial controllers are therefore at the basis of the pyramid of checks, controls and audits as they:

- Are the first ones to check the expenditures
- Check 100% of the expenditures declared
- Have the full range of information
- Have a thorough knowledge of the rules applicable in the Member/Partner State of the partner they check

Consequently first level controllers have as well more chances to detect anomalies in the expenditure reported.

As the cornerstone of the pyramid, a good quality of the first level control is prerequisite to have a high level of confidence in the sound functioning financial management of the whole system.

1.2 Legal basis and main aims of controls

- Article 16 of Regulation 1080/2006 provides details for the organisation and scope of certification of expenditure (first level control) in the new programming period 2007-2013. It is stated that:

“In order to validate expenditure, each MS shall set up a control system. This control system must make 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 rules and its national rules.

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

Each MS shall ensure that the expenditure can be validated by the controllers within a period of three months².”

The European Commission in its “*Guidance document on management verifications to be carried out by Member States on projects co-financed by the SF and CF for the 2000-2013 programming period*” further stresses that

“MS when they designate the controllers, also ensure that they have means of action to obtain the results in the expected time and quality through, for instance, a formal contractual arrangement, or a paragraph in a Memorandum of understanding...”

- Article 13 of Regulation 1828/2006 stipulates that “[...] *the verifications to be carried out [...] shall cover administrative, financial, technical and physical aspects of operations, as appropriate.*”

The main aim of the certification is therefore to provide a guarantee for the Member/Partner States itself but as well to the Managing and Certifying Authorities (MA/CA) that the costs of the operations are *accounted for* and *claimed* in accordance and in compliance with the legal and financial provisions of the EC Regulations, the rules governing the ESPON 2013

² In the framework of the ESPON 2013 Programme taking into account that each controller shall be given the same time for undertaking the controls and in the sake of safeguarding the programme and the operation from de-commitment risk, this delay has been set in two months. This will allow the operation to submit its reimbursement claim four months after the end of the reporting period.

Programme, the Subsidy Contract and the Partnership Agreement, and that the operation accounts comply as well with the legal and financial obligations of each organisation involved in the operation, according to both its own legal status and the relevant national legislation.

1.3 National Specificities: eligibility rules and national applicable rules

Eligibility rules

As stipulated in Regulation 1083/2006, Art.56, §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”. However, the Member and Partner States participating in the ESPON 2013 have indicated in the Agreement in §6(12) that “*Without prejudice to the list of ineligible expenditure in Article 7 of Regulation (EC) No 1080/2006, the rules of Article 49 to 53 of Regulation (EC) No 1828/2006 shall apply in accordance with Article 13 of Regulation (EC) No 1080/2006 to the determination of the eligibility of expenditure under operation selected as part of the ESPON 2013 OP.*”.

National rules applicable to public procurement, state aids, environmental protections and equal opportunities have been provided by the Member/Partner States to the Programme Authorities during the setting up of the first level control system.

National guidelines on first level control

In case Member/Partner States provides additional national guidance on the certification of expenditure and in particular on eligibility of expenditure according to specific national rules, the key information (enabling Lead Partners to undertake their role) shall be synthesised and provided as well in English. The Programme Authorities will verify their compliance with EC rules before publishing on the website.

1.4 Specificities of the ESPON 2013 Programme

A series of specific aspects were considered for the setting up the framework of the first level control system for the ESPON 2013 programme.

In ESPON 2013 the majority of operations will directly involve public bodies or bodies governed by public law, thus limiting the risk that funds unduly paid cannot be recovered. In addition, many of these public bodies or bodies governed by public law have an internal audit service/department or are regularly audited by an external public auditor or private audit firm.

Due to the nature of the operations financed by the ESPON 2013, the categories of expenditure to be verified are usually limited to staff, administration, external expertise and travel. Investment is done only in some cases and on a very small scale and usually limited to small equipment. In addition, the amount to be verified within every six months reporting period is relatively low compared to operations financed under the mainstream programmes.

