



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
REGIONAL POLICY

NOTE TO THE COCOF

Subject: European Transparency Initiative: Implementation of the Financial Regulation regarding the publication of data on beneficiaries of Community Funds under the shared management mode

The European Commission proposed the European Transparency Initiative in a Green Paper in 2006¹ followed by a Communication in 2007². The Council endorsed the initiative by Articles 30(3) and 53b §2 d)³ of the Financial Regulation⁴, which require Member States to provide information on how EU funds under shared management are spent, in particular through *the ex-post publication of beneficiaries*. As regards the publication of beneficiaries of the Structural Funds and the Cohesion Fund (hereinafter the Funds), this obligation is further specified by the Commission Regulation (EC) No 1828/2006.⁵ The purpose of this note is to provide guidance to Member States, on the practical implications of implementing the transparency initiative for the Structural Funds, the Cohesion Fund and the Fisheries Fund.

¹ Green Paper of the Commission "European Transparency Initiative" of 3 May 2006, COM (2006)194.

² Communication from the Commission - Follow-up to the Green Paper 'European Transparency Initiative' of 21 March 2007, COM (2007)127.

³ Article 53b §2 d) reads as follow: "*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: 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.*"

⁴ Council Regulation (EC, Euratom) N°1605/2002 applicable to the general budget of the European Communities as lately amended by Council Regulation (EG) N° 1995/2006, OJ L 390 of 13.12.2006, p.1.

⁵ Commission Regulation (EC) No 1828/2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund

1. Legal background

Article 53b §2 d) of the Financial Regulation stipulates that "*the Member States shall ensure, by means of relevant sector-specific regulation and in conformity with Article 30(3), adequate annual ex post publication of beneficiaries of funds*".

Article 7 §2 d) of the Commission Implementing Regulation No 1828/2006 states that: "*the managing authority shall be responsible for organising at least the following information and publicity measures: the publication, electronically or otherwise, of the list of beneficiaries, the names of the operations and the amount of public funding allocated to operations.*"

Article 2 of the Council Regulation No 1083/06 (General Regulation) defines :

beneficiary as: "*operator, body or firm, whether public or private, responsible for initiating and implementing operations. In the context of aid schemes under Article 87 of the Treaty, beneficiaries are public or private firms carrying out an individual project and receiving public aid.*"⁶

Note: participants in an operation of the ESF shall not be named;

operation as: "*a project or group of projects selected by the managing authority of the operational programme concerned or under its responsibility according to criteria laid down by the monitoring committee and implemented by one or more beneficiaries allowing achievement of the goals of the priority axis to which it relates.*"

2. Content of the information published

The practices of publication of data on beneficiaries benefiting from EU co-financing varies across Member States – some disclose only the names of co-financed projects, some give the name and address of beneficiaries, amounts allocated etc. The objective of the transparency exercise is to establish a co-ordinated framework which sets out minimum requirements as to the publication of such data, in order to allow the public to follow how Community funds are spent.

The legal provisions require the publication of three categories of information: a) the list of beneficiaries, b) the name of the operation and c) the amount of the public funding allocated to the operations.

List of beneficiaries of the Funds

The above legal provisions clearly define which organisations or bodies are understood as beneficiaries. Nevertheless, some Member States have sought further clarification, particularly as regards beneficiaries of the European Territorial Co-operation. In this context, the following guidance can be provided:

For programmes developed under **European Territorial Cooperation**, taking due account of the objective of the transparency exercise, it seems appropriate to publish the list of all beneficiaries

⁶ This definition is similar to the one under the 2000-2006 period.

and not to limit the publication to lead beneficiaries. Nevertheless, due to the difficulties in establishing at the beginning of the programming period all the final beneficiaries for these programmes, the names of the lead partners and the amounts committed could first be published. At the end of a given operation, this information should be completed with a comprehensive list of final beneficiaries with the respective amounts received.

