Note of the Commission services No. 7

Note of Commission services regarding eligible expenditure in the 2007-13 programming period

This note has been prepared by the Directorates-General for Regional Policy and for Employment, Social Affairs and Equal Opportunities.

A draft of this note was discussed on 25th April 2007 in the Committee for the Coordination of the Funds (COCOF).

The note sets out the reading that the two Directorates-General will give to the relevant articles of the Regulations on this issue in their dealings with Member States.

This note responds to questions raised by Member States in written submissions to the COCOF or in contact with Commission services on eligible expenditure in the 2007-13 programming period.

1. Importance of taking account of the rules on eligible expenditure when preparing the financial table of an OP, especially where the Community contribution is based on total costs

1A. Questions received from Member States through Jaspers: What private expenditure should be declared in the statement of expenditure in respect of revenue-generating infrastructure projects? What is the impact of the reply to the preceding question on the private funding that should be taken into account in the financial table of the OP?

Commission services' answer

At the programming stage, when preparing financial tables for OPs, Member States should ensure that only eligible contributions are taken into account when they state the level of national funding and the breakdown between national public and private funding. If they do not do so, there is a risk they will need to generate more projects than they currently plan for or to increase the national public contribution, if they do not wish to lose part of the Community contribution.

This is particularly important in the case of revenue-generating projects, as the rules on what can be declared as eligible expenditure in respect of such projects have radically changed in the 2007-13 programming period. In the 2000-06 programming period, the total eligible investment costs could be declared. The co-financing rate was then adjusted to take account of net revenues. By contrast, in the 2007-13 period, the co-financing rate will not be adjusted, as only the eligible investment costs, less expected net revenue, should be declared.

One of the main cases in which the issue of declaring private expenditure for revenue-generating projects covered by Article 55 of Regulation 1083/2006 will arise is when private partners are involved in investments in infrastructure.

As a preliminary point, it is important to recall that, as regards investment in infrastructure, Article 55 only applies to projects where charges are levied on users. Thus, projects involving investment in infrastructure in respect of which payments will be made by the relevant public authority rather than users (such as availability payments or shadow tolls) are not covered by Article 55. In such cases, payment by the public authority is often spread over time, rather than being paid in one or more lump sums at the time of construction of the infrastructure and the eligible expenditure of the project will be considered to be public expenditure.

Article 55(2) states that, for revenue-generating projects, the eligible expenditure cannot exceed the "funding gap", that is, the part of the investment cost not expected to be recouped by future net revenue. Indeed, as detailed in the guidance on the methodology for carrying out a cost-benefit analysis (which also explains the application of Article 55 in the case of major projects)[1], the amount to which the Community co-financing rate applies (that is, the eligible expenditure) can be smaller than the funding gap, when the funding gap is corrected to exclude the non-eligible part of the investment cost, further to Article 56.

When revenues generated by users are not sufficient to cover investment and operating costs, the projects are not financially self-sustaining. An external subsidy is therefore needed to bridge the funding gap between investment costs and related net revenues. This subsidy is provided by the public authorities responsible for the project, which can be paid in a lump sum during construction of the infrastructure or over time. Consequently, the project is financed from two sources: a public grant, intended to bridge the funding gap, and private funds (loans and equity), which are typically recouped from user charges. In this case, the private funding would not be considered to be eligible expenditure, pursuant to the Article 55(2).The Structural Funds and the Cohesion Fund are thus co-financing the public grant which is provided by the public authorities to the project, in order to bridge the funding gap, and to permit projects that would not have proceeded or been viable without Community funding.

In the case of infrastructure projects, public and private expenditure can be used to finance the total cost of the projects. However, after application of the funding gap rules under Article 55, the 'eligible expenditure', to which the co-financing rate applies, will be, in all but some exceptional cases, the public expenditure which remains once the net revenue has been deducted. . This is because the concept of what constitutes 'eligible expenditure' differs from that used in the regulations for the 2000-2006 programming period. This fact should be taken into account in both statements of expenditure and in OP financing tables for the 2007-13 programming period.