It is the Member/Partner States responsibility to set up its own control system. However, the systems will not exist independent of each other since the ESPON 2013 Programme involves 27 Member States + Iceland, Liechtenstein, Norway and Switzerland and applies the Lead Partner principle. In the preparation of the joint Project Progress Report, the Lead Partner of an operation depends on his partners from other Member/Partner States. This system only works if:

- the documentation provided by the partners is homogeneous and full,
- the partners are able to report regularly and in due time.

Flexible and efficient systems without control **delays** at the level of all Member/Partner States are a key factor for the financial performance of the operations and the ESPON 2013 programme as a whole.

2. Design of control systems

The Managing Authority and the Coordination Unit, with the support of the Audit Authority, have provided all Member and Partner States with information on how to meet the regulatory requirements. In particular, they have provided a Guidance note and a Questionnaire that has been used to describe the implemented control system. The filled in and signed questionnaire has been sent to the MA and CU and its submission was a prerequisite for the signature of the Agreement.

The description of each MS/PS control system is available for public access and can be consulted on the ESPON 2013 Programme's website.

2.1 Centralised and Decentralised systems

There are two different first level control systems applied by the countries that participate in the ESPON 2013 Programme:

- Centralized system;
- Decentralized system.

In **centralized systems** a central body is appointed by the Member/Partner State to carry out the first level controls in accordance with Art. 16 Regulation (EC) No 1080/2006. This body can be designated at a federal, national, or both federal and national level and acts under the supervision of a governmental body (e.g.: ministry).

In **decentralized systems**, the partners propose a controller to the Central Approbation Body (CAB), which is established at the central level by the Member/Partner State. The CAB has the duty to check if the controller fulfils the requirements set by the Member/Partner States for being designated as such. If the controller proposed matches the requirements, the CAB designates it and delivers the designation to the controller and to the project that has proposed him/her. The CAB shall keep the list of the first level controllers designated in accordance with Art. 16 Regulation (EC) No 1080/2006. This list shall be made available for public consultation and shall be provided to the any of the programme authorities, Commission Authorities or other control or audit bodies requesting it. In this system it is the CAB of the Member/Partner State that monitors and controls the performance of the first level controllers in its territory and thus guarantees that the first level controllers are acting in compliance with the Structural Funds and ESPON 2013 Programme regulatory framework and the national legal framework for the validation of the expenditure and activities of the controlled beneficiary.

2.2 Role of the Central Approbation Body in decentralised systems

The role of the CAB in decentralized system is crucial as they are the one confirming the ability, competency and independency of a controller to perform its duty. Please note that the designation is "ad personam" and requirements refer to the nominated controller.

The CAB receives the proposals from the LP or PP for the nomination of the controller and has the responsibility to:

- check that the controller proposed fulfils all the requirements;

- check if all the requirements as described in the Designation Checklist and Certificate are fulfilled, and thus to confirm the choice of the Lead/Project Partner and officially designate the controller (Designation Checklist and Certificate);
- ensure the Managing Authority the sufficient quality of the controls undertaken by the controllers designated.

Designation of first level control

For the designation of controllers a specific Designation Checklist and Certificate have been elaborated by the Programme. (see Annex 1)

The Designation Checklist and Certificate has to be filled in only if the controlled partner is located in a country with decentralized first level control system. In this case the partners need to select and propose their controller to the CAB, who has the duty to check if the controller fulfils the requirements set by the Member/Partner States for being designated.

The form has to be filled in, signed and stamped by the controlled Lead/Project Partner and the proposed controller first. The signed documents accompanied by the relevant supporting documents (e.g. proof of qualification, organisation chart, etc.) have then to be submitted to the CAB for approval.

