

AUDIT DRAFT REPORT

Central Baltic INTERREG V A Cross-border Co-operation Programme 2014 - 2020

DATE OF THE DRAFT REPORT: 05/03/2018	
Audit number (as in the audit file):	CB-10/2017
Date of the final audit report:	05/03/2018
Accounting period	31/6/2016 - 1/7/2017
Audit scope	Progress report 2.1: €336 482.68 (100%)
Auditor(s)	Hannes Vahemäe, Auditor of II Audit Unit Financial Control Department of Ministry of Finance of Estonia Suur-Ameerika 1, 10129 Tallinn, Estonia
Place of audit	Tallinn, Estonia
Project name	MobiCarnet: integrated system for automated and paperless management of transit documents and for tracking movement of goods in real-time.
Project Acronym	MobiCarnet
Project Number	CB293
Priority Axis:	3. Well-connected Central Baltic region
Project Priority Specific Objectives:	SO 3.1 Improved transport flows of people and goods
Audited organisation and contact information	Association of Estonian International Road Carriers Narva mnt. 91, 10127 Tallinn



PART 1 - AUDIT SCOPE

According to Article 127(7) of Regulation (EU) No 1303/2013 the audit authority is responsible to carry out audits on operations on the basis of supporting documents constituting the audit trail and verify the legality and regularity of expenditure declared to the Commission, including the following aspects:

- a) that the operation was selected in accordance with the selection criteria for the operational programme, was not physically completed or fully implemented before the beneficiary submitted the application for funding under the operational programme, has been implemented in accordance with the approval decision and fulfilled any conditions applicable at the time of the audit concerning its functionality, use, and objectives to be attained;
- b) that the expenditure declared to the Commission corresponds to the accounting records and that the required supporting documentation demonstrates an adequate audit trail;
- c) that for expenditure declared to the Commission determined in accordance with Articles 67(1)(b) and (c) and 109 of Regulation (EU) No 1303/2013 and Article 14(1) of Regulation (EU) No 1304/2013, outputs and results underpinning payments to the beneficiary have been delivered, participant data or other records related to outputs and results are consistent with the information submitted to the Commission and that the required supporting documentation demonstrates an adequate audit trail.

Audit was conducted during the period: 4/10/2017 - 05/03/2018 (on-the-spot verification on 16th of November 2017 at the premises of the Lead Partner, Association of Estonian International Road Carriers)

PART 1.1 - Limitation of scope

There were no limitations of the scope.

PART 1.2 - AUDIT METHODOLOGY

The audit is carried out in compliance with international accepted auditing standards and the audit strategy, which is approved by the audit authority and group of auditors representing each Central Baltic INTERREG VA Programme Member State.

The audit process comprises of three stages:

a) Preparation and planning of the audit

The legal regulations, programme's and project's documentation and other relevant documentation were collected and analysed. Also, interviews or checklists were prepared for carrying out the administrative checks and on-the-spot controls of the auditor.

b) Fieldwork

Interviews with responsible staff were conducted, documents checked and testing performed. In order to attain the audit objectives, the audit check-list compiled by the Audit Authority was used. The on-spot visit to the auditee was held on 16/11/2017. Additional expertise was asked from the experts of state aid from the Ministry of Finance.

c) Reporting



On the basis of audit procedures, conclusions on the implementation of the project were made.

Preliminary report: 08/02/2018
Contradictory procedures: Report sent to the auditee as a draft: 08/02/2018
Final report: 05/03/2018



PART 2 - FINANCIAL DATA OF OPERATION

Financial data of audited partner must be listed

Partner abbr. LP/PP	Certified amount in the audit scope								
	Staff Costs	Office And Administration	Travel And Accommodation	External Expertise And Services	Equipment	Infrastructure And Works	Total Expenditure	(net revenue)	Total
LP	€107 526.11	€16 128.91	€6529.58	€204 968.91	€1329.17	€0.00	€336 482.68	€0.00	€336 482.68
Total	€107 526.11	€16 128.91	€6529.58	€204 968.91	€1329.17	€0.00	€336 482.68	€0.00	€336 482.68

*Data available in eMS Section: CA Certificates > (open needed certificate) > Project report tables

Audited amounts outside the audit scope

According to the audit finding No 1, the project has received unlawful state aid and thus the whole project is ineligible, including the payments made to the project on the basis of the financial report 0, report 1 and report 3 (60% of the payment claim) in the amount of €459 762.90.



PART 3 - FINDINGS AND RECOMMENDATIONS

PART 3.1 GENERAL

During the audit we identify and document audit findings. We categorise these findings by reference to the level of importance. The categories which we use to classify our findings are as follows:

Major	Findings that have financial impact or any other high risk deficiencies.
Minor	Findings for which action should be taken to ensure full compliance but have no financial consequences.

PART 3.2 FINDINGS AND RECOMMENDATIONS

Audit finding No 1: The project fulfills all the criteria of the State Aid and should have been granted under State Aid regulation (major finding with financial impact of €336 482.68)

According to the Article 107 of the Treaty on the Functioning of the European Union: *“any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.”*

MA has explained that they have seen the MobiCarnet’s project as a public service and therefore, the granted aid to the project partners does not fall under the State Aid rules.

