Ref. Ares(2013)2826823 - 05/08/2013

Ref. Ares(2012)774012 - 27/06/2012

EUROPEAN COMMISSION
DIRECTORATE-GENERAL
REGIONAL POLICY
Audit
The Director

Brussels,
REGIO J2/BS/id/ D(2012) 175473

Subject: **Audit of the functioning of the management and control systems as required by articles 60 (a) and 60 (b) of (EC) Regulation 1083/2006 and articles 13(2) to 13(4) of (EC) Regulation 1828/2006**

Audit of Regional Development Operational Programme CCI 2007RO161PO001

Ref.: Mission No. **2011/RO/REGIO/J2/956/1** (to be used in following correspondence)

Your Excellency

I am writing to inform you that the Directorate General Regional Policy has analysed the reply received from the national authorities to the related draft audit report of the audit mission referred to above, namely your replies dated 11 October (ARES 1076539), 24 October (ARES 1129227), 31 October 2011 and 22 February 2012 (ARES 212310).

Please find enclosed the **final audit report** setting out the Commission's final position on all the remaining open findings and related actions and recommendations.

The irregular expenditure detected during the audit and the proposed financial corrections is presented in **Annex II**.

I request that you treat the enclosed audit report as confidential until the follow up procedure set below has been brought to a final conclusion. If the whole or part of the report is transmitted to persons concerned by the audit to enable them to provide comments, please ensure that the information set out in this paragraph accompanies the transmission.

His Excellency Mr Mihnea Ioan Motoc
Ambassador Extraordinary and Plenipotentiary Permanent Representative
Permanent Representation of Romania to the EU
Rue Montoyer / Montoyerstraat 12
1000 Bruxelles/Brussel

The attention of the national authorities is drawn to the fact that the present letter can lead to financial corrections decided by the Commission under Article 99 of Regulation (EC) No 1083/2006. To avoid any misunderstanding, the legal procedure is set out in Annex III to the present letter.

In accordance with this procedure, the national authorities may either inform the Commission of their formal acceptance of the financial corrections proposed, or object to the observations made by the Commission, in which case they will be invited to a hearing by the Commission at which both sides shall make efforts to reach an agreement regarding the observations and the conclusions to be drawn from them.

The national authorities are requested to inform the Commission on the implementation of actions and recommendations set out in the final audit report within two months of receipt of the national language version of this final audit report by the Permanent Representation.

Given that any suspension or reduction of the Community assistance to the projects may adversely affect final beneficiaries, I therefore formally request that you ensure that these persons are duly informed and placed in a position to effectively make known their views on the information on which the proposed decision is based. I would be grateful to receive any information on this matter.

Furthermore, you are requested to confirm that findings which have a financial impact on the EU budget exceeding €10.000 have been reported to OLAF in the IMS system for reporting irregularities and to provide the relevant references.

Yours faithfully

Lena Andersson Pench

Enclosures: Annex I – Commission's observations, conclusions and recommendations
Annex II – Summary of irregular expenditure and proposed financial corrections
Annex III – Procedure for suspension of payments and application of financial corrections

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OLAF audit reports

Ref. Ares(2012)774012 - 27/06/2012

EUROPEAN COMMISSION
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REGIONAL POLICY
Audit
Control and audit

ANNEX I – COMMISSION'S OBSERVATIONS, CONCLUSIONS AND RECOMMENDATIONS

Analysis of the measures taken under the action plan for the remedial of systemic weaknesses in relation to key requirement 4: Adequate management verifications (in particular public procurement verifications)

1. Significant deficiencies identified:

The audit found significant irregularities in relation to public procurement process for the contracts awarded under the projects selected in the sample, namely:

i) use of discriminatory technical criteria for selection stage of restricted procedures;

ii) unjustified use of accelerated procedures;

iii) incorrect use of Article 122 of national Ordinance 34/2006 (additional works contracted as similar works through negotiated procedure without publishing a contract notice).

On the basis of the projects based findings and due to the fact that the irregularities were not detected by the Managing Authority, ANRMAP and UCVAP (as national bodies for public procurement verifications), nor by Certifying Authority, the deficiency was considered systemic. Therefore, remedial measures were included in the action plan to be implemented by the MS (see Table 2 to the audit report).

2. Member state reply:

Romanian authorities replied on 11 October 2011 (ARES 1076539). Additional information was received on conflict of interest by latter ARES 1129227/24.10.2011. On 31 October 2011, Romanian authorities submitted the audit reports issued by AA on the compliance of UCVAP and ANRMAP. By letter of 22 February 2012 (ARES 212310), the Romanian authorities accepted the financial corrections proposed by the Commission under findings no. 2, 3, 4 and 5.

Further to the meetings which took place on 16/17 and 28 November between Commission's services and Romanian authorities (MA, AA and ACIS), further commitments were taken by Romanian authorities by letter Ares(2011)1304614 - 05/12/2011.

Tables 1 and 2 below provide more detailed information on the information submitted by the Romanian authorities.

3. Commission analysis:

i) Effective functioning of the management and control system with regard to public procurement verifications

a) The Commission acknowledges that the tasks and responsibilities of all bodies involved in public procurement have been better defined and that the accountability of ANRMAP and UCVAP has been formally reinforced. Following the assessment of the cooperation agreements concluded between MA, ANRMAP and UCVAP on 9 September 2011, the Commission draw attention on the involvement of ANRMAP in the ex-post verifications. the Romanian authorities accepted the recommendation and concluded Addendum no. 1 to the agreement on 24 November 2011.

b) Commission takes note that ANRMAP issued, as requested, new guidelines for the interpretation of public procurement law. Nonetheless, by letter Ares(2011)1252930 - 23/11/2011, Commission draw attention on:

- Non-retroactivity of the new guidelines for the interpretation of the public procurement law;

- Proportionality on the application of the general principles of public procurement.

c) By letter of 31 October 2011, the AA submitted two audit reports on the assessment of the conformity of the ex-ante system for the verification of public procurement. Even though, the reports confirm the compliance of UCVAP and ANRMAP, the effective functioning of the management and control system in respect to public procurement verifications could not be tested.

Recommendation:

AA should confirm based a representative sample of transactions, the effective functioning of the new set up for management verifications, notably in respect to public procurement verification.

ii) Corrective measures to be taken in respect to significant deficiencies identified – rescreening of past expenditure by MA

As part of the action plan, the managing authority was requested to verify all works contracts under the priority axis 2.1 to screen for the existence of discriminatory selection criteria in the tender notice, unjustified use of accelerated procedure and additional works contracted as similar works.

MA for Regional Development OP has screened all works contracts under axis 2.1, found irregularities and proposed corrections in amount EUR 20.5 million for in 29 contracts, representing 2.7% of the contracted amount.

Following the review of the above mentioned action based on a sample of operations already verified by MA, the Commission was not satisfied with regard to the quantification of the financial impact of the errors found by the Romanian authorities. In addition, the proposed corrections did not take into account notably cases of unjustified use of accelerated procedure and shortened deadlines. Moreover, managing authority did not carry out specific verification with regard to conflict of interests.

Following the audit carried out for the assessment of the verifications performed by MA, the audit authority identified irregularities based on which financial corrections were proposed

following the audit work carried out within the context of rescreening all public procurement contracts at national level, amount to 71.85 million Euro for the Regional OP out of which 62.60 million Euro are related to Axis 2.1. The proportion of corrections proposed for Axis 2.1 is 10.60% of the value of the contracts signed.

The results of the AA's audit work confirm the assessment of the Commission on the verifications carried out on a sample of contracts checked by MA. The Commission considered that MA did not identify all errors and underestimated the level of necessary corrections to be made. In particular, MA did not identify all cases of shortened deadlines and unjustified use of accelerated procedure.

Recommendation:

Audit work should be carried out by AA in order to follow-up the effective correction process.

iii) Additional actions requested

a) Fraud prevention and detection / conflict of interest verifications

In order to implement the legislative framework on the prevention and detection of cases of conflict of interests, necessary tools should be made available for the managing authorities to carry out consistent verifications. The procedural framework should be aligned accordingly and management authorities should include checks on conflicts of interests. In cases of suspicion of fraud or conflict of interest, the expenditure under the related operation should be decertified until the finalisation of the investigation.

Recommendation:

As concerns the suspicion of fraud and conflict of interest cases, Commission recommends:

- awareness campaigns, and
- training initiative on the basis of a detailed vademecum (legislative frame, institutions' roles, tools, code of conduct and transparency initiative) at two levels: (a) managing authorities and intermediate bodies and (b) final beneficiaries with a clear timetable, to be implemented regularly by MA;
- inclusion of the conflict of interest issue within the management verifications;
- development of specific tools to allow for the verification on conflict of interest;
- expenditure incurred under contracts for which suspicions of fraud arise should not be certified up to the end of the investigations carried out by the appropriate bodies.

b) Other structural weaknesses

The assessment of the information submitted by the Romanian authorities revealed certain structural problems of a systemic nature which might have impact for all operational programmes. Following the review of the information submitted by MA, it was noticed that decisions on establishing irregularities were often directly linked to the recovery process. This

state of facts lead to inconsistent approaches as different decisions had been taken in respect to similar findings.

In addition, Commission could not identify the relevant Article of Ordinance 66/2011 which regulates the cases of disagreements between managing authorities and audit authority.

Recommendation:

- Decisions on establishing irregularities should be decoupled from the recovery process. Managing authorities (management verifications) should decide on corrections for expenditure to be certified to the Commission regardless of the subsequent recovery process at national level. In the case of the Regional operational programme it was also noticed that the corrective measures were not applied consistently for similar type of findings.

- The legal framework should provide for the corrective mechanism to be implemented in cases of disagreements between managing authorities and audit authority.

As concerns the recommendations mentioned under points i) – iv), further commitments have already been taken by the national authorities through Ares(2011)1304614 - 05/12/2011 following the meeting held between Commission's services and the Romanian authorities on 28 November.

Based on the results of the actions plan already implemented in 2011 by MA for Regional Development OP and based on the further commitments taken by the Romanian authorities through the above mentioned letter, Commission services decided for the Regional Operational Programme on a provisional correction of 10% to be applied to the past and new expenditure by the Romanian authorities and to be withheld from the payment claims up to the end of the contradictory procedure[1]. By Commission's letter of 1 of March 2012 (Ref. Ares(2012)242234 - 01/03/2012), Romanian authorities were reminded the provisional status of the withholding measures which are to be imposed by end of June 2012.

[1] See DG Regio letter Ares(2011)1399042 - 22/12/2011.