However, private expenditure may be declared as eligible expenditure where it is a genuine private donation, which will not be recovered in the future through user charges. Such situations may occur, for example, in respect of the financing of cultural infrastructures, such as theatres. However, in the Commission's experience, such cases of gifts from the private sector to finance infrastructure are rare.

[1] http://ec.europa.eu/regional_policy/sources/docoffic/working/sf2000_en.htm

Example *In the case of a revenue-generating project relating to infrastructure, it does not matter whether public or total eligible expenditure is taken for calculation purposes, as it is the investment cost less discounted net revenue which counts.*

*Total cost: 100, of which 80% is eligible, because 20 was paid before 2007 and is therefore not eligible according to Article 56. Public contribution: 60; Private contribution: 40. Discounted net revenue: 50. Eligible Expenditure: 40 (=80-50*80%)*[2]

(a) Grant calculated based on 50% of total public and private eligible expenditure

EU grant	*National public contribution*
20	*20*

(b) Grant calculated based on 50% of public eligible expenditure

EU grant	*National public contribution*
20	*20*

(c) Total investment cost

Eligible expenditure	*Non eligible expenditure according to Article 55*	*Non eligible expenditure according to Article 56*
40 (EU 20, National 20)	*40*	*20*

For such revenue-generating projects, private expenditure would normally be covered by net revenues. Where this is the case, the private expenditure should not be included in the statement of expenditure.

<u>*1B. Question received from Member States through Jaspers*</u>*: How should the total investment cost of projects in an OP be taken into account in the preparation of the financial table of the OP?*

<u>Commission services' answer</u>

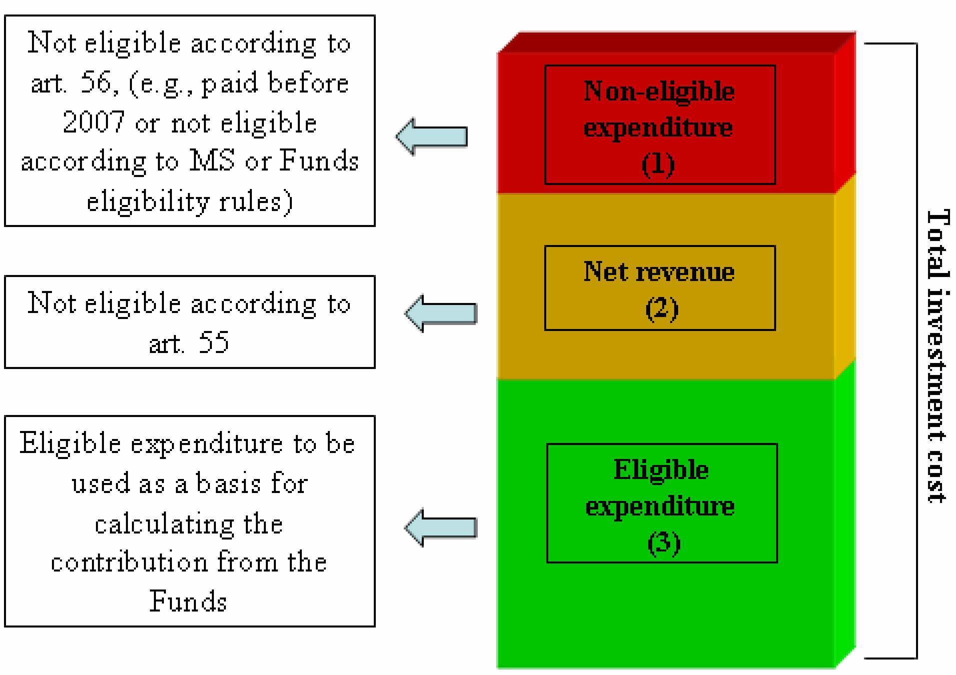
The total investment cost of all the projects to which it is anticipated that funding will be given under a priority axis should not be shown directly in the financial table of the OP.

