EUROPEAN COMMISSION
DIRECTORATE-GENERAL
REGIONAL AND URBAN POLICY

Director-General

Questions and Answers

Questions and Answers

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers in this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA698_EMFAF_CALCULATION OF COMPENSATION

Relevant Article: Article 39 of the EMFAF Regulation

Member State: LT

Question:

Article 39 of Regulation (EU) 2021/1139 provides that compensation for additional costs or income foregone and other compensation provided under this Regulation shall be granted under any of the forms referred to in points (b) to (e) of Article 53(1) of Regulation (EU) 2021/1060.

There is no definition of 'compensation' in Regulation (EU) 2021/1060 or (EU) 2021/1139.

As Article 39 refers to "<...> and other compensations provided under this Regulation <...>, I would like to ask whether we correctly understand that the provision of Article 39 is to be applied only in the case of compensation payments under Articles 20, 21, 25(2)(a) and 26(2) of Regulation (EU) 2021/1139 (compensations available to the outermost regions are not concerned, as not relevant for LT)?

Answer:

Article 39 of Regulation (EU) 2021/1139 refers to two types of eligible compensation:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

1. 'compensation for additional costs or income foregone' – which is not pre-defined in the Regulation, hence has to be defined by the Member State as eligible operation under the scope of a given specific objective, and
2. 'other compensation provided under this Regulation' pre-defined in a specific article: (i.e. permanent or temporary cessation of fishing activities (Article 20 and 21 respectively), additional costs in outermost regions (Article 36), emergency measures in case of significant disruption of the markets (Article 26(2)).

In the first case, the additional costs or income foregone compensated must be directly linked to actions or events related to the scope of a specific objective, and the compensation must contribute to the specific objective, as further explained in recital 13. For example, recital 39 mentions 'compensatory measures providing critical land and nature management services' as an example under the specific objective on aquaculture; such compensation should be justified as regards its contribution to a sustainable aquaculture.

Calculation of those two types of compensations must be granted under any of the forms referred to in points (b) to (e) of Article 53(1) of Regulation (EU) 2021/1060 (unit costs, lump sums, flat-rate financing, a combination of the forms referred from (a) to (d).

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA700_EMFAF_SUPPORT FOR PERMANENT CESSATION OF FISHING ACTIVITIES

Relevant Article: *Article 20 of the EMFAF Regulation*

Member State: PL

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question:

In case of the support for permanent cessation of fishing activities (Article 20 of Regulation (EU) of the European Parliament and of the Council 2021/1139 of 7 July 2021) can the condition of carrying out fishing activities at sea for at least 180 days (at least 90 days per year) during the last 2 calendar years preceding the date of submission of the application for support be waived? In Poland, the permanent cessation of fishing activities will concern owners of low-income units due to insufficient resources. Fulfilment of the obligation of 180 days generates additional costs and exposes such vessels to losses.

Answer:

Article 20 of EMFAF sets out rules governing the support for permanent cessation of fishing activities. In paragraph 2 of that Article the necessary conditions for granting the support are identified and listed out, including the condition that fishing vessel is registered as active and has carried out fishing activities at sea for at least 90 days per year during the last two calendar years preceding the date of submission of the application for support (Article 20(2)(c)). Article 20 does not contain any provisions on possible derogations from the identified necessary conditions.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA702_EMFAF_PERMANENT CESSATION-CHANGE OF BENEFICIARY

Relevant Article: Article 20 of the EMFAF Regulation

Member State: FR

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question:

Among the conditions identified for permanent cessation support from the EMFAF, Article 20 of Regulation (EU) 1139/2021 is "(2e) the beneficiary shall not register any fishing vessel within five years following the receipt of support.". The same Article states "(3) The support referred to in paragraph 1 may only be granted to (a) owners of Union fishing vessels concerned by the permanent cessation".

The same dispositions exist in regulation EMFF (EU) 508/2014, under Article 34.

The question is to know who is the beneficiary, and how to ensure that the s/he cannot register another fishing vessels within 5 years. In particular, is there something that prevents the manager of a company that benefited from support to create another fishing company with a new vessel?

Answer:

The beneficiary is to be understood as being the legal entity that has received the permanent cessation aid. This can be a company or a person, but it needs to be the owner of the fishing vessel. This is to be assessed on a case by case basis.

Based on Article 20(2)(e) of Regulation (EU) 1139/2021, the owner/beneficiary cannot register in the Union fleet register any vessel, meaning that it is not possible to register a new or a second-hand vessel within five years following the receipt of support for permanent cessation.

As for the question on whether the beneficiary may create a new fishing company, the owner of a company that benefited from support is allowed to do so but this creation cannot lead to the registration of a new or a second-hand vessel within five years following the receipt of the support.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA706_EMFAF_PRODUCER ORGANISATION

Relevant Article: Art 41 and Annex III of the EMFAF Regulation

Member State: CZ

Question:

CZ is currently preparing rules for beneficiaries in activity producers organisations (PO) and has the following question about the maximum level of support for eligible expenses of 75% for operations carried out by a PO, associations of POs or interbranch organisations (line 15 in Annex III of the EMFAF regulation).

The activity will be also focused on founding of the PO, in this case one of its future members will apply for subsidy and once the PO is approved, CZ will reimburse the cost of founding to the PO.

Can be such operation covered by 75%? The applicant isn't a PO in time of submission of application, but in the time of payment, the money will go to an approved PO.

Answer:

Annex III of the EMFAF Regulation does not itself provide an answer to this specific question. However, recital 40 of the same Regulation states that *food security relies on efficient and well-organised markets, which improve the transparency, stability, quality and diversity of the supply chain, as well as consumer information. For that purpose, it should be possible for the EMFAF to support the marketing of fishery and aquaculture products, in line with the objectives set out in Regulation (EU) No 1379/2013 of the European Parliament and of the Council. In particular, support should be available for the creation of producer organisations, the implementation of production and marketing plans, the promotion of new market outlets and the development and dissemination of market intelligence*.

In view of the above support can be available for the creation of a producer organisation. Hence, a possible applicant can't be a producer organisation itself at the moment of submitting an application for support for creating such organisation. CZ should therefore specify in the rules for beneficiaries the types of entities entitled to submit applications for support under the measure in question

To comply with Annex III EMFAF Regulation, line 15, an aid intensity of 75% can be granted if at the latest during the implementation of the project, the applicant becomes a recognised producer organisation, association of producer organisations or interbranch organisations. Such requirements should be clearly stated in the relevant calls for proposals.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

This page includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this page express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00274 - REALLOCATION OF THE FLEXIBILITY AMOUNT CONFIRMED AFTER THE MID-TERM REVIEW

Relevant Articles: 18 and 86(1) of the CPR

Member State: CZ

Question 1 (including any relevant facts and information):

Should the flexibility amount be reallocated among the priorities within programme, or can it be reallocated to other programmes?

Answer:

According to Article 18(3) CPR, a Member State can request one or more programme amendments if it deems it necessary following the mid-term review of the programmes amongst other reasons, in case it identifies new challenges in relevant country specific recommendations adopted in 2024. In such cases, the revised allocations of the financial resources by priority must be submitted to the Commission together with other elements referred to in Article 18(3).

As it follows from Article 86(1) CPR, the flexibility amount is definitely confirmed to the programme after the adoption of the Commission decision following the mid-term review. At the same time as confirming the flexibility amount, following the Member

State's request in accordance with Article 18(3), the Commission can approve the reallocation of the flexibility amount among the priorities of the relevant programme as well as its reallocation to another programme. Such reallocations need to be done in accordance with and within the limitations of the relevant provisions regarding transfers (Articles 26 and 111 CPR).

It is also to be noted that when reallocating the flexibility amount within or outside of the programme, it is necessary to respect the relevant legislative requirements such as thematic concentration and minimum allocations on climate and sustainable urban development.

QA00275 - Version of National Energy and Climate Plans (NECPs) to consider in the Mid-Term Review

Relevant Article: Art. 18 of the CPR

Member State: CZ

Question 1 (including any relevant facts and information):

The regulation states that for the mid-term review, MS shall take into account "the progress in implementing the integrated national energy and climate plan, if relevant" (Art. 18 (1)(b)). Should the updated national energy and climate plans (NECPs) submitted in October 2023 be considered for this?

Answer:

This is correct. When reviewing a programme in accordance with Article18(1)(b) CPR, the Member State should take into account its updated NECP as well as the Commission assessment and country-specific recommendations on its updated NECP.

QA00276 - Amending the Partnership Agreement as part of the mid-term review

Relevant Articles: Article 13 and 18 of the CPR

Member State: CZ

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

Should the Partnership Agreement (PA) also be amended as part of the mid-term review exercise, as per Article 13 CPR?

Answer:

According to Article 13 CPR, a Member State may submit to the Commission by 31 March 2025 an amended Partnership Agreement, taking into account the outcome of the mid-term review. Whether the Member State decides to do so is therefore left to its discretion, but it is not an obligation that would result from the relevant provisions of the CPR.

QA00277 - ROLE OF EVALUATIONS IN THE MID-TERM REVIEW

Relevant Articles: Articles 18 and 45 of the CPR

Member State: CZ

Question 1 (including any relevant facts and information):

Does the Commission expect specific mid-term review evaluations to be carried out as part of the mid-term review exercise?

Answer:

The Commission draws attention to Article 18(1)(e) CPR, which states that for programmes supported by the ERDF, the ESF+, the Cohesion Fund and the JTF, Member States should review each programme, taking into account 'the main results of relevant evaluations', which is one of the elements among others listed under Art 18(1) CPR.

These evaluations may include early 2021-2027 evaluations and 2014-2020 *ex post* evaluations, whenever available, relevant, and useful for the exercise. However, Member States are not obligated to carry out specific mid-term evaluations.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00278 - REQUIREMENTS FOR PROGRAMME DATA ASSESSED DURING THE MID-TERM REVIEW

Relevant Article: Art. 18 CPR

Member State: CZ

Question 1 (including any relevant facts and information):

What cut-off date should be adhered to for the data used in the assessment of programmes? Would a summer 2024 cut-off date be accepted by the Commission?

Answer:

According to Article 18(1)(f) CPR, the 'progress in achieving the milestones, taking into account major difficulties encountered in the implementation of the programme;' is one of the key aspects to be assessed by Member States during the mid-term review of cohesion policy programmes.

While CPR does not stipulate a compulsory cut-off date for the data to be used by Member States during the mid-term review, certain policy considerations should be taken into account.

Firstly, the mid-term review should factor in new challenges identified in relevant country-specific recommendations (CSR) adopted in 2024 (Article 18(1)(a) CPR). The Commission should publish these CSR in June 2024. Consequently, Member States are not expected to submit their outcomes of the mid-term review to the Commission prior to the analysis of CSR, thus not before summer 2024.

Secondly, the milestones mentioned in Article 18(1)(f) pertain to those output indicators that are expected to be achieved by the end of 2024, as per point (b) under second paragraph of Article 16(1) CPR.

Considering these two points, for an up-to-date assessment of the programme's progress in achieving the milestones, Member States should use the data transmitted to the Commission, in line with Article 42(1) CPR, by 31 January 2025 reflecting the indicator data at the end of 2024.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00001 - CAN NATURAL PERSONS' ELECTRIC CAR PURCHASES BE SUPPORTED IN THE NEXT PROGRAMMING PERIOD FROM ERDF/CF UNDER PO2?

Relevant Articles: Article 5 and 7 ERDF/CF regulation

Member State: HU

Question 1 (including any relevant facts and information):

Can natural persons' electric car purchases be supported in the next programming period from ERDF/CF under PO2?

Hungary has a similar support scheme in place (electric cars for individuals, ~ 3000 EUR / 1M HUF per car), funded from national sources, and would like to involve ESIF sources.

Answer:

This answer was updated on 11 October 2021 to reflect the changes following from the adoption of the ERDF regulation.

In relation to hybrid electric vehicles, Article 7(1)(h)(iii), ERDF/CF allows supporting clean vehicles as defined in Directive 2009/33/EC of the European Parliament and of the Council for public purposes. As such, it does not provide the possibility to purchase hybrid electric cars by private households.

The purchase of fully electric passenger cars for individuals is not explicitly excluded in the ERDF/CF regulation. However, analogically to the approach agreed by the co-legislators for clean vehicles, the support should target only vehicles used for public purposes.

Cohesion policy is an investment policy and does not support the purchase of electric passenger cars for individuals, which in accounting terms belongs to the category of private consumption. Such support would not improve access to services and would have limited impact on the overall performance of the transport system. Therefore, supporting electro-mobility should focus on publicly accessible charging infrastructure (where there are market failures leading to regional disparities) and on the vehicles and infrastructure providing public transport services. Such investments reinforce the sustainability of the entire system and for all its users.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00002 - ELIGIBILITY OF VAT UNDER COHESION POLICY RULES IN THE 2021-2027 PROGRAMMING PERIOD

Relevant Article: Article 64 of the CPR

Member State: PL

Question (including any relevant facts and information):

Poland asked for confirmation of their approach for the assessment of the eligibility of VAT in the 2021-2027 period. They consider, as a general rule, that eligibility of VAT is to be assessed in accordance with the right for the beneficiary to 'deduct' VAT or to obtain a 'refund' of VAT paid on goods and services purchased, based on the rules specific to the Structural Funds and the Cohesion Fund. The proposed approach is as follows:

1) As a general rule, in order to identify the eligibility of VAT, it is necessary to assess its recoverability, i.e. recoverable VAT under national legislation is considered as ineligible, even if the beneficiary (or final recipient in the context of financial instruments, in the case of grant-supported part of the investment) does not recover the VAT.

2) As an exception to this rule, eligibility of VAT within the operations the total cost of which is below EUR 5 million (including VAT) is **not to be assessed** in regard to the right for the beneficiary (or final recipient) to recover the VAT under national legislation. Consequently, in any such a project, VAT is eligible notwithstanding the provisions of Article 63(2) of the CPR (in line with which, expenditure shall be eligible if it has been **incurred** by a beneficiary **and paid** between 1 January 2021 and 31 December 2029) or the provisions of Article 53(1)(a) of the CPR (in line with which, grants provided by Member States to beneficiaries may take the form of reimbursement of eligible costs actually **incurred** by a beneficiary **and paid** in implementing operations).

3) As a consequence of not examining the right to recover the VAT within the operations the total cost of which is below EUR 5 million (including VAT), situation where the beneficiary (final recipient) recovers the VAT is not to be qualified as unjustified double financial benefit.

4) The approach described in 1) – 3) is applicable also for the grants in the form of simplified cost options (Article 53(1)(b-d) of the CPR) or financing not linked to costs (Article 53(1)(f) of the CPR).

5) In order to ensure common and constant base for converting the amount of total cost of the operation (EUR 5 million, including VAT) into the currency of the Member State (PLN), the applicants and beneficiaries shall use the European Commission's official monthly accounting rates for the euro

(http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/index_en.cfm)

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- of the day of the given call for proposals. This solution (fixing the rates) will avoid the problem of varying exchange rate (situations where the total cost of the operation expressed in EUR exceeds the 5 million threshold during the implementation of the operation, but only as a result of exchange rate fluctuation).

6) Changes of the total cost of operation during the implementation shall be taken into account accordingly, i.e.:– for operations originally below the 5 million threshold – if during the implementation the total cost exceeds the threshold, Article 64(1)(c) (ii) or (iii) applies,– for operations originally above the 5 million threshold – if during the implementation the total cost falls below the threshold, Article 64(1)(c)(i) applies.

Poland would like Commission confirmation of the proposed approach.

Answer:

1) It is in the first instance for the managing authority to ensure compliance with regulatory provisions. Based on the information provided, the proposed approach under points 1 to 3 is correct and corresponds to the provisions of Article 64 of the CPR.

In particular, applicable provisions on grant support apply regardless of the form of support and hence cover simplified costs and financing not linked to costs.

As regards points 5 and 6, the threshold of EUR 5 000 000 is indeed to be verified against the actual costs of the operation, taking into account possible cost overruns during implementation. It is proposed to carry out this assessment on the basis of the amount in the grant agreement, as the actual costs are not known in advance, consistently with the practices applied during the 2014-2020 programming period[i] and because the grant agreement usually entails a mature estimation of the costs. The conversion into euro should therefore be made on the basis of the amount indicated in the grant agreement, by using the monthly accounting exchange rate of the Commission in the month during which the grant agreement was last amended.