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ANNEX II - SUMMARY OF IRREGULAR EXPENDITURE AND PROPOSED FINANCIAL CORRECTIONS

Finding N°	Contract	Description of finding	Amount on irregular expenditure (Basis for calculation of financial correction) - Lei -	% Rate of assistance[1]	% Financial correction	Amount of financial correction (C4xC5xC6) - Lei -
1	2	3	4	5	6	7
Contracting Authority: UAT Buzau Project code: SMIS 1475						
Contracting Authority: UAT Teleorman Project code: SMIS 1124						
2.	Contract: Work contract – [redacted]	Discriminatory technical eligibility criteria	47.724.025	86.5%	25%	10.320.320,41
3.	[redacted]	Unjustified accelerated procedure based on ANRMAP Order 51/2009	47.724.025	86.5%	10%	4.085.176,54
Contracting Authority: UAT Teleorman Project code: SMIS 1099						
4.	Contract: Work contract – [redacted]	Discriminatory technical eligibility criteria	89.916.434,41	86.5%	25%	19.444.428,94
Contracting Authority: UAT Ilfov Project code 4272						
5.	Works contract – [redacted]	Unjustified accelerated procedure based on ANRMAP Order 51/2009	173.667.721,41 lei	86.5%	25%	37.164.892,38

Finding N°	Contract	Description of finding	Amount on irregular expenditure (Basis for calculation of financial correction) - Lei -	% Rate of assistance[1]	% Financial correction	Amount of financial correction (C4xC5xC6) - Lei -
1	2	3	4	5	6	7
	International (works for 9 projects)					
6.	Works contract – [redacted]	Ineligible expenditure related to additional works.	173.667.721,41 lei	86.5%	Irregular expenditure not expressed in percentage	3,627,416.08 (in relation to project SMIS code 4272)
7.	Framework agreement for supervising services: – [redacted]; [redacted] (covers supervision for 33 work sites)	Noncompliance with the contractual provisions	Payments related the [redacted] subsequent contracts should be made at the percentage initially tendered (0.35% of the value of supervised works)	86.5%	Irregular expenditure not expressed in percentage	138.278,42 (difference between the amounts requested under the subsequent contracts and amounts paid by the MA calculated based on 0.35% up to June 2012)

Note: When several deficiencies are found in the same system, the flat rates of correction are not cumulated, the most serious deficiency being taken as an indication of the risks presented by the control system as a whole. (Guidelines on the principles, criteria and indicative scales to be applied by Commission departments in determining financial corrections under Article 39(3) of Regulation (EC) No 1260/1999.

ANNEX III – PROCEDURE FOR SUSPENSION OF PAYMENTS AND APPLICATION OF FINANCIAL CORRECTIONS

(1) Under Article 92(1) of Council Regulation (EC) No 1083/2006, the Commission shall suspend the interim payments in question.

(2) Under Article 99(1) of Council Regulation (EC) No 1083/2006, the Commission may make financial corrections by cancelling all or part of the Community contribution to an operational programme where, after carrying out the necessary examination, it concludes that:

(a) there is a serious deficiency in the management and control system of the programme which has put at risk the Community contribution already paid to the programme;

(b) expenditure contained in a certified statement of expenditure is irregular and has not been corrected by the Member State prior to the opening of the correction procedure under this paragraph;

(c) a Member State has not complied with its obligations under Article 98 prior to the opening of the correction procedure under this paragraph.

(3) Under Article 100(1) of Council Regulation (EC) No 1083/2006, before taking a decision on a financial correction, the Commission shall open the procedure by informing the Member State of its provisional conclusions and requesting the Member State to submit its comments within two months.

Where the Commission proposes a financial correction on the basis of extrapolation or at a flat rate, the Member State shall be given the opportunity to demonstrate, through an examination of the documentation concerned, that the actual extent of irregularity was less than the Commission's assessment. In agreement with the Commission, the Member State may limit the scope of this examination to an appropriate proportion or sample of the documentation concerned. Except in duly justified cases, the time allowed for this examination shall not exceed a further period of two months after the two-month period referred to in point (3).

(4) Under Article 100(2) of Council Regulation (EC) No 1083/2006, the Commission shall take account of any evidence supplied by the Member State within the time limits mentioned in point (3).

(5) Under Article 100(3) of Council Regulation (EC) No 1083/2006, where the Member State does not accept the provisional conclusions of the Commission, the Member State shall be invited to a hearing by the Commission, in which both sides in cooperation based on the partnership shall make efforts to reach an agreement concerning the observations and the conclusions to be drawn from them.

(6) Under Article 100(4) of Council Regulation (EC) No 1083/2006, in case of an agreement, the Member State may reuse the Community funds concerned in conformity with the second subparagraph of Article 98(2).

(7) Under Article 100(5) of Council Regulation (EC) No 1083/2006, in the absence of agreement, the Commission shall take a decision on the financial correction within six months of the date of the hearing taking account of all information and observations submitted during the course of the procedure. If no hearing takes place, the six-month period shall begin to run two months after the date of the letter of invitation sent by the Commission.

LIST OF ACRONYMS

AA:	Audit Authority
ANRMAP:	Authority for Regulating and Monitoring Public Procurement
ATU:	Administrative Territorial Unit
CA:	Contracting Authority
CNSC:	National Council for Solving Complaints
DG REGIO:	Directorate General for Regional Policy
EPM:	Enquiry Planning Memorandum
ERDF:	European Regional Development Fund
MA:	Managing Authority
UCVAP:	Unit for Coordination and Verification of Public Procurement

TABLE 1

FINDINGS AND ACTIONS TO BE TAKEN/ RECOMMENDATIONS

PROJECT AUDITS (ON-THE-SPOT VISITS)

N°	FINDING	ACTION TO BE TAKEN/ RECOMMENDATIONS	RESPONSIBLE BODY	DEADLINE (DAYS)	PRIORITY HIGH/ MEDIUM/ LOW	ACCEPTANCE BY THE MEMBER STATE / COMMENTS FROM THE MEMBER STATE	FINAL POSITION OF THE COMMISSION
KEY REQUIREMENT 4: ADEQUATE MANAGEMENT VERIFICATIONS (IN PARTICULAR PUBLIC PROCUREMENT) Deficiencies identified							
Contracting Authority: UAT Buzau **SMIS 1475 – Road rehabilitation within the project "Modernization of infrastructure for access to tourist areas in Buzau County" (57.89km)**							
Contract: Audit service contract – [redacted] **Value of the contract**: 256.000 LEI (VAT not included); (approx. 62.730 EUR[2]) **Procurement procedure:** Open tender							
1.	**Irregularity related to the evaluation process** The lowest offer (approx. 33.750 EUR) was excluded based on inconsistency in the tender documents submitted by the bidder. The number of reports to	The guidelines (COCOF 07/0037/03-EN) on financial corrections due to noncompliance with public procurement rules stipulates 2%, 5% or 10% corrections	a) MA	a) 60 days	*Low*	**Recommendation not accepted** Checks were carried out in accordance with Government Emergency Order No 66/2011 and Findings Note No 68459/15 September 2011 was prepared According to the Findings Note, the control unit found from the documents subject to	Commission's services take note of the MS's reply. **This finding is considered closed.**

[2] For approximation reasons, the EU exchange rate of May 2011 was used. (1Euro=4.081 Lei)

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	be provided by the audit company was 7+2 at page 28 and 2 at page 29. This seems to be a formal error occurred while drafting the offer. According to Article 78 in Government Decision 925/2006, the evaluation committee has the obligation to request necessary clarifications related to formal aspects in order to have the confirmation on the information provided in the tender document. UCVAP and CNSC should have taken into account the provisions of Article 78 in the Ordinance 34/2006 when issuing their opinion.	(depending on the seriousness of the issue) for incorrect application of certain ancillary elements of the public procurement procedure. Taking into account that the evaluation committee, although obliged, did not request further information and bearing in mind that the contract was under the threshold of the Directive, we propose 2% financial correction to be applied to the value of the contract (Point 12 in guidance for financial corrections due to public procurement).				checks, which are kept at the registered office of the Ministry of Regional Development and Tourism (MRDT), as well as from those sent by the beneficiary in the period of the checks, that no irregularities were identified in the development of the public procurement procedure in connection with the assessment process because the tender which was rejected as non-compliant did not meet the requirements in the tender documents and in the clarification posted in SEAP on 22 June 2009 regarding the number of audit reports to be prepared under the contract, as follows: • "Question: How many reports must be issued? • Response: 7. <u>One report in each of the 6th, 10th, 14th, 18th, 22nd and 26th month, as well as one final report."</u> The control unit considers that, according to the findings, it is clear that 7 audit reports had to be prepared under the contract. The rejected tenderer undertook in its technical offer to prepare either 9 audit reports or only two audit reports, according to the action plan committed to in its offer. Therefore, in accordance with the provisions of Article 81 of Government Decision No 925/2006, which provides for the obligation of the evaluation committee to reject unacceptable and non-compliant tenders, the Contracting Authority proceeded correctly	

N°	FINDING	ACTION TO BE TAKEN/ RECOMMENDATIONS	RESPONSIBLE BODY	DEADLINE (DAYS)	PRIORITY HIGH/ MEDIUM/ LOW	ACCEPTANCE BY THE MEMBER STATE / COMMENTS FROM THE MEMBER STATE	FINAL POSITION OF THE COMMISSION
						when it rejected the tender of [redacted] as non-compliant because it failed to comply with the provisions in the tender documents, more specifically as regards the number of audit reports requested. We send you included with the response all the substantiating documents which led to the justification of the conclusions in Findings Note No 68456/15 September 2011 Considering the above, the suspicion of irregularity is not confirmed, and the control unit did not identify irregularities in the procurement process relating to the audit services contract, as referred to in Government Emergency Order No 66/2011 on the prevention, identification and sanctioning of irregularities occurred in connection with the procurement and use of European funds and/or their related national public funds.	
Contracting Authority: UAT Teleorman **SMIS 1124 – Rehabilitation DJ 506 Cervenia-Vitanesti-Babaita, km 17+400-58+000 (40.6km)**							
Contract: Work contract – [redacted] **Value of the contract:** 47.724.025 (VAT not included); (approx. 11.694.000 EUR) **Procurement procedure:** Accelerated restrictive procedure							
2.	**Discriminatory technical selection criteria**	**Action a)** Taking into account	MA; ANRMAP	60 days	*High*	**Initial position expressed by MS:** **Recommendation not accepted**	The Commission's services take note of the information

N°	FINDING	ACTION TO BE TAKEN/ RECOMMENDATIONS	RESPONSIBLE BODY	DEADLINE (DAYS)	PRIORITY HIGH/ MEDIUM/ LOW	ACCEPTANCE BY THE MEMBER STATE / COMMENTS FROM THE MEMBER STATE	FINAL POSITION OF THE COMMISSION
	Applicable legislation Article 23, paragraph 8 of the Directive 2004/18, transposed in Article 38 of ordinance 34/2006, states: "*Unless justified by the subject matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraphs 3 and 4 is not possible; such reference shall be accompanied by the words 'or equivalent'.*" **Facts:** **First,** the contracting authority established a detailed list of	the financial implications, and the fact the Commission's services consider the procedure as a "quasi-direct", 100% financial correction is proposed to be applied to the value of the contract. **Horizontal action** See action plan, Table 2				Checks were carried out in accordance with Government Order No 79/2003 and Findings Report No 61474/01 August 2011 was prepared as a result thereof. According to this report, the control unit found the following from the documents subject to checks, which were kept at the registered office of MRDT and which were sent by the beneficiary to be included with the financing application, the applications for reimbursement, and in the period of the checks: ◦ **As regards the use of the qualification and selection criteria:** - The invitation to tender was sent for publication in SEAP and OJEU - The Evaluation Committee considered as unacceptable the tenders which were submitted with a large number of documents missing, as required in the tender documents. - As regards the list of *in situ* cold recycling equipments, they can be found in the technical solution established by the designer, according to which the whole technological process is carried out on site, i.e. *in situ,* on the site of the road, by a set of equipments: ◦ a water tank ◦ a hot bitumen tank ◦ a binder spreader ◦ a plant for the mixture of components ◦ a recycler ◦ compacting cylinders. Among these, the recycler has the main	provided by the MS. **Commission's services close the finding.** In respect to the use of discriminatory criteria, a 25% financial correction shall be applied to the value of the contract (point 7 of the guidelines on the financial corrections). Due to suspicions of fraud, expenditure under this contract should not be declared until the finalisation of the investigation. If fraud is proven by investigations, a financial correction of 100% of the value of the contract shall be applied.

