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Financing, by the 2007-2013 technical assistance allocation of the technical assistance tasks of the 2000-06 programmes

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"This is a Working Document prepared by the Commission services. On the basis of the applicable Community Law, it provides technical guidance to the attention of public authorities, practitioners, beneficiaries or potential beneficiaries, and other bodies involved in the monitoring, control or implementation of the Cohesion policy on how to interpret and apply the Community rules in this area. The aim of the working document is to provide Commission's services explanations and interpretations of the said rules in order to facilitate the implementation of operational programmes and to encourage good practice(s). However this guidance is without prejudice to the interpretation of the Court of Justice and the Court of First Instance or evolving Commission decision making practice."

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

It modifies the previous note on the subject that was finalized on 14 June 2007¹. The modifications were necessary in order to facilitate the management of the technical assistance expenditure in the light of time overlaps between the two programming periods, 2000-2006 and 2007-2013, and also to make full use of the extension of the final date of eligibility of the 2000-2006 programmes, while ensuring sound financial management of the operational programmes.

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 two questions:

1. 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. The question of co-financing of the technical assistance tasks of the 2000-2006 operational programmes in the situations where no credits are available any longer to carry out technical assistance tasks until the final date of eligibility.

This problem becomes even more evident in the light of the Commission decisions to extend the final date of eligibility of 2000-2006 operational programmes until 30 June 2009² as Member States have not been entitled to modify the financing plans since end of 2006.

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).

¹ (COCOF 07/0021/02)

² Until 31 December 2009 for TA expenditure within those Interreg programmes which have no continuation under the 2007-2013 programming period.

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 guidelines³ 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"*.

3. INTERPRETATION

Regulation (EC) No 1083/2006 establishes rules applicable to expenditure co-financed under the 2007-2013 programming period. Article 46 of Regulation (EC) No 1083/2006 does not set out an explicit temporal limitation regarding the period to which technical assistance expenditure co-financed from the 2007-2013 financial envelope should relate.

³ Commission Guidelines on closure of assistance (2000-2006) from the Structural Funds, C(2006)3424.

Therefore, co-financing of technical assistance expenditure linked to the implementation of 2000-2006 operational programmes could be possible from the 2007-2013 financial envelope in the following clearly defined cases:

- i) TA activities relating to the closure of the 2000-2006 programming period and incurred after the final date for the eligibility of expenditure under the 2000-2006 programming period;
- ii) TA activities carried out after 31/12/2008 but before the extended final date for the eligibility for those 2000 – 2006 programmes where the eligibility period has been extended because of in particular significant changes in the socio economic situation and the labour market;
- iii) in exceptional cases for the TA activities carried out before 31/12/2008, where no TA credits are left under the 2000 – 2006 operational programmes and on the basis of the latest spending plans⁴ the credits in other priority axes are exhausted so that for the purposes of TA the operational programme in question cannot benefit from the 10% flexibility at priority level. This retroactively applicable possibility does not create any legitimate expectations for the future similar cases.

DG REGIO and DG EMPL come to the conclusion that the technical assistance budget of the 2007-2013 programmes may co-finance technical assistance for the 2000-2006 programmes, as already set out under points (i) to (iii), only if the following conditions are met:

- TA expenditure is incurred after the starting date for the eligibility of expenditure under an intervention of the 2007-2013 programming period (i.e. according to Article 56(1) of Regulation (EC) No 1083/2006, date of submission of the operational programme or 1 January 2007, whichever is the earlier);
- eligibility of such TA expenditure 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 eligibility of such TA expenditure.

It should be reiterated that, as for any other type of co-financed operation, an audit trail must be set up so as to avoid any risk of double co-financing for the same technical assistance activities under the 2000-2006 and 2007-2013 programming periods.

Technical assistance costs for the benefit of 2000-2006 programming period but co-financed from the 2007-2013 allocations 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.

Finally, for those Interreg Community Initiative programmes that have no continuation in the 2007-2013 programming period and therefore cannot use technical assistance of the 2007-2013 programmes, the Commission intends to extend the final date of eligibility of technical assistance expenditure paid under these programmes until 31 December 2009 in order to allow for financing of tasks related to closure of these programmes.

⁴ Reflecting the status of credits on the date when 2007-2013 TA allocation starts being used.