The regulatory framework only requires the publication of the names of beneficiaries. The disclosure of any additional data (e.g. the identification number or the address of the beneficiaries etc), lies within the discretionary power of the Member States. However, in any event, the Member States must comply with national legislation, as well as with the Community legal framework on data protection.⁷

Name of the operation

For each beneficiary the name of operation should be clearly identified. In this context, it is advisable to use names, which facilitate the understanding of the nature of the operation. Member States may also choose to publish additional information (e.g. objectives of the projects, target groups in case of ESF etc), but this is not a requirement prescribed in the current legal framework.

Amount of public funding

“Public funding” in Art. 7 of the Commission Regulation refers to EC and national eligible funding and does not cover private contributions. The EC co-financing rate is set only at the level of priority axis, therefore for individual projects the co-financing rate may vary even within a priority axis. Member States are not required to publish for each operation the rate of Community co-financing. However, the public should be informed that the disclosed figures include both national and European funds in order to avoid misinterpretation.

Concerning the amounts to be published, taking also into account the observation presented by some Member States, the Commission suggests the publication of the following two figures per beneficiary:

- 1) amounts committed to the operation and
- 2) total amounts effectively paid at the end of an operation.

The yearly instalments of payments need not be published. This approach would allow the public to have access to meaningful data already at an early stage, when the commitment to a beneficiary is made. As a second step and after the completion of an operation meant as the moment where the final payment for an operation takes place, the initial figure on commitments would be replaced by amounts effectively paid.

Moreover, it is advisable for the Member States not to duplicate the work and to base the collection of information on the national audit system.

3. The collection and publication of data

Responsibility for publication

⁷ Directive (EC) N°95/46 of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data OJ L 281 of 23.11.1995, p 31.

The legal obligation for implementing the transparency initiative lies with the Member States. Nevertheless, the Commission has committed itself to playing a coordinating role, primarily by facilitating access to the information available on Member States' websites. The Commission's role will be two-fold. First, it proposes a common indicative standard for the publication of data under the Structural Funds, the Cohesion Fund and the Fisheries Fund (see Annex). Second, it will provide the EU public, through its website, with links to Member States' electronic addresses where the requested data on beneficiaries are published.⁸

Publication of data on national/regional websites

Most Member States use electronic means to publish information on beneficiaries. Even though the Commission Regulation makes reference to other means of publication, it must be stressed that electronic publication is to be favoured, as underlined in all the legal instruments dealing with the disclosure of the list of beneficiaries.⁹ In this context, the Commission strongly recommends using national and/or regional website for the purpose of the transparency exercise.

One potential issue of concern lies in the different levels (regional, national) at which information is available in the different Member States. Each Member State may decide whether to disclose the list of beneficiaries at national or regional level. In order to have an efficient information system on the Commission website, Member States are asked to inform the Commission (e.g. through the Communication Plans or the COCOF) how the publication of data is organised among different levels and actors. In this context, it is also necessary to communicate to the Commission either a single link to the national website, or the individual links to the regional websites, where the information on beneficiaries are made available to the public. Member States should also mention any other means of publication being undertaken in the context of transparency, to which reference could be eventually included on the Commission's website.

Irrespective of the level at which the list of beneficiaries is published, in order to ensure the effective functioning of the system and facilitate co-ordination at European level, the Commission calls Member States to designate a single entity, at least for each Fund, which would be responsible for the coordination of the transparency exercise.

Similarly, as regards the European territorial cooperation programmes, the Member States involved should designate one single entity responsible for the coordination and the collection of information concerning beneficiaries. The Managing Authority, which is responsible for allocating funding to final beneficiaries and therefore has at its disposal the relevant information, seems appropriate for this purpose.