Project Partners located in a country with decentralized first level control system are requested to provide its Lead Partner with an **ORIGINAL**, duly signed and stamped Designation Checklist and Certificate together its first Partner Progress Report (and each time when new controller is proposed and designated). The Lead Partner has to send to the ESPON CU (**IN ORIGINAL**) all Designation Checklist and Certificate (without its supporting documents, e.g. proof of qualification, organisation chart, etc) together with the first Project Progress Report and each time when new controller is proposed and designated.

All bodies involved, LP, PP, Controller and CAB are required to keep copies of the Designation Checklist & Certificate for their own audit trail.

2.3 Qualifications and independency of Controllers in general

Regardless the type of systems that each Member States has decided to implement, controllers must be sufficiently qualified in order to check and validate the expenditure. More specifically controllers must:

- hold a function totally independent and separated from any bodies having responsibilities for the management and control of project(s) and/or of the programme;
- hold professional skills and experience in international and national auditing standards and accountancy in general;
- hold professional skills and experience in the field of control of projects co-financed by EU-funds (Structural Funds and ERDF in particular);
- hold knowledge of the ESPON 2013 Operational Programme, programme manual, guidelines for certification and any document that the Programme might consider binding for the projects;
- hold sufficient knowledge of the English language, in order to read, understand all relevant documents and communicate with other actors;
- ensure that his/her work is properly documented and accessible to ensure an efficient review of the work in a way that any other controller/auditor can perform again the control with the only use of the control file;

- ensure that the work will be carried out within 2 months after receipt of the documents from the controlled partner;

All Member and Partner States shall keep in mind these requirements when designating the first level controllers. More particularly in **decentralised systems** when the first level controller is proposed by the partner, the minimum requirements included in the designation **checklist** shall be even more carefully checked by the CAB.

2.4 Specific controller independency requirements in decentralised systems

In the case of a decentralised system, additional requirements have been set up at programme level. These additional requirements vary depending if the controller is external or internal.

If the controller is **external**³:

- He/she can be either a private or a public controller;
- He/she must be registered as a member of a professional organisation (this requirement is mandatory for private external auditors);
- He/she must perform his/her tasks according to a professional code of conduct or other rules defining his/her function and independence;
- There must be a basis for the controller to carry out the control (e.g. service contract, mandate, agreement etc.);
- All experts working as tax *advisors* or financial/accounting *advisors* (or similar categories of advisors) can not be considered qualified controllers, since the same term that is defining their status, “advisors”, is not providing assurance of their independence from the controlled organization.

If the controller is **internal**:

He/She must be independent both from the unit involved in the project management and from the unit involved in activities implementation. This requirement must be absolutely ensured as indicated by the European Commission⁴. Please note that an organizational chart must be provided to the CAB to give evidence of compliance with the above requirements.

Additionally:

- Controller must be professionally independent from the unit dealing with the activities and finances of the operation (accounting, salary calculations, payment orders etc.). This implies that the controller must not be involved in project preparation, project finances, project activities (incl. signing the project report as project partner);
- The controller’s independence must be regulated by law or local/internal rules in the country where the controlled partner is located (e.g. rules regarding internal controller’s function, code of conduct);
- An organisational chart must be provided where it is shown that the controller is absolutely independent from the units where the activities and finances are managed, where the payments are ordered and where the control is carried out;
- There are no relationships by blood or marriage between the controller and employees/managers of the unit in charge of project activities and finance;

