

**COMMISSION REGULATION (EC) No 16/2003
of 6 January 2003**

laying down special detailed rules for implementing Council Regulation (EC) No 1164/94 as regards eligibility of expenditure in the context of measures part-financed by the Cohesion Fund

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Article 2

Having regard to the Treaty establishing the European Community,

Body responsible for implementation

Having regard to Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund ⁽¹⁾, as last amended by Regulation (EC) No 1265/1999 ⁽²⁾, and in particular Article D(7) of Annex II thereto,

The 'body responsible for implementation' referred to in Article 10(4) of Regulation (EC) No 1164/94 shall be the public or private body responsible for organising the tenders for a project. That body shall be designated in the Commission decision granting aid from the Cohesion Fund (hereinafter called 'the Commission decision').

Whereas:

Any change in the body responsible for implementation shall be approved by the Commission.

- (1) Under Regulation (EC) No 1164/94, the Cohesion Fund may part-finance projects, preliminary studies and technical support measures. The conditions under which such measures are eligible and to be implemented should therefore be specified.
- (2) Until now the eligibility rules have been set out as a standardised text in Annex IV to the decisions granting aid.
- (3) To ensure that measures part-financed by the Cohesion Fund receive uniform treatment, common rules should be laid down on the eligibility of the relevant expenditure. Those rules should specify the period of eligibility and different categories of eligible expenditure.
- (4) Regulation (EC) No 1164/94 stipulates that the Commission may approve proposed projects only if they meet criteria guaranteeing that they are of high quality and compatible with the Community's policies, in particular the rules on the award of public contracts and on competition.
- (5) The rules set out below are to replace those in Annex IV to the Commission decisions granting aid from the Cohesion Fund for new projects approved by Commission decision after the entry into force of this Regulation,

Article 3

'Implementation of a project' and 'period of implementation'

1. The implementation of a project shall cover all stages from preliminary planning to the completion of the approved project, including the relevant publicity measures. Preliminary planning shall include the study of alternatives.
2. A project may be restricted by the Commission decision to only one or several stages of implementation.
3. The implementation phase of a project shall cover the period necessary for the stages of implementation to be completed, up to the point at which the project becomes fully operational and at which the material objectives adopted by the Commission decision have been completed.

HAS ADOPTED THIS REGULATION:

Article 4

CHAPTER 1

GENERAL PROVISIONS

Transparency and documentary evidence

Article 1

Scope

This Regulation lays down common rules for determining the eligibility of expenditure under the measures provided for in Article 3 of Regulation (EC) No 1164/94 which may be part-financed by the Cohesion Fund.

All expenditure incurred by the body responsible for implementation must be based on legally binding contracts or agreements and/or documents.

Appropriate supporting documents must be produced.

Concession-holders and licensees for the implementation of a project shall be subject to the same requirements as regards inspection and monitoring as the bodies responsible for its implementation.

⁽¹⁾ OJ L 130, 25.5.1994, p. 1.
⁽²⁾ OJ L 161, 26.6.1999, p. 62.

*Article 5***Expenditure actually incurred**

1. The expenditure to be taken into account for the payment of Community assistance must have actually been incurred during the period of eligibility as defined in the Commission decision, in accordance with Article 8(2)(b) of Commission Regulation (EC) No 1386/2002 ⁽¹⁾, and must be directly related to the project. The expenditure must relate to payments certified by the Member State and actually made by it or on its behalf or, in the case of concessions, by the concession-holder to which the body responsible for implementation has delegated implementation of the project, and supported by received invoices or accounting documents of equivalent probative value.

'Accounting document of equivalent probative value' means any document submitted by the body responsible for implementation to prove that the book entry gives a true and fair view of the transactions actually made, in accordance with standard accounting practice.

2. In the case of concessions, the certification by the responsible authority of the value of the work carried out in terms of the progress indicators for the work in the concession contract shall constitute an accounting document of equivalent probative value. That authority may be designated by the Member States in accordance with Article D(4) of Annex II to Regulation (EC) No 1164/94.

*Article 6***Completed projects**

An application for assistance in respect of a project materially completed at the time when the application is submitted cannot be considered eligible.

*Article 7***Initial time limit on eligibility**

1. Expenditure incurred shall be eligible for assistance as from the date on which the Commission receives the complete application.

An application shall be considered complete where it contains the information required in Article 10(4) of Regulation (EC) No 1164/94.

2. The start of the period of eligibility shall be fixed in the Commission decision approving the project. Expenditure paid before that date shall not be eligible.

3. If a substantial modification of the material components of a project is requested, expenditure relating to the new additional or extended physical components shall be eligible from the date on which the Commission receives the request for amendment.