2) As regards implementation of operations using simplified cost options (SCOs):

- It is reminded that SCOs have to be defined in advance and must be included in the call for proposals. This means that once SCOs are established they should not be changed during or after the implementation of an operation to compensate for an increase in costs or underutilisation of the available budget. In an exceptional situation where increase of a budget of an operation implemented based on SCOs is accepted, an assessment should be done in line with the principles described below.
- For operations the total cost of which is below EUR 5 000 000 (including VAT), VAT is eligible.
- For operations the total cost of which is at least EUR 5 000 000 (including VAT):
    - In case of reimbursement of costs based on a flat rate, VAT eligibility is assessed for the basis costs, i.e. the costs to which the flat rate is applied. As regards the "real" costs covered by flat rate (i.e. costs

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

underlying categories of expenditure reimbursed based on the flat rate), VAT eligibility will not be assessed;

- In case of reimbursement of operations based on unit costs and/or lump sums, if the MA applies the same SCO rate for all operations (regardless whether they are above or below EUR 5 000 000), in practice no adjustment is needed.

[i] Guidance on sampling methods EGESIF_16-0014-01 of 20/01/2017, section 7.10.1

QA00003 - ELIGIBILITY OF DEPRECIATION COSTS

Relevant Article: Article 67(2)(d) of the CPR

Member State: LT

Question 1 (including any relevant facts and information):

The Managing Authority (MA) is asking for an interpretation of Art. 67 (2)(d) CPR, which states that:

2. Depreciation costs for which no payment supported by invoices has been made may be considered to be eligible where the following conditions are fulfilled:

(d) public grants have not contributed towards the acquisition of the depreciated assets.

The MA would like to know if depreciation costs of assets financed from the national or sub-national budgets can be considered eligible. The MA provides following examples of cases:

1. Public school purchases equipment in 2020 from current expenditure and wants to use it in an ESF project;
2. Municipality social support center wants to use in an ESF project transportation purchased by municipality;
3. University purchased equipment from a national grant scheme and wants to use it in an ERDF research project;
4. Limited liability company received in 2020 state aid for purchasing equipment. In 2021, it wants to use this equipment in an ERDF research project.

Answer:

It should be pointed out that the depreciation costs referred to in Article 67(2) CPR may only be considered eligible if the conditions set out in points (a) to (d) are cumulatively met.

In accordance with point (d) of Article 67(2) CPR, depreciation costs are eligible where "public grants have not contributed towards the acquisition of the depreciated assets". "Public grant" should be understood as any public contribution within the meaning of point 28 of Article 2 CPR **in the form of a grant**.

With regard to the specific questions, the condition set out in point (d) of Article 67(2) cannot be considered as fulfilled in cases 3 and 4, for which the equipment had received public grants (respectively national aid scheme and State aid) and thus the depreciation costs cannot be considered eligible.

On the other hand, in the first two examples the source of the purchase of assets cannot be objectively verified on the basis of the information provided (i.e whether a public grant contributed to the purchase of the equipment or not). In case they have been purchased in house, through own budgets (even if (partially) public), without any public grants, then the corresponding depreciation costs could be considered eligible, provided the other conditions are also fulfilled.

QA00004 - SUPPORT TO NATURAL PERSONS/INDIVIDUALS FOR INVESTMENT IN HOUSING LINKED TO CLIMATE CHANGE ADAPTATION

Relevant Articles: Article 2 of the CPR, Article 73 CPR;

Article 5 and 6 of the ERDF/CF Regulation

Member State: HU

Question 1 (including any relevant facts and information):

As part of the preparation of the 2021-2027 energy and environment programme, the Managing Authority is considering supporting climate change adaptation investment by individuals/natural persons. Examples of such projects by households include green roofs, rainwater retention tanks, green walls, bicycle storage facilities in apartment blocks, home composting facilities. As part of the recast of the Drinking Water Directive, domestic lead pipes as well as the utilities networks containing lead pipes will need to be changed.

According to Article 2(9)(a) CPR: "*beneficiary means: a public or private law body, an entity with or without legal personality or* ***a natural person, responsible for initiating or both initiating and implementing operations***". According to the reply to question QA00001 "The scope of the ERDF and *Cohesion Fund in Article 5 and Article 6 of the ERDF/CF Regulation* ***does not provide for the possibility to subsidise consumption by private households***."

Based on the above, we would like to ask the following questions:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Can individuals or individual property benefit from EU cohesion policy support for investment in housing contributing to climate change adaptation directly or indirectly (via local authorities as intermediaries) under 2021-2027 EU cohesion policy rules?

1. If so, what would the consequences be in terms of public procurement and state aid?

Answer:

Based on the definition of a beneficiary provided by Article 2(9)(a) of the CPR, natural persons (individuals) or private bodies can benefit from the EU support, if they are responsible for initiating or both initiating and implementing an operation.

There is no prohibition set out in the ERDF and Cohesion Fund Regulation preventing a natural person to be a beneficiary.

The replacement of domestic lead pipes could therefore be eligible. However, pursuant to Article 73(2)(c) CPR, the managing authority should ensure that the selected operations present the best relationship between the amount of support and the achievement of objectives. Therefore, such investments would be ineffective if they are not preceded by the replacement of lead pipes on the public water distribution system.

In the case presented, natural persons could benefit for investment in housing, contributing to climate change adaptation directly or indirectly. The individuals could, for example, purchase and install the equipment, based on nominal ceilings or vouchers, or local authorities could act as tendering authorities, through framework contracts.

State aid rules apply only to the extent that the beneficiary is an 'undertaking'. Undertaking is an entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. Therefore, public support granted to individuals performing economic activities (such as renting activities) will fall under the scope of the State aid rules.

In the same vein, provisions on durability, pursuant to Article 65 CPR shall apply.

Regarding the application of the public procurement rules, it should be noted that if the co-financed operation involves contracting authorities as defined under the public procurement rules, it will be necessary to examine whether the provisions of applicable public procurement directives have been complied with.

QA00005 - THE USE OF EU FUNDS FOR THE FINANCING OF PUBLIC ADMINISTRATION BUILDINGS

Relevant Article: Article 36 of the CPR

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State: RO

Question 1 (including any relevant facts and information):

In their draft programme proposals, Romanian authorities propose to finance with their technical assistance the construction, acquisition or modernisation of the public administration premises. Is it eligible under the 21-27 Regulations?

Answer:

Article 36(1) of the CPR on technical assistance (TA) provides that, at the initiative of a Member State (MS), the Funds may support actions that are necessary for the effective administration and use of the Funds. The same provision does not include an exhaustive list of actions that can be supported under the TA of a MS.

Based on the above, the construction, acquisition or modernisation of public administration premises is not expressly excluded from the support of TA of a MS in case it is deemed necessary for the effective administration and use of the Funds and is in line with national eligibility rules. It should be noted that, in cases of using TA of a MS for operations comprising investments in infrastructure, the Member States should ensure the durability of the operation pursuant to Article 65(1) of the CPR.

However, from a policy point of view, it is difficult to justify using TA for supporting the construction, acquisition and modernisation/renovation of public administration buildings. Firstly, it would not bring any EU added value. Secondly, this would reduce the means available for capacity building and for carrying out - among others – activities such as preparation, training, or communication – activities for which the TA is primarily intended to.

In view of the above, using TA for construction, acquisition and modernisation/renovation of public administration buildings should only be considered in exceptional and duly justified cases (e.g. when rental expenses are much higher than the cost for construction or purchase of a new building), and under certain conditions (i.e. eligibility based on a pro rata of the budget linked strictly to the needs of the programme authorities, to the programming period and demonstration of clear savings as compared to rental costs).

QA00006 - TECHNICAL ASSISTANCE: RISK OF DOUBLE FUNDING WHEN USING FLAT-RATE TECHNICAL ASSISTANCE IN 2021-2027

Relevant Article: Article 36(5) of the CPR

Member State: LT

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

The Managing Authority sent the following question related to the risk of double funding of expenditure related to TA between two financial periods (2014-2020 and 2021-2027) and how such risk, if present, could be best mitigated.

In 2014-2020 period, the situation related to the TA expenditure is as follows:

- TA expenditure based on **real costs**,
- TA also includes expenditure related to the **preparation** for 2021-2027.
- The last day of **eligibility of technical assistance** is 31/12/2023.

In 2021-2027 period, the situation related to the TA expenditure is as follows: The managing authority intends to use flat-rate TA,

- According to the CPR, expenditure of operations on the basis of which the flat-rate TA is calculated is **eligible from the beginning of 2021.**
- LT will start declaring expenditure once the Management and Control System is set-up and audited. **The first expenditure declarations should be submitted to the Commission approximately in late 2022 or early 2023.** These declarations will include expenditure of operations other than TA incurred in 2021 and the receivable amount of flat-rate TA calculated as a percentage of expenditure of operations.

The Managing Authority is asking, if expenditure incurred by institutions in preparation for the administration of the new financial period is paid from 2014-2020 technical assistance based on real costs, can they still claim a full percentage of the flat-rate TA on 2021-2027 expenditure that will be declared in 2023? Will this not present a double funding?

Answer:

Where a Member State decides to use the flat-rate approach for technical assistance for 2021-2027, the relevant flat-rate percentage for the fund concerned provided in Article 36(5)(b) will be applied automatically to each payment application submitted to the Commission.

How the Member State uses the flat-rate payments for technical assistance is the responsibility of the Member State. Given the nature of the flat-rate, there will be no check of the underlying costs of the amounts reimbursed based on the flat rate at EU level.

Thus, it is for each Member State to exclude double funding. Each managing authority will have its own internal system for monitoring implementation of technical assistance and it is for the managing authority to ensure that the same costs of technical assistance operations co-financed under 2014-2020 period are not covered again in 2021-2027 period.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00007 - JTF - USE OF PILLARS 2 AND 3 WITHOUT USING PILLAR 1

Relevant Article: Article 11 JTF Regulation

Member State: BE

Question **1 (including any relevant facts and information):**

Is it possible for (a) region(s), which will not receive JTF money, to apply for pillars 2 and/or 3 of the JTM?

For this purpose, the region(s) would have a territorial plan, in which they would explain how pillars 2 and 3 would contribute to the transition of that/these regions. These regions even envisage, if necessary to include a priority under their OP with an allocation of a "symbolic euro" of the JTF.

Answer:

The Just Transition Mechanism (JTM) consists of three pillars, namely the Just Transition Fund (pillar 1), the dedicated just transition scheme under InvestEU to crowd in private investments (pillar 2) and the Public Sector Loan Facility with the EIB to leverage public financing (pillar 3).

The focus of the JTM and its three pillars is and has always been the "territories most negatively affected by the transition process". Therefore, pillars 2 and 3 of the JTM are to, pursuant to their respective legal acts, benefit the territories most negatively impacted by the transition towards the EU climate neutral economy by 2050, as identified in the territorial just transition plans (TJTPs). Pursuant to paragraphs 1 and 2(b) of Article 11 of the JTF Regulation, these territories will be supported by the JTF. It is therefore not possible for a territory to benefit solely from pillars 2 and 3 without being supported by the JTF. The respective support of the three pillars are therefore complementary. In this regard, the TJTPs have to include a description of the synergies and complementarities with planned support from the other pillars of the JTM.

The respective contribution of the three pillars should be tailored to the development needs of the territories concerned and the type of projects eligible under each instrument. The TJTPs have to include, in particular, a description of the expected contribution of the JTF support pursuant to Article 11(2)(d) JTF Regulation.

Whereas all three pillars have to benefit the territories most negatively affected, as outlined above, the corresponding projects do not necessarily need to be located in these territories. In such cases, it will be necessary to justify that a project benefits the eligible territories by demonstrating that it contributes to meeting the development

needs stemming from transition, as set out in the relevant TJTP. To this end, the TJTP has to specify, when support from pillars 2 or 3 is envisaged, the sectors and activities expected to be supported under those pillars.

Therefore, pillars 2 and 3 cannot be used as a "compensation" mechanism for regions not identified as "most negatively affected by the transition" and disconnected from the use of the JTF. Allocating only a symbolic JTF euro to these regions to benefit from pillars 2 and 3 would contradict their identification as "most negatively affected".

QA00008 - REVENUE GENERATING PROJECTS

Relevant Article: Article 73 CPR

Member State: RO

Question 1 (including any relevant facts and information):

In the explanatory memorandum of the Proposal of the Commission of CPR Regulation and the Simplification handbook (point no 42) is mentioned the fact that, unlike in 2014-2020 programming period, there will no longer be specific rules for revenue generating investments. Does it mean that there is no need for the calculation of funding gap methodology at the level of the projects?

Answer:

The Common Provisions Regulation 2021-2027 does not include specific provisions on revenue generating investments.

Therefore, the CPR and the Fund specific regulations do not require the application of a specific methodology for the calculation of funding gap at the level of an operation (i.e. present value of the net revenue does not have to be deducted from the eligible expenditure).

However, Member States should comply with State aid rules and ensure that the operation generating net income is selected in accordance with Article 73 of the CPR (including Article 73(2)(c)) and applicable national rules.

In addition, pursuant to the polluter pays principle set up in the Treaty and user pays principles in sectoral legislations, Member States shall ensure an adequate contribution of the users, through tariff policies, to cover a share of investment costs, notably in the environment sector.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00009 - In 2021-27 period, the purchase of land for an amount exceeding 10 % of the total eligible expenditure for the operation concerned will be ineligible. What does "land" mean in this context?

Relevant Article: Article 64(1)(b) of the CPR

Member State: HU

Question 1 (including any relevant facts and information):

'Between 2021-27, the purchase of land for an amount exceeding 10 % of the total eligible expenditure for the operation concerned will be ineligible.

In this context, does 'land' refer to all kind of plots OR only to empty ones, which do not comprise buildings?'

The Hungarian authorities are planning to launch calls for proposals supporting social urban rehabilitation. It is crucial for them to plan with the highest possible flexibility on the eligibility of land purchase. If the 10% limit in the CPR only refers to empty plots, the Hungarian authorities would allow a higher % of eligible cost for plots, which also comprise building(s).

Answer:

Pursuant to Article 64(1)(b) of the CPR, purchase of land is eligible up to amount not exceeding 10% of the total eligible expenditure of the operation concerned, which can be increased to 15% for derelict sites and for those formerly in industrial use which comprise buildings.

Whether the purchased land is built-on or not does not affect its eligibility.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00010 - ELIGIBILITY OF ACTIVITIES TO BOOST THE ENTREPRENEURIAL DISCOVERY PROCESS (EDP) UNDER SPECIFIC OBJECTIVE 1.4 OF THE ERDF REGULATION 2021 – 2027

Relevant Articles:

- Articles 3(1) point (a) (iv) of the ERDF/CF Regulation
- Article 3(4) point (a) and (b) of the ERDF/CF Regulation

Member State: ES

Question 1 (including any relevant facts and information):

Entrepreneurial discovery processes (EDP) are at the heart of smart specialization strategies. Through these processes, public administrations, businesses, universities, research and innovation actors and civil society are involved in the preparation of smart specialization strategies.

Public administration has a key role to play as a driver of innovation and economic and social transformation, through policies aimed at mobilising the knowledge and capacities of a territory to generate new responses to societal challenges. To this end, EDP mechanisms need to be put in place, so that appropriate smart specialisation strategies can be defined as a first step and then the tools and projects to develop them.

Therefore, some Spanish regions propose to create a dedicated EDP programme, which will articulate the involvement of quadruple helix actors in the identification of challenges and opportunities, in the definition of priorities and in the design, implementation and monitoring of research and innovation instruments and projects, helping to accelerate the transition towards more sustainable and inclusive development pathways.

Spanish authorities consider that this EDP programme would fall under the PO 1 specific objective (iv) « developing skills for smart specialisation, industrial transition and entrepreneurship" (Article 3(1) point (a) (iv) of ERDF- CF 2021 - 2027 regulation).

The objectives of the EDP Programme would be closely linked to compliance with the requirements of the Enabling Condition, which have to be met throughout the period.