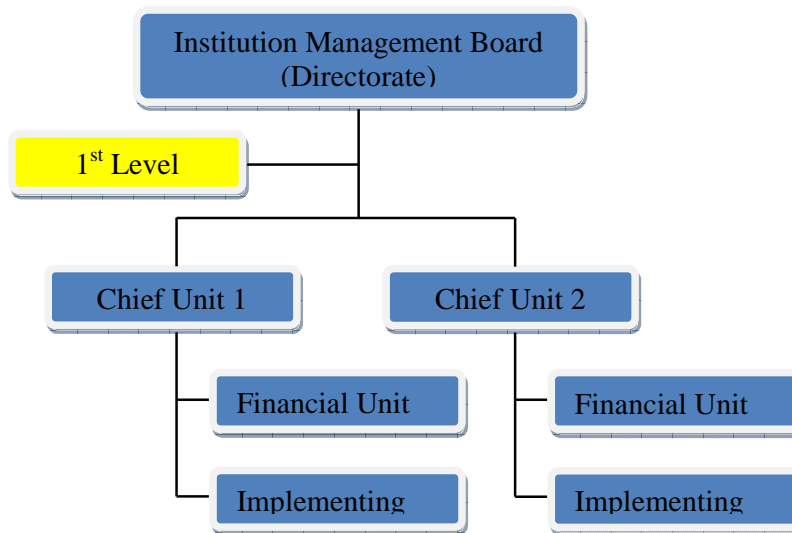
³ These requirements apply as well to centralized system in which the national authority has designated an external controller to implement the controls under its direct responsibility.

⁴ These requirements apply as well to centralized system in which the national authority has designated an external controller to implement the controls under its direct responsibility.

- The controller must be independent of mind, meaning that he/she doesn't feel dependent on the entity/unit to be controlled in any other way than the ones already mentioned.

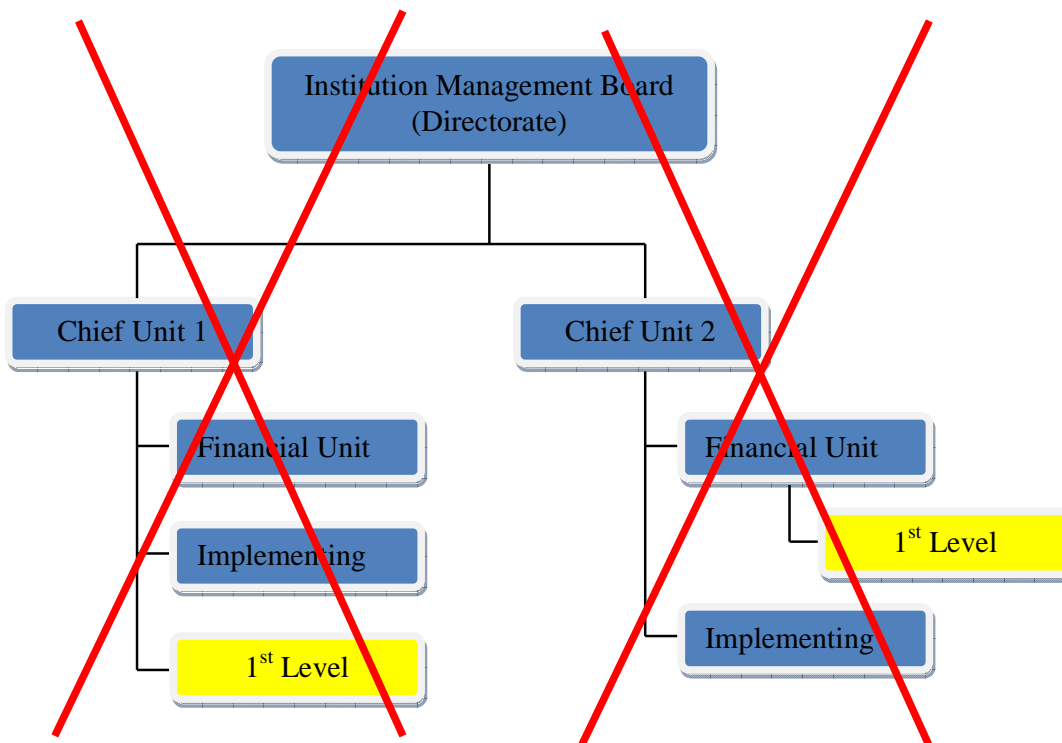
Example for a correct positioning of the first level controller (yellow box).

CORRECT!



Any other situation of the following type must be considered not acceptable.

WRONG!



