



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 20 April 2012

Interinstitutional File:
2011/0276 (COD)
2011/0273 (COD)
2011/0268 (COD)

8207/12
ADD 5 REV 2

FSTR **26**
FC **17**
REGIO **39**
SOC **240**
AGRISTR **40**
PECHE **103**
CADREFIN **165**
CODEC **831**

ADDENDUM 5 to NOTE

from : Presidency

to: Permanent Representatives Committee (part 2)/Council

No. prev. doc.: 15243/2/11 REV 2, 15253/1/11 REV 1, 15247/1/11 REV 1

No. Cion prop.: COM(2011) 615 final/2, COM(2011) 611 final/2, COM(2011) 607 final/2

Subject: Cohesion Policy legislative package
 - Presidency compromise on Eligibility

Delegations will find attached a compromise text on the Eligibility parts of the proposals for the Common Provisions Regulation, the ETC Regulation and the ESF Regulation.

The modifications highlighted in bold are those in comparison to the revised versions (corrigendum) presented by the Commission on 14 March 2012.

CHAPTER II

Eligibility of expenditure and durability

Article 55

Eligibility

1. The eligibility of expenditure shall be determined on the basis of national rules, except where specific rules are laid down in or on the basis of this Regulation or the Fund-specific rules.
2. Expenditure shall be eligible for a contribution from the CSF Funds if it has been incurred [...] by a beneficiary **and paid** between the date of submission of the programme to the Commission or from 1 January 2014, whichever is earlier, and 31 December 2022. In addition, expenditure shall only be eligible for a contribution from the EAFRD and the EMFF if the relevant aid is actually paid by the paying agency between 1 January 2014 and 31 December 2022.
3. In the case of costs reimbursed on the basis of Article 57(1)(b) and (c), the actions constituting the basis for reimbursement shall be carried out between 1 January 2014 and 31 December 2022.
4. Operations shall not be selected for support by the CSF Funds where they have been physically completed or fully implemented before the application for funding under the programme is submitted by the beneficiary to the managing authority, irrespective of whether all related payments have been made by the beneficiary.
5. This Article shall be without prejudice to the rules on eligibility of technical assistance at the initiative of the Commission set out in Article 51.

6. Net revenue directly generated by an operation during its implementation which has not been taken into account at the time of approval of the operation, shall be deducted from the eligible expenditure of the operation **at the latest** in the final payment claim submitted by the beneficiary. This rule shall not apply to financial instruments and prizes.

Where not all the expenditure is eligible for co-financing and the net revenues cannot be allocated separately to the eligible and non eligible parts of the expenditure, the net revenue shall be allocated pro-rata to the eligible and non-eligible parts of the expenditure.¹

7. In the case of amendment of a programme, expenditure becoming eligible because of the amendment to the programme shall only be eligible from the date of submission to the Commission of the request for amendment **or, in case of application of Article 87(11), from the date of entry into force of the decision amending the programme.**
8. An operation may receive support from one or more CSF Funds **or from one or more programmes** and from other Union instruments, provided that the expenditure item included in a request for payment for reimbursement by one of the CSF Funds does not receive support from another Fund or Union instrument, or support from the same Fund under another programme.

Article 56

Forms of support

The CSF Funds shall be used to provide support in the form of grants, prizes, repayable assistance and financial instruments, or a combination thereof.

¹ Article 55(6) may need to be reviewed pursuant to the negotiations on Article 54 CRP on revenue generating projects.

In the case of repayable assistance, the support repaid to the body that provided it, or to another competent authority of the Member State, shall be kept in a separate account **or separated with accounting codes** and reused for the same purpose or in accordance with the objectives of the programme.

Article 57

Forms of grants and repayable assistance

1. Grants **and repayable assistance** may take any of the following forms:
 - (a) reimbursement of eligible costs actually incurred and paid, together with, where applicable, in-kind contributions and depreciation;
 - (b) standard scales of unit costs;
 - (c) lump sums not exceeding EUR 100 000 of public contribution;
 - (d) flat-rate financing, determined by the application of a percentage to one or several defined categories of costs.
2. The options referred to in paragraph 1 may be combined only where each covers different categories of costs or where they are used for different projects forming a part of an operation or for successive phases of an operation.
3. **Without prejudice to art. 14(4) of [ESF regulation]** where an operation or a project forming a part of an operation is implemented exclusively through the **public** procurement of works, goods or services, only paragraph 1(a) shall apply. Where the procurement within an operation or project forming part of an operation is limited to certain categories of costs, all the options referred to in paragraph 1 may be applied.