As a result of the audit procedures, the auditors would make the following conclusions about the project from the viewpoint of the State Aid:

- According to the project application, the auditors’ opinion is that the project and creating the MobiCarnet’s system is not a task given to the project partner (ERAA) with an administrative contract by the state. Lead Partner’s articles of association does not foresee that kind of service providing to the public. Therefore, the project’s result cannot be treated as public service, but rather as a private business of the project partner.
- During the audit, the Lead Partner has provided the information that they will collect fees from the users to cover maintenance costs. Therefore, in auditors’ opinion this is an economic activity.
- Since the project is funded from the Central Baltic Programme, it is a support from the State resources and the financing is imputable to the State.
- The economic advantage to the Lead Partner is that 85% of the project’s costs are compensated from the Cenral Baltic Programme and the result of the project is a product that will be marketed internationally. As the target area has been identified in the project application as international market, the auditors assume, it will not be distributed free of charge;
- The support given to the MobiCarnet’s project is selective. Project is funded from the Central Baltic Programme. From the Programme, not every project gets its funding and the projects are assessed by the Joint Secretariat and by the Managing Authority. The Joint Secretariat with Managing Authority will decide which project gets funding. Therefore, the support is selective.
- There is also a potential distortion of the competition and an effect on trade between Member States. In auditor’s opinion, the competition is distorted between the other coordinating organizations (or stakeholders’ representing organization), because the development of the



MobiCarnet system should be viewed as an economic product and having a public financing for that kind of costs, is a violation of competition and helps to generate additional income on the basis of public resources.

In auditors' opinion, all the criterias of the State Aid are fulfilled and the MA has given illegal State Aid to the MobiCarnet's project partners.

Recommendation to the Lead Partner:

The Managing Authority is recommended to formalize the financial correction from the Progress Report 2 in amount of €336 482.68, including the €286 010.28 (85%) of programme's funds and €50 474.40 (15%) of own contribution. In auditors' opinion, the project has fallen under State Aid and therefore, all the costs of the project are ineligible.

Auditee's response:

The auditee, Eesti Rahvusvaheliste Autovedajate Assotsiatsioon (ERAA) is on the opinion that the granted aid to project partners in Project MobiCarnet CB293 does not fall under the State Aid rules and therefore, the audit finding no1 that MA has given illegal State Aid to Mobicarnet Project Partners, is groundless and unreasonable.

The auditee gives the following response:

- MobiCarnet is not a public service, but is a service that is open to public. There are no limitations to use the services of the system and the service is not offered for profit making purposes, but to an extent fees are collected, these are meant to cover the costs of maintaining the system. Definitely the main target groups are the members of ERAA and SKAL Kustannus Oy (international road carriers), but the services are available publicly. The only limitation is that the users need to identify themselves via ID card and mobile ID in Estonia and via mobile ID Telia or aski.fi in Finland.
- ERAA is a non-profit association and the Articles of Association of ERAA entitle ERAA to establish undertakings for rendering necessary services to its members, if necessary, or to participate in those as well as to perform any other operations in the interest of its members. The note made by the auditor Hannes Vahemäe to the Articles of Association of ERAA, is irrelevant.
- The auditor's note that the given support is selective, is also irrelevant. In all Central Baltic programme projects, the existence of aid and selectivity, apply.
- What has to be analyzed, among others, is whether the other two criterias of State Aid are fulfilled - whether economic advantage and effect on competition and trade, exists.
- The aid cannot give an economic advantage to the Project Partners. The programme rules set forth that the project must not generate any revenue and the developed system does not foresee any revenues. At the same time, the system needs maintenance (minimum 15 000 - 20 000 EUR per month) and for the maintenance of the system some funds are needed. Only the mere fact that the service is provided for small fee to be able to secure the functioning of the system does not provide any economic advantage to ERAA or SKAL Finland Oy or to the daily operator of the system, MobiCarnet OÜ. Therefore the auditor's opinion that it is an economic activity, is irrelevant. The auditor has to identify the economic advantage, which he has not done and which does not exist as well.
- The auditor's assumption that the service is marketed internationally, is not correct. The project that was approved by MA was only for the territory of Estonia and Finland. The service can be provided only in Estonia (via ID card and mobile ID) or in Finland (via mobile ID Telia or aski.fi). The system is integrated to Estonian Commercial Register, Register of Economic Activities, Tax and Customs Board and Police and Border Guard Board and to Finnish Customs, Police, Border Guard and Patent and Registration Office. The system cannot be used in other states than Estonia and Finland without excessive development and interface to local tax/ customs and other



necessary authorities for which the Project Partners or the operator of the product does not have any funds nor any plans.