3. First Level Financial Control

3.1 Scope and extent of controls

Check at Lead Partner and Project Partner level the sound financial management and more particularly check that expenditure reported by the Lead/Project Partner in each progress report fulfils the following conditions:

- The expenditures are in line with the legal basis of the implementation of the project (e.g. conditions of the programme, approved application form and subsidy contract etc.);
- The costs are accounted correctly and sufficiently supported (e.g. invoices, receipts, complete audit trail etc.);
- The costs are eligible towards overall eligibility issues (e.g. eligibility and reporting periods, direct link to the operation, VAT, absence of double funding etc.);
- The correct exchange rate was applied;
- Public Procurement procedures have been respected and are fully documented (both at EU and national level etc.);
- The expenditure are in line with the specificities of the type of expenditures and budget lines (Staff costs, Administration costs, Travel and Accommodation, Equipment, External Expertise and Services);
- The expenditure complies with the partner budget;
- The expenditure complies with the Community/EU rules (e.g. publicity and information, state aid, environment etc.);
- the related activities, sub-contracted supplies and services are in progress, have actually taken place, or have been delivered or carried out;

The Controller is responsible for the methods and techniques of the control in accordance with international and national audit standards. The Controllers have to be familiar with the content of the following documents in order to be able to confirm the strict compliance with the provisions laid down in:

- the EU-regulations and directives, i.e. in particular with:
 - Regulation (EC) No. 1080/2006;
 - Regulation (EC) No. 1083/2006;
 - Regulation (EC) No. 1828/2006;
 - Regulation (EC) No. 2355/2002;
 - Directive (EC) No. 2004/18/EC (on public procurement/the award of public works contracts, public supply contracts and public service contracts);
- Guidance document on management verifications to be carried out by Member states on projects co-financed by the Structural Funds and Cohesion Funds for the 2007-2013 programming period;
- Further national rules and guidance (e.g. national public procurement rules; state aids, environment, equal opportunities etc.);
- ESPON 2013 Operational Programme, Programme Manual, Guidelines for certification;
- Approved application form, subsidy contract and its annexes, partnership agreement etc.

The programme provides standard documents (see in Annex 1) in order to guide the CAB and the controllers during the control work, to ensure the application of the same quality standards on all levels and document the control steps properly:

- Template for **Designation Checklist and Certificate** for designation (as explained above, it is to be completed only in case of decentralized system);
- Template for **Control Certificate of the validation of expenditure – Project Partner** to be signed by the Project Partner's controller;
- Template for **Control Certificate of the validation of expenditure – Lead Partner** to be signed by the Lead Partner's controller;
- A template for **Control Checklist** that has to be filled in and attached to each control certificate;
- Template for **Control Report** that has to be filled in and attached to each control certificate;

The above documents are to be completed in relation to each of the controlled Project/Partner Progress Report (with the exception of the Designation Checklist as explained) and to be sent in ORIGINAL to the controlled beneficiary.

Some instructions as well as guidance in relation to these documents can also be found in the “Instructions” sheet of Annex 1.

These documents represent the minimum requirements for the Controllers’ checks.

In order to have sufficient assurance, the Controllers are thus expected to check 100% of the expenditure. **Only in very well justified cases, sampling is allowed and under the condition that the method, the scope and the results are fully documented and give sufficient evidence and reassurance for confirming the full expenditure.**

The Controllers also have to verify that the reported activities have been implemented, the delivery of sub-contracted supplies, works and goods is in progress or has been completed. **On-the-spot checks are therefore usually required in order to gain sufficient evidence and to be able to give a reasonable opinion on this matter.**

The first level controller is advised to maintain a close contact with the CU in order to ask for assistance whenever there are doubts linked to the above points.

3.2 Role of Financial Controller of the Project Partner

All expenditure and activities must be validated at project partners’ level by **national** 1st level controllers.