The start of the period of eligibility of expenditure related to the new additional or extended physical components shall be specified in the Commission decision approving the modification. Expenditure incurred before that date shall not be eligible.

*Article 8***End of the eligibility period**

The final date for eligibility shall relate to payments made by the body responsible for implementation.

The final date of eligibility shall be fixed in the Commission decision.

CHAPTER 2

ELIGIBLE EXPENDITURE*Article 9***Categories of eligible expenditure**

Subject to the qualifications set out in Chapters 3 to 10, the following categories of eligible expenditure shall be expenditure relating to:

- (a) planning and design;
- (b) land purchase;
- (c) site preparation;
- (d) construction;
- (e) equipment;
- (f) project management;
- (g) expenditure on publicity and information measures undertaken pursuant to Commission Decision 96/455/EC ⁽²⁾.

*Article 10***Other categories of expenditure**

Other categories of expenditure may be eligible, provided that they are specified in the Commission decision.

CHAPTER 3

VALUE ADDED TAX AND OTHER TAXES AND CHARGES*Article 11***Value added tax**

1. Value added tax (VAT) shall be considered eligible expenditure only if it is genuinely and definitively borne by the body responsible for implementation. VAT which is recoverable, by whatever means, shall not be considered eligible even if it is not actually recovered by the body responsible for implementation or by the final beneficiary.

⁽¹⁾ OJ L 201, 31.7.2002, p. 5.

⁽²⁾ OJ L 188, 27.7.1996, p. 47.

2. Where the final beneficiary is subject to a flat-rate scheme under Title XIV of Council Directive 77/388/EEC ⁽¹⁾, the VAT paid shall be considered recoverable for the purposes of paragraph 1.

3. Under no circumstances may Community part-financing exceed total eligible expenditure excluding VAT.

Article 12

Other taxes and charges

Other levies, taxes or charges, in particular direct taxes and social security contributions on salaries and wages, arising from Community part-finance shall constitute eligible expenditure only if they are genuinely and definitively borne by the body responsible for implementation.

CHAPTER 4

EXPENDITURE RELATING TO PLANNING AND DESIGN OF MEASURES

Article 13

Eligibility of expenditure

Expenditure relating to planning, expertise and design shall be eligible, provided that such expenditure is directly linked to one or more projects and is specifically approved by the Commission decision, except in the cases set out in Articles 14, 15 and 34.

Article 14

Compatibility of costs

Where several projects are covered by a single works contract or where the body responsible for implementation is carrying out the functions on its own account, costs must be assigned through a transparent and separate project-accounting system based on accounting documents or documents of equivalent probative value.

Article 15

Expenditure incurred by public authorities on planning and design of measures

Where employees of a public authority are involved in the activities referred to in Article 13, expenditure can be accepted by the Commission as eligible only in duly justified cases where all the following requirements are met:

- (a) the employee must have temporarily left his or her statutory employment in the public authority and must be employed under a formal decision by the authority responsible for undertaking the tasks referred to in Article 13;

- (b) expenditure must be based on a contract relating to one or more specified projects; where a contract relates to several projects, costs must be allocated in a transparent manner;
- (c) expenditure must be directly linked to one or more of the individual projects concerned;
- (d) the contract must be limited in time and must not exceed the time limit set for implementation of the project;
- (e) the tasks to be implemented under that contract must not cover general administrative functions as specified in Articles 27 and 28.

CHAPTER 5

PURCHASE OF LAND AND RIGHTS OF ACCESS

Article 16

Purchase of land not built on

The cost of the purchase of land not built on shall be eligible only if the all following requirements are met:

- (a) purchase of the land must be indispensable to the implementation of the project;
- (b) the purchase of land shall not exceed 10 % of the eligible expenditure for a project, except in cases duly justified by the body responsible for implementation;
- (c) a certificate shall be obtained from an independent qualified valuer or duly authorised official body, confirming that the purchase price does not exceed the market value;
- (d) the purchase of land shall be approved by the Commission decision;
- (e) national rules laid down to avoid speculation shall be complied with.

Expenditure on the purchase of land which, after completion of the project, remains in forestry or agricultural use shall not be eligible unless otherwise specified in the Commission decision.

Article 17

The purchase of land containing developed facilities

The purchase of land containing developed facilities may be eligible, if specifically justified and approved in the Commission decision.

Article 18

Purchase of land in public ownership or in the ownership of the body responsible for implementation

Neither the cost of land already owned by the body responsible for implementation nor the purchase of land owned by a public administration shall be eligible.

⁽¹⁾ OJ L 145, 13.6.1977, p. 1.

