

FICHE NO 11

DELEGATED ACT ON GENERAL RULES ON ELIGIBILITY OF EXPENDITURE FOR COOPERATION PROGRAMMES

VERSION 1 - 3 JUNE 2013

Regulation	Article
European Territorial Cooperation Regulation	<ul style="list-style-type: none">• Article 17(1): General rules on eligibility of expenditure• Article 18: Staff costs
Common Provisions Regulation	<ul style="list-style-type: none">• Article 57: Forms of grants and repayable assistance• Article 58: Flat rate financing for indirect costs and staff costs for grants and repayable assistance• Article 59: Specific eligibility rules for grants and repayable assistance

This document is provisional, without prejudice to the on-going negotiations in the Trilogues between the European Parliament and the Council (in line with the principle that "nothing is agreed until everything is agreed"). This document is a draft that shall be adjusted following the expert meeting.

It does not prejudge the final nature of the basic act, nor the content of any delegated or implementing act that may be prepared by the Commission.

1. EMPOWERMENT

The proposed ETC Regulation provides in its Article 17(1) that the Commission shall set up specific rules on eligibility of expenditure for cooperation programmes by means of a delegated act.

"The Commission shall [...] adopt delegated acts in accordance with Article 29 to set up [...] specific rules on eligibility of expenditure for cooperation programmes with regard to staff costs, office and administrative expenditure, travel and accommodation costs, external expertise and services costs and equipment expenditure. The Commission shall notify the delegated acts, adopted in accordance with article 29, simultaneously to the European Parliament and to the Council within four months of the adoption of this Regulation".

2. MAIN OBJECTIVES AND SCOPE

The objective of the delegated act on eligibility of expenditure for cooperation programmes is to set out specific rules on European level with regard to staff costs, office and administrative expenditure, travel and accommodation costs, external expertise and services costs, and equipment expenditure. The specific rules apply without prejudice to the eligibility rules applicable to all ESI Funds set out in Articles 55 - 59 CPR and to the specific flat rate for staff costs set out in Article 18 ETC Regulation.

3. MAIN ELEMENTS/CONTENTS

The **delegated act on eligibility of expenditure** will consist of general provisions and five sections related to (1) staff costs, (2) office and administrative expenditure, (3) travel and accommodation costs, (4) external expertise and services costs, and (5) equipment expenditure.

The general provisions will clarify the relation between the delegated act and the other eligibility rules. E.g. as regards lump sums (Article 57(1)(c) CPR established in accordance with Article 57(4) CPR), it will clarify that programmes are free to use them either for the whole operation or part of it in any of the following sections based on the fair, equitable and verifiable calculation method.

Section I: Staff costs

Definition of scope: costs of staff employed by the beneficiary and working full time or part time on the preparation or implementation, or both, of the operation; costs of the provision of services relating to the preparation or implementation, or both, of an operation provided by a public law body or a private law body which is itself the beneficiary and which carries out work within the operation without recourse to outside service-providers.

These staff costs are eligible if they are paid by the public law bodies or private law bodies for the preparation or implementation, or both, of an operation that is additional and not part of their statutory responsibilities.

These staff costs cover salaries, employment taxes, and other costs directly linked to the salary payments in line with the employment policy of the beneficiary organisation and in respect of equal treatment of all personnel. Taxable benefits which form part of the contractual terms and conditions of staff engaged in the preparation and implementation of operations shall be eligible. Examples include bonus payments or lunch vouchers. These should be set out clearly in the initial application for grant; they should be proportionate to the role and responsibilities by an individual in the preparation and implementation of operations and should figure in the expenditure approved in the approval process for the operation.

At least the contributions levied on salaries, if in line with the organisation's staff policy or if they are written into an employment contract, concerning the following branches of social security as covered by Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems¹ shall be eligible: sickness benefits, maternity and equivalent paternity benefits, invalidity benefits, old-age benefits, survivor's benefits, benefits in respect of accident at work and occupational diseases, death grants, unemployment benefits, pre-retirement benefits and family benefits². Where the cost of replacement for an employee away on maternity, paternity or long term sick leave may result in an overall increase in staff costs for the operation, the applicant may need approval to amend the budget.

For staff costs related to individuals engaged in the operation full time, registration of working time is not required as basis for justification of the costs. For employees working on the operation part time, staff costs are eligible, provided there is a time registration system (e.g. a requirement to fill in timesheets) in place, allowing identification of the actual time spent on the implementation of the operation.

An hourly personnel rate shall be calculated for each employee based on employment/work contract. The hourly rate shall be established on annual basis, taking into account the total personnel cost (total gross remuneration and social charges) and the number of hours worked. For the employees working on the operation part time the hourly rate shall be calculated on an annual basis by dividing the latest documented employment cost by the total number of hours worked.

Compensation for overtime is eligible provided it is directly related to the operation, documented and actually paid (in the form of supplementary monetary compensation or maintenance salary and social contributions during free time offered as compensation for overtime), in accordance with employment policy of the beneficiary organisation.

¹ OJ L 166, 30.4.2004, p. 1.

² Article 3 of Regulation (EC) No 883/2004; Article 16 of that Regulation allows for the possibility of two or more Member States to provide for exceptions to the rules under Articles 11 to 15 on determining the applicable legislation "in the interest of certain persons or categories of persons".

Non-taxable bonus payments or other non-taxable benefits are not eligible nor are exceptional or extraordinary provision of pension rights.