4. The amounts referred to in paragraph 1(b), (c) and (d) shall be established **in one of the following ways**:
- (a) a fair, equitable and verifiable calculation method based on:
 - (i) statistical data or other objective information; or
 - (ii) the verified historical data of individual beneficiaries; or
 - (iii) the application of **the** usual cost accounting practices **of individual beneficiaries**;
 - (b) **in accordance with the rules for application of corresponding** scales of unit costs, lump sums and flat rates applicable in Union policies for a similar type of operation and beneficiary;
 - (c) **in accordance with the rules for application of corresponding** scales of unit costs, lump sums and flat rates applied under schemes for grants funded entirely by the Member State for a similar type of operation and beneficiary;
 - (d) rates established by this Regulation or the Fund-specific rules.
5. The document setting out the conditions for support for each operation shall set out the method to be applied for determining the costs of the operation and the conditions for payment of the grant.

Article 58

Flat rate financing for indirect costs and staff costs for grants and repayable assistance

- 1.** Where the implementation of an operation gives rise to indirect costs, they may be calculated as a flat rate in one of the following ways:

- (a) a flat rate of up to **25** % of eligible direct costs, **provided that** the rate is calculated on the basis of a fair, equitable and verifiable calculation method or a method applied under schemes for grants funded entirely by the Member State for a similar type of operation and beneficiary;
- (b) a flat rate of up to 15 % of eligible direct staff costs **without a requirement for the Member State to execute any calculation to determine the applicable rate;**
- (c) a flat rate applied to eligible direct costs based on existing methods and corresponding rates, applicable in Union policies for a similar type of operation and beneficiary.

The Commission shall be empowered to adopt delegated acts in accordance with Article 142 concerning the definition of the flat rate and the related methods referred to in point (c) above.

2. Staff costs relating to the implementation of an operation may be calculated by dividing the latest documented annual gross employment costs by 1650 hours.

Article 59

Specific eligibility rules for grants and repayable assistance

- 1. Contributions in kind in the form of provision of works, goods, services, land and real estate for which no cash payment supported by invoices or documents of equivalent probative value has been made, may be eligible provided that the eligibility rules of the CSF Funds and the programme allow for it and that all the following conditions are fulfilled:
 - (a) the public support paid to the operation which includes contributions in kind shall not exceed the total eligible expenditure, excluding contributions in kind, at the end of the operation;
 - (b) the value attributed to contributions in kind does not exceed the costs generally accepted on the market in question;

- (c) the value and the delivery of the contribution can be independently assessed and verified;
- (d) in the case of provision of land or real estate, **a cash payment for the purposes of a lease agreement of a nominal amount per annum not exceeding a single unit of the currency of the Member State may be made.** The value **of the land or real estate must be** certified by an independent qualified expert or duly authorised official body and does not exceed the limit laid down in paragraph 3(b);
- (e) in the case of contributions in kind in the form of unpaid work, the value of that work is determined taking into account the verified time spent and the rate of remuneration for equivalent work.

2. Depreciation costs may be considered as eligible under the following conditions:

- (a) the eligibility rules of the programme allow for it;
- (b) the amount of the expenditure is duly justified by supporting documents having equivalent probative value to invoices where reimbursed in the form referred to in Article 57(1)(a);
- (c) the costs relate exclusively to the period of support for the operation;
- (d) public grants have not contributed towards the acquisition of the depreciated assets.

3. The following costs shall not be eligible for a contribution from the CSF Funds:

- (a) interest on debt;
- (b) the purchase of land not built on and land built on in the amount exceeding 10% of the total eligible expenditure for the operation concerned. In exceptional and duly justified cases, a higher percentage may be permitted for operations concerning environmental conservation;

- (c) [value added tax. However, VAT amounts shall be eligible where they are not recoverable under national VAT legislation and are paid by a beneficiary other than non-taxable person as defined in the first subparagraph of Article 13(1) of Directive 2006/112/EC, provided that such VAT amounts are not incurred in relation to the provision of infrastructure.]¹

Article 60

Eligibility of operations depending on location

1. Operations supported by the CSF Funds, subject to the derogations referred to in paragraphs 2 and 3, and the Fund-specific rules, shall be located in the area covered by the programme under which they are supported (the 'programme area').
2. The managing authority may accept that an operation is implemented outside the programme area but within the Union, provided that all the following conditions are satisfied:
 - (a) the operation is for the benefit of the programme area;
 - (b) the total amount allocated under the programme to operations located outside the programme area does not exceed **15** % of the support from the ERDF, Cohesion Fund and EMFF at the level of the priority, or **5** % of the support from the EAFRD at the level of the programme;
 - (c) the monitoring committee has given its agreement to the operation or types of operations concerned;
 - (d) the obligations of the authorities for the programme in relation to management, control and audit concerning the operation are fulfilled by the authorities responsible for the programme under which that operation is supported or they enter into agreements with authorities in the area in which the operation is implemented.