*Article 19***Compulsory purchase**

Articles 16, 17 and 18 shall apply to cases of compulsory purchase. Specific charges relating to the compulsory purchase order, such as expert's valuation, legal assistance and temporary lease arrangements for the land concerned, shall be eligible.

*Article 20***Rights of access**

Expenditure on rights of access to the project site during implementation shall be eligible, if it is indispensable to the implementation of the project and specifically approved by the Commission decision to grant assistance.

This may include compensation for lost harvest and repair of damage.

CHAPTER 6

PURCHASE OF BUILDINGS, SITE PREPARATION AND CONSTRUCTION*Article 21***Purchase of real estate**

1. The cost of purchasing real estate, meaning buildings already constructed and the land on which they are built, may be eligible only where these are existing properties suited to the specific operational needs of the project.

2. A certificate must be obtained from a qualified independent expert or an official body to confirm that the price does not exceed the market value. This certificate must attest that the building complies with national legislation, or must specify the points which do not comply and which the body responsible for implementation of the project intends to correct.

3. Within the preceding 10 years, the building must not have received national or Community assistance which would give rise to duplication where the Structural Funds are part-financing a purchase or where the Cohesion Fund is financing another project.

4. The real estate shall be used for the purpose and for the period specified in the Commission decision.

5. The cost of real estate already owned by the body responsible for implementing the project and the purchase of real estate owned by a public administration, shall not be eligible.

*Article 22***Site preparation and construction**

1. Expenditure on site preparation and construction which are essential for implementation of the project shall be eligible.

2. Where the body responsible for implementation is undertaking site preparation or construction works, or parts thereof, on its own account, costs must be assigned through a transparent and separate project-accounting system based on accounting documents or documents of equivalent probative value.

3. Cases where public employees are involved shall be covered by Article 15.

4. Eligible costs shall include only costs actually borne after the date specified in Article 7(1) and relating directly to the project. Eligible costs may include one or more of the following categories:

- (a) labour costs (gross wages and salaries);
- (b) charges for using durable equipment during construction;
- (c) cost of products used for the implementation of the project;
- (d) overheads and other costs, if specifically justified; they are to be assigned fairly, in accordance with generally recognised accounting standards.

5. Overheads may not be charged where the body responsible for implementation is a public authority.

6. Costs must be assessed at market prices.

CHAPTER 7

PURCHASE, LEASE OF EQUIPMENT AND INTANGIBLE ASSETS*Article 23***Durable equipment that is part of capital expenditure of the measures**

1. Expenditure on the purchase or construction of plant and equipment that is to be permanently installed and fixed in the project shall be eligible, provided that it is included in the inventory of durable equipment of the body responsible for implementation and that it is treated as capital expenditure in accordance with standard accounting conventions.

2. Without prejudice to Article 33, the lease of equipment as referred to in paragraph 1 shall be regarded as part of the operating costs and shall not be eligible.

*Article 24***The purchase of intangible assets**

The purchase and use of intangible assets, such as patents, shall be eligible if they are necessary for the implementation of the project.

*Article 25***Durable equipment used for the implementation of measures**

1. Where the body responsible for implementation carries out on its own account all or part of the site-preparation or construction work, expenditure on the purchase or production of durable equipment used during the implementation phase of a project shall not be eligible. This concerns heavy construction machinery as well as office and other types of equipment.

2. Durable equipment that is specially purchased or produced for implementing a project may be considered eligible if it is without economic value or is scrapped after use, and if the Commission decision includes a specific provision to that effect.

*Article 26***Durable equipment used for administrative purposes relating to the implementation of measures**

1. Expenditure on the purchase and leasing of durable equipment used for administrative purposes shall not be eligible.

2. Without prejudice to Articles 30 and 33, expenditure on the purchase and leasing of equipment used by a public authority in the pursuit of its monitoring and supervision work shall not be eligible.

CHAPTER 8

COSTS INCURRED IN THE MANAGEMENT, IMPLEMENTATION, MONITORING AND INSPECTION OF MEASURES*Article 27***General and administrative expenses**

The general and administrative expenditure of the body responsible for the implementation of measures shall not be eligible.

*Article 28***Expenditure incurred by public authorities**

Expenditure incurred by public authorities in the management, implementation, monitoring and inspection of a measure or all measures, in particular the salaries of established national or local officials, shall not be eligible.

*Article 29***Expenditure on subcontracted measures**

Where measures are subcontracted, only duly justified expenditure relating to financial and material monitoring, audits and on-the-spot inspections of the project shall be eligible.

In the context of implementing the horizontal duties of management, implementation, monitoring and control, necessary and duly justified subcontracted expenditure shall be eligible, up to the limit laid down in Article 7(4) of Regulation (EC) No 1164/94.

