

FP6 Financial Collective Responsibility

Introduction

There are two kinds of control:

- Ex-ante controls (before the signature of the contract) ;
- Ex-post controls (during and after the implementation of the project)

In this leaflet we only discuss the Ex-ante controls.

EX-ANTE CONTROLS

The purpose of ex-ante financial controls is to verify the financial capacity of the participants. To verify the financial capacity of contractors, in certain cases and for certain types of participants, during contract negotiation, the Commission requires the provision of documents relating to the legal and financial capacity of future contractors. These documents may include an external audit report produced by an approved auditor that certifies the accounts of that contractor for the last financial year available and gives an assessment of its financial viability, audited financial accounts for the last three full financial years (certified profit and loss accounts and balance sheets) or financial information for the last full financial year for the coordinator.

1 General principles:

In general, the financial capacity of public bodies (including international organisations) does not have to be verified, whether the instrument imposes collective financial responsibility or not. However, this is at the discretion of the Commission authorising officer. Most research instruments such as STREPs, IPs and NoEs do impose such responsibility and we shall only consider them here. For cases where it is not imposed, please see the complete Financial Guidelines. Verification of the “public body” status of an organisation may also be required.

For any other type of legal entity, the verification of its financial capacity depends on the following factors:

1.1 For instruments with financial collective responsibility of the contractors, but that is insufficient to cover the full protection of the Community financial interest²⁸⁶:

- a full financial viability check is necessary for the coordinator.
- financial verification is usually carried out where the non-public body contractors (including those whose participation is not guaranteed by a Member State/Associated State), include one entitled to receive more than 50% of the requested EC contribution to all non-public body contractors.
- financial verification is required where the EC contribution for that contractor exceeds, by more than € 300,000, 50% of the requested EC contribution to all non-public body contractors. For such cases the Commission must request an external audit report produced by an approved auditor that certifies the accounts of that contractor for the last financial year available and gives an assessment of its financial viability. The financial viability has to attest that the future contractor has stable and sufficient sources of funding to carry out the tasks throughout the period of its participation in the project and to provide any counterpart funding that may be necessary.

Depending on the outcome of the financial check, a bank guarantee (or any other financial security) may be requested from a contractor. Where a bank guarantee is not provided it may be possible to continue with the project with that contractor on condition that no pre-financing is made available to that contractor. A special clause to that effect is foreseen.

1.2 For instruments with financial collective responsibility at a level that is sufficient to cover the Community financial contribution:

- a full financial viability check is not necessary for all the contractors but must be carried out for the coordinator.
- the pre-financing cannot exceed 85% of the maximum Community financial contribution.

2 The notion of insufficient financial collective responsibility of the contractors:

The level of financial collective responsibility of the contractors is considered as insufficient in the following cases:

- All the contractors except one meet the definition of a public body;
- There are several contractors (two or more) in the consortium that are not public bodies, and the requested Community financial contribution of one of them is greater than 50% of the requested Community financial contribution for all of them.

The amount of the potential financial guarantee to be requested from the participant whose requested Community financial contribution is more than 50% of the requested Community financial contribution of participants that are not public bodies, is calculated as follows:

(Amount of the requested Community financial contribution of the participant which is more than 50% of the requested Community financial contribution of those participants that are not public bodies)

minus

(the sum of the amounts of requested Community financial contribution of other participants that are not public bodies).

3 Commentary

Most consortia in the IST program do have collective financial responsibility as defined in 2, above. However, the problems sometimes encountered in FP6 is how the first point under 1.2, above is interpreted by the Commission. Some Directorates appear, as a matter of course, to request a full financial viability check for most contractors, especially SMEs. In our interpretation, this should not be necessary, except in extreme circumstances. The problem is in interpretation of the phrase "is not necessary". It can be interpreted as either "should not be normally carried out" or as "is not always required". We believe the former was the intent.

Please note that the financial responsibility of a contractor is limited to the amount received.

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