The general objectives of the programme would be:

• Empowering quadruple helix actors to promote smart specialisation

• Providing an effective entrepreneurial discovery process with quadruple helix actors.

This programme would create various working groups/technical offices/innovation laboratories, related to the areas of expertise of RIS3, to articulate, revitalise and coordinate the EDP with the quadruple helix actors. The activities of these working groups/technical offices/innovation laboratories would include:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

• Creating spaces and dynamics for dialogue and collaborative work with quadruple helix actors to define shared visions, objectives and strategies.

• Promoting projects that can be funded with European funds that create new opportunities for entrepreneurship in the areas of specialisation.

The type of actions to be financed would be in line with those defined in Article 5 (f) of the ERDF Regulation and the eligible expenditure would be:

• Staff expenditure (establishment plan and new recruitments)

• Expenditure on equipment needed to perform the functions (computers or other)

• Procurement of services to implement planned actions

• International travel (air or train tickets and hotels only)

• Indirect costs

Would the actions included in the EDP programme, as explained above, be eligible under the specific objective 1.4 « developing skills for smart specialisation, industrial transition and entrepreneurship" (Article 3(1) point (a) (iv) of ERDF- CF 2021 - 2027 regulation)?

Answer:

Concerning the planned EDP programme, the activities foreseen could be financed under policy objective 1 - specific objective 1.1 or specific objective 1.4, depending on the focus of the activities.

QA00011 - DURABILITY OF BILLBOARDS AND PLAQUES

Relevant Article: Article 50(1)(c) of the CPR

Member State: FR

Question 1 (including any relevant facts and information):

Projects with a significant EU contribution (more than 500 000 euros, and physical investment/equipment), the beneficiary is required to set up a durable billboard or a plaque. **What durability means in terms of timing?**

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In this particular context, durable is to be understood as existing and remaining for the period of time in which the relevant physical object, infrastructure or construction physically exists.

QA00013 - DATA FIELDS 103, 104 AND 130, ANNEX XVII

Relevant Article: Article 98(6) CPR

Member State: DE

Question 1 (including any relevant facts and information):

The addition '(of which amount corrected as a result of an audit)' does not make it clear whether the audit authority's audits (Article 127 of Regulation (EU) No 1303/2013) should be taken into account here, by analogy with the 2014-2020 funding period.

Data field 103

1. Is it correct to indicate in data field 103 the deduction in value of the ground for deduction recorded in data field 102 in accordance with Article 98 (6) of Regulation (EC) No 2021/1060?

Data field 104

1. Is it correct to report in data field 104 the public amount of the value deduction recorded in 103?

Data field 130

1. Is it correct to report in data field 130 the sum of all deductions from data fields 103 of an operation that were deducted during the accounting year concerned by the accounts?

Data fields 103, 104 and 130

1. Is it correct to present the 'amount corrected as a result of an audit', by analogy with the 2014-2020 funding period, only in relation to audits carried out by the audit authority under Article 77 or Article 79 of Regulation (EC) No 2021/1060?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In the data field 103 of Annex XVII to the CPR, the Member State should indicate the amount of the total eligible expenditure deducted from the accounts for each deduction made in accordance with Article 98(6) CPR and presented in data field 102, whereas in the data field 104 the Member State should report the amount of the public contribution corresponding to the deduction presented in the data field 103. The amounts deducted directly from the accounts in accordance with Article 98(6) CPR (which are commented in the reconciliation of expenditure in the accounts in line with the appendix 4 of the template for the accounts set out in Annex XXIV to the CPR) should be indicated in the data field 130. The total amount of the deductions for an operation indicated in the data field 130 should be the sum of all the deductions for an operation presented in the data field 103.

It should be noted that the amounts in the data fields 102, 103, 104 and 130 of Annex XVII to the CPR refer to deductions from the accounts, i.e. to amounts deducted directly from the accounts, and not included in the withdrawals from the payment applications during the accounting year (which are presented in the data field 128 of Annex XVII to the CPR and appendix 2 of the template for the accounts set out in Annex XXIV to the CPR).

Amounts corrected as a result of audit refer to corrections resulting from all the audit work of the audit authority.

QA00014 - DATA FIELD 95 (ANNEX XVII)

Relevant Article: n/a

Member State: DE

Question 1 (including any relevant facts and information):

We understand the rule that this field is the recording of eligible expenditure for lump sums (for example, flat rates on direct or flat rate expenditure).

For this purpose, the following information shall be collected:

1. The amount of eligible expenditure declared to the Commission; and

2. Indication of the flat rate financing in the documents setting out the conditions for support.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

1. What should be recorded: the amount of eligible expenditure declared to the Commission include the total amount of eligible expenditure, including flat-rate financing, or should the amount to which the flat-rate financing relates or only the part of the lump sum declared in a payment claim by the beneficiary?
2. Which unit does the lump sum have, "%" or "EUR"? In other words, is the proportion/flat rate or the resulting amount necessary?

Example:

Flat-rate financing is granted in accordance with Article 56 of Regulation (EC) No 2021/1060 (40 % residual costs). Direct staff expenditure has a value of EUR 100 000. The beneficiary shall account for EUR 50 000 from the managing authority.

How would the recording be carried out?

1. EUR 50 000 plus 40 % = EUR 70 000 or EUR 50 000 or 40 % of EUR 50 000 = EUR 20 000

2. 40 % or EUR 40 000

Answer:

Data field 95 of Annex XVII to the Regulation (EU) 1060/2021 refer to "data on expenditure in payment claim from the beneficiary – only for flat rates." It requires the recording of: a) the amount declared to the Commission, which corresponds to the costs calculated on the applicable basis and b) the flat rate itself (i.e. the percentage (%)). The eligible expenditure to which the flat rate is applied (the basis that will be used to calculate the SCO amount) is not to be reported in this field: depending on the form of grant provided to the beneficiary, it will be recorded in the respective field. For example, if the basis corresponds to eligible expenditure incurred by the beneficiary and paid (i.e. real costs) it will be recorded in field 79.

Based on the above and looking at the specific example, what should be recorded in field 95 is the amount of EUR 20.000 and the flat rate 40%.

QA00015 - PUBLICITY REQUIREMENTS ACCORDING TO ARTICLE 50(1)(C) IN THE CONTEXT OF FINANCIAL INSTRUMENTS

Relevant Article: Article 50(1)(c), Article 50(2) second sub-paragraph of the CPR

Member State: CZ

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

Is the publicity requirement under Article 50(1)(c) applicable to all kinds of financial instruments, including those financing working capital?

Answer:

Second paragraph of Article 50(2) of Regulation 2021/1060[1] ("CPR") specifies that "*For financial instruments, the beneficiary shall ensure by means of contractual terms that the final recipients comply with the requirements set out in point (c) of paragraph 1*". This means that in the context of financial instrument, the threshold in Article 50(1)(c) refers to the investment at the final recipient level. Therefore, where operations are supported by the ERDF and the Cohesion Fund, the final recipients should display durable plaques or billboards clearly visible to the public where the total cost of the investment exceeds EUR 500 000[2] as soon as physical investment starts or purchased equipment is installed. In guarantee instruments, the requirement should be respected at the level of the underlying investment. It should be noted that the threshold of EUR 500 000 does not refer only to an expenditure item or items related to the physical investment/purchase of equipment but cover the total cost of an investment at the final recipient level, as explained below in the reply to question 3.

The above-mentioned provisions explicitly stipulate that the requirement concerning the display of durable plaques or billboards concerns only *physical investments* and their *physical implementation* and *installation of purchased equipment.* In this respect, support to working capital is outside of the scope of this provision, as it is intended to strengthen the general activities of a final recipient (e.g. an enterprise) without inducing any defined physical investment or purchase of equipment that would be considered a tangible asset.

Equally, the provisions of this Article do not apply if the support is provided for acquisition of intangible assets[3] due to the absence of physical substance of these assets.

It is generally recommended that final recipients recognise the contribution of EU funds by applying the general Operational guidelines for recipients of EU funding[4], i.e. by using the standard visibility tools provided by the Commission.

Question 2 (including any relevant facts and information):

Is this interpretation also applicable to equity investments, such as provision of growth capital to start-ups?

Answer:

In the context of financial instruments providing equity investments, the rules and interpretation explained herewith apply depending on how the provided capital to the company is used for the mixture of its needs. At the moment of making an equity investment it may not be definite how much of the provided capital will be used for a mix of various asset types. However, the investment contract with the final recipient

should include the obligations under Article 50(1)(c) of the CPR to be respected, should the total cost of an investment exceed EUR 500 000 and involve physical investment or installation of purchased equipment.

Question 3 (including any relevant facts and information):

What is meant by the "total cost of operation" in context of financial instruments?

Answer:

Article 50(2) provides that "*final recipients comply with the requirements set out in point (c) of paragraph 1*" as set out in their contractual terms. This clarifies that the total cost should be taken into account at the level of the *investment* of the final recipients receiving support. Therefore, the provision of Article 50(1)(c) CPR should be considered in relation to the total cost of the investment as set out in the respective contractual terms.

For guarantees, the amount of programme resources set aside in guarantee contracts for the underlying disbursed loans or (quasi-) equity investments is not relevant for the calculation of the total cost of the investment at the level of the final recipient.

Question 4 (including any relevant facts and information):

Is the calculation of the total cost of operation in any way influenced if the financial instrument is combined with a grant in one or two operations?

Answer:

No, the combination with grant does not have any influence. As explained above in the context of FI the provisions of Article 50(1)(c) and Article 50(2) second paragraph apply to the total cost of investment, irrespective of how it is financed.

Question 5 (including any relevant facts and information):

Which paragraphs of Article 50 are applicable to financial instruments?

Answer:

Article 50(1)(a) and (b), the first sentence of Article 50(1)(d), Article 50(3) apply to beneficiaries and bodies implementing financial instruments as defined respectively in Article 2(9)(e) and Article 2(22) of the Regulation.

Article 50(1)(c) has to be read together with Article 50(2) and it is applicable to final recipients in line with the clarifications above. The second subparagraph of Article 50(2) provides that beneficiaries of financial instruments should, by way of contractual terms, e.g. in loan agreements signed with final recipients, ensure that final recipients comply with the requirements in Article 50(1)(c). In case of breach of their obligations, the contractual terms in this respect apply to final recipients.

The second sentence of Article 50(1)(d) does not apply to financial instruments beneficiaries as this point applies only to natural persons.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 50(1)(e) applies to beneficiaries and bodies implementing financial instruments in case of:

- where the FI operation is included in the list of operations of strategic importance; and

- operations whose total cost exceed EUR 10 000 000.

[1] Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy

[2] Please note that the threshold is EUR 100 000 for the ESF+, the JTF, the EMFAF, the MAIF, the ISF and the BMVI pursuant to Article 50(1)(c)(ii).

[3] Intangible asset: an identifiable non-monetary asset **without physical substance**. An asset is a resource that is controlled by the entity as a result of past events (for example, purchase or self-creation) and from which future economic benefits (inflows of cash or other assets) are expected (International Accounting Standard - IAS 38).

[4] THE USE OF THE EU EMBLEM IN THE CONTEXT OF EU PROGRAMMES 2021-2027. Operational guidelines for recipients of EU funding.

QA00016 - INFRASTRUCTURE OPERATIONS IN THE TOURISM AND CULTURE SECTOR: 'ENHANCING THE ROLE OF CULTURE AND TOURISM IN ECONOMIC DEVELOPMENT, SOCIAL INCLUSION AND SOCIAL INNOVATION' AND 'INTERVENTION FIELD DIMENSIONS'.

Relevant Article: Article 3 of the ERDF/CF Regulation, Annex I of the CPR

Member State: DE

Question 1 (including any relevant facts and information):

Can you confirm that, in the absence of dedicated 'intervention field dimension codes', operations for investments in culture and tourism infrastructure can be supported under policy objective 4 or have such investments to be included under one or more of the other policy objectives and which conditions have to be fulfilled?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

Investments on these sectors however can be carried out through the existing codes of interventions provided in Annex I of the CPR under PO5, from 165 to 167. These codes are not restricted only to PO5, but could be used also under any other policy objective, therefore there is no need for a new code of intervention related to culture and tourism infrastructure in Annex 1 of the CPR.

QA00019 - ARE SMES ELIGIBLE AS BENEFICIARIES FOR SUPPORTING TOURISM AND CULTURE UNDER PO5?

Relevant Article: n/a

Member State: RO

Question 1 (including any relevant facts and information):

Is it possible to support interventions in tourism and culture under PO5 (Intervention fields 165-167) having SMEs as beneficiaries, alone or in partnership with public beneficiaries?

Tourism and eco-tourism is a great engine for local development while cultural and natural heritage sites are assets that can help attract tourists and boost local economies.

As the investments under PO5 must be part of an integrated territorial strategy, developed by the local public authority in partnership with private actors, we consider that by accepting SMEs as beneficiaries, alone or in partnership with public beneficiaries, will contribute to the sustainable exploitation of tourist resources more effectively and deliver better results on the ground.

Therefore, we need to know whether SMEs could be eligible beneficiaries under PO5 (if they contribute to meeting the objectives of these strategies).

Answer:

The SMEs can be the beneficiaries under PO5 as long as the operations from which they are supported are implemented under any of the territorial tools as proposed in Article 28 of the CPR and selected as contributing the territorial strategies according to Article 29 of the CPR.

There is no rule forbidding SMEs being the beneficiaries under PO5.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00023 - INVESTMENTS IN RESEARCH UNITS OF LARGE ENTERPRISES

Relevant Articles: 3 and 5 of the ERDF/CF regulation

Member State: RO

Question 1 (including any relevant facts and information):

Are the research units of large enterprises eligible for funding through PO1 - SO (i)?

Answer:

Under 2021-2027 cohesion policy, the promotion of private research and collaboration between public and private should be given priority. Mainstream funding and technical assistance should be used to reward innovation and support beneficiaries in the preparation of mature, integrated projects, promoting, when possible, cross-sectorial cooperation along the entire value chain.

With this regard, basic research (TRL1-3) should not be a priority for ERDF investment, except where it responds to a need identified in a smart specialisation strategy through the entrepreneurial discovery process, in particular related to demand-driven business and societal needs.

Furthermore, to concentrate the use of limited resources in the most efficient way, when it comes to financing productive investments, the measures should be limited to SMEs only. However, support to productive investment in large enterprises can be supported under SO (i) of PO1 when the investments involve cooperation with SMEs in research and innovation activities (Article 5(2),ERDF/CF Regulation).

Finally, it is reminded that all investments under this specific objective should be in line with the smart specialisation strategy.

QA00025 - COMBINING SPECIFIC OBJECTIVES IN A PRIORITY

Relevant Article: Article 22 of the CPR

Member State: NL

Question 1 (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Can two or more specific objectives be combined or merged in a priority? For instance, can specific objective 2.2 (sustainable energy) be combined with specific objective 2.3 (smart energy systems)?

Context: Anticipating a compulsory allocation to PO2, Managing Authorities in the Netherlands are exploring possible content of such a priority. In line with Annex D (2019) programming focused on PO1 up to now. The draft ERDF regulation for the 2021-2027 period foresees quite a number of specific objectives under PO 2. The Managing Authority would like to avoid a multiplication of specific objectives in a PO2 priority and, therefore, wants to know if related specific objectives can be combined.

Answer:

According to Article 22 of the CPR, a priority corresponding to a policy objective shall consist of one or more specific objectives. Additionally, each priority shall correspond to a single policy objective.

In other words, managing authority can have, in a programme, one priority consisting of one or more specific objectives provided, that these specific objectives belong to the same policy objective. However, different specific objectives cannot be merged into one single specific objective.

QA00027 - DATA FIELD 69 ANNEX XVII

Relevant Article: n/a

Member State: DE

Questions (including any relevant facts and information):

In point (c) it is not clear to what extent all or only part of the assistance provided by the Funds is to be indicated here and the extent to which the word "received" refers to amounts granted or paid.