Member States will, of course, not necessarily have a clear idea of all the projects that will be included in OPs at the time of preparation of the OP and its financial table, let alone the total investment costs for such projects.

Nevertheless, if projects have been identified, Member States should try to ensure that the national contribution included in the OP financial plan corresponds, to the extent possible, to amounts that can be declared to the Commission as eligible expenditure in respect of projects. It is recognised that, in developing project pipelines including the list of major projects, Member States will be dealing with intermediate bodies and beneficiaries which are planning on the basis of total investment cost rather than on the basis of eligible expenditure as defined in Regulation 1083/2006. Member States may therefore need to ensure consistency of their OP financial tables with a “total cost” planning approach.

[2] Note that "where not all the investment cost is eligible for co-financing the net revenue shall be allocated pro rata to the eligible and non-eligible parts of the investment cost" - Article 55(2). For fuller detail on the calculation of eligible expenditure, see the numerical example annexed to the "Guidance on the methodology for carrying out cost-benefit analysis" which refers to major projects but can be applied by analogy also to non-major projects.

The chart below illustrates the relationship between the eligible expenditure, net revenue and non-eligible expenditure concepts and the total investment cost concept. The chart is necessarily a simplification (for example, according to Article 55(2), part of net revenue should be allocated to non-eligible costs for calculation purposes where not all of the investment cost is eligible for co-financing).



A table is set out below which is intended to help Member States to prepare their OP financial table correctly, showing how the formally required information for the OP financial table is linked to total cost and other relevant categories of expenditure. It should be considered as an optional tool for Member States' internal use and should not be submitted to the Commission, as only the OP financial table set out in Annex XVI of Regulation 1828/2006 should be submitted to the Commission. In addition to facilitating the preparation of the OP financial tables, it may also help Member States to identify useful data such as the total cost of all investments funded by priority, or the share of total public or total private funding under a priority axis.

- The table has an additional column on the left hand side, showing Total Cost. The table can then be read from left to right, starting with the concept of total cost and then coming to 'total eligible expenditure', which is the basis on which the EC grant is calculated.
- On the right hand side of the table, Member States can include as a useful additional item for information the total private sector contribution to the OP; this is also useful information which demonstrates the total private sector contribution to the OP.
- Additional Funding can be shown, together with Total Cost.
- Additional Private Funding can be shown separately for information, to enable calculation of total private funding (i.e., matching net revenue, and additional private funding) and a Total Private Funding figure can be shown to give a full picture of the private sector contribution to the OP. Likewise for Additional Public Funding.

TABLE FOR INTERNAL USE BY MEMBER STATES IN PREPARING OP FINANCIAL TABLES CONTAINING REVENUE-GENERATING PROJECTS

Operational programme reference (CCI number):
Priority axes by source of funding (in euros)

	For Member States' internal use	Formally required information to be included in the OP financial plan					For Member States' internal use							
	Total cost (z) = (d)+(i)	Community Funding (a)	National Public funding (b)	National private funding (c)	Total funding **of eligible expenditure** (d) = (a)+(b)+ (c)	Co-financial rate (e)= (a)/(d)	Additional public funding (f)	Addition-al private funding (g)	Other funding (h)	Total additional funding (i)= (f)+(g) +(h)	Total Private Funding (j) = (c)+(g)	Total Public Funding (k) = (b)+(f) +(h)	Of which Non-eligible expenditure (l)	Of which EIB contribution (m)
Priority Axis 1 Specify the basis for calculating the Community contribution (total or public)														
Priority Axis 2 see example 1	100	20	20	0	40	50%	20	40	0	60	40	40	20	
Total														

Notes:

- Column (c): for revenue generating projects, this column includes only private funding in excess of discounted net revenue; private funding matched by discounted net revenue can be shown in column (g). Where priority axis shows basis for calculating grant as “public expenditure”, column (c) should be zero and any private funding shown in column (g).
- Column (l): Expenditure not eligible per Article 56 of the Regulation, eg, expenditure incurred before the date of submission of the OP or 1 Jan 2007, as the case may be.
- Column (z): This column shows total investment cost, including expenditure not eligible under Article 56. It is equal to total funding (ie, funding through eligible expenditure plus additional funding).