First level controllers at project partner’s level are required to:

- Validate the expenditure incurred by the controlled project partner;
- Validate the content of both the activity and financial reports of the Partner Progress Report;
- Draft a *Control Checklist* and a *Control Report* on the control performed;
- Sign the *Control Certificate-Project Partner*;
- Sign the *Designation Checklist and Certificate* (in case the beneficiary is located in a country with decentralized system);

- Provide the Project Partner with the following original documentation duly signed and stamped:
 - Control Certificate-Project Partner;
 - Control Checklist;
 - Control Report;
 - Designation Checklist and Certificate (if relevant);
 - Partner Progress Report (financial and activity reports, duly signed and stamped at relevant sheet).

3.3 Specific Role of Financial Controller of the Lead Partner

Taking into account that the Lead Partner should ensure that both the expenditure presented by each of 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, and that the expenditure presented by each of the beneficiaries participating in the operation has been validated by the controllers, the scope of the work of the controller responsible for the lead beneficiary should therefore include a verification of how the lead beneficiary has complied with these obligations⁵.

In particular, the first level controllers at Lead Partner's level are required to:

- Validate the expenditure incurred by the controlled Lead Partner;
- Validate the content of both the activity and financial reports of the Lead Partner's Partner Progress Report;
- Validate the completeness of the Project Progress Report (Partner Progress Reports with the necessary first level control documentations);
- Draft a *Control Checklist* and a *Control Report* on the control performed;
- Sign the *Control Certificate-Lead Partner*;
- Sign the *Designation Checklist and Certificate* (in case the beneficiary is located in a country with decentralized system);
- Provide the Lead Partner with the following original documentation duly signed and stamped:
 - Control Certificate-Lead Partner;
 - Control Checklist;
 - Control Report;
 - Designation Checklist and Certificate (if relevant);
 - Project Progress Report (financial and activity reports, duly signed and stamped at relevant sheet).
- Undertake any additional controls, checks that are deemed necessary and appropriate to verify that the Lead Partner has complied with its responsibilities as mentioned above.

The **original** Partner Progress Reports of the Project Partners together with their first level control documents have also to be sent back to the Lead Partner.

⁵ As indicated in the European Commission "Guidance document on management verifications to be carried out by Member States on projects co-financed by the SF and CF for the 2000-2013 programming period".

3.4 Flows of reporting requirements

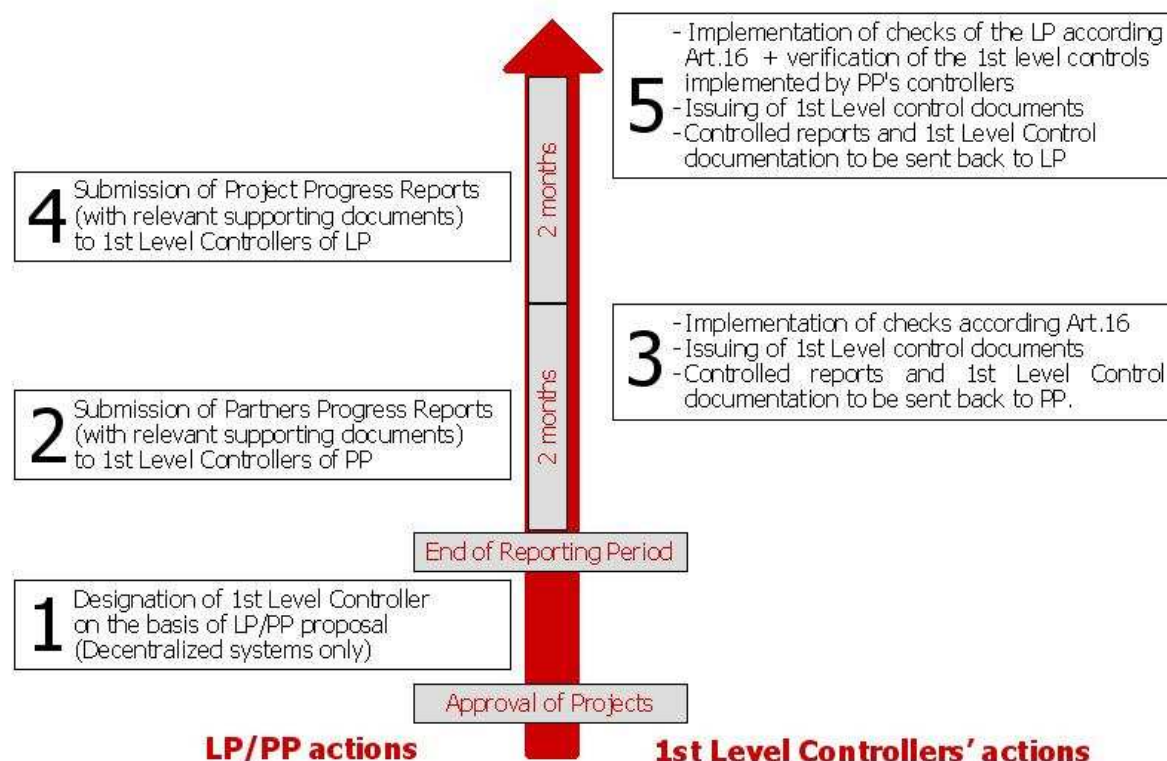
The First Level Control validation follows a two-step approach:

- a. Validation of expenditure declared by the project partners in the respective reports at the project partner level (validation at PP level);
 - the PP constitute its Partner Progress Report;
 - the PP submit its Partner Progress Report to its national (or duly designated) First Level Controller;
 - the First Level Controller performs the check and sends back the relevant documentation to the PP;
 - the PP forwards its full and validated Partner Progress Report to its LP.

- b. Validation of the expenditure declared by the project in the respective report at the lead partner level (validation at LP level);
 - the LP constitute its Partner Progress Report;
 - the LP constitute the overall Project Progress Report;
 - the LP submits the Project Progress Report to its national (or duly designated) First Level Controller;
 - the First Level Controller performs the relevant checks and sends back the relevant documentation to the LP;
 - the LP forwards the full and validated Project Progress Report to the ESPON CU.

The specific procedure and timeframe for the validation of the expenditure can be found below.

Flow of documents (ESPON 2013)



4. Quality measures and quality controls

In accordance with Article §2(6) of the “Agreement between the Member and Partner States and the Grand-Duchy of Luxembourg in its role as the Managing and Certifying Authority on the implementation of the "ESPON 2013 Operational Programme":

- In case a Member State or the Partner State is opting for a **decentralised control system**, its Central Approbation Body shall undertake quality checks of the functioning of the system set up at national level. The MA (through the CU) shall reserve the right to participate to the quality checks.
- In case a Member State or Partner State is opting for a **centralised control system**, the MA (through the CU) shall undertake the quality checks together with the national representative in the MC, notwithstanding that the final responsibility of the soundness of the control system shall remain with the Member States in question.
- In the case of the **country of the MA**, the quality check shall be undertaken by the CA with the support of the CU.

All Member States and Partner States shall ensure that the recommendations resulting from the quality checks will be followed and implemented. The MA shall reserve the right to

withhold temporarily payments to those beneficiaries located in the Member States and Partner States where quality checks have shown serious system deficiencies.

The methodology and scope of the above mentioned quality checks are described in a separate document and enclosed to the Management and Control System Description of the ESPON 2013 Programme.

In addition to the above, the MA (through the CU) and the CA will systematically verify, upon submission, the Control Certificate(s), Control Checklist(s), Control Report(s) and Designation Checklist(s) and Certificate(s) (if relevant). Should there be any need for questions and or clarifications, they will get in contact with respectively the designated controller or national controller in the case of decentralised and centralised systems. In case of decentralised systems, all communication will be as well copied to the Central Approbation Body.

5. Annexes

Annex 1 – Templates of First Level Control Documents