Timing and frequency of publication

⁸ Green Paper of the Commission "European Transparency Initiative" of the 3 May 2006, COM (2006)194, p. 3: "*In order to allow better scrutiny of use of EU funds under centralised management, a dedicated internet site, providing easy access to existing information about the beneficiaries of projects and programmes, is being created. The site will also contain links to websites of the Member States where data on the beneficiaries of EU funds under shared management can be found.*"

⁹ Article 4 §2 b) Commission Regulation (EC) 1828/2008: "*The annual reports and the final report on implementation of an operational programme, referred to in Article 67 of Regulation (EC) No 1083/2006, shall include: the arrangements for the information and publicity measures referred to in Article 7(2)(d) including, where applicable, the **electronic address** at which such data may be found;*" and Article 7 §2 d): "*The managing authority shall be responsible for organising at least the following information and publicity measures: the publication, **electronically** or otherwise, of the list of beneficiaries, the names of the operations and the amount of public funding allocated to the operations.*" (Emphasis added)

With regard to the timing, the Commission expects the first publication in 2008. This would consist of beneficiaries of the Funds that have been allocated funding after the entry into force of the Financial Regulation, which is the 1st of May 2007.¹⁰

Member States are encouraged to update information available on their websites as frequently as appropriate (e.g. monthly, quarterly basis). Nevertheless, according to the above mentioned provisions of the Financial Regulation, the publication of data shall take place at least on an annual basis. The Commission suggests using the date of submission of the annual reports, i.e. the 30 June (as provided in Article 67 §1 of the Regulation (EC) No 1083/2006) of each year as a final deadline for the publication of data on beneficiaries of the previous year.

Communication Plan

Managing Authorities shall prepare a Communication Plan and transmit it to the Commission (Article 2(2) of the Commission Regulation) at the latest 4 months after the adoption of the Operational Programmes. By mid March 2008 Member States had submitted over 140 communication plans. As the adoption of most of the 436 operational programmes for the ERDF and the ESF took place in the second half of 2007, it is expected that the majority of plans will be sent before the end of April 2008. The Commission would suggest to include in the document, where possible, links to already existing databases.

4. IPA Programmes

As to the IPA programmes, Article 62 (2) of the Commission Regulation (EC) No 718/2007 of 12 June 2007¹¹ implementing Council Regulation (EC) No 1085/2006 establishing an instrument for pre-accession assistance (IPA), which regulates the information and publicity under decentralised management, states in particular that: *"the operating structures shall be responsible for organising the publication of the list of the final beneficiaries, the names of the operations and the amount of Community funding allocated to operations."* The wording of the provision is identical to the wording used in the Commission Regulation 1828/2006 so that the above-mentioned observations apply also for IPA-programmes.

According to Article 102 Regulation (EC) No 718/2007, the operating structure of IPA-CBC programmes are called "managing authority" and are, according to Article 103 (1) d) of the Commission Regulation (EC) No 718/2007, among others, responsible for implementing the obligations of Article 62.

¹⁰ Council Regulation (EC, Euratom) N°1995/2006 of 13 December 2006 amending Regulation (EC, Euratom) N°1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ L 390, 30.12.2006, p.1, Art. 2.

¹¹ OJ L 170 of 29.6.2007, p.1.

ANNEX: INDICATIVE TABLE FOR SETTING THE LIST OF BENEFICIARIES OF EU FUNDING THROUGH STRUCTURAL AND COHESION FUNDS

| LIST OF BENEFICIARIES FOR REGION X/MEMBER STATE Y (LAST UPDATED MM/YY)¹ | | | | |
|---|------------------------------|---|---------------------------------------|---|
| NAME OF THE BENEFICIARIES | OPERATION | PUBLIC FUNDING PAID TO BENEFICIARY | | |
| | NAME OF THE OPERATION | YEAR OF ALLOCATION/YEAR OF FINAL PAYMENT | AMOUNTS COMMITTED ² | TOTAL AMOUNTS PAID AT THE END OF THE OPERATION |
| BENEFICIARY 1 | Operation A | | Currency of Payment | Currency of Payment |
| BENEFICIARY 1 | Operation B | | Currency of Payment | Currency of Payment |
| BENEFICIARY 1 | Operation C | | Currency of Payment | Currency of Payment |
| BENEFICIARY 2 | Operation A | | Currency of Payment | Currency of Payment |
| BENEFICIARY 3 | Operation D | | Currency of Payment | Currency of Payment |
| ... | ... | | Currency of Payment | Currency of Payment |

¹ The list can be established per co financing Fund.

² Column that may disappear once the operation is completed and the total amount paid and published.