2. Changing national public and private expenditure by OP and by priority axis

2A. Question: Can Member States change the amounts of national public and private co-financing by priority axis without changing the Commission decision?

Commission services' answer

Where a financing plan for an operational programme (OP), according to Article 37(1)(e)(ii) of Regulation 1083/2006 and Article 12(6) of Regulation 1080/2006, contains an indicative breakdown between national public and private co-financing, changes to the amounts of national public and private co-financing do not require a change to the Commission decision as long as the total amount of national co-financing remain unchanged. This is because what is important for the purposes of the financing plan is the total amount of national co-financing, and not the breakdown between national public and private co-financing, which is, as stated in the above-mentioned Articles, indicative.

However, a change in the co-financing rate at priority axis level resulting from changes to the national co-financing amounts will require a change to the Commission decision, in accordance with Articles 33 and 53(6).

It is expected that Member States will inform the Commission in the annual and final reports of significant changes in the levels of national public and private co-financing at OP and priority axis level, as part of the information required to obtain a clear view of the implementation of the OP.

3. Display of Expenditure in the Statement of Expenditure

3A. Question: *Statement of expenditure: we ask to make clear how to fill in* the *columns "total amount of eligible expenditure paid by beneficiaries" and "corresponding public contribution" in case when the base for calculating Community contribution is public expenditure. According to the article 78 of Council Regulation 1083/2006 we understand that the statement of expenditure includes also private expenditure included in the column "total amount of eligible expenditure paid by beneficiaries" also in case when the basis for calculating of EU contribution is public expenditure. The column "corresponding public contribution" comprises only national public expenditure plus EU contribution. Into the column "Basis for calculating Community contribution (public or total)" the words "public" or "total" will be filled. Is our understanding correct? Is it obligatory to fill out both* columns?

Commission services' answer

It is the eligible expenditure of beneficiaries, whether it is public or private, that should be stated in the column "total amount of eligible expenditure paid by beneficiaries", irrespective of whether the basis for calculating the Community contribution is total cost or public cost.

The column "corresponding public contribution" should also be completed with public expenditure "paid or due to be paid to the beneficiaries according to the conditions governing the public contribution", according to Article 78(1) of Regulation (EC) No 1083/2006.

3B. Question: *Statement of expenditure – breakdown by year – what data should be filled into column "Amounts of expenditure (in euros)"? Total expenditure or public expenditure (case of the public basis for EU co-financing)?*

Commission services' answer

The relevant footnote to the table (wrongly numbered in Annex X to Regulation 1828/2006 as footnote 1) on "Breakdown by year of the total certified eligible expenditure" states that the breakdown "*shall correspond to the payments made by the beneficiaries in the year concerned*". The certified expenditure of beneficiaries, whether it is public or private, should be stated, irrespective of whether the basis for calculating the Community contribution is total cost or public cost.

3C. Question*: Annex X of the Implementing Regulation (1828/06) includes a table for the statement of expenditures. In the third column, the total amount of eligible expenditure paid by beneficiaries is to be entered (both for the interim payments and for the final payment). For cases where all of the private expenditure is included in the national co-financing in the framework of assisted operations, the above-named designation is clear. But where only part of the private funds (e.g. at priority axis level 10%) are used in showing the national co-financing, the column heading can easily be misunderstood. Are we correct in thinking that, in this case, despite the confusing designation, not the total eligible expenditure of ERDF operations is shown but only that portion of expenditure that represents co-financing (EU and national public and private)? That is our assumption since only this amount forms the basis for calculating the ERDF share of expenditures that is to be reimbursed by the EU.*

Commission services' answer

All eligible expenditure incurred by the beneficiary to implement the operation, whether it is public or private, should be declared in the statement of expenditure, in accordance with the first sub-paragraph of Article 78(1) of Regulation 1083/2006, and must be shown in the third column of the statement of expenditure ("Total amount of eligible expenditure paid by beneficiaries"). This is the case even where an OP or priority axis is expressed in public costs, although only the public contribution declared will be taken into account for the purposes of calculation of the Community contribution, in accordance with Article 53(1) of Regulation 1083/2006.