CHAPTER 9

FINANCIAL AND OTHER CHARGES AND LEGAL EXPENSES*Article 30***Financial charges**

Debt interest, charges for financial operations, exchange costs and other purely financial costs shall not be eligible.

*Article 31***Fines, financial penalties and expenditure on disputes**

Without prejudice to Article 7 of Commission Regulation (EC) No 1831/94 ⁽¹⁾, legal costs, fines, financial penalties and expenditure on disputes shall not be eligible.

*Article 32***Accountancy and audit fees**

Accountancy and audit fees shall be eligible if they are directly linked to the operation, are necessary for its preparation or implementation and relate to administrative or statutory requirements.

*Article 33***Special financing techniques**

Without prejudice to Article 29, the cost of financing techniques which do not imply an immediate purchase of equipment, such as leasing, may be considered eligible if it is justified and approved by the Commission decision, and provided that transfer of ownership to the body responsible for implementation takes place before payment of the balance.

⁽¹⁾ OJ L 191, 27.7.1994, p. 9.

*Article 34***Lawyers' fees, notarial fees, and costs of expert technical or financial advice**

Lawyers' fees, notarial fees, and costs of expert technical or financial advice shall be eligible if they are directly related to the operation and if they are necessary for its preparation or implementation.

CHAPTER 10

OTHER TYPES OF EXPENDITURE*Article 35***Operating expenditure and running costs of assisted projects**

1. The operating costs of a project or group of projects shall not be eligible.
2. By way of derogation from paragraph 1, training of operating personnel and testing of a project and its equipment may be regarded as eligible expenditure for any necessary period defined in the Commission decision.

*Article 36***Publicity and information measures**

Expenditure on publicity and information measures undertaken pursuant to Decision 96/455/EC shall be eligible.

*Article 37***Car parks**

The Cohesion Fund shall not contribute to the construction of indoor or outdoor car parking lots unless they are indispensable and are specifically approved by a Commission decision.

*Article 38***Purchase of second-hand equipment**

The cost of purchasing second-hand equipment shall be eligible under the following three conditions, without prejudice to the application of stricter national rules:

- (a) the seller of the equipment must provide a declaration stating its origin, and confirming that at no point during the previous seven years has it been purchased with the aid of national or Community grants;
- (b) the price of the equipment must not exceed its market value and must be lower than the cost of similar, but new, equipment;

- (c) the equipment has the characteristics required for the operation and complies with the applicable rules.

*Article 39***Subcontracting**

Without prejudice to the application of stricter national rules, expenditure relating to the following subcontracts shall not be eligible:

- (a) subcontracting which results in an increase in the cost of implementing the project with no commensurate added value;
- (b) subcontracting contracts concluded with intermediaries or consultants under which the payment is defined as a percentage of the total cost, unless such a payment is justified by the body responsible for implementation by reference to the real value of the works or services provided.

All subcontractors must undertake to provide the audit and inspection bodies with all necessary information about their subcontracting work.

CHAPTER 11

EXPENDITURE INCURRED IN RELATION TO MONITORING COMMITTEES, AD HOC MEETINGS AND COMPUTERISED MANAGEMENT AND MONITORING SYSTEMS*Article 40***Organisation of meetings of the Monitoring Committee**

1. Without prejudice to Articles 27 and 28, expenditure incurred in the organisation of the mandatory meetings of the Monitoring Committee provided for in Article F of Annex II to Regulation (EC) No 1164/94 shall be eligible on presentation of supporting documents.

2. The expenditure referred to in paragraph 1 shall be admissible where it relates to one or more of the following categories of costs:

- (a) interpreting services;
- (b) hire of meeting rooms;
- (c) rental of audio-visual and other necessary electronic equipment;
- (d) provision of documentation and related facilities;
- (e) fees for participation of experts;
- (f) travel costs.

3. Salaries and allowances of public authority employees paid for the organisation of the Monitoring Committees shall not be eligible.

4. Fixed equipment for monitoring purposes may be eligible if specifically allowed by a Commission decision on technical assistance.

Article 41

Meetings at the request of the Commission or the Monitoring Committee

Article 40 shall apply to the organisation of ad hoc meetings at the request of the Commission or the Monitoring Committee.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 6 January 2003.

Article 42

Computer systems for management and monitoring

The costs entailed in purchasing and installing computerised management and monitoring systems shall be eligible up to the limits laid down in the Commission decision.

Article 43

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

It shall apply to new projects approved by a Commission decision under Article 10(6) of Regulation (EC) No 1164/94 after its entry into force.

For the Commission

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Member of the Commission