Forms of support under staff costs:

- 1) Reimbursement of eligible costs actually incurred and paid on the basis of payslips or documents of equivalent probative value, and, in case of part-time work, time sheets or data from time registration systems allowing confirmation of actual working time spent on implementation of the operation;
- 2) [Calculation based on dividing the latest documented annual gross employment costs by 1650 hours (Article 58(2) CPR);]³.
- 3) Contributions in kind in accordance with Article 59(1) CPR;
- 4) Flat rate of up to 20 % of the direct costs other than the staff costs of an operation (Article 18 ETC) without a requirement for cooperation programmes to execute any calculation to determine the applicable rate;
- 5) Standard scale of unit costs (Article 57 (1) (b) CPR) established by the programme in accordance with Article 57(4) CPR.

Section II: Office and administrative expenditure (indirect costs)

Definition of scope: costs generated inside the organisation of the beneficiary that cannot be directly accounted to the operation:

- Indirect staff costs (accounting, clerical, custodial, customer services, advertising, management, purchasing, sales, warehousing);
- Supplies (furniture, stationary, photocopying);
- Office and material rent;
- Utilities (electricity, heating, water);
- Maintenance, cleaning and repairs;
- IT system support;
- Communication (telephone, fax, internet, postal services, business cards);
- Insurance;
- Interest (e.g. expenditure on interest subsidies to reduce the cost of borrowing under an approved state aid scheme)⁴;
- Taxes related to other items falling under office and administration (e.g. irrecoverable VAT);

³ The calculation method is still subject to negotiations between co-legislators.

⁴ Interest on debt is not eligible (Article 59 (3)(a) CPR).

Forms of support under office and administrative expenditure (indirect costs) as listed in the definition above:

- 1) Reimbursement of eligible costs on the basis of documents setting out indirect office and administrative expenditure actually incurred and paid in relation to the operation. The allocation method shall be in line with the accounting policy of the beneficiary organisation;
- 2) Flat rate of up to [25%] of eligible direct costs (Article 58(1)(a), or (c) CPR);
- 3) Flat rate of up to [15%] of eligible direct staff costs (Article 58(1)(b) CPR) without a requirement for cooperation programmes to execute any calculation to determine the applicable rate.

Section III: Travel and accommodation costs

Definition of scope: costs of transportation, accommodation costs, daily allowances or *per diem*, travel insurance on the preparation and implementation of the operation.

Staff travel costs must be directly related to and essential for the operation.

Forms of support under travel and accommodation costs:

- 1) Reimbursement of eligible costs actually incurred and paid by the employee and reimbursed on the basis of documents proving such reimbursement by the employer (bills, tickets, accommodation costs, etc.);
- 2) Standard scale of units costs (Article 57 (1)(b) CPR) for daily allowances/per diem established by the programme in one of the ways defined in Article 57(4) CPR.

Section IV: External expertise and services costs

Definition of scope: professional services and expertise provided by public or private law body other than the beneficiary in preparation and implementation of an operation: bank charges for opening and administering the accounts; financial transaction charges; legal and notarial fees; costs of technical and financial experts; consultancy fees; control costs; guarantee costs; studies, or surveys; translations; services related to provision of venues, catering, etc.

Specific provisions on the eligibility of certain external expertise and services

- 1) Bank charges for opening and administering the account or accounts are eligible where the implementation of an operation requires a separate account to be opened.
- 2) Charges for financial transactions across borders are eligible.
- 3) Legal consultancy fees, notarial fees, cost of technical and financial experts, other consultancy fees and accountancy fees are eligible if they are directly linked to the operation and are necessary for its preparation or implementation or both.

- 4) Control costs are eligible, if they are directly linked to the operation and are necessary for its preparation or implementation or if they relate to requirements imposed by the managing authority.
- 5) The cost of guarantees provided by a bank or other financial institution are eligible to the extent to which the guarantees are required by national or Union legislation.
- 6) Fines, financial penalties and expenditure on legal disputes and litigation shall not be eligible.

Travel and accommodation expenses related to external expertise and incurred by services providers are part of their service contract and do not fall into the scope of Section III.

Forms of support under external expertise and services costs:

- 7) Reimbursement of eligible costs actually incurred and paid on the basis of contracts or written agreements and against invoices (to be supported, where necessary, by evidence documenting the procedure leading up to the award of the contract: announcement, selection, award);
- 8) Contributions in kind (Article 59(1) CPR);

Section V: Equipment expenditure

Definition of scope: financing of infrastructure and construction works, tools or devices purchased by the beneficiary which are necessary to prepare and implement an operation (IT hardware and software, laboratory equipment, machines and instruments, other specific equipment needed for the operation).

Rules on depreciation are set out in Article 59(2) CPR and rules for durability of infrastructure by Article 61 CPR. No special rules shall be established in these areas for ETC programmes.

Forms of support under equipment expenditure:

- 1) Reimbursement of eligible costs actually incurred and paid on the basis of contracts or written agreements and against invoices (to be supported, where necessary, by evidence documenting the procedure leading up to the award of the contract: announcement, selection, award);
- 2) Contributions in kind (Article 59(1) CPR).

4. MAIN CHANGES COMPARED TO THE PERIOD 2007-2013

The key change is that a clear hierarchy of rules is established and more extensive eligibility rules are set at EU level in order to provide for a more harmonised implementation frame for ETC programmes. In contrast, in the 2007-2013 period eligibility of expenditure is mostly determined on the basis of national rules.

Extensive eligibility rules that are also applicable to ETC programmes are established in the CPR for 2014-2020, including provisions for the use of in-kind contribution, depreciation or simplified cost options (flat rates, lump sums, standard scale of unit costs). In addition, the ETC Regulation contains a specific flat rate for staff costs.

The delegated act on eligibility of expenditure for cooperation programmes is an additional component to provide clarity on eligibility of expenditure for cost categories that have caused particular problems in the past. For areas that are not covered by rules thus established at EU level, the monitoring committee shall establish additional eligibility rules for the cooperation programme as a whole. National rules of the Member State in which the expenditure is incurred shall only apply as a last resort.

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