Nº	Finding	Action to be taken/ Recommendations	Responsible Body	Deadline (Days)	Priority High/ Medium/ Low	Acceptance by the Member State / comments from the Member State	Final position of the Commission
	equipment to be in the possession or at the disposal of the candidates without permitting the use of equivalent equipment for the selection stage of the restricted public procedure used. For example, in situ cold recycling equipment. The contracting authority could not justify through the technical design the need to use this specific process. Following the selection stage only one company out of six complied with all technical eligibility criteria. As a consequence, the financial offer was submitted only by one company in the second stage of the procurement process. The contracting authority's set up of detailed technical eligibility criteria lead to unjustified obstacles to the opening up of public					function because it cuts the deteriorated road, kneads it and mixes it with the added binder and then it lays it back. The recycler is not a process in itself, it is a piece of equipment required to be included in the list of equipments according to the technical solution, which was to be applied on the road sections where the designer deemed it necessary. **No particular equipment make was required** for such a technological process, but merely a set of equipments which, according to their specificity, contribute to the cold "*in situ*" stabilization of the mixing materials according to the technical solution established by the designer. - With regard to the decision of the evaluation committee, [redacted] lodged an objection in which it stated that the Contracting Authority used technical criteria deemed unjustified obstacles to the participation in the public procurement procedure - With Letter No 17014/3225-C8/9 July 2010, the National Council for the Settlement of Objections communicated to the Contracting Authority its Decision No 3465/C8/3225 of 7 July 2010, whereby it rejected the objection lodged by [redacted] and ordered further proceedings considering that **the latter did not provide proof that it owned the machines, installations and technical equipments concerned.** Moreover, **some**	

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	procurement to competition. Therefore, the basic public procurement principles of equal treatment and non-discrimination and the one of sound financial management, are not complied with. **Secondly**, ANRMAP and MA in its supervisory role) did not identify this specific situation during their verification					**rented machines and equipments were specified, but** the tenderer **failed to submit the lease contracts concluded in this respect.** Thus, the control unit has found that **there are no sufficient grounds to substantiate a breach from the part of the beneficiary** in the provisions of Article 178(2) of Government Emergency Order No 34/2006 and Article 8 of Government Decision No 925/2006. ◦ **With regard to the conflict of interests** - The control unit carried out checks, including at the National Trade Registry Office (NTRO), which sent the summary of the companies involved (from all viewpoints, namely the associates, the stock capital, shareholding, secondary offices etc) for [redacted] *and* [redacted] which does not reveal any direct connection with any of the persons involved in the implementation of the project from Teleorman County Council. - Thus, considering the provisions of Section 8 – Rules to prevent the conflict of interests in Government Emergency Order No 34/2006, no elements have been identified to ascertain the existence of a conflict of interests under the procurement process for a works contract. **In conclusion, as a result of the checks on the aspects which were notified, the control unit did not find any irregularities, as**	

Nº	FINDING	ACTION TO BE TAKEN/ RECOMMENDATIONS	RESPONSIBLE BODY	DEADLINE (DAYS)	PRIORITY HIGH/ MEDIUM/ LOW	ACCEPTANCE BY THE MEMBER STATE / COMMENTS FROM THE MEMBER STATE	FINAL POSITION OF THE COMMISSION
						defined in Government Order No 79/2003 on the control and recovery of Community funds, and of the related co-financing funds unduly used, as approved as amended by Law No 529/2003, as subsequently amended and supplemented. We send you included with the response all the substantiating documents which led to the justification of the conclusions in Report No 61474/1 August 2011. **Updated position expressed by MS by letter Ares(2012)212310:** **Recommendation partially accepted:** According to the COCOF note no. 07/0037/03 *Guideline to determine financial corrections,* a financial correction of 25% shall be applied due to applying too restrictive criteria.	
3.	**Unjustified accelerated procedure based on ANRMAP Order 51/2009** **<u>Applicable legislation</u>** In accordance with the provisions of the *Article 38 paragraph 3 of the EU Directive no. 2004/18/EC on the coordination of procedures for the*	**Action a)** 1) When verifying the contract notice. ANRMAP should assess the compliance with the legal provisions when reduced deadlines are foreseen by the contracting	**Action a) and b)** MA **Action c)** MA; ANRMAP	60 days	*High*	**Initial position expressed by MS:** **Recommendation not accepted** **A decision was issued with regard to the application of the provisions of Government Emergency Order No 66/2011, and the Findings Note which was subject to the objection was concluded, the objection was admitted and the debt security was voided.** Report No CA 61474/16 August 2011 According to the documents subject to checks,	Commission's services take note on the reply provided by the MS. **Commission's services close the finding.** According to the COCOF Note no 07/0037/03

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	award of public works contracts. public supply contracts and public service contracts and Article 83 of Emergency Ordinance 34/2006: *"In the case of restricted procedures, negotiated procedures with publication of a contract notice referred to in Article 30 and the competitive dialogue:* *(a) the minimum time limit for receipt of requests to participate shall be 37 days from the date on which the contract notice is sent."* As concerns reduce deadlines, paragraph 8 states: "*In the case of restricted procedures and negotiated procedures with publication of a*	authorities. **Action b)** According to the *COCOF Note no 07/0037/03 Guideline to determine financial corrections*, a financial correction of 10% shall be applied to the value of the contract due to unjustified use of reduced deadlines for submitting offers by potential bidders. **Horizontal action** See action plan, Table 2				which are kept at the registered office of MRDT and which were sent by the beneficiary to be included with the financing application, the applications for payment, and in the period of the checks, the control unit has noted the following: Teleorman County Council, as a Contracting Authority, requested that the public procurement procedure be amended, pointing out that it was entitled to speed up the procurement process in accordance with the provisions of Order No 51/2009 of the National Regulatory Authority Monitoring Public Procurement (NRAMPP) *on the speeding up of the restricted and negotiated procedures with the prior publication of an invitation to tender.* The control unit established the following: - the contract notice was published in 23 March 2010; - the invitation to tender was sent for publication on 15 April 2010; - the deadline for the submission of applications was 3 May 2010;	Guideline to determine financial corrections, a financial correction of 10% shall be applied to the value of the contract due to unjustified use of reduced deadlines for submitting offers by potential bidders. [3]

[3] When several deficiencies are found in the same system, the flat rates of correction are not cumulated, the most serious deficiency being taken as an indication of the risks presented by the control system as a whole. (Guidelines on the principles, criteria and indicative scales to be applied by Commission departments in determining financial corrections under Article 39(3) of Regulation (EC) No 1260/1999.

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	contract notice referred to in Article 30, where urgency renders impracticable the time limits laid down in this Article, contracting authorities may fix: *(a) a time limit for the receipt of requests to participate which may not be less than 15 days from the date on which the contract notice was sent, or less than 10 days if the notice was sent by electronic means, in accordance with the format and procedure for sending notices indicated in point 3 of Annex VIII.*" **Facts** As regards the above mentioned contract: • Prior information notice was published on 23.03.2010. • Contract notice was sent for publication on 15.04.2010. and • Deadline for submission of offers					- the contract was signed on 30 July 2010. Therefore, the period for the submission of tenders by candidates was 17 days (from 16 April 2010 to 3 May 2010, exclusive). Pursuant to the recommendation of the European Commission included in the Preliminary Audit Report No 2011/RO/REGIO/J2/956/1 for the Regional Operational Programme CCI 2007RO161PO001, it was deemed that the time limit for the submission of tenders was unjustifiably below the minimum time limit provided for by Article 38 of Directive 2004/18/EC and by the application of the accelerated procedure, competition was not sufficiently ensured. Following the analysis of the tenders submitted by the other candidates as well, it was found that a large number of documents were missing, as follows: - the joint venture [redacted], as well as [redacted] in Zarnesti failed to submit many of the documents requested, part of such documents not being related to the technical equipment requested, such as missing educational certificates, degrees, non-legalised documents etc. - [redacted] in addition to the absence of many documents in	

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	was 3.05.2010. • Contract signed on 30.07.2010. Therefore, the time limit for bidders to submit offers was **18 days**. **First,** having in mind: a) the reduction of the deadline is foreseen only when normal time-limits are impracticable, (*Article 38 paragraph 8 of the EU Directive no. 2004/18/EC),* and b) "when fixing the time limits for the receipt of tenders and requests to participate, contracting authorities shall take account in particular of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set by this Article." (*Article 38 paragraph 1 of the EU Directive no. 2004/18/EC),* it is our opinion that the deadline for the					connection with the technical equipment requested, educational certificates and degrees were missing, as well as non-legalised documents, references, recommendations for the staff involved, the financial – economic situation etc. - [redacted] in Pitesti, except for the documents related to the technical equipment, documents were found to be missing as regards the economic and financial situation, as well as the tax certificate which was not valid on the date of the meeting for the opening of tenders, the bank reference letter for the financial support for the work, educational degrees, attestations etc. Considering the above, as well as the fact that the beneficiary was entitled to speed up the procurement procedure in accordance with the provisions of Order No 51/2009 of NRAMPP, *the exceptional nature* of the situation which entailed the shortening of the period concerning the *time limit for the submission of applications, which must be at least 37 days,* is not deemed justified. According to the rule of **COCOF 07/0037/03-RO, the final version on 29 November 2007 of EC,** Guidelines for determining financial corrections to be made to expenditure co-financed from the Structural Funds or the Cohesion Fund for non-compliance with the rules on public procurement, in conjunction with the provisions in the criterion 1.6 in the Annex to Government Emergency Order No	

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	submission of offers is unjustifiably below the minimum period foreseen by Article 38 of Directive 2004/18/EC and by applying the accelerated procedure market competition was not sufficiently ensured. **Secondly**, ANRMAP and MA in its supervisory role) did not identify this specific situation during their verification Also, according to the activity report of UCVAP, it has been verified and concluded that the Contracting Authority had respected the relevant legal deadlines. MA did not spot the issue in its supervisory role. Based on the audit work, we have identified that unjustified shortened deadlines constitute a recurrent irregularity in Romania for which the Commission has not received evidence that adequate measures are					66/2011, **a financial correction of 10% shall be applied to the value of the works contract.** **Teleorman County Council, acting as the beneficiary, lodged an objection registered** with the Ministry of Regional Development and Tourism under No 66682/7 September 2011 with regard to the Findings Note No CA-61479/16 August 2011 concerning irregularities and the application of financial corrections in connection with the project of the **SMIS Code No 1124** *"Rehabilitation of DJ 506, Cervenia-Vitanesti-Babaita, km 17+400 58+000"*. By this objection, **the former requested the cancellation of the financial correction of 10% applied to the value of the works contract.** By its Order No 2422/15 September 2011, the Minister of Regional Development and Tourism appointed the Committee for the settlement of the objection lodged by **Teleorman County Council.** **Following its analysis, the Committee has found that:** - Directive 2004/18/EC on public procurement allows the application of accelerated procedures when **they are justified by urgent needs.** Even if *the speeding up of the public procurement procedure can support in a justified manner the actions of Member States in*	