¹ Not discussed in Structural Actions Working Group

3. For operations concerning **Technical Assistance or** promotional activities, expenditure may be incurred outside the Union provided that the conditions set out in paragraph 2 (a) and the obligations in relation to management, control and audit concerning the operation are fulfilled.
4. Paragraphs 1 to 3 shall not apply to programmes under the European territorial cooperation goal and paragraphs 2 and 3 shall not apply to operations supported by the ESF.

Article 61

Durability of operations

1. An operation comprising investment in infrastructure or productive investment shall repay the contribution from the CSF Funds if within five years from the final payment to the beneficiary or within the period of time set out in the State aid rules, where applicable, it is subject to:
 - (a) a cessation or relocation of a productive activity **outside of the programme area; or**
 - (b) a change in ownership of an item of infrastructure which gives to a firm or a public body an undue advantage; or
 - (c) a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives.

Sums unduly paid in respect of the operation shall be recovered by the Member State **in proportion to the period for which the requirements have not been fulfilled.**

Member States may reduce the time limit set out in the first subparagraph to three years in cases concerning the maintenance of investments or jobs created by SMEs.

2. Operations supported by the ESF and operations supported by the other CSF Funds that are not investment in infrastructure or productive investments shall repay the contribution from the Fund only where they are subject to an obligation for maintenance of investment under the applicable State aid rules and where they undergo a cessation or relocation of a productive activity within the period laid down in those rules.
3. Paragraphs 1 and 2 shall not apply to contributions to or by financial instruments or to any operation which undergoes cessation of a productive activity due to a non-fraudulent bankruptcy.
4. Paragraphs 1 and 2 shall not apply to natural persons who are beneficiary of investment support and, after the completion of the investment operation, become eligible for and receive support under the EGF (Regulation [2012] setting a European Globalisation Fund) where the investment concerned is directly linked to the type of activity identified as eligible for EGF support.

TITLE VIII

Proportional control of operational programmes

Article 140

Proportional control of operational programmes

1. Operations for which the total eligible expenditure does not exceed EUR **200 000** shall not be subject to more than one audit by either the audit authority or the Commission prior to the closure of all the expenditure concerned [under Article 131]. Other operations shall not be subject to more than one audit per [accounting year] by **either** the audit authority **or** the Commission prior to the closure of all the expenditure concerned [under Article 131]. These provisions are without prejudice to paragraph 4. **Operations shall not be subject to an audit by the Commission or the audit authority in any year if there has already been an audit in that year by the European Court of Auditors.**

2. For operational programmes for which the most recent audit opinion indicates that there are no significant deficiencies, the Commission may agree with the audit authority in the subsequent meeting referred to in Article 118(3) that the level of audit work required may be reduced so that it is proportionate to the risk established. In such cases, the Commission will not carry out its own on-the-spot audits unless there is evidence suggesting deficiencies in the management and control system affecting expenditure declared to the Commission in an [accounting year] for which the accounts have been the subject of a clearance decision.
3. For operational programmes for which the Commission concludes that it can rely on the opinion of the audit authority, it may agree with the audit authority to limit its own on the spot audits to audit the work of the audit authority unless there is evidence of deficiencies in the work of the audit authority work for an [accounting year] for which the accounts have been subject to a clearance decision.
4. [...] The audit authority and the Commission may carry out audits of operations in case a risk assessment establishes a specific risk of irregularity or fraud, in case of evidence of serious deficiencies in the management and control system of the operational programme concerned, and, during the 3 years following closure of all the expenditure of an operation [under Article 131], as part of an audit sample. The Commission may at any time carry out audits of operations for the purpose of assessing the work of an audit authority by **reviewing the audit trail of the audit authority or taking part in the on-the-spot audits of the audit authority. Only if the Commission does not obtain necessary assurance as to the effective functioning of the audit authority by these means, may it carry out a** re-performance of its audit activity.

ETC-REGULATION

CHAPTER VI

ELIGIBILITY

Article 17

General rules on eligibility of expenditure

1. 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. Without prejudice to the eligibility rules laid down in or on the basis of Articles 55 to 61 of Regulation (EU) No [...] /2012 [CPR], Regulation (EU) No [...] /2012 [ERDF], [...] this Regulation **or the delegated act, referred to in paragraph (1), the participating Member States in the monitoring committee,** shall establish **additional** eligibility rules for the cooperation programme as a whole.
3. For matters not covered by eligibility rules laid down in or on the basis of Articles 55 to 61 of Regulation (EU) No [...] /2012 [CPR], Regulation (EU) No [...] /2012 [ERDF], **in the delegated act referred to in paragraph (1) or in rules, established jointly by the participating Member States in accordance with paragraph (2),** the national rules of the **Member State** in which the expenditure is incurred shall apply.

Article 18

Staff costs

Staff costs of an operation may be calculated as a flat rate of up to **20** % of the direct costs other than the staff costs of that operation.