1. Is it correct that in point (c) the total support from the financial instrument to the final recipient is to be assumed, including, where applicable, the national co-financing (for example, the nominal amount of the loan or the amount of the equity)?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

2. Is it correct that the word "received" refers to the amount granted but not to the amount actually paid?

3. Is there a need to adjust the amounts in the event of a change in relation to the final recipient (e.g. Partial cancellation of a loan amount)

4. How is the amount of support determined if a combination with a grant (Article 58 (5) of Regulation (EC) No 2021/1060) takes the form, for example, of a repayment rebate/grant for a loan?

(a) the amount corresponds to the original principal amount of the loan; or

(b) the amount is equal to the sum of the principal amount of the loan and the repayment rebate; or

(c) Amount equal to the difference between the principal amount of the loan and the repayment rebate (remaining capital of the loan)"

Answer:

1. Final recipients may receive support from financial instrument (FI) in the form of loans, guaranteed loans and equity and where applicable in combination of programme support in the form of grants in a single financial instrument operation. The amount of support is linked to the support provided by the programme resources. In the case of loans or equity investments the amount of support is the amount of programme resources (support from the Funds as well as national co-financing) effectively paid to a final recipient. In the case of guarantees, amount of support is the amount of e.g. loan paid to the final recipient guaranteed by the programme resources.

2. The amount of (guaranteed) loan effectively paid to the final recipient or an equity investment made into the capital of the final recipient is the "amount of support received" by the final recipient. Where financial instruments are combined with a grant component in a single financial instrument operation in accordance with Article 58(5) of Regulation (EU) 2021/1060, the grant paid to or for the benefit of the final recipient will also constitute "amount of support received" by the final recipient.

3. If there is a change in the business plan and the initially paid loan to the final recipient is partly cancelled, i.e. the investment for which the loan is requested needs a lower borrowed amount, the amount indicated should be only the amount of support which the final recipient receives.

4. In the case of a capital rebate, the amount of support received from FI initially should be recorded as a loan for investment of, for example, 100. Once the capital

rebate clause in the loan contract is triggered and part of the loan is transformed into the grant, the amount in the electronic records should be adjusted presenting the amount of the remaining loan (e.g. 80) and grant (e.g. 20).

In the case of a combination of a loan and a capital grant for the investment of 100, the amount of loan and the grant paid to, or for the benefit of, the final recipient is known from the outset; therefore, it should be recorded as loan e.g. 80 and the capital grant e.g. 20.

QA00028 - DOES INCLUDING A LIST OF PROJECTS IN A TERRITORIAL STRATEGY FULFIL THE REQUIREMENT OF ENSURING THE INFLUENCE OF MUNICIPAL OR LOCAL AUTHORITIES ON THE SELECTION OF PROJECTS?

Relevant Article: Article 29 of the CPR

Member State: PL

Question 1 (including any relevant facts and information):

The Polish Ministry of Investment and Economic Development has asked whether including a list of projects in a territorial strategy will fulfil the requirement of ensuring the influence of municipal or local authorities on the selection of projects.

The projects pointed out in the strategy shall be selected in a non-competitive way. Thus, when adopting the strategy together with the list of projects, municipal authorities will be guaranteed an exclusive right to submit projects under the operational programme, while the MA will only assess whether the formal and substantive criteria are met.

The competition mode should be applied only in certain situations, such as a limited allocation in relation to the number of functional areas interested in obtaining support in a given thematic area. The competition organized by the MA in thematic areas relevant for territorial instruments will be restricted to the projects complying with the territorial strategies, while the MA will assess projects in terms of formal and substantive criteria and select the best ones.

In both options, the involvement of municipal authorities on the selection of projects is ensured.

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 29 of the CPR includes content requirements for the territorial strategy, and roles and responsibilities of the relevant territorial authorities or bodies for the strategies and in the selection of operations.

The territorial strategies are under the responsibility of the relevant territorial authorities or bodies in line with Article 29 (2) of the CPR. Where the list of operations to be supported is included in the territorial strategies, it should mean that these authorities or bodies have already been involved in the selection of or have been selecting themselves such operations. Thus, the involvement of these authorities or bodies in the selection of those operations could be considered ensured.

In addition, the general rules and criteria related to the implementation of the funds need to be fulfilled, especially those related to selection of operations in Article 73 of the CPR (including transparency and non-discrimination) for both competitive and non-competitive modes.

QA00029 - Regional Development Plans 2021-2027 and County Development Strategies as sufficient strategies to frame territorial investments under Policy Objective 5

Relevant Article: Article 29 of the CPR

Member State: RO

Question (including relevant facts and information):

Is it sufficient for the tourism/heritage objectives to include the investment object in a regional/national/sectoral strategy or is there a need for an integrated strategy at local level? In this context, the Regional Development Plan 2021-2027 (RDP) and/or the County Development Strategy can be considered strategies based on which investments can be financed for the integrated territorial approach (eg. tourism and culture under PO 5), thus fulfilling the conditions stipulated by the CPR Regulation, art. 29?

In our opinion each RDP respect all the conditions required by the Article 29 Territorial strategies and could be considered as support document for the implementation of the interventions financed under PO5:

– the geographical area covered by the strategy is represented by the entire region, which is presented in the first part of each RDP and cover the description of the region (Geographic location, natural framework, main natural resources, description of the counties and the localities within the region, etc.)

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

– analysis of the development needs and the potential of the area is performed in the regional socio-economic and SWOT analyses

– description of an integrated approach to address the identified development needs and the potential is presented in the dedicated chapter for the Regional Strategy and the estimation of the financing needs

– description of the involvement of partners in accordance with Article 8 in the preparation and in the implementation of the strategy is also presented in a dedicated chapter in the document

Also, in the context of Article 29 (2) CPR, whereas existing strategic documents concerning the covered areas may be used for territorial strategies, could we consider the County Development Strategy as an integrated strategy?

Answer:

The investments in tourism and culture envisaged for support under PO5 need to stem from the integrated territorial or local development strategies that need to fulfil the regulatory requirements, such as Article 29 of the CPR for territorial strategies.

The term "territorial and local development strategies" does not specify, on purpose, the specific territorial level at which these strategies need to be drawn up. This term is used to enable the use of territorial instruments below the regional programme level (i.e. NUTS2, the usual regional programme level). It is understood that "relevant territorial authorities or bodies" comprise levels below NUTS 2 level in function of the territory covered.

Therefore, the Commission, a priori, would not consider the Regional Development Plans in Romania adequate for the purposes of territorial strategies in the meaning of Art. 29 of the CPR. In order to satisfy the requirements under Article 29 of the CPR, the plans would need to cover territories below the level of the territory, which is covered by the regional programme (e.g. county level).

Consequently, the local, urban and territorial strategies under the regional programme level, such as the County Development Strategies in Romania, may be considered, as far as they fulfil the requirements in Art. 29 of the CPR and are justified by the programme intervention logic. The identification of the specific territories targeted and the rationale for the use of territorial tools need to be explained in the programmes.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00030 - In case of support from EU funds according to the CPR and from the RRF (NextGenerationEU), which funding statement has to be used?

Relevant Articles: 47 and 50 of the CPR, Annex IX; Article 34 (2) of the RRF regulation

Member State: LT

Question 1 (including any relevant facts and information):

If a project under shared management receives support from EU funds according to the Common Provisions Regulation and from the Recovery and Resilience Facility (NextGenerationEU), which funding statement has to be used in order to acknowledge this EU support?

Answer:

The Commission services recommend using "Funded by the European Union – NextGenerationEU". Legally, this satisfies both the rules laid down in the Common Provisions Regulation and in the Recovery and Resilience Facility Regulation and is a better and simpler option than having distinct funding statements for each source of funding.

QA00031 - Data field 59, data field 60 Annex XVII

Relevant Articles: Articles 42, 72, 92 of the CPR

Member State: DE

Question 1 (including any relevant facts and information):

Data field 60 corresponds to the information in the report in accordance with Table 12 of Annex VII and is similar to field 38 of the implementation report for the 2014-2020 funding period, in which the data are to be reported at the level of the final beneficiary.

It is not clear to what extent the information on funds is to be kept at the level of the financial instrument or at the level of final recipients. The information at the level of the Fund could be calculated from the information in field 59.

For financial instruments where national co-financing is provided at the level of final recipients, double counting may occur in fields 59 and 60.

1. To which level does the additional funds in field 60 – financial instrument or final recipients – refer to?
2. Where the information relates to the level of final recipients: Does the data have to be collected in a way that ensures that the programme contribution is allocated to the individual final recipients?
3. How should data be recorded for financial instruments where national co-financing is provided at the level of final recipients?

Answer:

Annexes VII and XVII to the CPR have two distinct purposes, nevertheless they should be consistent with each other. Annex VII CPR, including Table 12, provides content for the information which should be transmitted to the Commission according to Article 42 CPR as a reporting exercise. Annex XVII CPR provides the content for the information, which the managing authorities should keep electronically. In order to facilitate easy access to the data on each operation necessary for monitoring, evaluation, financial management, verifications and audits, as envisaged in Article 72 CPR.

In relation to:

CPR Annex XVII, data field 59

Data field 59 specifies that information recorded should include total programme contribution, i.e. the Funds plus national public and/or private contribution committed in the funding agreement. This means also public and/or private contribution which **is expected** to be provided at the level of the final recipient and which will constitute part of the programme contribution.

Further on, the managing authorities should identify how much of the total programme contribution is the amount of public contribution, including if some of the national public contribution comes at the level of the final recipient. This information will be recorded in the subfield 59(a).

A separate subfield (-s) (59(b)) present breakdown of the amounts by Fund (ERDF, CF, etc) committed to the financial instrument according to the funding agreement.

The data field 59 and its subfields are a replication of the information agreed in the funding agreement and not the progress of the implementation yet, hence the reference in the text of the data field "**committed to a financial instrument and approved in a document** setting out the conditions for support (funding agreement)".

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

There is no risk of double recording as the data field 59 presents information of the amounts agreed in the funding agreement between the managing authority and the body implementing FI. The amount of the total programme contribution may be adjusted (upwards or downwards) over time if necessary by means of the amendment of the funding agreement depending on the progress in the implementation of the FI and the respective market conditions. This modification in the funding agreement is to be reflected respectively in the electronically stored data.

CPR Annex XVII, data field 60

Data stored in the data field 60 should include all the public and/or private resources attracted to the Funds and invested in final recipients; hence the reference "by product" in the text of the data field. The data kept electronically will demonstrate the progress of the implementation. This data field may contain both programme and non-programme public and/or private resources (except of the own contribution of the final recipients given that own resources cannot be taken into account for the calculation of the leverage) and will be reported subsequently to the Commission in accordance with Article 42(3)(c) and Table 12 of the Annex VII CPR.

QA00032 - ELIGIBILITY OF MUNICIPAL COMPANIES UNDER THE JTF CLASSIFIED AS LARGE ENTERPRISES

Relevant Articles: Art.8(2) and 11(2)(h) of the JTF regulation

Member State: PL

This Q&A was updated on 14 November 2025. The changes are struck through and the added text is in blue and underlined.

Question 1 (including any relevant facts and information):

The JTF Regulation provides an opportunity to support large enterprises under the condition that their possible investments under JTF should only be supported for job creation in the identified territory. In addition, the regulation requires a justification in a form of a gap analysis demonstrating that the expected job losses would exceed the expected number of jobs created in the absence of the investment is provided.

During the works on the Territorial Just Transition Plan (TJTP) of the Wałbrzych subregion in Lower Silesia an issue of the specific status of municipal companies was raised by the Managing Authorities. Municipal companies according to SME definition are qualified as large enterprises as they are controlled by public authorities (Art. 3 para.4 of the Annex to Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The MA argues that while municipal companies are in principle are large enterprises, due to their specific status they should not be excluded from JTF support under the abovementioned requirements of the JTF Regulation. These companies, owned by local government units, serve a role in satisfying socio-economic needs of the region by providing public services and projects for cities and communes. These include local transport, waste treatment and disposal companies, water and sewage companies, heating companies, regional agencies supporting the development of entrepreneurship and the labour market, etc. The activities of these companies relate to the wide range of support indicated in Article 8(2) of the JTF Regulation, rather than just productive investments and will not be linked to the employment change. Their activities however are part of the economic, social and spatial objectives of the TJTP under preparation.

Commission was addressed by the Deputy Marshal of Lower Silesia with the following questions:

1) Can municipal companies, which are in principle large enterprises, be beneficiaries of the Just Transition Fund (JTF) if they do not carry out productive investment having a direct impact on the maintenance/creation of new jobs or on bridging a gap in the job balance?

2) In general, will large enterprises be able to implement projects in areas covered by the JTF Regulation, such as waste water treatment and transforming into drinking water, economic and social revitalization of degraded post-mining areas, transition of energy infrastructure related to decarbonisation, investments in RES, measures for development of competencies and skills of employees, creation and development of business incubators and innovation accelerators? These areas play an important role in the case of transition of the Wałbrzych subregion.

3) Are the restrictions on support for large enterprises and the requirements for such projects in terms of an analysis of the employment gap to apply only to productive investments in such enterprises and not to other types of investments indicated in the JTF Regulation?

Answer:

General context:

The JTF regulation states that "*in order to enhance the economic diversification of territories impacted by the transition, the JTF should provide support to enterprises and economic stakeholders, including through support to productive investments in micro, small and medium-sized enterprises*". All categories of enterprises regardless of their size are therefore eligible across the different support areas under the JTF. Yet, some important restrictions apply to productive investments in enterprises other than SMEs ('large enterprises')[1].

The definition of *productive investments* is given in recital (16) of the JTF. They should be understood as '*as investment in fixed capital or immaterial assets of enterprises*

with a view to producing goods and services, thereby contributing to gross-capital formation and employment.'

Point (a) of Article 8(2) of the JTF~~narrows down~~ prioritises support to productive investments in~~to~~ SMEs, including microenterprises and start-ups. Such projects should also lead to economic diversification, modernisation and reconversion. Productive investments in large enterprises are possible under the JTF.~~in very limited cases, in areas designated as "assisted areas" in accordance with points (a) and (c) of Article 107(3) of the TFEU.~~

However, t~~T~~hey need to fulfil the~~four~~ three cumulative criteria based on Article 8(2) and point (h) of Article 11(2) of the JTF:

- they are necessary for the implementation of the TJTP,
- ~~they contribute to the transition to a climate-neutral economy by 2050 and to related environmental targets,~~
- their support is necessary for job creation in the identified territory.~~To this end, a gap analysis demonstrating that the expected job losses would exceed the expected number of jobs created in the absence of the investment is required in the territorial just transition plan~~
- they do not lead to relocation as defined in point (27) of Article 2 CPR.
- The job gap analysis is no longer required, unless for the purpose of State aid assessments under the Regional Aid Guidelines (RAG)~~Guidelines on Regional State aid~~.

In the case of productive investments in large enterprises, the relevant territorial just transition plan (TJTP) must include an indicative list of such operations and enterprises that will receive support. The list loses de facto its "indicative" character if the support is to be granted under~~Regional State Aid Guidelines~~ the RAG to large enterprises for diversification of the output of an establishment or for a fundamental change in the overall production process that concerns initial investments located in 'c' areas (see derogation under paragraph 14 of the RAG). In this case, the investment and the beneficiary must be identified in the TJTP.

~~It also has to provide a justification of necessity of such support through a gap analysis demonstrating that the expected job losses would exceed the expected number of jobs created in the absence of the investment. The gap analysis should include the estimated difference between the expected job losses and the potential job creation through JTF support (e.g. economic diversification investments for SMEs). This analysis may refer to historical evidence of job creation by SMEs in the territory, analysis of current employment by SMEs in the region, surveys on employment perspectives, or other methodologies.~~

~~In addition, support for productive investments is subject to State aid rules, in particular to the rules applicable to regional aid. According to the Guidelines on regional State aid, regional aid may be granted in 'a' areas to support all types of initial investments made by small and medium enterprises or large enterprises. In 'c' areas, regional aid may be granted to support all types of initial investments made by small~~

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

~~and medium enterprises, while large enterprises can only receive regional aid to support initial investments that create a new economic activity. However, when the conditions of paragraph 14 of the Guidelines on regional State aid[2] are fulfilled, large enterprises can also receive regional aid for their diversification or fundamental change investments in Just Transition areas.~~

Replies to specific questions:

Question 1:

To determine whether an investment in a large enterprise is eligible under the JTF and under which condition, the distinction should therefore be made between two types of investments:

- *productive investments:*

As per recital (16) of the JTF, productive investments are investments in an enterprise and its growth to produce new goods or services. They lead to a net increase in the value or profitability of a venture. As mentioned above, they are subject to support conditions under Article 8(4~~2~~) and point (h) of article 11(2) of the JTF, including a positive impact on employment creation. If one of the conditions remains unfulfilled, such investments are considered ineligible under the JTF.