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	being implemented.					*their consolidation of their internal economy by the swift execution of major public investment projects,* it is achieved **if the conditions for the application of a competitive procedure have been ensured.** As a Contracting Authority, the beneficiary requested the modification of the public procurement procedure, pointing out that it was entitled to speed up the procurement procedure in accordance with the provisions of Order No 51/2009 of NRAMPP *on the speeding up of restricted and negotiated procedures with the prior publication of an invitation to tender,* in conjunction with Article 83 of Government Emergency Order No 34/2006 on public procurement, as subsequently amended and supplemented. The Committee noted that the beneficiary justified the exceptional nature of that particular situation in accordance with the legal rules in force. Moreover, the reason for the speeding up of the restricted procedure was also invoked in the invitation to tender which was checked and approved by NRAMPP and in which the following was noted: *Accelerated restricted procedure – Exceptional nature of the current economic situation and the provisions of Order No 51/2009 of the President of NRAMPP, as well as of the deadlines for the implementation of projects.*	

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						Considering the provisions of Article 83 of Government Emergency Order No 34/2006, in conjunction with the provisions of Article 1 of Order No 51/2009 of NRAMPP, the Committee has found the following: - the contract notice was published on 23 March 2010; - the invitation to tender was sent for publication in OJEU on 15 April 2010; - the time limit for the submission of applications was 3 May 2010. By way of consequence, the provisions of Article 83(2) of Government Emergency Order No 34/2006 and of Article 1 of Order No 51/2009 of NRAMPP were complied with, namely Teleorman County Council invoked the exceptional nature of the current economic situation as a reason for the urgent switching from the open procedure, which was initially foreseen in the timetable of public procurement, to the accelerated restricted procedure. Thus, it ensured compliance with the minimum period of 15 days foreseen between the date of transmission of the invitation to tender and the time limit for the submission of applications, being consistent with the conditions set out. The complainant submitted a table (included as an annex), concerning the submission of the qualification documents requested in the Tender data sheet, whereby it proved that the documents could have been obtained within	

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						the period of time the applicants had available. In connection with this subject matter of the objection, according to the documents included with the case file, the Committee has found the following: - the rejected candidates had a large number of documents missing, although they could have been obtained in due time by the tenderers, so that the assertion of the complainant is consistent with reality; - the invitation to tender was published in SEAP, - the invitation to tender was published in OJEU; - The tender documents were analysed in terms of the inclusion of elements which may have entailed the introduction of unjustified obstacles likely to restrict competition; - under the procurement procedure by an accelerated restricted call for the award of a works contract with the object: "Rehabilitation of DJ 506, Crevenia-Vitanesti-Babaita, km 17+400-58+000", only one objection lodged by [redacted] was admitted by the National Council for the Settlement of Objections (NCSO). The objection was registered at NCSO under No 17970/27 May 2010 and it was settled by Decision No 3465/C8/3225/7 July 2010, being rejected as unsubstantiated. **Considering that the legal requirements**	

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						were complied with, according to which the accelerated restricted procedure was carried out to such an extent that the economic operators concerned had available an adequate and sufficient period of time to prepare the tenders and the qualification criteria, the Committee deems that the period set by the Contracting Authority, i.e. the period between the date of transmission of the invitation to tender and the time limit for the submission of tenders is consistent with the relevant legal provisions, thus ensuring the purposes of Article 2(1) of Government Emergency Order No 34/2006, as amended and supplemented, with due regard to the provisions of Article 3 of Order No 51/2009 as well. Following the analysis carried out, the Committee issued Decision No 12/28 September 2011, whereby: - **<u>it admits as a whole the objection</u> registered at the Ministry of Regional Development and Tourism (MRDT) under No 66682/7 September 2011, which was lodged by Teleorman County Council as an opponent, having the single tax registration code 4652686, the registered office/address registered for tax purposes at 178 Dunarii Street, Alexandria, PO Box 140047, with [redacted] as a legal representative and [redacted] as an authorised agent, with regard to Findings Note No CA-61479/16 August**	

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						2011 concerning irregularities and the application of financial corrections in connection with Grant Contract No 546/15 October 2009, **SMIS code 1124** ***"Rehabilitation of DJ 506, Cervenia-Vitanesti-Babaita, km 17+400 58+000*** **and** - **decides to void the debt security.** **All the substantiating documents underlying the decisions are included as annexes.** **Updated position expressed by MS by letter Ares(2012)212310:** **Recommendation accepted:** According to the *COCOF Note no 07/0037/03 Guideline to determine financial corrections,* a financial correction of 10% shall be applied to the value of the contract due to unjustified use of reduced deadlines for submitting offers by potential bidders.	
Project code 1099 - Rehabilitation DJ 701, limits - Dambovita Gratia-Poeni-Silistea-Scurtu Mare-Slavesti-Ciolanesti-Zambreasca-Dobrotesti, km 44+240-104+890 (55,450 km)							
Works contract – [redacted] **Value of contract:** 89.916.434,41 lei (without VAT) - (approx. 22.033.000 EUR) **Procurement procedure:** Open tender							

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4.	**Discriminatory technical eligibility criteria** **Applicable legislation** Article 23, paragraph 8 of the Directive 2004/18, transposed in Article 38 of ordinance 34/2006, states: "*Unless justified by the subject matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraphs 3 and 4 is not possible; such reference shall be accompanied by the words 'or equivalent'.*"	**Action a)** Taking into account the financial implications, and the fact the Commission's services consider the procedure as a "quasi-direct", 100% financial correction is proposed to be applied to the value of the contract. **Horizontal action** See action plan, Table 2	MA; ANRMAP	60 days	*High*	**Initial position expressed by MS: Recommendation not accepted** Checks were carried out in accordance with Government Emergency Order No 66/2011 according to Findings Note No 58818/3 August 2011 According to the documents subject to checks, which are kept at the registered office of MRDT and which were sent by the beneficiary to be included with the financing application, the applications for payment, and in the period of the checks, the findings of the control unit were the following: • **As regards the use of the qualification and selection criteria** - The invitation to tender was sent for publication in SEAP and OJEU - The Evaluation Committee considered as unacceptable the tenders which were submitted with a large number of documents missing, as required in the tender documents. - The requirement as regards the use of the "*in situ*" cold recycler under the project was met by three of the four companies or joint ventures which submitted tenders. - None of the companies which took the tender documents objected to the technical solution of the "in situ" cold recycling or the related machines and equipments. The in situ recycling procedure is established and explained in details both in the feasibility	The Commission's services take note of the information provided by the MS. **Commission's services close the finding.** In respect to the use of discriminatory criteria, a 25% financial correction shall be applied to the value of the contract (point 7 of the guidelines on the financial corrections). Due to suspicions of fraud, expenditure under this contract should not be declared until the finalisation of the investigation. If fraud is proven by investigations, a financial correction of 100% of the value of the contract shall be

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	Facts: The contracting authority established a detailed list of equipment to be in the possession or at the disposal of the candidates without permitting the use of equivalent equipment for the selection stage of the restricted public procedure used in this case. Therefore, the contracting authority's set up of detailed technical selection criteria lead to unjustified obstacles to the opening up of public procurement to competition. By limiting the competition, the principle of sound financial management, as stated in Article 14 (1) of Regulation 1083/2006, is not complied with. **Secondly**, ANRMAP and MA in its					study, in the brief design and in the financing application approved. This procedure which was chosen by the designer was approved by Government Decision No 766/1997 approving certain regulations on the quality in constructions, as published in Official Gazette, part I, No 352/10 December 1997, "Please note that the *in situ* recycling procedure is used exclusively for road works and, considering that the subject matter of the grant contract is the rehabilitation of a road, the Contracting Authority used this procedure in full compliance with Article 23(8) of Directive 2004/18/EC and in accordance with the solution imposed by the technical documentation approved, included as an annex to the grant contract. We would like to specify that the documentation submitted for the approval of the intervention works (i.e. the feasibility study), which was NOT prepared by the staff of the County Council but by a specialised company designated for this purpose through an open call procedure, provides that: (...) The brief design (...) provides the following: - 4 cm of asphalt concrete wearing layer BA 16 - 6 cm of connecting BAD 25 course binder layer	applied.

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	supervisory role did not identify this specific situation during their verification					- 20 cm of natural aggregate layer stabilized with cement *in situ* (...) Under heading 17 in the breakdown of works, it is specified: "20 cm cold recycling of roads by using the recycler and stabilizing ballast with cement (...). In accordance with the provisions of Article 35(3) of Government Emergency Order No 34/2006 and the Operational Manual for the award of contracts under the public procurement procedure, VOLUME II, page 20, the following are provided: "In the case of works contracts, the technical specifications may also refer to prescriptions relating to design and calculation of costs, ...of the procedures and execution methods, as well as to any other technical requirements that the Contracting Authority can describe..." By the TECHNICAL SOLUTION (...), the whole technological process is carried out on site (*in situ*), on the location of the road, by way of a set of equipments: - a water tank - a hot bitumen tank - a binder spreader - a plant for the mixture of components - a recycler	

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						- compacting cylinders Among these, the recycler has the main function because it cuts the deteriorated road, kneads it and mixes it with the added binder and then it lays it back. The recycler is not a process in itself, it is a piece of equipment required to be included in the list of equipments according to the technical solution, which was to be applied on the road sections where the designer deemed it necessary." - Of the 22 tenderers which received the tender documents, only one tenderer lodged an objection whereby it considered that only the qualification and selection criteria relating to the location of the asphalt processing plant were discriminatory in nature. By its Letter dated 21 May 2009, which was registered at Teleorman County Council under No 5882/22 May 2009, the tenderer [redacted] Cluj-Napoca, which did not participate anymore in the tendering procedure afterwards, lodged an objection with regard to the tender documents and to the procurement data sheet, which was addressed to the National Council for the Settlement of Objections (NCSO). The subject matter of the objection was the minimum qualification requirement, according to which economic operators had to own an asphalt processing plant in Teleorman county.	