Article 19

Eligibility of operations in cooperation programmes depending on location

1. Operations under cooperation programmes, subject to the derogations referred to in paragraphs 2 and 3, shall be located in the part of the programme area comprising Union territory (the "Union part of the programme area").
2. The managing authority may accept that all or part of an operation is implemented outside the Union part of the programme area, provided that all the following conditions are satisfied:
 - (a) the operation is for the benefit of the programme area;
 - (b) the total amount allocated under the cooperation programme to operations located outside the Union part programme area does not exceed 20% of the support from the ERDF at programme level, or 30% in the case of cooperation programmes for which the Union part of the programme consists of outermost regions;
 - (c) the obligations of the managing and audit authorities in relation to management, control and audit concerning the operation are fulfilled by the cooperation programme authorities or they enter into agreements with authorities in the Member State or third country or territory in which the operation is implemented.
3. For operations concerning promotional activities and capacity-building, expenditure may be incurred outside the Union part of the programme area provided that the conditions in paragraphs 2(a) and 2(c) are fulfilled.

ESF-REGULATION

Chapter III

Specific provisions for financial management

Article 13

Eligibility of expenditure

1. The ESF shall provide support for eligible expenditure, which, notwithstanding Article 110(2)(b) of Regulation (EU) No [...], may include any financial resources collectively constituted by employers and workers.

2. The ESF may provide support for expenditure incurred for operations which take place outside the programme area, but within the Union, provided that the two following conditions are satisfied:
 - (a) the operation is for the benefit of the programme area;

 - (b) the obligations of the authorities for the programme in relation to management, control and audit concerning the operation are fulfilled by the authorities responsible for the programme under which that operation is supported or they enter into agreements with authorities in the Member State in which the operation is implemented provided that the conditions set out in paragraph 2 (a) and the obligations in relation to management, control and audit concerning the operation are fulfilled.

Within 5% of the budget of the ESF operational programme, expenditure under such operations and provided they concern research and innovation, education and training is eligible outside the Union if incurred and paid according to the Member state and EU rules applicable to the operational programme. If a

programme is funded through more than one fund, cf. art. 87(1) of Regulation (EU) No [CPR...] the maximum of 5% is calculated on the basis of the allocation to the programme from the ESF.

3. In addition to the expenditure referred to in Article 59(3) of Regulation (EU) No [...], the purchase of infrastructure, land and real estate shall not be eligible for a contribution from the ESF.
4. Contributions in kind in the form of allowances or salaries disbursed by a third party for the benefit of the participants in an operation may be eligible for a contribution from the ESF provided that its value does not exceed the cost borne by the third party and that it is incurred in accordance with national rules, including accountancy rules.

Article 14

Simplified cost options

1. In addition to the methods referred to in Article 57 of Regulation (EU) No [...], the Commission may reimburse expenditure paid by Member States on the basis of standard scales of unit costs and lump sums defined by the Commission. The amounts calculated on this basis shall be regarded as public support paid to beneficiaries and as eligible expenditure for the purpose of applying **Regulation (EU) No (..) /2012 (CPR)**.

For this purpose the Commission shall be empowered to adopt delegated acts in accordance with Article 16 concerning the type of operations covered, the definitions of the standard scales of unit costs and lump sums and their maximum amounts, which may be adjusted according to the applicable commonly agreed methods.

Financial audit shall exclusively aim at verifying that the conditions for reimbursements by the Commission on the basis of standard scales of unit costs and lump sums have been fulfilled.

Where these forms of funding are used, the Member State may apply its accounting practices to support operations. For the purpose of this regulation and Regulation (EU) No [...] these accounting practices and the resulting amounts shall not be subject to audit by the audit authority or by the Commission.

2. In accordance with Article 57(1)(d) and (4)(d) of Regulation (EU) No [...], a flat rate of up to 40% of the eligible direct staff costs may be used in order to cover the remaining eligible costs of an operation **without a requirement for the Member State to execute any calculation to determine the applicable rate.**

3. **In addition to the methods stipulated in Article 57(4) of Regulation (EU) No [...], where the public support for grants and repayable assistance does not exceed EUR 100 000, the amounts referred to in paragraph 57(1) (b), (c) and (d) of Regulation (EU) No [...] may be established on a case-by-case basis by reference to a draft budget agreed ex-ante by the Managing Authority.**

4. Grants for which the public support does not exceed EUR 50 000 shall take the form of lump sums, [...] standard scales of unit costs in accordance with paragraph 1 or Article 57 of Regulation (EU) No [...] **or flat rates**, except for operations receiving support within the framework of a state aid scheme. **Where flat rate financing is used, the categories of costs which are used to calculate the rate, are reimbursed in accordance with Article 57(1) (a) of Regulation (EU) No (...) /2012 (CPR).**