Expenditure included in the statement of expenditure should be the expenditure paid by the beneficiary and should be limited to the amount of expenditure incurred to implement the operation as specifically selected by the managing authority and described in the decision approving the operation[3]. Thus, if the scope of an operation is or becomes greater than what was selected by the managing authority and described in the decision approving the operation, expenditure concerning that part of the project that was not selected by the managing authority to receive financial support from the operational programme should not be included in the statement of expenditure.

This requires that managing authorities have a national financial monitoring system to follow up individual operations as described under section 3 of Regulation 1828/2006. The same should apply to major projects. Thus, expenditure declared for a major project in the statement of expenditure should be limited to the amount to which the co-financing rate will apply, according to the Commission decision approving the major project. For example, if the Commission co-finances 10,000,000 euros of expenditure for a major project at the rate of 50%, but the major project costs 30,000,000 euros, only 10,000,000 euros of expenditure should be included in the statement of expenditure.

It is expected that private expenditure that is not eligible for co-financing will be reported in the annual and final reports to demonstrate the leverage effect of the Structural Funds.

3D Question: Certificate – we understand that this document will be generated automatically by the SFC system after entering the data into the Statement of expenditure. Is our understanding correct? Will the Certificate include also the private expenditure (case of the public basis for EU co-financing)?

Commission services' answer

The certificate should cover all the eligible expenditure of beneficiaries, and this eligible expenditure shall comply with all regulatory requirements, in particular with respect to management and control systems. The certificate will be generated automatically by the SFC system.

[3] An approval decision shall contain, among other things, a description of the services or products to be delivered under the operation.

4. Including private expenditure in OP financing plans; Changing maximum intervention rates by Priority Axis; Relation between Articles 53(4) and 77

<u>*Question:*</u>

1. We would be grateful for clarification of an issue concerning Article 53(1) of Regulation (EC) No 1083/2006, and an explanation of the apparent contradiction between Articles 53(4) and 77. This relates to ERDF programmes only.

Article 53

2. Article 53(1) states that the contribution from the funds, at the level of operational programmes shall be calculated with reference to:

(a) either the total eligible expenditure including public and private expenditure; or

(b) the public eligible expenditure.

3. This suggests that if an Operational Programme (OP) adopts (a), the private sector element is included in the overall intervention rate. For example, the overall financial table in a Competitiveness and Employment OP could be €50m ERDF - €40m public - €10m private.

4. We would welcome the Commission's advice on whether this is the correct interpretation of Article 53(1) ***[point 1]***

Apparent contradiction between Articles 53(4) and 77

5. Article 53(4) states that "the contribution from the funds at the priority axis level shall not be subject to the ceilings set out in paragraph 3 and in Annex III. However, it shall be fixed so as to ensure compliance with the maximum amount of contribution from the Funds and the maximum contribution rate per fund fixed at the level of the programme."

6. This suggests that the above OP example could have an overall intervention rate of 50%, i.e., the limit in Annex III of Regulation 1083/2006, but individual Priority Axes could go above 50%.

7. In theory a Priority Axis could have an intervention rate as high as 70% ERDF, provided there is a corresponding Priority Axis at 30% ERDF. We see this as a welcome move from the Commission to provide managers of programmes with increased flexibility. Our understanding is therefore that it is the co-financing rate at the level of the Operational Programme which in management terms is most important, within the limits of Annex III of 1083/2006. We would appreciate confirmation of this ***[point two].***

We also seek confirmation that a Programme Monitoring Committee can amend the co-financing rate at the level of the Priority Axis without seeking an EC decision (as is the case at Measure level within the 2000-06 programmes) ***[point three].***

Article 77

8. Article 77 (calculating interim and final payments) states that "the Community contribution through the interim payments and payments of the final balance shall not be higher than the public contribution and the maximum amount of assistance from the Funds for each priority axis ………"