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						In order to sustain its objection, [redacted] showed that Section 4 of Chapter V in the procurement data sheet entitled "Technical and/or professional capacity", required from economic operators "*to own an asphalt processing plant located in Teleorman county*", which the opponent considered restrictive, therefore contrary to the provisions of Article 178(2) of Government Emergency Order No 34/2006 and of Article 8 of Government Decision No 925/2006. Following the aforementioned objection lodged, the Contracting Authority took corrective action pursuant to Article 277(1) of Government Emergency Order No 34/2006, as amended and supplemented, which consisted in amending the provisions in Chapter V.4) Technical and/or professional capacity in the procurement data sheet. The tenderer [redacted] lodged an objection with regard to the outcome of the procedure, which was addressed to NCSO. The opponent invoked its right to bring supplementary supporting documents in order to substantiate compliance with the qualification requirements referred to in Article 11(4) and (5) of Government Decision No 925/2006 approving the detailed rules implementing the provisions relating to the award of public contracts in Government Emergency Order No 34/2006 on the award of public contracts, of public works concession	

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						contracts and public services concession contracts. The opponent equally considered that the requirement concerning the location of the asphalt processing plant within Teleorman county or the neighboring counties is discriminatory and inapplicable because the plant in possession *"is mobile and can be located on any site"*. By its Decision No 4157/C5/2476/4891/21 August 2009, the National Council for the Settlement of Objections (NCSO) admitted the objection lodged by [redacted], Cluj-Napoca and issued a decision for the cancellation of the procedure... Teleorman County Council lodged a complaint with regard to Decision No 4157/C5/2476/4891/21 August 2009 of NCSO at the Court of Appeal in Bucharest. By its **Civil Sentence No 1973/13 October 2009,** the Court of Appeal in Bucharest admitted the complaint of the complainant, namely Teleorman County Council, and rejected the objection lodged by [redacted] as unsubstantiated, **the decision of the court being final and irrevocable.** Therefore, the control unit deems that **there are no sufficient grounds to substantiate a**	

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						breach from the part of the beneficiary in the provisions of Article 178(2) of Government Emergency Order No 34/2006 and Article 8 of Government Decision No 925/2006. • **With regard to the conflict of interests** - The control unit carried out checks, including at the National Trade Registry Office (NTRO), which sent the summary of the companies involved (from all viewpoints, namely the associates, the stock capital, shareholding, secondary offices etc) for [redacted] *and* [redacted], which does not reveal any direct connection with any of the persons involved in the implementation of the project from Teleorman County Council. - Moreover, according to the statements of the beneficiary, none of the managing staff of the Contracting Authority or member of their families or relatives up to the fourth grade are shareholders or employees in any of these companies. Moreover, none of the members in the tenders' evaluation committee is connected to [redacted] and [redacted] - No public contracts were concluded to the benefit of companies managed by spouses, relatives up to the fourth grade inclusive, akin or business partners with the county public authority which organised tendering procedures, negotiation	

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						procedures or calls for tenders. At the same time, none of the persons specified above is in a conflict of financial interest because they have not obtained any real or potential profit with the help of a public clerk within the specialised apparatus, a government official or a person, who owns properties, shares or holds a certain function in the two companies which participated in public procurement procedures. - Considering the provisions of Section 8 – Rules to prevent the conflict of interests in Government Emergency Order No 34/2006, the control unit has not identified any elements to ascertain the existence of a conflict of interests under the procurement process for a works contract. - According to Request No 48312/23 June 2011 of the National Integrity Agency (included as an annex), the Audit Report of the Committee was transmitted because this institution has the competence to carry out checks with regard to the conflict of interests. **The response to the request was given by Letter No 51574/5 July 2011.** In conclusion, the control unit did not find any irregularities, as defined in **Government Order No 79/2003 on the control and recovery of Community funds, and of the related co-financing funds unduly used, as approved as amended by Law No 529/2003, as subsequently amended and**	

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						supplemented. **Updated position expressed by MS by letter Ares(2012)212310:** **Recommendation partially accepted** According to the Note *COCOF Note no. 07/0037/03 Guideline for determine financial corrections,* a financial correction of 25% shall be applied to the value of the contract due to applying too restrictive criteria for selection.	
Contracting Authority: UAT Ilfov **Project code 4272 - Modernization county road 101 Snagov – Gruiu (18km)** **Works contract –** [redacted] **Value of contract:** 173.667.721,41 lei (without VAT) (100.534 km for 9 projects) (42.555.200 EUR) **Procedure:** Accelerated restricted tender							
5.	**Unjustified accelerated procedure based on ANRMAP Order 51/2009** **<u>Applicable legislation</u>** In accordance with the provisions of the *Article 38 paragraph 3 of the EU Directive no. 2004/18/EC on the coordination of procedures for the award of public works contracts. public supply*	**Action a)** When verifying the contract notice, ANRMAP should assess the compliance with the legal provisions when reduced deadlines are applied by the contracting authorities. **Action b)**	MA MA; ANRMAP;	60 days	*High*	**Initial position expressed by MS:** **Recommendation not accepted** Checks were carried out in accordance with Government Emergency Order No 66/2011 and Report No 67349 of 12 September 2011 was prepared. **1.** According to that report, the inspection team found that, on 29 December 2011 [sic], the beneficiary sent to SEAP **the invitation to tender published under No 92716 of 30 December 2009** for the "*Execution of modernisation works on county roads in Ilfov*	Commission's services take note on the reply provided by the MS. **Commission's services close the finding.** According to the COCOF Note no 07/0037/03 Guideline to determine financial

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	contracts and public service contracts and Article 83 of Emergency Ordinance 34/2006: *"In the case of restricted procedures, negotiated procedures with publication of a contract notice referred to in Article 30 and the competitive dialogue:* *(a) the minimum time limit for receipt of requests to participate shall be 37 days from the date on which the contract notice is sent."* As concerns reduce deadlines, paragraph 8 states: "*In the case of restricted procedures and negotiated procedures with publication of a contract notice referred to in Article 30, where urgency renders impracticable the time limits laid down in this Article, contracting authorities may fix:* *(a) a time limit for the receipt of requests to*	Taking into account the financial value of this contract covering works to be carried out for all 9 projects managed by this contracting authority and the timing (holidays period), together with the fact that the competition was limited (3 out of 4 bidders were excluded) a 25% financial correction is proposed to be applied. **Horizontal action** See action plan, Table 2				*county*". Those works also include the project concerned, the type of procedure being the *accelerated restricted tender procedure.* Furthermore, **on 31 December 2009, the invitation to tender for the first selection stage was published in OJEU under No 2009/S 252-362817**, in accordance with Article 55(2)(c) of Government Emergency Order No 34/2006. The estimated value of the contract had been set, at the time of the publication, at EUR 41 300 584.06 without VAT. Those notices and the contract award documents specified, under Section IV.3.4, that *"The deadline for the receipt of tenders or requests for participation is **14 January 2010 at 9.00**"*, thus ensuring a period of 14 calendar days (in accordance with Article 3(z) of Government Emergency Order No 34/2006) between the date of transmission of invitations to tender for publication in OJEU and the deadline for the submission of applications. As regards the publication of a contract notice under Article 51(c), this was mandatory if the Contracting Authority intended to reduce certain deadlines in applying: - an open call tender procedure pursuant to Article 72(2) (not applicable); - or the second stage of the restricted tender procedure, namely the stage initiated by the transmission of the invitations to tender to all of the selected applicants, pursuant to Article 89(2) ('...up to 36 days, and in any case no sooner than 22 days'). In any event, paragraph 6 of the same Article provides that *"Where, for*	corrections, a financial correction of 25% shall be applied to the value of the contract due to unjustified use of reduced deadlines for submitting offers by potential bidders.

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	participate which may not be less than 15 days from the date on which the contract notice was sent, or less than 10 days if the notice was sent by electronic means, in accordance with the format and procedure for sending notices indicated in point 3 of Annex VIII." **For this contract:** • Contract notice was sent for publication on 30.12.2009. and • Deadline for submission of offers was 14.01.2010. Therefore, the time limit for bidders to submit offers was **15 days**. **Firstly,** having in view: a) the reduction of the deadline is foreseen only when normal time-limits are impracticable, **but** b) when launching the tender procedure not all Financing Contracts were approved (for the 9 contracts included in the					*reasons of urgency, the number of days referred to in paragraphs 1 and 2 cannot be complied with... the Contracting Authority shall be entitled to speed up the application of the procedure by reducing the respective period, but to not less than 10 days".* Therefore, in this case, **the need for the prior publication of a contract notice in SEAP and OJEU was not mandatory**, because the period set initially by the Contracting Authority in the second stage of the restricted tender procedure was 13 days, with a subsequent three-day extension pursuant to Article 72 of the Order concerned. Thus, the invitation to tender was issued under No 1034 of 10 February 2010 and the deadline for submitting a tender was set for 24 February 2010 According to letter No 241 of 23 February 2010, that deadline was extended to 1 March 2010. On the other hand, when analyzing the correctness of setting a period of 14 calendar days between the date of transmission of invitations to tender for publication in OJEU and the deadline for submitting applications (between 30 December 2009 and 14 February 2010), the following legislative provisions apply: - Articles 71 and 83(1), (2) and (3) of Government Emergency Order No 34/2006 on the award of public procurement contracts, public works concession contracts and public services concession contracts, as amended;	

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	tender) and the works cannot actually start on the field until the signature of the Financing Contracts, and c) the contractual agreement was only signed on 21.04.2011, **It is our opinion that the use of accelerated restricted procedure was not justified.** **Secondly,** "when fixing the time limits for the receipt of tenders and requests to participate, contracting authorities shall take account in particular of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set by this Article." (*Article 38 paragraph 1 of the EU Directive no. 2004/18/EC).* By applying the accelerated restricted procedure for this complex tender, with					- Article 27(3) of Government Decision No 925/2006 on the detailed rules for implementing Government Emergency Order No 34/2006, as amended. Those provisions are reproduced below: **Article 17** – *Without prejudice to the applicability of the provisions of this Emergency Order concerning the minimum periods which must be ensured, on the one hand, between the date of transmission of contract notices for publication or the date of transmission of invitations to tender and, on the other hand, the deadline for the submission of tenders/applications, the Contracting Authority shall set that period according to the complexity of the contract and/or the specific requirements, so that the interested economic operators have adequate and sufficient time to prepare the tenders and the qualification documents requested in the contract award documents."* **Article 83** – *(1) Without prejudice to the provisions of Article 71, where the estimated value of the public procurement contract is equal to or greater than the value referred to in Article 55(2),* the ***period between the date of transmission of the contract notice for publication in the Official Journal of the European Union and the deadline for the submission of applications*** *must be at least 37 days.* *(2)* ***Where, for reasons of urgency,*** *the number of days referred to in paragraph (1) cannot be complied with, the Contracting Authority shall*	

