

**EUROPEAN COMMISSION**DIRECTORATE-GENERAL
REGIONAL POLICYDIRECTORATE GENERAL
EMPLOYMENT, SOCIAL AFFAIRS AND EQUAL OPPORTUNITIES

Note of the Commission services No. 5

Financing, by the 2007-2013 technical assistance allocation, of the technical assistance tasks of the 2000-06 programmes incurred after the final date of eligibility

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 28 February 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.

1. INTRODUCTION

Following enquiries by several Member States, this note aims to clarify the question of co-financing of technical assistance costs related to the 2000-06 programmes incurred after the final date of eligibility of these programmes.

Some technical assistance costs, such as certain audit costs (including the preparation of the winding-up statement), costs related to preparation of the final implementation reports, and the archiving of supporting documents, will be incurred after the final eligibility date.

Therefore, they will not be eligible for co-financing under the 2000 – 2006 programming period. The question is whether such costs could be supported by the technical assistance under the 2007-2013 programming period.

2. LEGAL FRAMEWORK

The legal provisions applicable to the 2000-06 period impose obligations on the Member States to carry out certain tasks related to the closure of the programmes after the final date of eligibility, which is normally 31 December 2008 or 30 April 2009 for expenditure incurred by bodies granting assistance under Article 9(1) of Regulation (EC) No1260/1999 (the General Regulation for 2000-2006).

In particular, Article 105 (2) of Regulation (EC) 1083/2006 (the General Regulation for 2007-2013) states that *"by way of derogation from Articles 31(2), 32(4) and 37(1) of Regulation (EC) No 1260/1999, partial sums committed for assistance co-financed by the*

ERDF or the ESF approved by the Commission between 1 January 2000 and 31 December 2006 for which the certified statement of expenditure actually paid, the final report on implementation and the statement referred to in Article 38(1)(f) of that Regulation have not been sent to the Commission within 15 months after the final date of eligibility of expenditure laid down in the decision granting a contribution from the Funds, shall be automatically decommitted by the Commission not later than 6 months after that deadline, giving rise to the repayment of amounts unduly paid".

Furthermore, Article 38(6) of Regulation (EC) 1260/1999 requires that *"for a period of three years, ... following the payment by the Commission of the final balance in respect of any assistance, the responsible authorities shall keep available for the Commission all the supporting documents ... regarding expenditure and checks on the assistance concerned."* Paragraph 3.2.3. of the closure guidelines¹ further specify the period for documents retention and for correction of the final balance: *"...the Commission will take as a starting point for such time periods whichever of the following dates is applicable: (i) the date of execution of the last payment by the Commission, (ii) the date of execution of reimbursement by the Member State to a Fund, (iii) the date of compensation or (iv) the date of the letter from the Commission regarding closure where no final balance is paid because payments already made have been sufficient to cover expenditure".*

The scope of the technical assistance at the initiative of the Member States for the 2007-2013 programming period is defined in Article 46 of the Regulation (EC) No 1083/2006 : *"At the initiative of the Member State, the Funds may finance the preparatory, management, monitoring, evaluation, information and control activities of operational programmes together with activities to reinforce the administrative capacity for implementing the Funds within the following limits: (a) 4 % of the total amount allocated under the Convergence and Regional competitiveness and employment objectives; (b) 6 % of the total amount allocated under the European territorial cooperation objective".*

Contrary to the 2000-06 programming period, the legal basis for the 2007-2013 programming period establishes only a limited list of eligibility rules at the EU level. As laid down in Article 56 of the Regulation (EC) No 1083/2006, *"the rules on eligibility of expenditure shall be laid down at national level subject to the exceptions provided for in the specific Regulations for each Fund. They shall cover the entirety of the expenditure declared under the operational programme"*. Article 56(1) of the Regulation (EC) No 1083/2006 defines the starting date of eligibility of expenditure as follows: *"Expenditure, including for major projects, shall be eligible for a contribution from the Funds if it has actually been paid between the date of submission of the operational programmes to the Commission or from 1 January 2007, whichever is earlier, and 31 December 2015. Operations must not have been completed before the starting date for eligibility"*.

¹ Decision of the Commission on Guidelines on closure of assistance (2000-2006) from the Structural Funds, C(2006)3424

3. INTERPRETATION

Regulation (EC) No 1083/2006 establishes the rules applicable to the expenditure financed with the financial envelope available for the 2007-2013 programming period. However, in order to find a solution for the financing of technical assistance expenditure incurred beyond the final date for the eligibility of the expenditure under the 2000-2006 programming period and given the fact that Article 46 of the Regulation N° 1083/2006 does not lay down a temporal limitation regarding the period to which technical assistance expenditure relate, DG REGIO and DG EMPL come to the conclusion that costs incurred after the final date of eligibility of the 2000-2006 programmes relating to closure of these programmes may be co-financed by the technical assistance budget of the 2007-2013 programmes.

Those costs would be eligible under the 2007-2013 technical assistance allocations of the Member States provided that:

- they are incurred after the final date for the eligibility of expenditure under an intervention of the 2000-2006 programming period;
- their eligibility is assessed on a case-by-case basis, in the light of the specific features of each new operational programme and its overall consistency with, previous programmes; there should therefore be a clear and demonstrable link between a programme of the 2007-2013 period and that of the 2000-2006 period in terms of geographical scope, or field of intervention, or administrative systems regarding management and control; 2007-2013 programmes mainstreaming Equal and Urban Community Initiatives of the 2000-06 period are considered to represent the link;
- national eligibility rules do not exclude their eligibility.

Such costs would fall under the technical assistance capping established in Article 46 of the Regulation (EC) No 1083/2006. Any costs incurred before the starting date of eligibility of the 2007-2013 programmes would not be eligible for Community co-financing under these programmes. Furthermore, if there is no continuation of the 2000-06 programmes, in terms of geographical, or thematic scale, or administrative systems, the costs incurred after the final date of eligibility of these programmes would have to be covered from national sources.