9. This suggests that the Community contribution should not exceed 50% in any Priority axis in the OP financial table, because otherwise the interim and final payment requests for that axis would inevitably have a higher Community element than the national public sector element. This appears to contradict the flexibility and simplification offered by the EC in Article 53(4). ***[point four].***

10. The provisions of Article 77 also appear to preclude OPs from adopting financial tables as in the example in paragraph 3, where the inclusion of the private sector match might result in the community contribution being greater than that offered as national public co-financing. ***[point five].***

Commission services' answer (referring to the five points in bold type)

Point one: Where the contribution from the Funds is calculated by reference to total eligible expenditure including public and private expenditure, it is possible for the private sector element to be included in the OP financing table. It would thus be possible, as the Member State suggests, to have a financial table in a Competitiveness and Employment OP with €50m ERDF - €40m national public - €10m private.

Point two: Pursuant to Article 53(4), the Community contribution for individual Priority Axes may go above 50% for a competitiveness OP. Thus, it would be possible, as the Member State suggests, to have a Priority Axis with an intervention rate higher than 50% for ERDF, provided there is a corresponding Priority Axis at a lower rate. Clearly, the overall intervention rate for the OP will have to be respected, and the increased flexibility the Member State refers to will depend in practice on the volume of expenditure for each Priority Axis.

It should be recalled that the co-financing rate of the OP is the result of the division of the total Community funding by the total funding. It is not the average of co-financing rates for the priority axes.

Point three: Article 53(6) states that the Commission's decision adopting an OP fixes the maximum rate and the maximum amount of the contribution from the Funds for each OP and for each priority axis. If these rates are to be changed, the Commission decision will need to be modified. A Programme Monitoring Committee can therefore not amend the maximum co-financing rate at the level of the Priority Axis without seeking a Commission decision.

Point four: The Commission does not share the view that Article 77, second paragraph, contradicts Article 53(4).

Article 77, second paragraph, sets two limits on what will be paid in respect of interim and final payment requests. One limit is that the Community contribution to be paid shall not be greater than the maximum amount of EC assistance for the priority axis as laid down in the Commission decision. This simply limits the global amount to be co-financed from the Funds for the OP for the whole of the programming period and does not mean that the priority axis cannot have a higher intervention rate than the OP, as outlined in the response to point two above.

The other limit set by the second paragraph of Article 77 is that interim and final payments shall not exceed the "*public contribution*". This is the public contribution "*paid or to be paid to the beneficiaries according to the conditions governing the public contribution*", in accordance with Article 78(1). It is comprised of EC and national public funding that is to be paid in respect of all operations under a priority axis, according to the decision approving the operation. It is this 'public contribution' that should be stated in the final column ("corresponding public contribution") of the statement of expenditure. This provision mirrors the one laid down in Article 54(c) of Regulation 1083/2006, whereby "*an operation shall not* *receive an assistance from a Fund higher than the total public expenditure allocated*". Consequently, the Community contribution can exceed 50% in any priority axis.

Point five: Article 77 does not preclude OPs from having financial tables which include private funding. As explained above, the second paragraph of Article 77 does not, in our view, require the national public funding in the OP to equal the Community funding, which appears to be the hypothesis on which the question is based.

5. Differences between the OP financing plan and payment applications with regard to amounts of national public and private co-financing

Question: What will be the Commission's approach where, in payment applications, private expenditure is higher than that stated in the OP financing plan and public expenditure is lower?

Commission services' answer

This question concerns OPs and priority axes for which the contribution from the Funds will be calculated with reference to total eligible expenditure.

Differences between the amounts of public and private expenditure claimed and the corresponding amounts in the indicative breakdown in the OP financing table will not affect reimbursement of the total cost declared. This is because, as explained above, it is the level of national co-financing in the financial plan that should be examined, and not the breakdown between public and private co-financing, which is only indicative. Commission services will apply the provisions of Article 77 in respect of payment applications.