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	extensive selection criteria, only 1 offer had been able to meet all the criteria in order to be selected for the 2nd phase of the tender procedure. This could have had a financial impact on the contracted amount, having in mind the lack of competition. Practically, it resulted in contracting the works for an amount very close to the maximum estimated amount. By limiting the competition, the basic public procurement principles of equal treatment and non-discrimination and the one of sound financial management, are not complied with. **Thirdly**, for this contract, ANRMAP specifically gave its agreement for the use of the restricted procedure, through the Note no. 4942/01.04.2011. Also, according to the					*be entitled to speed up the procedure by reducing the period referred to in paragraph (1),* ***but to not less than 15 days.*** *(3) Where the contract notice is sent, in electronic format, for publication in Official Journal of the European Union,* ***the period referred to in paragraph (1) may be reduced by 7 days and the period referred to in paragraph (2) may be reduced by 5 days.*** Under these conditions, the minimum deadline provided for by the Order in the first stage of the accelerated restricted tender procedure is 15 – 5 = 10 calendar days, which **is applicable subject to compliance with the provisions of Article 27(3) of Government Decision No 925/2006, as updated, and with the provisions of Article 71.** We would like to point out that the Territorial Administrative Unit (TAU) in Ilfov County sent the contract notice for the submission of applications under the first selection stage **by SEAP** on 30 December 2009 for publication in OJEU in computerized form in accordance with the provisions of Article 48(2) of Government Emergency Order No 34/2006, as updated. This notice was published under No 2009/S 252-362817 in compliance with Article 83(3) of Government Emergency Order No 34/2006. It has been found that the Contracting Authority complied with this minimum period and, **by adding other 4 calendar days as an extension**, the provisions of Article 71 can be	

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	activity report of UCVAP, it has been verified and concluded that the Contracting Authority had respected the relevant legal deadlines. MA did not spot the issue in its supervisory role. Based on the audit work, we have identified that unjustified shortened deadlines constitute a recurrent irregularity in Romania for which the Commission has not received evidence that adequate measures are being implemented.					deemed to have been observed as regards the extension of the period of submission of applications according to the specific requirements imposed, with the following arguments being brought with regard to this latter issue: o the Procurement data sheet (document No 7) includes the requirements and the minimum levels requested from the potential candidates, among which: - in Chapter V.1 – *Personal status of the applicant/tenderer* – 3 documents; - in Chapter V.2 – *Professional capacity* – 4 certificates issued by State authorities, 1 tax record certificate issued within not more than 15 days before the opening of applications, 2 criminal records; - in Chapter V.3) *Economic and financial status* – 4 documents relating to annual balance sheets and turnover for each member in the joint venture; 1 document regarding access to credit lines, issued by the creditor bank(s) within not more than three days before the date of opening of applications, to be submitted only in original; - in Chapter V.4. *Technical and/or professional capacity* – 1 list with the main works carried out, 3 specific declarations as regards the in-house technical staff, subcontractors, machines and equipments available as well as a sheet for similar experience and a statement for the acknowledgment of the contractual terms. Requirements also involved the submission	

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						of documents as regards the possession/acquisition of asphalt mixing plants, concrete plants, quarries for mining, laboratories and several related documents pertaining to each unit. - Operators also had to submit the legalized copy of the ISO 9001:2001 certificate on the implementation of the quality management system, of the ISO 14001:2001 certificate on the implementation of the environment standard, of the OHSAS 18001:2007 certificate on the occupational management and safety and of the SA 8000:2008 certificate on social accountability; o The requested documents *are found at the registered office of any economic operator, even more so as they refer to the financial year completed more than a year before*, and others, such as tax certificates, ascertaining certificates, bank documents, tax records or lease/supply contracts, may be obtained within a reasonable period of 3 to 7 days following the submission of an application; o Certain aspects in connection with the above are confirmed by the current practice; o In this stage of submission of applications, potential participants did not have to prepare any technical documents (i.e. the technical proposal, the preparation of estimates etc). In order to obtain additional clarifications in	

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						this respect, MRDT requested from NRAMPP by Letter No 63100/23 August 2011 an opinion with regard to the correct justification of the 14 calendar day-period by the Contracting Authority, of the compliance ensured by this entity with the principles in Article 2(2) of Government Emergency Order No 34/2006, as updated, as well as with regard to the correct establishment of minimum requirements as regards the obligation to implement the SA 8000:2008 standard relating to social accountability. It was noted that, pursuant to Article 2 of Government Emergency Order No 74/2005 on the establishment of NRAMPP, as subsequently amended and supplemented: Article 2 *"For the purposes of its functions, the Authority shall have the following main tasks:* *..... d) to ensure an appropriate framework for the* ***consistent application of the legislation in the area of public procurement,*** and pursuant to Article 3: Article 3 "*By the duties it was entrusted with and by its structure, the Authority shall carry out the following* ***tasks****:* ***..... e) methodological guidance*** *to Contracting Authorities during the public procurement process,* ***supporting the correct application of the relevant legislation".*** According to the response of NRAMPP, pursuant to Letter No 13741/26 August 2011, registered at MRDT under No 64571/30 August 2011 (document No 8), "*...the grounds as regards the speeding up of the public*	

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						procurement procedure for the award of a works contract in order to reduce and set the periods ***were correctly substantiated, and the Contracting Authority observed the principles referred to in Article 2(2) and the minimum periods referred to in Government Emergency Order No 34/2006".*** As regards the requested certifications, "*...the contracting authorities shall be entitled to request from economic operators to submit the SA 8000:2008 certificate as part of the qualification documents only where this requirement is relevant for the performance of the contract which is to be awarded, and proportional with the nature and complexity of that contract".* **In conclusion, the control unit established that the beneficiary (ATU Ilfov), as a Contracting Authority, did not commit any breach in the specific provisions of the legislation in force as regards public procurement, and no financial corrections are required to be applied with reference to the provisions of Article 6(3) of Government Emergency Order No 66/2006 on the prevention, ascertaining and sanctioning of irregularities occurred in the procurement and use of European funds and/or of their related national public funds.** **Updated position expressed by MS by letter Ares(2012)212310:** **Recommendation accepted**	

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						According to the *COCOF Note no. 07/0037/03 Guideline to determine financial corrections,* a financial correction of 25% shall be applied to the value of the contract due to applying too restrictive criteria for selection.	
6.	**Unjustified/ Incorrect use of negotiated procedure without publishing a contract notice in the case of similar works** The Contracting Authority had made use of the provisions of Article 122 of OUG 34/2006. According to the Article mentioned above, in case the Contracting Authority intends to apply the negotiated procedure without publication of a contract notice for contracting similar works, the estimated value of the initial contract should be determined taking into account all similar works foreseen to be contracted at a later stage (Art 122, §j).	**Action a)** The managing authority should perform an analysis of the works performed under the addenda to the initial contract in order to identify which part of the works qualify as "similar works" and which part are "additional works". Additional works shall not be eligible. Action b) Having in mind that the contracting authority compensated the additional works awarded to the contractor by renouncing to other works included in	MA	60 days	*High*	**Accepted recommendation** **Checks were carried out in accordance with Government Emergency Order No 66/2011 and the Findings Note was prepared:** • As regards the application of the negotiated procedure without the publication of an invitation to tender, in the case of similar works, the control unit has found the following: - In the Procurement data sheet it was stated that the Contracting Authority is entitled to opt for the subsequent acquisition of new works from the economic operator whose tender will be declared successful under the procedure pursuant to Article 122(i) and (j) of Government Emergency Order No 34/2006. - The works set out in Addendum No 1, 3, 5 and 16 were referred to in the construction site orders by the designer and were approved by addendums to the works contract by the beneficiary and the constructor. - The total value of Addendum No 1, 3, 5 and 16 was 3,627,416.08 lei, which is below the maximum rate referred to in the grant	Commission's services take note of the information provided by the Romanian authorities. The value of 3,627,416.08 lei related to the above mentioned SMIS project should be corrected. Nevertheless, the same analysis and correction should be applied for the other projects financed from ERDF which fall under the same contract. **The Commission's services consider this finding closed under the present audit procedure. Follow-up of the**

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	For this contract, - the estimated amount in the contract notice was 207 M lei, and - it was estimated an additional amount of similar works in amount of 650 M lei. Practically, until the moment of the report, similar works in amount of 203.102.141 have been contracted as similar works. Similar works are considered to be repetitive works of the ones included in the initial contract and which are in line with the tender documentation. It is our opinion that amount foreseen for similar works is disproportionate as compared to the initially contracted amount (three times the value of the initial contract). Thus, **the principle of sound financial management**	the initial technical design, Romanian authorities should perform detailed technical checks on the deliveries to determine whether, the finalised project complies with the initially approved one and with the initially approved technical design based on which works contracts have been awarded. This action should be taken before closing the financed projects affected by this works contract. **Horizontal action** See action plan, Table 2				contract, i.e. 10% of the value of the works contract. - With regard to the acquisition of the works listed in Addendum No 3 and 16, the beneficiary failed to meet the cumulative requirements imposed by Article 122(i) of Government Emergency Order No 34/2006 concerning the application of the negotiated procedure without the prior application of an invitation to tender, because it did not provide proof that these works became necessary for the performance of the contract due to certain unforeseeable circumstances. - Moreover, the beneficiary may not invoke the opportunity for the acquisition of additional works if the data provided in the application form had been changed. - With regard to the acquisition of the works listed in Addendum No 1 and 5, the beneficiary failed to meet the cumulative requirements imposed by Article 122(j) of Government Emergency Order No 34/2006 concerning the application of the negotiated procedure without the prior publication of an invitation to tender. - The legal text referred to, i.e. Article 122(j), provides that the estimated value of the initial contract is set by taking into account as well the similar works which may be acquired subsequently. - The beneficiary contradicted itself when it asserted that, upon the initial acquisition, it took into account works about which it subsequently stated that they became	**corrective measures will be done during future audit work.**

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	was not complied with. **Secondly**, under the umbrella of similar works, additional works were contracted as well at least in amount of 5.059.398 lei (Addenda number 3, 8, 9, 10 and 11). **In addition**, for the Addenda number 12, 13 and 14 the nature of the works is not indicated. The related amount is 9.300.349 lei. **Also**, for Addendum number 1, the contracted works cannot be considered as similar because these are a consequence of a modification of the initial technical solution, which implies renouncement to a number of works and execution of additional works (not initially foreseen). From the data available, the Addendum number 4 could be as well partially affected, as it foresees					necessary due to certain events which were not considered when the initial project was prepared (weather conditions, heavy traffic). - Considering the findings above, as regards the conclusion of Addendum No 1, 3, 5 and 16, the control unit considered that the beneficiary failed to apply correctly the negotiated procedure without the prior publication of an invitation to tender, which is contrary to the cumulative requirements imposed by Article 122(i) and (j) of Government Emergency Order No 34/2006. **Considering the fact that, until the date when the checks were carried out, no amount was settled to the account of the beneficiary under Works contract No 3335/11/21 April 2010 which was concluded with the joint venture [redacted] the Managing Authority for the Regional Operational Programme will not refund any expenditure incurred by the Administrative-Territorial Unit of Ilfov county under Addenda No 1, 3, 5 and 16 to this contract.**	

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	execution of additional works. **Therefore, the additional works cannot be considered as eligible to be contracted as similar works and are irregular.** Please see **Annex 1** of the Report, for an overview of the Addenda signed for similar works.						
Framework agreement: – [redacted] **Value of contract:** Percentage of the works contracts to be supervised **Procurement procedure**: Open tender							
7.	**Noncompliance with the contractual provisions** Framework agreement for supervision services of 33 works contracts was concluded with 3	**Action a)** Contracting Authority should provide justification on the percentages agreed during the subsequent	CA; MA	60 days	*High*	**Accepted recommendation** **Checks were carried out in accordance with Government Emergency Order No 66/2011 and the Findings Note was prepared:** • **With regard to the conclusion of the subsequent services contract for**	Commission's services take note of the information provided by the MS. Based on the Procedure report