The standard example of such an investment is the installation of a production line for launching a new product according to a company's new buisness diversification strategy. The investment will lead to a reallocation of labour resources to a new business area to maintain the existing jobs.

- *other kind of investments than productive investments:*

Article 8(2)(b)-(q~~i~~) lists exhaustively eligible investments that may be other than the productive ones. Yet, a definition in the JTF Regulation or the CPR for such investments is not provided, contrary to the productive investments as stated above.

If a case-by-case analysis leads to the conclusion that such investments are not productive, they are then not subject to the~~four~~ three cumulative conditions laid down in Article 8,~~2nd~~ 3rd indent and the requirement laid down in point (h) of Article 11(2) of the JTF.

Such other kind of investments are usually made in infrastructure, equipment and access to services (e.g. in the field of energy, environment, transport, digital connectivity, education, training, social inclusion etc.) that have territorial development as an objective. Their primary aim is not to increase the value or profitability of a venture, unlike productive investments.

The standard example of such investments are services of general economic interest. Such investments deliver outcomes in the overall public good that would not be supplied (or would be supplied under the different conditions in terms of objective, quality, safety, affordability or universal access) by the market without public intervention[3]. In such a case, municipal companies would not be beneficiaries within the meaning of the CPR, but contactors of the beneficiary (municipality) and would

carry out the works/investments. Such companies will help implement and operate the investment if selected in line with applicable rules.

Regardless of being productive or not, all investments under the JTF still need to comply with all applicable provisions under the CPR and JTF Regulations, e.g. compliance with the JTF specific objective and the scope of eligible support under Articles 8 and 9 of the JTF.

Finally, investments reducing GHG emissions from activities listed in the ETS Directive are eligible, subject to specific conditions laid down in the ~~3rd~~ 2nd sub-paragraph of Article 8(2) and point (i) of Article 11(2) of the JTF.

Questions 2 and 3

Productive and other kind of investments can be implemented across the different support areas indicated under Article 8(2) of the JTF.

~~In this respect however, it is necessary to recall that the eligibility scope of the JTF is detailed in an exclusive manner and does not entail investments in wastewater treatment or drinking / water management, which are therefore ineligible. In duly justified circumstances only, water management can be supported as part of a land restoration project, in line with recital 12 of the JTF.~~

~~The other thematic areas listed in your question are compliant with the eligibility scope of the JTF under Article 8(2) of the JTF. Yet,t~~ To determine whether future operations that are to be implemented in these~~thematic~~ support areas by large enterprises are subject to the conditions laid down in Article 8,~~2nd~~ 3rd indent and the requirement laid down in point (h) of Article 11(2) of the JTF, it should first be concluded if these operations fall or not into the definition of productive investments, as established in recital (16) of the JTF Regulation.

Based on the facts provided in the question, there is no sufficient information on the exact nature of the operations planned by the Wałbrzych subregion – e.g. on the objective such operations would contribute to - to identify whether such investments should be considered as productive or not. It is the responsibility of the managing authority to determine if the conditions explained above are fulfilled and the TJTP needs to demonstrate their fulfilment.

Finally, as mentioned above, all other general support conditions under the CPR and JTF apply to productive and other kind of investments.

---

[1] All enterprises not falling into the scope of the definition of micro, small and medium-sized enterprises provided in the Commission Recommendation (2003/361/EC) of 6 May 2003 (OJ L 124, 20.5.2003, p. 36).

[2] OJ C 153 of 29.4.2021, p.1.

[3] CPR has no definition of public service or service of economic general interest. The concept might therefore apply to different situations and terms, depending on the Member State, except when an obligation to designate formally a task or a service as being of general economic interest is laid out in Union legislation.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00033 - EFFECTIVE COMMUNICATION AND COMPLIANCE WITH CPR PROVISIONS REGARDING COMMUNICATION

Relevant Articles:

Chapter I of the CPR – Monitoring

Article 103 of the CPR – Financial corrections by the Member State

Member State: FR

Question 1 (including any relevant facts and information):

What are the Commission's recommendations for communicating as effectively as possible, in the event of suspension of funding, as a result of a beneficiary's failure to comply with its commitments?

What would be the Commission's assessment of the compliance of the beneficiaries of the funds with their obligation to communicate?

Answer:

Communication and visibility will be monitored and evaluated in the same way as the fulfilment of other aspects of the programme by the competent Commission services.

There is no intention to issue the guidelines on the methodology of establishing the scope of violation or the amount of the corrections. When needed, the Member State should proceed with the corrections in the same manner as with any other financial corrections applied in accordance with Article 103 of the CPR.

QA00037 - FLAT-RATE FINANCING FOR INDIRECT COSTS CONCERNING GRANTS

Relevant Article: Article 54 of the CPR

Member State: FR

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

We wonder whether it would be possible to use, for the reimbursement of indirect costs (Art. 54 CPR), both the flat rate of 15% of personnel costs when such expenses are present in a project and that of 7% of total eligible expenses when no personnel costs are declared, and this for the whole of the EMFAF.

Answer:

In Article 54 CPR, the use of either rate is possible at the level of the operation: "where a flat rate is used to cover the indirect costs of an operation, it may be based on one of the following... ». It is therefore possible to use one of the rates stated therein per operation, depending on, for example, the criterion you propose (existence or not of personnel costs). The Managing Authority should define the categories of costs and select the appropriate SCOs and rates in a consistent way and in full respect of the principle of equal treatment.

For further information on the calculation of indirect costs, please consult section 3.1.2.1 of the revised Guidelines on SCOs within ESI.

The document setting out the conditions for support in accordance with Article 73(3) shall include information on the form of reimbursement for indirect costs (i.e. which flat rate will be applied).

QA00038 - SELECTION OF OPERATIONS BY THE MANAGING AUTHORITY ON INFRASTRUCTURE – CLIMATE PROOFING

Relevant Articles: Articles 2(42) and 73 CPR

Member State: IE

Question 1 (including any relevant facts and information):

Article 73 (Selection of operations by the managing authority) of the CPR states in paragraph 2(j) the following:

2. In selecting operations, the managing authority shall:

……

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

(j) ensure the climate proofing of investments in infrastructure with an expected lifespan of at least five years.

The term 'infrastructure' is not defined in the CPR, and there seems to be no standard definition online, so I am wondering does the Commission have a view on its applicability to EMFAF funded capital investments. It is clear that it would be relevant to harbour infrastructure. I think we can be sure it does not apply to fishing vessels or aquaculture structures such as trestles, salmon cages etc. I am less certain about buildings, such as processing factories. I would welcome a Commission opinion on this, so that we can plan for the necessary assessment procedures.

Answer:

The Commission has developed a guidance on the climate proofing of infrastructure covering the programming period 2021-2027, which is also deemed a relevant reference for the climate proofing of infrastructure under Article 2(42) and Article 73(2) j) of Regulation (EU) 2021/1060 (Common Provisions Regulation (CPR).[1] Whilst the CPR does not provide a definition of infrastructure, the guidance defines it as a broad concept, which includes[2]:

• **buildings,** from private homes to schools **or industrial facilities**, which are the most common type of infrastructure and the basis for human settlement;

• nature-based infrastructures such as green roofs, walls, spaces, and drainage systems;

• **network infrastructure crucial for the functioning of today's economy and society**, notably energy infrastructure (e.g. grids, power stations, pipelines), **transport** (fixed assets such as roads, railways, **ports**, airports or inland waterways transport infrastructure), information and communication technologies (e.g. mobile phone networks, data cables, data centres), and water (e.g. water supply pipelines, reservoirs, waste water treatment facilities);

• **systems to manage the waste generated by businesses** and households (**collecting points**, sorting and recycling facilities, incinerators and landfills);

• **other physical assets in a wider range of policy areas**, including communications, emergency services, energy, finance, food, government, health, education and training, research, civil protection, **transport, and waste or water**;

• other eligible types of infrastructure may also be laid down in the fund-specific legislation, for instance, the InvestEU Regulation includes a comprehensive list of eligible investments under the sustainable infrastructure policy window.

The guidance further clarifies that, with regard to EU funding for infrastructure in the programming period 2021-2027, the main instruments that may be employed include - under the Common Provisions Regulation (CPR) - the European Regional Development Fund (ERDF), the Cohesion Fund (CF) and the Just Transition Fund (JTF). Nevertheless, given that Article 73 CPR fully applies to operations selected for support also from the

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

EMFAF, the requirement to comply with the principle of climate proofing is applicable to new infrastructure, as well as renewal, upgrading and extension of existing infrastructure, supported by the EMFAF with an expected lifespan of at least five years.

Based on this, such principle is to be considered **relevant with regard to both harbour infrastructure and processing factories**. Therefore, in addition to supporting activities that would respect the climate and environmental standards and priorities of the Union, in selecting operations the Managing Authority should ensure the climate proofing of capital investments in both these kinds of infrastructure.

In this respect, the Commission guidance on the climate proofing of investments 2021-2027 may be a useful reference for public authorities as a basis to complement any further national and sectoral considerations and guidance.

---

[1] C(2021) 5430 final

https://ec.europa.eu/clima/sites/default/files/adaptation/what/docs/climate_proofing_guidance_en.pdf

[2] C(2021) 5430 final, page 7.

QA00039 - JTF

Relevant Articles: Article 8 and Article 9 of the JTF

Member State: EE

Question 1 (including any relevant facts and information):

1.1. Should deploying CCU technologies (Carbon capture and utilization) be considered as fostering the transfer of advanced technologies (c), as investments in the deployment of technology and infrastructures in greenhouse gas emission reduction (d) or as investments in enhancing the circular economy (g)?

Is such an investment considered a productive investment, which in enterprises other than SMEs needs to be approved as part of the territorial just transition plan?

1.2. If capturing carbon in such an investment is related to energy production from oil shale (either 100% shale oil or a mix with biomass), does it mean that the investment is out of scope of JTF according to Art 9? Can such investments receive support from II pillar Under InvestEU?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

Ad 1.1.

Any investment related to energy production from oil shale is ineligible according to Article 9(d) of the JTF Regulation, prohibiting the production, processing, transport, distribution, storage or combustion of fossil fuels.

Moreover, cost efficient decarbonisation in the power sector is achieved by using renewables. Therefore, from a policy and economic point of view, the JTF should not fund investments for CCU in the power sector. The objective of the JTF should also be pursued in line with the objective of promoting sustainable development as set out in Article 6a CPR, taking into account the "do no significant harm" principle.

In principle, investments related to mining or to the extraction, processing, distribution, storage or combustion of solid fossil fuels and oil as well as investments related to the extraction of gas are also not supported under the Just Transition scheme under InvestEU according to annex 5(B)(12) of the InvestEU Regulation. This exclusion does not apply to:

(a) projects where there is no viable alternative technology;

(b) projects related to pollution prevention and control;

(c) projects equipped with carbon capture and storage or carbon capture and utilisation installations; industrial or research projects that lead to substantial reductions of greenhouse gas emissions as compared with the applicable EU Emission Trading System benchmarks.

Any of the investments falling under points (a)-(c) above, which would be eligible under InvestEU, need to be compatible with the lending policies of the implementing partners.

Ad 1.2.

Pursuant to Article 8(1) of the JTF regulation, the JTF should only support activities directly linked to its specific objective set out in Article 2 JTF, which is about addressing the impacts of the transition towards the Union's 2030 targets for energy and climate and climate neutral economy by 2050. The JTF should also support activities that do no significant harm to the environmental objectives in line with Article 9(4) of the CPR and that ensure the transition towards a low carbon economy in the pathway to achieve climate neutrality at the latest by 2050.

Further information on the project, its purpose, future use and technical features would be needed to assess whether an investment in CCU fulfills the aforementioned requirements. Such information would also be necessary to examine whether the investment in question should be considered a productive investment in enterprises other than SMEs and how to classify it under the typology of eligible activities under Article 8(2) of the JTF.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 2 (including any relevant facts and information):

Oil shale is not only used as a solid fuel for thermal power-plants but also shale oil is produced from it. Shale oil is mostly used for diesel production but there are also several by-products that are a valuable raw produce for the chemical industry.

Would investments related to extracting and using these by-products or investments related to using oil shale ashes be allowed from JTF or considered also as investments related to the production, processing, distribution, storage or combustion of fossil fuels and thus excluded from the scope? Can such investments receive support from II pillar under InvestEU?

Answer:

The production of shale oil by-products is technically inseparable from oil shale production and extraction, which represent a major source of GHG emissions. Article 9(d) of the JTF regulation prohibits support related to the production, processing, transport, distribution, storage or combustion of fossil fuels. Thus, investments related to extracting and using these by-products or investments related to using oil shale ashes are also ineligible.

In principle, investments related to mining or to the extraction, processing, distribution, storage or combustion of solid fossil fuels and oil, as well as investments related to the extraction of gas are also not supported under the InvestEU pillar II (deployed under the InvestEU programme) according to annex 5(B)(12) of the InvestEU Regulation. This exclusion does not apply to the following cases:

(a) projects where there is no viable alternative technology;

(b) projects related to pollution prevention and control;

(c) projects equipped with carbon capture and storage or carbon capture and utilisation installations; industrial or research projects that lead to substantial reductions of greenhouse gas emissions as compared with the applicable EU Emission Trading System benchmarks".

Any of the investments falling under points (a)-(c) above which would be eligible under InvestEU, need to be compatible with the lending policies of the implementing partners.

Question 3 (including relevant facts and information):

Investments in smart and sustainable local mobility are within the scope of JTF. In case of Estonia – would the investments in rail connections from Narva to Tallinn be eligible to support along the entire route from Tallinn to Narva or should be limited to the specific territories most negatively affected by the transition process?

Answer:

Based on Article 2, JTF objective is to address economic, social and environmental costs of the transition towards the Union's 2030 targets for energy and climate and climate neutrality by 2050.

Investments to improve local transportation for better accessibility can be considered eligible under JTF, if it is demonstrated that it contributes to alleviate the social and economic costs triggered by the transition (in Ida-Virumaa for instance)..

In addition, pursuant to Article 8(2), JTF can only support investments in smart and sustainable local mobility. This railway cannot be considered, due to its scale and objectives, as investment in local mobility.

Question 4 (including relevant facts and information):

What kind of activities can be supported as social inclusion activities (Article 8(2)(o) other activities in the areas of education and social inclusion (…) indicated in territorial just transition plans in accordance with Article 11 of the JTF)? In case of Estonia, Ida-Virumaa will be one of the regions most affected by population changes (both ageing and decrease) and Ida-Viru county had a life expectancy lower by 10 years compared to the rest of Estonia. Would investments in health care infrastructure and social service infrastructure be eligible as part of social inclusion activities from JTF? In case of education – would investments in primary and general education infrastructure be eligible?

Answer:

According to Article 8(2)(o) (Scope of support) of the JTF, activities in the areas of education and social inclusion including, where duly justified, infrastructure for the purposes of child and elderly care facilities could be supported. This provision does not include health infrastructures.

However, the support to such facilities has to be justified with regard to their capacity to alleviate the social and economic costs stemming from the climate transition. If ageing and depopulation trends are structural and cannot be directly imputable to the transition steps impacting Ida-Virumaa, such facilities could rather be supported under ERDF.

Question 5 (including relevant facts and information):

In InvestEU, a financial contribution is required from an implementing partner in the form of own risk-taking capacity that is provided on a pari passu basis with the EU guarantee or in another form that allows an efficient implementation of the InvestEU Programme while ensuring appropriate alignment of interest. In case of the just transition scheme Under InvestEU – is it allowed to use JTF funding as financial contribution of the implementing partner?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Under InvestEU, the implementing partners should provide their own resources and under their own risk. The EU Funding under the InvestEU guarantee cannot be used to guarantee another source of EU funding (i.e. JTF).