- The Project does not affect trade between Member States as it only has local effect to simplify the execution and storage of the transit documents and track the movement of goods from Estonia to Finland and from Finland to Estonia. Therefore, if one of the four criteria does not exist, the State Aid rules are not applicable. Auditor's wrong assumption is not supported by Project approval and Subsidy agreement, where the relocation of the programme area (Estonian and Finland) give grounds to the repayment of the ERDF contribution.
- The Project has been audited by the Ministry of Finance during the whole time of the project implementation and the issue of State Aid has not been raised during the whole two year period. ERAA would not have continued to implement the Project, if such indication has arisen earlier. The finding of the second level audit is definitely a surprise for the Project Partners.
- SKAL Kustannus Oy as Project Partner has been audited by Finnish Ministry of Finance and no such findings as in Estonia have been made to the Project in Finland.

ERAA has been given six working days to respond to the audit draft report. This timeframe does not give the possibility to have a more thorough analysis of the situation. Therefore, ERAA has ordered from law firm Ellex Raidla a legal analysis on the subject whether Project MobiCarnet CB293 falls under the State Aid rules.

Final conclusion by the auditor:

Taking into account the information given by the auditee in its response and all the criteria on the basis of which the potential state aid shall be assessed, the auditors are still in opinion that the project falls under the State Aid rules.

The auditee points out in its response that they will collect fees to cover the costs of maintaining the system. Therefore, in auditors' opinion it is an economic activity, because they are getting income for providing the service in the market.

One of the main points that the auditee brings out, is that the project partners don't get an economic advantage. The auditors' disagree with that. Right now the state has given money from its resources to implement the project of MobiCarnet and therefore the auditee's financial situation has an advantage among other organizations. Also, the auditors' would like to refer that the project can be seen non-economic only when it fulfils a purely social and cultural purpose. In auditors' opinion, the MobiCarnet doesn't fulfil that purpose.

The assumption that the service is marketed internationally, is based on the information given in the project application, according to which: "For further implementation, establishing contact with potential target groups on EU and global level." and "...MC will focus on the perspective of broader usage by different organizations and countries." In auditors' opinion these are the indications to the applicants' intention to market the system also internationally.

Also, the auditee points out that the project does not affect trade between Member States, because it's only for the local market. According to the Commission Notice¹ on the notion of State aid, "...public support to undertakings only constitutes state aid insofar as it affects trade between member states. In that respect, it is not necessary to establish that the aid has an actual effect on trade between member states but only whether the aid is liable to affect such trade. In particular, where state financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-union trade, the latter must be regarded as affected by the aid". As the final outcome of the project is an IT system offering a solution for better and paper free management of movement of goods, the product competes with other similar IT solutions on the transportation market. Therefore, in auditors' opinion, there's a potential market for the MobiCarnet's

¹ [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0719\(05\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0719(05)&from=EN)



project and thus a potential effect on trade between member states. The aid given to the auditee strengthens the position compared to the other organizations offering similar solutions and therefore it has an effect between the Member States.

The auditors would also like to clarify the auditing procedures. So far, the project has been checked only by the first level controllers and not by the auditors. The First Level Control and the Second Level Audit are different bodies and have different tasks. The First Level Control is responsible for checking the eligibility of the cost documents and payment applications. The Second Level Audit is responsible for giving an independent opinion on the overall implementation and management of the project on the level of the project partner and the programme bodies. So there could be different approaches and different opinions.

Estonian members of the Group of Auditors are not aware about the findings or opinions that were given to the Finnish project partner by the Finnish Ministry of Finance.

PART 4 - AUDIT CONCLUSION

The conclusion of the audit is based on the audit procedures carried out during the audit, including analysis of the information and documents gathered and interviews conducted with the auditee. Based on the audit work performed the auditors have obtained reasonable assurance that the expenditure declared under the audited operation “MobiCarnet: integrated system for automated and paperless management of transit documents and for tracking movement of goods in real-time.” (MobiCarnet) No CB293 within Priority Axis 3 during the reference year 01.07.2016-30.06.2017 is not legal and regular.

The summarized list of findings identified during the audit is presented in the following table.

No	Financial Impact Total	Financial Impact ERDF
1.	€336 482.68	€286 010.28
Sum	€336 482.68	€286 010.28

PART 4.1 FOLLOW-UP

This audit report is compiled for use of the Audit Authority of the Central Baltic INTERREG VA 2014-2020 Programme and will be used to draw conclusions about functioning of the Management and control system of the above mentioned programme. Information in the report will be disclosed to relevant parties involved of management of the EU funds, including Commission services.

Parties responsible of audit finding follow-up:

1. Findings with Financial impact - The Audit Authority (AA) will inform the Managing Authority (MA) to take necessary actions to correct shortcomings in the system;
 - a. Deductions will be made by the MA;
 - b. Confirmation of deductions will be made by the AA;
 - c. If needed follow-up audit will be done by GoA member.
2. Findings without the Financial impact
 - a. The MA will be informed and evaluation will be done if further actions are needed;
 - b. Confirmation of actions will be followed-up by the AA and if needed by the GoA member.

Upon request from the MA the Auditee is responsible to implement the recommendations and deliver the proof to the MA.



Auditor: Hannes Vahemäe

Position: Audit Manager

Signed electronically

Head of Unit: Kadi Peets

Position: Audit Supervisor

Signed electronically