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	eligible tenderers. The award criterion was the lowest price. In this situation, the value of the framework contract is expressed in percentages applied to the value of the works contracts to be supervised. i.e. [redacted] – 0.35%; [redacted] - 0.516%; [redacted] – 0.65%; When awarding the subsequent supervision contracts, the contracting authority re-negotiated the conditions with the 3 qualified tenderers. During the subsequent negotiations, one of the tenderers submitted offers higher than the one initially tendered (i.e. [redacted] – cca. 0.64%) **Having in view:** - Article 32, paragraph 2 of Directive 2004/18 states: "When awarding contracts based on a	negotiations for specific contracts with the winners of the framework contract which did not complied with the provisions of the framework contract. **Horizontal action** See action plan, Table 2				**technical consulting as regards the supervision of works,** the control unit noted the following: - the Beneficiary concluded framework services agreements with the following tenderers: - [redacted] (unit price: 0.35 %); - [redacted] (unit price: 0.516 %); - [redacted] (unit price: 0.65 %). - The Beneficiary concluded the subsequent services contract No 14/4 May 2010 with [redacted] for 0.64% of the value of the supervised works. - The Beneficiary set in the framework agreements the maximum rate of the subsequent contracts as *"the estimated value of the subsequent contract with the highest rate which is foreseen to be awarded on the period of the contract"*. - The analysis of the legal texts specified by the Beneficiary (Article 143 of Government Emergency Order No 34/2006, in conjunction with Article 65(f) of Government Order No 925/2006) revealed that this *"estimated value..."* is used for the determination of the value thresholds according to which the award procedure is chosen, not for the imposition of certain minimum qualification requirements. Thus, the corroboration of the two legal	for awarding subsequent contract no. 7399/13.07.2009, the Commission's understanding is that only [redacted] did not respect the percentage initially offered. This practice was put in question in finding no. 7. Therefore, the Commission considers as irregular the amount which results from the difference in percentage offered during the subsequent negotiations with the above mentioned company. Having in view that the value of the subsequent contracts is expressed in

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	framework agreement, the parties may **under no circumstances make substantial amendments to the terms laid down in that framework agreement**, in particular in the case referred to in paragraph 3." - provisions of the initially concluded framework contract, paragraph 4.2: "The subsequent contracts will be awarded by re-launching the competition with the enterprises signing the framework contract, which will tender a percentage applied at the value of the specific contract for which the service will be provided; **this percentage shall not be over the maximum percentage tendered for the award of the framework contract.**" (i.e. 0.35%) **The contracts concluded subsequently** with the [redacted] **do**					texts considered by the Beneficiary is not applicable. - The Beneficiary and the providers of services introduced under Article 7.2 of the framework agreements a maximum tendering rate of 0.65%, thus altering the outcome of the tendering procedure whereby the tender ranked on the first position had a value of 0.35% in breach of the provisions of Article 200 of Government Emergency Order No 34/2006, Article 82(1) and (4) of Government Decision No 925/2006. - Following the reiteration of the tendering procedure, the Contracting Authority did not obtain any improvement in the price, which led to the reiteration of the competition under Article 68(2)(b). In these circumstances, the Contracting Authority had the obligation to award the subsequent contract to the tenderer which was ranked on the first position under the procedure applied for the conclusion of the framework agreement, by considering the conditions and elements set out in the latter's initial tender, i.e. [redacted] for the value of 0.35% of the value of works subject to supervision in accordance with the provisions of Article 69(6) of Government Decision No 925/2006. - Considering that the Beneficiary,	percentage to be applied to the value of the works supervised; the total value of the correction depends on the expenditure declared by the final beneficiary. **Provided that the Romanian authorities corrects all payments related to the contracts concluded with C.S.T SRL according to the above mentioned reasoning, the Commission's services consider this finding closed within the present contradictory procedure.** **Follow-up of the corrective measures will be done during future audit work.**

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	not comply with the provisions of the framework agreement as the price to which the contract was awarded exceeded the percentage initially tendered. Therefore, **the amount** based on the (originally agreed) percentage included in the framework contract is considered as irregular.					namely the Administrative Territorial Unit of Ilfov county, concluded the subsequent services contract No 14/04 May 2010 in breach of the national legislation on public procurement, and taking into account the provisions of Article 9(25) of the grant contract, all the expenses incurred by the Beneficiary with technical consulting services as regards the supervision of works under Budget line 3.5 are ineligible. **Considering that, until the date when the checks were carried out, no sum was settled to the beneficiary's account under the subsequent services contract No 14/4 May 2010 concluded with [redacted] the Managing Authority under the Regional Operational Programme will not reimburse any expense incurred by the Administrative Territorial Unit of Ilfov county under this contract.**	
Comment on the financial selection criteria used by ATU Buzau and ATU Ilfov contracting authorities							
8.	Commission services noticed that both contracting authorities have used restrictive financial criteria in the selection stage of 3 public procurement procedures (i.e. liquidity ratio over 100% and solvency ratio over	ANRMAP should be more pro-active when suspecting use of restrictive selection criteria which might result in a limitation of competition.	ANRMAP	Permanent	*High*	No reply has been included in present document.	Following the measures implemented under the action plan for lifting the interruption of payments deadlines, the **Commission closes this finding under**

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	35%). Several months later (July 2010), national legislation in place (national ordinance 34/2006) changed stating that, liquidity ratio should not be over 100% while solvency ratio should not be used as selection criteria.						**the present contradictory procedure.**
KEY REQUIREMENT 2: ADEQUATE SELECTION OF OPERATIONS Weaknesses identified							
9.	**Information and communication** The applicants guide was modified twice by corrigenda and republished once without interrupting the session for call for projects.	We take notice that the modifications were mainly formal ones. However, a good practice would be to interrupt the call for projects in order to allow the applicants to adjust their applications appropriately.	MA	Permane nt	*Low*	**Accepted recommendation** The Guidelines for Applicants relating to the m area of intervention 2.1 and those relating to o major areas of intervention have been subjec changes following certain legislative updates, streamlining of certain procedural aspects am areas, the introduction of recommendations f auditors, in particular those related to the proces the technical and financial evaluation, and th related to certain aspects in the technical economic documentation etc. Such measures did affect the actual process involving the design of project. Moreover, when new procedures v initiated for the major areas of intervention 4.3, and 5.3, the National Centres for Tou Information and Promotion, the guidelines	Commission's services take note of the information provided by the MS. **The Commission's services consider this finding closed.**

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						applicants were also subject to changes follov the preliminary public consultations. It is noteworthy that the Guidelines relating to the m area of intervention 2.1 were republished follov the beneficiaries' requests to have a consolid version of the document. However, ROP MA be able to apply this measure to the subsequent c for applications and/or within the follov programming period.	
10.	**Equal treatment of final beneficiaries** A significant number of technical clarifications were requested by the IB's during compliance stage verification or by the external evaluators during the financial and technical evaluation of projects. It can be argued that some of the clarifications requested improved the initially submitted projects. The decision on requesting or not clarifications is a subjective one and could lead to un-equal treatment between final beneficiaries.	In order to ensure equal treatment and non-discrimination between applicants, managing authority should clearly identify types of clarifications that could be requested.	MA	60 days	*Medium*	**Accepted recommendation** We would like to point out here that this issue was also approached with the Audit Authority. ROP MA tried to establish a clear distinction between the requests for clarifications and the requests aimed at supplementing/improving the projects. From the viewpoint of ROP MA, the request for clarifications must not however allow the applicant to bring new documents which should have been annexed to the financing application, which was checked in the stage of compliance and eligibility. Nevertheless, during the technical and financial evaluation, the feasibility study/the documentation for the endorsement of the intervention works can have certain non-correlations or certain incomplete parts. Those aspects must be corrected. Otherwise, an extremely high rate of projects should be rejected due to these inconsistencies. Based on our experience as regards checks, most of the reasons for rejection are given by the absence of documents (subject to the compliance and eligibility stage), such as deeds of property, the	Commission's services take note of the information provided by the MS. **The Commission's services consider this finding closed.**

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						endorsement from the Ministry of Education and Research, the Technical/technical economic endorsement from the Ministry of Public Health, the Environmental Sheet required under the Urban Planning Certificate etc) or even the extremely low quality of the feasibility study, including the Cost Benefit Analysis which was contrary to the specific recommendations (during the technical and financial evaluation) etc. However, any dissatisfied Beneficiary has the possibility to send an objection to ROP MA. However, considering that most of the proj which are pending completion at this stag extremely low, and that the submission of proj is suspended in most regions and areas, we inten settle this issue during the following programn period.	
11.	**Technical evaluation of projects** Technical evaluation of projects is performed mainly documentary. This approach may lead to approval of projects not well prepared. As a consequence, many of the problems occurring during the implementation of projects seem to be due to low quality of the feasibility study and	Managing authority should take measures and strengthen its verifications in order to ensure compliance with the principle of sound financial management as it is stipulated in Article 14 (1) of Regulation 1083/2006. An early on-the-spot visit could mean a more robust check on the quality and maturity	MA	60 days	*Medium*	**Accepted recommendation** This measure has already been applied for the major area of intervention 1.1 as of June 2010 (the Growth and Urban Development Poles operations), the procedure provides that the Feasibility Study and the Brief Design be subject to an on-the-spot visit made by independent assessors. Moreover, the meeting with the Beneficiary for clarifications is also envisaged. In addition, we point out that in connection with the quality of the Feasibility Study and of the Brief Design, it is dependent in most cases by the very poor expertise work or other studies. Another major improvement	Commission's services take note of the information provided by the MS. **The Commission's services consider this finding closed.**

N°	FINDING	ACTION TO BE TAKEN/ RECOMMENDATIONS	RESPONSIBLE BODY	DEADLINE (DAYS)	PRIORITY HIGH/ MEDIUM/ LOW	ACCEPTANCE BY THE MEMBER STATE / COMMENTS FROM THE MEMBER STATE	FINAL POSITION OF THE COMMISSION
	technical design, as well as differences with the reality on the field. Moreover, the on-the-spot visit by the IB is performed at a very late stage (just before the signature of the financing contract); in addition, the main purpose of the visit is to check the existence of the original documentation submitted in the financing application.	of the project.				of the procedure was that independent assessors may request the technical expertise work in order to see whether the Feasibility Study takes over the solutions proposed in the expertise work/studies. In addition, almost 99% of the technical financial evaluations are completed, with exception of the major area of intervention Growth and Urban Development Poles.	
12.	**Overlapping compliance verifications** Audit team notices overlapping verifications (compliance and documentary verifications performed by 2 employees in the IB). These verifications are in line with the procedural requirements of the managing authority, but they are not focussed on the risk areas (i.e. there is no qualitative approach of	Although the procedures have been improved by the managing authority since launching the programme, they could be further streamlined in order to avoid unnecessary administrative verifications.	MA	Permane nt	*Low*	Accepted recommendation We agree that the compliance and eligibility stages are likely to have some cases of overlapping as regards compliance. This approach was made in order to ensure a single decision for the two sub-stages of verification. From our viewpoint and based on our experience, the connection between the checks on compliance and eligibility is closely related – certain headings in the compliance grid were erroneously interpreted, e.g. in the case of projects developed in partnership, the related documents, the existence of CVs, the Cost – Benefit Analysis included in the Feasibility Study, not separately etc)	Commission's services take note of the information provided by the MS. **The Commission's services consider this finding closed.**

N°	FINDING	ACTION TO BE TAKEN/ RECOMMENDATIONS	RESPONSIBLE BODY	DEADLINE (DAYS)	PRIORITY HIGH/ MEDIUM/ LOW	ACCEPTANCE BY THE MEMBER STATE / COMMENTS FROM THE MEMBER STATE	FINAL POSITION OF THE COMMISSION
	the evaluations for visits on-the-spot).					However, considering that most of the projects have been completed at this stage or their number is significantly low, we intend to approach this issue during the following programming period.	