QA00040 - SUBMISSION OF PROGRAMMES

Relevant Article: Article 21 of the CPR

Member State: PL

Question 1 (including any relevant facts and information):

The PA is almost ready to be submitted in autumn 2021. However, there is the possibility that the EMFAF programme would not be ready for formal submission within 3 months from PA submission, as set out in Article 21(2) CPR. PL MA wonders if submitting an informal EMFAF programme via the SFC2021 and/or SFC2014 could fulfil the provision of Article 21(2) CPR.

Answer:

Only formal submission of the EMFAF programme via SFC2021 can be said to fulfil the provision in Article 21(2) CPR.

The Managing Authority should take all possible steps to respect the deadline set out in Article 21(2) CPR, submitting the most mature version of the programme possible at that stage. The Commission will then assess the submitted programme. The nature and extent of its observations will depend on the programme's completeness and quality.

QA00041 - AVAILABILITY OF DOCUMENTS AND MANAGEMENT VERIFICATIONS AND AUDITS OF FINANCIAL INSTRUMENTS

Relevant Articles: Article 81 and 82 of the CPR

Member State: EE

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

We are currently preparing a national act necessary for the implementation of EMFAF. Among other things, we discussed CPR the provisions with regard of availability of documents.

It seems to me that Art 82 paragraph 1 establishes requirement for MAs not to beneficiaries. Taking into account that we are planning to go digital with EMFAF, it seems reasonable that all documents are kept in digital form in the IT system of IB. To me it seems unnecessary for all the beneficiaries to print out their applications for support and payment and other documents submitted electronically to authorities.

If I look on the elements of audit trail in the Annex XIII of CPR, then it also seems to confirm that such data is already now available in the ARIB IT system.

There is a FI-s specific provision in Art 81 para 4 of CPR and I understand from it that the audits will not be carried out on the level of final beneficiaries either.

Do you share this understanding, that if the documents (both originals and digitally signed copies) related to an operation are available on the level of MA/IB, there is no need to establish requirement for the beneficiaries to keep them?

Answer:

Document availability: Article 82 of the CPR 2021-2027 Regulation imposes an obligation to the managing authority on ensuring that all supporting documents related to an operation supported by the Funds are kept at the appropriate level for a 5-year period from 31 December of the year in which the last payment by the managing authority to the beneficiary is made. Implementation of this provision falls fully under the responsibility of the managing authority. In this context, the managing authority should ensure that the relevant actors are informed about the necessity to keep the documents at their level or not.

For audit purposes, the managing authority is responsible to ensure the availability of all necessary documents (in paper or in digital form) at appropriate level. In that sense, the documents can be kept at the level of the beneficiary or at the level of the Intermediate Body or Managing Authority.

Financial instruments: On the second question, article 81 of the CPR 2021-2027 provides that audits carried out by the managing authority, or by bodies responsible for the audit of programmes, are at the level of bodies implementing financial instruments, at the level of bodies delivering the underlying new loans (in the context of guarantee funds) or at the managing authority level. The regulation does not provide for derogations for exceptional circumstances to perform the audit at the level of the final recipient, as it is the case under the CPR 2014-2020.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Paragraph 4 of the Article 81 further restricts, putting the circumstances under which the audit can be performed at the level of the body providing the underlying loan, i.e. where documents are not available at the level of the managing authority or at the level of the bodies implementing the financial instrument, or there is evidence that the documents at its level do not represent a true and accurate record of the support provided.

QA00042 - FLAT RATE FOR DIRECT AND INDIRECT COSTS

Relevant Articles: 54 and 56 of the CPR

Member State: AT

Question 1 (including any relevant facts and information):

1. How is the provision in Article 56 (1) CPR to be understood, according to which *"A flat rate of up to 40 % of eligible direct staff costs may be used in order to cover the remaining eligible costs of an operation"*. Are the remaining costs simply all the remaining costs of the project except for the staff costs or how is that to be understood?
2. Furthermore, the question arises as to whether the provisions above under Article 56 CPR can be combined with the provision in Article 54 CPR "Flat rates for indirect costs concerning grants", i.e. whether a Member State can apply both provisions to a project at the same time?
3. If Article 56 CPR can be combined with Article 54 CPR, does this mean that the flat rate for indirect costs is part of the expenditure covered by the maximum of 40% of direct costs or can this come as eligible expenditure that comes on top of the direct staff costs + the flat rate of max 40% of eligible direct staff costs (total eligible costs would then be: direct staff costs + 40% of direct staff + flat rate for indirect costs)?

Answer:

1. Yes. The 40% would cover all remaining costs for a given operation.

The Managing authority may apply this flat rate to types of operations that require all three of the following categories of costs: direct staff costs, other direct costs and indirect costs. It shall check ex-ante if this condition is fulfilled for the respective type(s) of operation.

Audits would then verify if the methodology was established correctly; i.e. that all three of these categories of costs exist, comply with the eligibility requirements (of the programme and CPR) and are relevant for the respective type(s) of operation.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Audits will check the "basis costs" to which the flat rate is applied (i.e. the direct staff costs of the operation) and the correct calculation of the amount that is reimbursed on the basis of the flat rate. There are, however, no checks on the actual costs incurred by the beneficiary or related (financial) supporting documents for the amounts reimbursed on the basis of the flat rate.

For operations supported by the ERDF, the ESF+, the JTF, the AMIF, the ISF and the BMVI, salaries and allowances paid to participants shall be considered additional eligible costs not included in the flat rate. This is not applicable for the EMFAF.

2. No. Where the beneficiary applies the 40% flat rate on the staff costs, this should cover "the remaining costs" of the project. This would also include any overheads.

3. This question is obsolete, as the two flat rates cannot be combined.

QA00043 - PAYMENTS AND MANAGEMENT VERIFICATIONS IN PPP PROJECTS

Relevant Article: Art. 2(39); Art. 53(1a); Art 63(2), Art. 74(1) of the CPR

Member State: PL

Question 1 (including any relevant facts and information) - follow up question to the approach described below:

Can expenditure incurred by the private partner during the eligibility period be considered as eligible if payments from the escrow account to the private partner are made after 31 December 2029?

Answer:

Expenditure incurred by a beneficiary or a private partner in a PPP operation can be considered eligible for a contribution from the Cohesion Funds only if it is also paid during the eligibility period (from 1 January 2021 to 31 December 2029), as provided in Article 63(2) of the CPR.

The PPP agreement sets out the modalities for payment and determining the eligible costs (cf recital 46). It means that the payments to the contractor (private partner) by the public promoter (beneficiary) through the escrow account may be largely decoupled from the actual investment costs incurred by the private contractor. On the other hand, the payment of the different instalments should be conditioned by the

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

effective implementation of the works by the contractor, in accordance with the timetable and technical specifications of the PPP agreement.

Payments made into the account have to relate to expenditure incurred by the private partner during the eligibility period. In line with Article 74(1)(b) CPR, the beneficiary should receive the amount due in full and no later than 80 days from the date of submission of the payment claim by the beneficiary – and this condition is satisfied if the amount related to incurred expenditure is paid into the escrow account. This is without prejudice to the timing of payments from the escrow accounts, which would follow the agreed timeline and conditions established in the PPP agreement and could be affected after the eligibility period.

In any event, the definition of escrow account, under Article 2(39), simply aims at describing the genuine functioning of such accounts, releasing payments to private partners over the lifetime of PPP projects, irrespectively of the eligibility period. This definition cannot preclude the application of legal provisions of Article 63(2) regulating the eligibility of expenditure.

BACKGROUND INFORMATIONM (the original question asked):

Question (including relevant facts and information):

We would like to ask for your confirmation that our approach described below is in line with the CPR.

Provisions concerned:

Article 2, point 39:

'escrow account' means, in case of a PPP operation, a bank account covered by a written agreement between a public body beneficiary and a private partner approved by the managing authority or an intermediate body used for payments during or after the eligibility period;

- recital 46 [added in reference to Article 53(1)(a)]:

In order to provide the necessary flexibility for implementation of PPPs, the PPP agreement should specify when expenditure is considered eligible, in particular under which conditions it is incurred by the beneficiary or by the private partner of the PPP irrespective of who is carrying out the payments in implementing the PPP operation.

- Article 51(b)

The Union contribution may take any of the following forms:

(b) reimbursement of support provided to beneficiaries in accordance with Chapter II and Chapter III of this Title.

- Article 53(1)(a) :

Grants provided by Member States to beneficiaries may take any of the following forms:

(a) reimbursement of eligible costs actually incurred by a beneficiary or the private partner of PPP operations and paid in implementing operations, contributions in kind and depreciation;

- Article 63(2)

Expenditure shall be eligible for a contribution from the Funds if it has been incurred by a beneficiary or the private partner of a PPP operation and paid in implementing operations, between the date of submission of the programme to the Commission or from 1 January 2021, whichever date is earlier, and 31 December 2029.

- Article 74

For PPP operations, the managing authority shall make payments to an escrow account set up for that purpose in the name of the beneficiary for use in accordance with the PPP agreement.

Description of the proposed approach:

In accordance with the above-mentioned provisions and in order to maximize the advantages of the PPP scheme, we are planning to introduce a scheme for reimbursing costs in PPP operations as follows:

Step 1.

The beneficiary (a public law body) applies to the managing authority (MA) for an advance payment covering all costs of the private partner (de facto: the contractor) indicated in the PPP agreement. The PPP agreement will be one of the annexes to the co-financing agreement.

Step 2.

The MA transfers the advance payment to the escrow account. The advance payment reflects all investment costs of the project as defined in the PPP agreement.

Step 3.

The beneficiary transfers the funds from the escrow account in line with the provisions of the PPP agreement. Important: the transfers of the funds to the private partner may be conducted during or after the eligibility period, depending on the prior arrangements set out in the PPP agreement between the contracting parties (i.e. the beneficiary and the private partner – as it is regulated in the current programming period, specifically in Regulation (EU) No 1303/2013 Article 64.1-3).

Step 4.

Before the end of the eligibility period the MA verifies, whether all the works that were the basis for the advance payment:

- were actually completed,

- are reflected in the technical documentation and 3

- were carried out in accordance with the PPP agreement and applicable law.

The verification process is analogous to the well-known process of approval of construction investments under the construction law applicable in the EU countries.

The MA will verify the completion of works mainly on the basis of the technical documentation of the investment, but it will do on-the-spot checks as well. (Before the MA does the verification, the documentation is going to be approved and signed by the entities obliged by the construction law, e.g. building inspector, construction manager or chief engineer.)

A successful verification of the works means that the advance payment made to the public entity has been cleared.

To sum up, our main concerns are:

1) Is it possible for the MA to pay the advance payment to the beneficiary (a public law body) that would cover all the investment costs defined in the PPP agreement?

2) Can the advance payment be recognized as settled if the investment works are positively verified by the MA?

3) Can the advance payment be certified to the Commission as soon as it is deposited into the escrow account (i.e. before investment works have started and cost have been incurred by the private partner)?

Answer:

The implementation of PPP operations is ruled by the several provisions and principles:

- The managing authority shall carry out payments to an escrow account;
- The beneficiary is either the public body initiating a PPP operation or the private partner selected for its implementation;
- Expenditure shall be incurred by a beneficiary or the private partner of PPP operations and paid in implementing the operations;
- The PPP agreement should specify when expenditure is considered eligible, in particular under which conditions it is incurred by the beneficiary or by the private partner of the PPP, irrespective of who is carrying out the payments in implementing the PPP operation. This principle echoes the practices in implementing PPP operations, whereby the private partner is remunerated by the public body based on arrangements detailed in the PPP agreement including where these payments are decoupled from the actual investment

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

costs incurred by the private partner, pursuant to the construction risk borne by this latter. The PPP agreement should in particular detail the conditions linked to the payments made by the public body to the private partner (on the quality of the construction works and implementation timetable notably).

It stems from the above that the following mechanisms should be followed, replying to the questions raised:

- There is no rule limiting the capacity of the managing authority to provide advance payment(s) to the beneficiaries, for cash flow purposes. In this regard, the whole amount of the grant can be paid to the public body, as beneficiary, in the escrow account;

- This advance payment can only be declared for reimbursement to the Commission, if it complies with the conditions set out in Article 91(5) of the CPR.

- In any case, expenditure incurred by the beneficiary, and the payments made by the beneficiary to private partner for implementing the operation, pursuant to the arrangements detailed in the PPP agreement and within a period between 1 January 2021 and 31 December 2029, may be considered as eligible expenditure and can be declared to the Commission by the managing authority after having carried out the necessary verifications provided for in Article 74 1(a)(i) and (2)) of the CPR.

As any other operation, the PPP operation has to be selected by the managing authority in line with requirements of Article 73 of the CPR.

QA00045 - THE DATE OF ELIGIBILITY OF OPERATIONS AND THE COLLABORATIVE ACTIONS

Relevant Article: Article 63(2) of the CPR

Member State: FR

Question 1 (including any relevant facts and information):

1. The French national authorities request confirmation from the Commission that the term "… in implementing operations" in Article 63(2) of the CPR relate to the **payment** of the operation and not to the date at which the beneficiary has incurred the operation (**commitment**).

2. The French national authorities request confirmation from the Commission that the national provisions concerning "collaborative actions" are in conformity with the EU legislation.

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

1. As stated in Article 63(2) of the CPR, the timeframe specified for the eligibility of expenditure concerns both the incurring of the expenditure and the date of the payment. Thus, to be eligible, expenditure must be incurred by the beneficiaries and paid in implementing operations after the submission of the programme or after the 1 January 2021 – whichever is the earlier.
2. It is the responsibility of the national authorities to check that the national regulations and rules taken in addition or when implementing the EU law are in conformity with the EU law, including with state aid rules.

QA00046 - IRRECOVERABLE AMOUNTS

Relevant Article: Article 98(3) of the CPR

Member State: FR

Question 1 (including any relevant facts and information):

The appendices on recoveries, outstanding amounts, irrecoverable amounts and advances paid in the context of state aid in the accounts will disappear for the 2021-2027 programming period. Thus, recoveries will only be entered in the accounts using the 'immediate withdrawal' method.

We understand that the recovery obligation is only foreseen in the CPR in two specific cases:

- Operations subject to the principle of durability
- State aid operations

Both above covered by Article 65 of the CPR.

Does the Commission confirm that these are the only two cases?

In the execution part of SFC2021 (see fields irrecoverable amounts on SFC2014), will findings of irrecoverable irregularities be declared by the managing authorities to the Commission for the 2021-2027 programming period (see Delegated Regulation (EU) 2016/568)?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Please, note that there is an appendix for advances paid in the context of state aid – Appendix 7 of Annex XXIV. Recovery of funds is a Member State responsibility in all cases. No reporting template on this matter exists anymore.

The Commission is concerned only with regard to withdrawals of amounts, in accordance with Articles 98(3)(b), 98(6) and 98(7) of the CPR, including those related to irregular expenditure linked to Article 65(1) and 65(2) CPR or repayment of such amounts in accordance with Article 88 of the CPR.

Concerning the second question the reply is no, irrecoverable amounts cannot be reported in SFC2021, including in the accounts, as there is no specific field for this.

QA00047 - ELIGIBILITY OF OPERATING AID TO INNOVATION CLUSTERS

Relevant Article: Article 5(1) ERDF Regulation

Member State: DK

Question 1 (including any relevant facts and information):

Can DK support operating costs of the Innovation clusters within the SO 1.1 of the ERDF OP? The costs foreseen for support would be those pursuant to Article 27 GBER. These sector specific clusters are the corner stone of their Smart specialization strategy.

Answer:

As a general rule, operating costs are not included within the scope of support of the ERDF cf. Art. 5 ERDF Regulation (an exception is only provided for in the context of the specific additional allocation for the outermost regions, cf. Art. 14 (2)(b) ERDF Regulation. The notion of "operating cost" is not defined under cohesion policy rules.

The General Block Exemption Regulation (GBER)[1] details, under Article 27(8), the categories of operating costs (personal and administrative costs) eligible to aid for innovative clusters, as follows:

- Animation of the cluster to facilitate collaboration, information sharing and the provision or channelling of specialised and customised business support services;

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- Marketing of the cluster to increase participation of new undertakings or organisations and to increase visibility;
- Management of the cluster's facilities; organisation of training programmes, workshops and conferences to support knowledge sharing and networking and transnational cooperation.

Some of these costs may be eligible for the ERDF, where they contribute to the specific objective "*Developing and enhancing research and innovation capacities and the uptake of advanced technologies*" and can be considered as falling within the scope of the ERDF such as:

- networking, cooperation, exchange of experience and activities involving innovation clusters including between businesses, research organisations and public authorities;
- information, communication and studies.

This requires a case-by-case assessment.

---

[1] Commission Regulation (EU) No 651/2014

QA00048 - FLEXIBILITY AMOUNT AND FUTURE TRANSFERS OF ERDF ALLOCATIONS BETWEEN PROGRAMMES

Relevant Articles: Articles 18, 22 and 86 of the CPR

Member State: CZ

Question 1 (including any relevant facts and information):

Background: CZ contemplates to shift parts of the allocations between programmes (within same fund - ERDF) to optimize spending of resources according to abilities of programmes to spend fast in the early years of the period. The sum of the fund allocation remains the same in each year, so that the annual breakdown would be in line with the EC proposal. The result is a non-linear allocation/spending profile in particular financial table/s of programmes affected by this shift (see the proposal in the table attached).

In case of CZ this would apply to parts of the ERDF allocations of OP JAK and OP Transport. Both programmes are composed of two funds, but it should be stressed that the shift would concern just the ERDF part, the other funds will remain absolutely

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

intact in both programmes, all standard provisions and procedures will apply to them regardless of the processes concerning the ERDF.

According to CPR Art. 86 there should be a „flexibility amount" indicated in a particular financial table/s of a programme. In the model described above, the ERDF resources of one of the programmes are concentrated to the first three years of the period. It implies that there are no ERDF allocations left for the last two years of the period in one of the programmes, at the same time allocations for the last two years of the period in the other programme increasing accordingly.

Q1: Is this solution applicable or there should be allocations different from zero in particular financial table/s of a programme in case of both funds?

Q2: In scenario B, the shifts for 2026 and 2027 would concern only 50% of the allocation for these last two years (i.e. not touching the flexibility amount). Would then only 50 % of the allocation of the last two years be sufficient to fill in the particular financial table/s of a programme?

Answer:

Pursuant to Article 22(6) CPR, the financing shall include amounts for 2021 to 2027, including the flexibility amount, with a view to increasing the adaptability of programmes to unforeseen circumstances of policy priorities.

Pursuant to Article 86(1) CPR, the flexibility amount, corresponding to 50% of the allocations for 2026 and 2027, shall be retained and definitively allocated to the programmes after the mid-term review.

Pursuant to Article 86(2) CPR, commitments for each programme shall be made in annual instalments for each Fund during the 2021-2027 period.

While it is clear that the underlying logic of the Regulation and the programming Annexes is that the programme financing consists of yearly financial allocations for the years 2021 to 2027, it is not explicitly excluded that frontloading of annual commitments in one programme could take place (with the corresponding backloading in other programme(s) in order to keep the overall global resources for the ERDF by the Member State under the Investment for jobs and growth goal, i.e: MFF profile), but the following **policy considerations** need to be taken into account:

Cohesion policy is a multiannual policy, designed to be implemented over the course of a decade, and to be adaptable and modifiable so as to address changing circumstances. The multiannual programming perspective also provides visibility to stakeholders, together with a guarantee of available financial support. The frontloading of programme resources in certain programmes would generally run counter to these principles, as it would make programmes unnecessarily time-limited and inflexible, as funding would be used up before the end of the programming period.

In addition, the purpose of the flexibility amount and the intention of the co-legislator when agreeing on this provision was to provide further adaptability in the implementation of cohesion policy, enabling resources to be redirected, if needed, in

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

view of unforeseen socio-economic challenges or emerging policy priorities. It is therefore important that these amounts are sufficient and available in each programme to effectively provide for the desired adaptability.

In that respect, programming zero amounts for the last years of the period should not be envisaged. However, in order to give Member States flexibility in their programming, if duly justified, at programme level the annual amounts can deviate by up to +/-50% from the Member State's Fund allocation for the year scaled down in proportion to the programme's fund allocation within the Member State envelope as defined in the implementing act.

As regards the above mentioned "scenario B", it is not possible to implement such a construction. The flexibility amount is always half of whatever amounts are included in a programme for 2026 and 2027.

QA00050 - DATA FIELD 137, ANNEX XVII

Relevant Articles:

Article 64 and 67 of the CPR

Annex XVII of the CPR

Member State: DE

Question 1 (including any relevant facts and information):

Data expected:

1. expenditure on the purchase of land

2. expenditure relating to the purchase of land

3. Reason for exceeding the ceilings

This article limits the eligibility of land acquisition to 10 % and 15 % of the total eligible expenditure of the operation. The last subparagraph of Article 64 (1) of Regulation (EU) No 2021/1060 states that this limitation does not apply to environmental protection measures.

However, as paragraph 1 also lays down rules on eligibility, such as VAT, it is unclear, according to the wording of the box, which reasons should be given for exceeding the ceiling.

1. Which expenditure should be allocated to data 1 and 2?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Data 1: Only purchase price

Data 2: All charges (taxes, notaries, land register, etc.)

1. Is one reason expected for each overshooting of the ceilings, i.e. even if the ceiling is exceeded by 10 %?
2. What are the reasons for exceeding the limits for the acquisition of land? Is it sufficient to refer to the permissible reasons for the exceedance?
3. Is the expression "financing of environmental protection measures" sufficient to justify in cases of exceedances due to environmental protection measures, or, for example, must an appropriate scope of intervention be provided? If so, what scope of intervention is accepted for this purpose?

Answer:

1) The purpose of the field 137 in Annex XVII CPR is to monitor the limits set out in Article 64(1) CPR, in particular under its point (b), related to the purchase of land. The field is to contain the amount of incurred and paid eligible expenditure for land purchase. Such an amount may contain accompanying charges, taxes or fees, when they constitute a cost for beneficiary, depending on detailed eligibility rules set up at national level. In relation to value added tax eligibility rules set out in Article 64(1)(c) apply.

In relation to contributions in kind in the form of provision of land, Article 67(1), CPR stipulates that the value of land as certified by an independent qualified expert or duly authorised official body should not exceed the limit set out in point (b) of Article 64(1)(b) CPR. Valuations of land usually do not take into account related charges or taxes. So in case of contributions in kind data field 137 should contain the value of land without charges or taxes unless there is an established practice in Member State to include them in valuations.

2) Purchase of land shall not exceed 10% of the total eligible expenditure for the operation concerned. For derelict sites and for those formerly in industrial use which comprise buildings, the limit has been raised to 15%. The amount inserted in field 137 of annex XVII CPR cannot exceed the limits set out in the regulation. Additionally, the second subparagraph of Article 64(1) CPR stipulates that the limits set out in Article 64(1)(b) do not apply to operations concerning environmental conservation.

a) An operation may exceed the ceilings only if it concerns environmental conservation.

Filed 137 in annex XVII CPR needs this reason.

3) The main reason could be accompanied by a short reference to the scope of the measure (e.g. restoration of a Natura 2000 site, restoration of a wetland).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00051 - SECOND-LEVEL CONTROL IN THE CASE OF ERDF-FUNDED CLLD, WITH EAFRD AS LEAD FUND

Relevant Article: Art. 3(1)(e)(ii) of the ERDF regulation; Art. 31(4) to (6) of the CPR

Member State: AT

Question 1 (including any relevant facts and information):

In the Austrian ERDF mainstream programme 2021-27, it is foreseen to support CLLD (Community Led Local Development) under specific objective 5.2 (Art. 3(1)(e)(ii) of the ERDF regulation no. 2021/1058 for 2021-27), with the EAFRD as lead-fund (see art. 31(4) of the CPR for 2021-27, regulation no. 2021/1060). Article 31(5) on CLLD in the CPR reads: "While respecting the scope and the eligibility rules of each fund involved in supporting the strategy, the rules of the Lead Fund shall apply to that strategy. The authorities of other funds shall rely on decisions and management verifications made by the competent authority of the Lead Fund."

The draft Austrian ERDF mainstream programme for 2021-27 contains the following statement:

„Die Abwicklung von CLLD erfolgt ausschließlich auf Basis der Vorgaben des ELER als federführender Fonds („Lead-Fonds") gemäß VO (EU) Nr. XX/20XX unter Berücksichtigung allfälliger zusätzlicher EU-Vorgaben des EFRE. **Dies betrifft auch die Kontrolle 2. Ebene**. Die Zahlstelle im EFRE zahlt auf Basis der Prüfergebnisse des „Lead-Fonds" aus und führt keine zusätzlichen Kontrollschritte durch."

"CLLD is implemented solely on the basis of the requirements of the EAFRD as lead fund in accordance with Regulation (EU) No XX/20XX, taking into account any additional EU requirements from the ERDF. **This also concerns the second-level control**. The "body in charge of the accounting function" in the ERDF pays on the basis of the audit results of the 'lead fund', and does not carry out any additional control steps."

The question is if the second-level control of CLLD-support with the ERDF can be carried out solely on the basis of the requirements of the EAFRD as lead fund in accordance with the Regulation? The sentence in bold above ("This also concerns the second-level control") could be understood in a way that the audit authority of the lead fund (EAFRD) carries out the second-level control for CLLD, and not the ERDF audit authority. Is this possible?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The Lead Fund rules applicable to all the operations under the CLLD strategy concern all decisions and management verifications, including checks, grant and payment decisions, controls, as well as possible corrections or penalties. As stated in Article 31(5) CPR, the scope and the eligibility rules of each fund involved in supporting the strategy should be respected. In practice, the Lead Fund approach means that the Lead Fund authorities handle all matters with beneficiaries except for making payments, for which they provide the authorities of other Funds with information necessary to monitor and make payments in accordance with the Fund-specific rules.

Audit work carried out by the competent Lead Fund authority should also apply to all the contributing funds. Following the single audit principle, as specifically set out in Article 80(1) CPR, the audit authority of those Funds can rely on the opinion of the competent Lead Fund authority when issuing assurance on the functioning of the management system and the legality and regularity of expenditure of the CLLD operations.

QA00052 - SUPPORT TO ALL PREPARATORY, MANAGEMENT AND ANIMATION FROM ERDF FOR THE LOCAL ACTION GROUPS IN THE CONTEXT OF A MULTI-FUNDED CLLD STRATEGY

Relevant Article: Art 31 of the CPR

Member State: RO

Question 1 (including any relevant facts and information):

According to Article 31(3) CPR we understand that where support to Community-led local development strategies is available from more than one Fund, the relevant managing authorities may choose one of the Funds concerned to support all preparatory, management and animation costs. In case ESF + is the Lead fund, can the relevant MA choose ERDF to support the above mentioned costs?

Answer:

CLLD strategies may be supported by one or several of the Funds covered by the Article 31 CPR directly (i.e. ERDF, the ESF+, the JTF and the EMFAF) and by the EAFRD, which is linked to the CPR through Article 2(2) of the CAP regulation (COM proposal of 1.6.2018).

In case support to a CLLD strategy is available from more than one fund, the relevant Managing Authorities may

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- in accordance with paragraph (3) of Article 31 of the CPR, decide to use only one of those funds to cover all preparatory, management and animation costs related to strategies with respect to the conditions set out in Article 34(2) of the CPR;
- in accordance with paragraph (4) of Article 31 of the CPR, choose one of the Funds providing support as the "Lead Fund", which would mean that only the rules of the Lead Fund would apply to the strategy implemented, while respecting the conditions set out in paragraphs (5)-(6) of Article 31 of the CPR.

These are two options provided by the regulation that do not exclude each other. Therefore it is possible to use ERDF resources to cover all preparatory, management and animation costs as referred to in points (a) and (c) of Article 34(1) CPR related to CLLD strategies while at the same time having ESF+ as the Lead Fund.

QA00053 - ALLOWANCES PAID IN CASH

Relevant Article: Article 56(2) of the CPR

Member State: NL

Question 1 (including any relevant facts and information):

Shall allowances paid to participants who voluntarily return to their country of origin to reintegrate, paid both in cash and in kind be considered additional eligible costs not included in the flat rate?

Answer:

First, it should be noted that it is the responsibility of the managing authority to define the eligible costs for each type of operation and define as well whether these are direct or indirect costs. Given that the CPR does not contain a definition, the meaning of allowance is understood in the context of the relevant provision, in relation to staff costs, as a sum of money paid to participants for possible expenses related to the objective of a given project. Thus, in the case described in the background, only the amount of "max euro 300 paid in cash for incidentals" can be considered as an additional eligible cost not included in the flat rate.

Other amounts mentioned in the background could be considered in principle as direct costs based on real costs and they are paid on the basis of proof of payment.

Background provided by the NL

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Background information provided by the NL:

The Repatriation and Departure Service (DT&V) can provide return assistance to foreign nationals who want to leave the Netherlands. Part of this service is the 'Return and Emigration Assistance from the Netherlands' (REAN) programme. This program supports foreign nationals with their departure from the Netherlands by a.o. the purchase of plane tickets, assistance to and at the airport, counselling and possibly a return allowance (=terug keer vergoeding) of max euro 300 paid in cash for incidentals. The actual amount per beneficiary depends on the country of origin and are based on living expenses and needs. The program is implemented by IOM.

Once returned to their country of origin foreign nationals who have chosen for voluntary return may get assistance in their country of origin through the Assisted Voluntary Return and Reintegration (AVRR) implemented by IOM's country offices. By submitting a re-integration plan they can get assistance to up to a maximum of euro 1800 per adult and euro 2800 per child. This is the re-integration allowance. This can only be obtained by submitting a detailed reintegration plan and can be spent on temporary housing, inventory and rent for a startup business, etc. These costs are based on real costs and can be paid to the beneficiary on the basis of proof of payment or can be paid directly to the vendor by IOM. Up to a maximum of euro 300 can be paid in cash to the participant.

(These amounts are subject to change and are reviewed and recorded in the REAN and AVRR)

QA00054 - QUESTIONS ON THE ACCOUNTING FUNCTION AND PAYMENT APPLICATION

Relevant Articles: Art. 76, 91 and 93 CPR

Member State: LV

Question 1 (including any relevant facts and information):

In the framework of changes in Management information system for the new EU fund planning period 2021-2027, we (responsible for accounting function (AF)) have several questions about functions of AF and preparation of Payment application and Accounts:

Functions

1. Article 76 of CPR does not lay down directly the obligation for AF to account expenditure, which could be declared, and withdrawals in a separate accounting system. Responsibility for accounting expenditure is indirectly mentioned only in point a), c), d) of Article 91 (3) (….as entered in the system of the body carrying out the

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

accounting function) and point a) of Article 98 (3) (…entered into the accounting systems of the body carrying out the accounting function), however accounting of withdrawals is not mentioned at all.

In this regard could the Management information system, where all the data on operations are ensured by Intermediate body, and which ensures automatic generation of payment applications and accounts, including records of all deductions and withdrawals performed by AF, be considered as the system mentioned in point 3 a), c), d) of Article 91?

2. Point 2 of Article 76 foresees that AF shall not comprise verifications at the level of beneficiaries. Please confirm, that our understanding is correct and the AF shall not perform any kind of verifications not only at the beneficiary level, but also at the Intermediate body and Managing Authority level, since by signing Payment application and Accounts the AF does not certify eligibility of expenditure, but only confirms technical correctness and completeness of data?

3. In case it will be agreed in the Programme that the Commission will pay Union contribution based on point a), c), d) and e) of Article 51, please clarify or provide some references to documents/guidance which explain:

3.1. how the AF can get such an information on expenditure to be declared;

3.2. whether the AF should in addition to Managing Authority/Intermediate Body controls verify that the conditions for reimbursement from the Commission have been fulfilled;

Should this data come from the operations? If the form of grant to beneficiary differs from the form of contribution from the Commission, should the Intermediate body ensure the information about both flows of approved expenditure – one to be paid to beneficiary and another to be declared in Payment application?

4. Comparing to CPR (2014-2020) the new CPR does not imply the obligation for AF to take into account results of management verification and controls performed by Audit Authority. Does it mean that AF can declare expenditure in Payment application without any corrections and additional evaluation of the impact of above-mentioned results on expenditures included in the PA?