FOLLOW UP OF THE ACTION PLAN BY THE ROMANIAN AUTHORITIES

N°	Audit finding	Summary of finding	Actions description & Deliverables to be provided within 2 months period	Responsible body / Documents provided
1.	**Effective functioning of the management and control system with regard to public procurement verifications**	Following the verifications carried out, irregularities have been identified in respect to the award of 3 out of 4 works contracts. These contracts were concluded for works related to 12 road projects, and represent **around 84% of the eligible expenditure of the projects included in the sample.** In addition, findings have been raised in relations to 2 service contracts. The following significant findings identified distorted the competition by limiting the access to the market of the bidders: i) use of discriminatory technical criteria for selection stage of restricted procedures; ii) unjustified use of accelerated procedures; iii) incorrect use of Article 122 of national Ordinance 34/2006 (additional works contracted as similar works through negotiated procedure without	**Actions:** i) **The managing authority is reminded that it has overall responsibility for the management verifications.** It can choose to entrust some or all of these tasks to other bodies. However, it cannot delegate the overall responsibility for ensuring that they are properly carried out. **Therefore, where certain tasks have been entrusted to other bodies, the managing authority should, in its supervisory capacity, obtain assurance that the tasks have been properly carried out.** In this view, as routine supervision and, certainly, where managing authority has concerns that the tasks are not being properly carried, it should carry out own verifications by examining a sample of files. The number of files in the sample should be based on a risk assessment taking as well into account the quality/reliability of the work performed by ANRMAP and UCVAP. ii) The tasks and responsibilities of all bodies involved in public procurement (managing authority, ANRMAP and UCVAP) should be clearly defined for each step of the process so that checks tackle risk areas and identify in due time problems and irregularities and propose remedial actions and/or financial corrections. iii) It is recommended to **formally reinforce the**	MA, ANRMAP, UCVAP The Romanian authorities have provided the following information (letter Ares(2011)1076539/11.10.2011, ARES 1129227/24.10.2011 and letter no 653/31.10.2011), namely: a) Reports on the management verifications carried out by the managing authority; b) Revised agreement of 9 September 2011 on the set up of the system related to the verifications of public procurement procedures, together with legal framework ensuring the accountability of the bodies entrusted with the checks on public procurement procedures. The definition of tasks and responsibilities of all bodies involved in the public procurement verification system have been redefined and the accountability of ex ante control bodies (ANRMAP and UCVAP) have been formally reinforced. These two public procurement bodies are now subject to audits performed by the audit authority. c) Description of the risk factors taken

N°	Audit finding	Summary of finding	Actions description & Deliverables to be provided within 2 months period	Responsible body / Documents provided
		publishing a contract notice) Therefore, in the opinion of the auditors, the basic public procurement principles of equal treatment and non-discrimination and sound financial management have not been complied with. In addition, despite several layers of verifications, neither ANRMAP and UCVAP, nor the managing authority identified the irregularities presented below.	**accountability of the two bodies** (ANRMAP and UCVAP) entrusted to regulate and verify ex ante the public procurement procedures in Romania. The institutions verifying ex ante public procurement aspects should act as delegated bodies, part of the management and control systems of the operational programmes, being legally accountable for their actions, while the managing authority should remain ultimately responsible for the correct spending of funds. When re-defining relationship and division of tasks between managing authority, ANRMAP and UCVAP, the process should be based on the provisions of the "Guidance document on management verifications to be carried out by Member States on operations co-financed by the Structural Funds and the Cohesion Fund for the 2007 – 2013 programming period" (COCOF 08/0020/04). iv) With regard to the contents of the management verifications, the responsible bodies should <u>focus on the substance and on the risky areas</u>, rather than on the formal aspects. The content of tendering notice, regarding the selection and award criteria, the respect of the legally applicable deadlines and the adequacy of the tendering procedure (in particular for negotiated procedure) shall be duly checked ex-ante by ANRMAP, in full, and by the MA in its supervisory role on a sample basis. The transparency and the fairness of the procurement procedure and, in particular, the selection and the award phases by the correct	into account for the verifications performed. According to the revised set-up of the management and control system, the managing authority performs ex post verifications on public procurement procedures regardless whether these procedures have been verified ex ante by the ANRMAP or UCVAP. The selection of procedures to be verified takes into account risk factors and specific sampling methodology. d) Revised procedures on management verification. e) AA's reports on compliance audit carried out on ANRMAP and UCVAP <u>Commission analysis and recommendation:</u> Please see section 3.i) of the report.

N°	Audit finding	Summary of finding	Actions description & Deliverables to be provided within 2 months period	Responsible body / Documents provided
			application of the corresponding published criteria, should be carefully monitored by UCVAP, when participating as observer in the respective committees and by the MA, in its supervisory role on a sample basis. v) The responsible bodies (MA and ANRMAP/UCVAP supervised by the MA as a first level of control) should carry out effective management verifications, resulting in the identification of all irregular expenditure and leading to the necessary corrective measures by the MA including financial corrections and preventing declaration of ineligible expenditure to the Commission if the public procurement procedure has not been legal and regular even if the other bodies (ANRMAP/UCVAP) have not identified the issues. When the irregularities are not detected and corrections not made at the first level of control then the correction should be made at the level of CPA which serves as a second independent level of control. vi) Overall coordination of the bodies and increased and continuous capacity building within the bodies will be critical success factors in promptly improving the management of the EU funds. The auditors were informed that there is already an action plan running in the context of increasing the capacity to absorb EU funds which may fit into some of the Commission recommendations. **Deliverables:** a) **Reports** on management verifications methodology with focus on public procurement carried out by the managing authority.	

N°	Audit finding	Summary of finding	Actions description & Deliverables to be provided within 2 months period	Responsible body / Documents provided
			b) **Revised agreement** on the set up of the system related to the verifications of public procurement procedures, together with **legal framework** ensuring the accountability of the bodies entrusted with the checks on public procurement procedures. c) **Up-dated workflows and procedures** focusing on risk areas.	
2.	**Discriminatory technical selection criteria**	The audit team identified that discriminatory technical criteria were used in the selection of tenderers for two public procurement procedures. These types of irregularities should have been detected ex-ante, at the level of ANRMAP, when verifying before publication, the compliance of tender notices with relevant EU and national legislation. ANRMAP can perform these verifications also by the help of a database developed in compliance with Article 101, of Order 925/2006. Secondly, the management authority, the body responsible for the implementation of the programme, should have detected such cases of non-compliance during their checks for the management verifications.	**Actions:** a) The managing authority is requested to verify all works contracts under the priority axis 2.1 to screen for the existence of discriminatory selection criteria in the tender notice. The results of this analysis should be reported to the Commission b) Managing authority and ANRMAP should **update their procedures and improve their verifications** in order to identify and prevent the occurrence of such cases. **Deliverables:** a) **Report** on the verifications carried out. c) **Up-dated workflows and procedures** focusing on risk areas. d) The Managing authority must follow-up possible fraud indicators and **report such identified cases to national competent bodies and to OLAF**.	**MA, ANRMAP, UCVAP** The Romanian authorities have provided the following information (letters Ares(2011)1076539/11.10.2011 and ARES 1129227/24.10.2011), namely: a) With regard to the screening of all works contracts under the priority axis 2.1, the managing authority provided a data base of the 46 contracts for which suspected irregularities have been identified with focus on public procurement together with the verification reports. Following the verifications carried out by the managing authority, irregularities have been confirmed for 29 contracts and the management authority proposed financial corrections for the amount of EUR 20.507.752,24. b) Up-dated procedures for management verifications including the risk assessment to be carried out. c) With regard to allegations of fraud raised by the Commission, the

N°	Audit finding	Summary of finding	Actions description & Deliverables to be provided within 2 months period	Responsible body / Documents provided
				Romanian authorities confirmed only one case of the conflict of interest. For the other two cases, national investigations are under progress. Commission analysis and recommendation: Please see section 3.ii) of the report.
3.	**Unjustified use of accelerated procedure**	The Contracting Authorities made use of certain actions taken in the context of the recovery package, as explained in Council's communication of 12 December 2008, transposed in the national ordinance 51/2009. Specifically, shortened deadlines have been set in the tender notices, for works tenders launched during 2009 and 2010. ANRMAP took a horizontal approach and allowed the use of shortened deadlines, instead of having a case by case assessment of the urgency and complexity of the contracts to be awarded by taking into account the principle of proportionality. Nonetheless, both the Directive 2004/18 and national ANRMAP Order no. 51/2009, Article 3, stipulate that this principle need to be considered when taking the decision	**Actions:** a) The managing authority is requested to make sure that all works contracts under the priority axis 2.1 are verified for the existence of discriminatory selection criteria in the tender notice. The results of this analysis should be reported to the Commission b) **ANRMAP should issue clear and uniform guidance** on use of accelerated procedures including best practice cases. c) Managing authority and ANRMAP should **update their procedures and improve their verifications** in order to identify and prevent the occurrence of such cases. **Deliverables:** a) **Report** on the verifications carried out. b) **Guidance** provided to contracting authorities. c) **Up-dated workflows and procedures** focusing on risk areas.	**MA, ANRMAP, UCVAP** Please see comment above for documents requested under points a) and c). The guidance requested under point b) was provided by AMRMAP under the format of a national Order no. 509/2011. Commission analysis and recommendation: Please see section 3.ii) of the report.

N°	Audit finding	Summary of finding	Actions description & Deliverables to be provided within 2 months period	Responsible body / Documents provided
		of using accelerated procedures so that the acceleration of the procedure should not be an impediment for the enterprises to submit appropriate tenders.		
4.	**Additional works contracted as similar works**	The Contracting Authority has made use of the provisions of Article 122 of OUG 34/2006, which states that the Contracting Authority is allowed to apply the negotiated procedure without publication of a contract notice for contracting similar works. However, the auditors identified that additional works have been contracted under addenda under the umbrella of similar works. The amounts foreseen for similar works are 3 times the initial contracted value.	**Actions:** a) Managing authority should screen all contracts under axis 2.1 to identify and correct cases where additional works have been contracted under the name of similar works. **Deliverables:** a) Reports on the verifications performed to be provided within 2 months.	**MA, ANRMAP, UCVAP** Please see comment under action 2. Commission analysis and recommendation: Please see section 3.ii) of the report.