5. Does the Commission intend to issue some guidance on preparation of PA and Accounts, since in our opinion the requirements are more complicated comparing to the previous planning period.

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

1. Overall, recovery of funds is a Member State responsibility in all cases. No reporting template on this matter exists anymore. The Commission is concerned only with regard to withdrawals of amounts, in accordance with Articles 98(3)(b), 98(6) and 98(7) of the CPR, including those related to irregular expenditure linked to Article 65(1) and 65(2) CPR or repayment of such amounts in accordance with Article 88 CPR. Article 76(1)(b) CPR sets out that the body fulfilling accounting functions should keep electronic records of all the elements of the accounts, including payment applications. Article 91 of the CPR sets out that the payment application should be based on amounts "as entered in the system of the body carrying out the accounting function". Commission services at this stage are not in the position to confirm if the system is compliant with these requirements solely based on the provided brief description. In all cases, the system should be under the responsibility of the programme authorities, i.e.: managing authority or the body carrying out the accounting function (AF). Furthermore, we draw also your attention that the Audit strategy of the audit authority shall, based on a risk assessment, include also system audits of authorities in charge of accounting function.

2. The understanding in the question is correct.

3. Practical arrangements for exchange of information between the bodies at the national level should be agreed by the relevant bodies themselves, including for simplified cost options (SCO) and financing not linked to costs (FNLTC) schemes, as the implementation of the accounting function and underlying reliance on the information provided by the MA or AA should not differ whether COM reimburses based on expenditure incurred or amounts covered by a SCO/FNLTC scheme. In case when the expenditure declared by the beneficiary is the same as the expenditure declared by the MS to the Commission, declaration of expenditure will follow standard procedures as for operations declaring real costs. In case of differences between the amounts declared by and reimbursed to the beneficiaries and the SCO amounts declared to the Commission, the national authorities are still obliged to keep, among others, proof of payment of the public contribution to the beneficiary and of the date when the payment was made (see section 3 of Annex XIII to CPR presenting obligatory elements of audit trail for reimbursement of the Union contribution by the Commission under Article 94 CPR to be kept at the level of the managing authority/intermediate body).
   In accordance with Article 94 (3) CPR, the unit costs, lump sums and flat rates will be subject to management verifications and Commission and MS audits aiming only at verifying that the conditions for reimbursement by the Commission have been fulfilled. The accounting function should limit itself to the functions foreseen by the Article 76 CPR and not duplicate management verifications of the managing authority.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

4. Article 98(6) CPR sets out that irregular expenditure and expenditure subject to ongoing assessment should be deducted from the (annual) accounts and the accounts include the amounts withdrawn during the accounting year in line with Article 98(3)(b) and 98(7) CPR. The Article also provides that amounts subject to ongoing assessment may be introduced in the payment applications for subsequent accounting years once their legality and regularity is confirmed. In line with Article 74(1)(d) CPR the managing authority shall prevent, detect and correct irregularities and the Commission may suspend all or part of payments if the expenditure in payment applications is linked to an irregularity that has not been corrected, as provided for in Article 97(1)(c) CPR. The body carrying out the accounting function shall take account of these requirements and have arrangements with the managing authority and the audit authority on these aspects.

5. The Commission does not foresee the adoption of any guidance on this subject.

QA00056 - CAN PO1, IN PARTICULAR SO1.II, PROVIDE SUPPORT FOR INVESTMENTS IN VIDEO- AND OTHER TYPES OF SURVEILLANCE?

Relevant Articles:

Article 3(1)(a) and (e) of the ERDF Regulation

Article 29(1) CPR

Member State: IT

Question 1 (including any relevant facts and information):

A first draft of a programme for Italy called "Security and Legality" contains proposals for investments to fight crime and corruption and increase security. The entire programme is proposed to be co-financed by PO1 - SO1.ii. The interventions proposed include video- and potentially other types of surveillance in business parks/zones, touristic areas and urban areas.

The Italian authorities have in mind to address this with a sectoral strategy for a territory, i.e. the local police stations are to draw up a strategy. To what extent, if any, are actions of this type eligible under PO1 - SO1.ii, also in view of the fact that "security" is explicitly referred to under PO5 – SO 5.i and 5.ii?

Would the answer to the previous question depend on whether it concerns business parks/zones, touristic areas or urban areas?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

- Equipment for video- or other types of surveillance does not fit the digitisation of the public administration as envisaged under SO1.ii (reaping the benefits of digitisation for citizens, companies, research organisations and public authorities). By contrast, applications for the digital handling of surveillance or other data could be considered eligible under this SO in case these are new or significantly upgraded services for e-government.
- Promoting security is an objective mentioned under PO5 and therefore surveillance equipment would be eligible under this PO; but that means that it must be part of territorial or local development strategies for the area(s) concerned envisaged by this PO.
- Whether it concerns a business area, touristic area or urban area is not relevant: in all such cases, the need for video- or other types of surveillance equipment has to be identified through a territorial or local development strategy under PO5.
- The territorial strategy needs to comply with the conditions set out in Article 29 CPR to ensure, amongst others, that the strategy is multi-sectoral and governed by the relevant territorial authorities or bodies (because general development needs and the potential of the area are to be addressed in an integrated territorial approach).

QA00057 - START DATE OF ELIGIBILITY FOR THE JTF

Relevant Articles:

Articles 22 and 63 of the CPR

Article 10 of the JTF

Member State: DE

Question 1 (including any relevant facts and information):

The JTF can be integrated as an axis through an amendment in another cohesion policy programme that becomes a multi-funds programme through the amendment.

Is it correct that all intervention types used in the ERDF programme (e.g. 047 or 089) and later in the course of an amendment also in the JTF axis integrated into that ERDF

Programme, would be eligible from 1 January 2021, while those not covered by the ERDF but, e.g., by the ESF+ Programme, but included in the JTF (e.g. 134 or 136) would only be eligible as of submission of the amendment?

Moreover, the measures included in a self-standing JTF Programme would be eligible as of 1 January 2021, since it would be a separate programme and not part of an amendment to an existing programme, which risks containing different intervention types than those needed under the JTF.

It seems strange that the integration of a programme into another programme through an amendment (here JTF into ERDF) is treated like a 'regular' amendment of the programme, where new intervention types are added and therefore only eligible as from integration, while introducing a separate JTF programme on the same day would mean that all intervention types would be eligible as from 1.1.2021.

This also seems to discourage MSs, most of which intend to include the JTF as an amendment of their ERDF programmes from including ESF+ like interventions in their JTF axis. Moreover, it discourages them from choosing interventions, which are different from their ERDF interventions.

Answer:

In accordance with Article 63 of the CPR, the eligibility rules for new investments differ according to the programme status:

1. **In the case of expenditure introduced into a programme submitted to the Commission for the first time for adoption, the rules under Article 63(2) of the CPR apply.**

   In this case, expenditure would be eligible for a contribution from the Funds if it has been incurred by a beneficiary and paid by a relevant body between the date of submission of the programme to the Commission or from 1 January 2021 (whichever date is earlier) and 31 December 2029. As the Commission has not received any programme prior to 2021, this means in practice that the starting eligibility date for all programmes will be 1 January 2021.

2. **In the case of expenditure introduced into a programme through a request for its amendment, the rules under Article 63(7) of the CPR will apply.** In this case, expenditure would be eligible for a contribution from the Funds from the date of the submission of the corresponding request to the Commission unless the programme already contains the same code of intervention of those listed in Table 1 of Annex I of the CPR. The latter applies only to the programmes supported by the ERDF, CF and/ or JTF (not to the ESF+ resources). In any case, new expenditure needs to comply with all other support conditions, as laid down in the CPR or Fund-specific regulations.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

These rules have a horizontal character and, in fact, there are no derogations on the starting date of eligibility of expenditure in the Fund-specific regulations: in neither the ERDF/CF Regulation nor the JTF one.

In line with Article 10(1) of the JTF regulation and Article 22(8) of the CPR, the Member State may freely decide the programming method for the JTF: approval as a stand-alone programme or as part of a programme or as part of a request for a programme amendment. However, this decision will determine the starting date of eligibility for the JTF in accordance with Article 63 of the CPR. The fact that Article 10(1) of the JTF Regulation and paragraph 8 of Article 22 of the CPR allows the Member States to have the JTF resources approved as part of a programme submitted for adoption or of a request for amendment, does not alter the rules on the starting date of eligibility, thus does not provide for a derogation from Article 63. Therefore, the starting date of eligibility may differ as follows:

1. **In the case of JTF expenditure introduced into a self-standing programme or as part of a programme submitted to the Commission for the first time for adoption, the rules under Article 63(2) of the CPR apply.** In this case, JTF expenditure would be eligible 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 2021 (whichever date is earlier) and 31 December 2029.
2. **In the case of JTF expenditure introduced into an already adopted programme through a formal request for amendment, the rules under Article 63(7) of the CPR will apply.**

In this case, expenditure would be eligible for a contribution from the JTF from the date of the submission of the corresponding request to the Commission unless the programme already contains the same code of intervention of those listed in Table 1 of Annex I of the CPR. Then, the eligibility date will be set to 1 January 2021[1]. This is regardless of whether the code is associated in the programme to the ERDF, ESF+, CF or JTF specific objective. This could be the case of a multi-fund programme with a broad thematic coverage and thus containing numerous categories of intervention.

In any case, new expenditure under the JTF will still have to comply with all applicable support conditions under the CPR and the JTF Regulations, e.g. expenditure related to operations should contribute to the implementation of the relevant territorial just transition plan etc.

Finally, it should be clarified that the option outlined by the Member State in the question ("*the integration of a programme into another programme through an amendment (here JTF into ERDF)"*) is technically not considered as the merging of programmes. It is understood as the introduction of JTF resources in an adopted programme with ERDF resources via a programme amendment.

[1] Or later depending on when the relevant codes of intervention were introduced into the programme through its amendment.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00058 - 25 % LIMIT LINKED TO THE TERRITORIAL STRATEGY / CLLD

Relevant Article: Article 34 of the CPR

Member State: FR

Question 1 (including any relevant facts and information):

The question concerns the clarification of provisions of Article 34 of Regulation (EU) 2021/1060: "*1. The Member State shall ensure that support from the Funds for community-led local development covers: (a) capacity building and preparatory actions supporting the design and future implementation of the strategy, […] (c) the management, monitoring and evaluation of the strategy and its animation, including the facilitation of exchanges between stakeholders. 2. […] The support referred to under point (c) of paragraph 1 shall not exceed 25 % of the total public contribution to the strategy*".

Should the 25% limit be calculated on the basis of the total public expenditure of all the Funds that are supporting the (multi-funded) CLLD strategy (in this case ERDF and EAFRD) or should the ceiling be calculated on the basis of the total public expenditure of all the Funds that are supporting the (multi-funded) CLLD strategy + any additional public contribution relating to the local development strategy?

Answer:

According to the second paragraph of Article 34(2) CPR, the support from the CPR Funds listed in Article 31(1) CPR to a CLLD strategy for the management, monitoring and evaluation of the strategy and its animation, including the facilitation of exchanges between stakeholders (referred to under point (c) of Article 34(1) CPR) shall not exceed 25 % of the total public contribution to the strategy.

The total public contribution to the strategy should include any public contribution to the strategy - as defined in point 28 of Article 2 CPR – i.e. the source of which is the budget of national, regional or local public authorities, the budget of the Union made available to the Funds, the budget of public law bodies or the budget of associations of public authorities or of public law bodies.

Consequently, in the example provided in the question, the maximum amount of the support from the ERDF should be calculated on the basis of the total public

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

contribution to the strategy from the ERDF and the EAFRD (EU and national contribution) together with any additional public contribution to the strategy.

QA00059 - APPLICATION OF ARTICLE 6 OF THE JTF REGULATION TO INSULAR TERRITORIES THAT DO NOT CONSTITUTE AN ENTIRE ISLAND

Relevant Articles:

Article 6 and Article 11 of the JTF

Article 22 of the CPR

Member State: IT

Question 1 (including any relevant facts and information):

Does Article 6 of the JTF Regulation on "Specific allocations for outermost regions and islands" apply when a territory (NUTS 3) included in a territorial just transition plan is part of an island but is not the island in its entirety? The specific case concerned is the Sulcis-Iglesiente area in Southwest Sardinia: Sulcis-Iglesiente is a NUTS3 area that is part of the Sardinia island region, which is a NUTS 2 area.

Secondly, would it be possible to modify the specific allocation to the (part of the) island during programme implementation and if so, should this be done through a programme amendment?

Note that the JTF assistance for Sulcis-Iglesiente and for the other JTF designated NUTS3 area in Italy (Taranto in the Apulia region) will be covered by one single dedicated JTF Programme.

Answer:

Question 1:

Yes, Article 6 JTF applies even if the selected JTF territory is just part of an island as in the current case the Sulcis-Iglesiente area is part of a NUTS 3 area, as requested by Article 11(1) of the JTF Regulation on the Territorial Just Transition Plan (TJTP).

Question 2:

When including such territories in their TJTP, Member States should set out the specific amount allocated for those territories under section 1.3 of the TJTP together with the corresponding justification, reflecting their specific challenges and capacity to finance the necessary investments.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In accordance with Article 22(8) of the Common Provisions Regulation territorial just transition plans are an integral part of the programme. Thus, any modification of the allocation under section 1.3 has to be considered an amendment of the relevant programme(s) triggering the need to notify the amendment and to get it approved by Commission decision, based on Article 24 of the Common Provisions Regulation.

QA00060 - POSSIBILITY OF PROCURING PROJECTS

Relevant Article: Article 52 of the CPR

Member State: SE

Question 1 (including any relevant facts and information):

Article 52 (Forms of support) in the CRP states "Member States shall use the contribution from the Funds to provide support to beneficiaries in the form of grants, financial instruments or prizes, or a combination thereof." Does this wording mean that it is not possible to use the contribution from the Funds to procure projects? If procurement of projects is still an option under shared management (like in current FEAD) — where do we find legal support for this?

Answer:

Public procurement is not a "form of support to beneficiaries" in accordance with Article 52 of the CPR, however, beneficiaries when receiving support from the Funds should implement operations in accordance with the rules on public procurement where relevant, namely Directives 2014/23, 2014/24 and 2014/25.".

It should be noted that public procurement was never considered as a form of support for the European Structural and Investment Funds in 2014-2020. This form of support was only provided for the FEAD. The reason for this was because in the case of the FEAD a great part of the support received by beneficiaries (notably for the purchase of food) was subject to public procurement rules.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00062 - COMBINATION OF SUPPORT FROM FI UNDER SHARED MANAGEMENT WITH THE SUPPORT FROM RRF AT THE LEVEL OF FINAL RECIPIENTS

Relevant Article:

Article 58 and Article 63 of the CPR

Article 9 RRF regulation

Member State: FR

Question 1 (including any relevant facts and information):

The regional authorities in France responsible for the programme implementation are considering scaling up the support to enterprises (i.e. final recipients) in the form of financial instruments by providing support from a mix of sources of support including Recovery and Resilience Fund (RRF) resources and programme resources under 2014-2020 and 2021-2027 programming periods. The ERDF programme resources are managed by the regional financial instruments set up under the provisions of CPR. The RRF (further in the text referred to as RFF) support distributed to the individual regions will be managed by the national promotional bank.

Is the combination of the ERDF programme resources and support from Resilience and Recovery Facility possible in one investment if support is provided in the form of financial instruments?

Answer[1]:

The reply concerns exclusively the possibility of bringing together the CPR Funds and RRF within the same investment at the level of the final recipient; it does not address possible synergies between parallel or successive management of the Funds and RRF through the same financial instrument structure which was already analysed in the reply available in QA for RRF[2].

While according to Article 58(4) of Regulation (EU) 2021/1060 (CPR), support to final recipients under the financial instrument may be combined with support from any Fund or another Union instrument, other conditions should be also taken into account:

- The CPR contains an explicit prohibition of double support in the sense that the same item of expenditure cannot be supported by the EU budget beyond 100% (Article 58(7) CPR).
- Article 58(4) CPR clarifies that the expenditure related to the financial instrument cannot be declared to the Commission for support under another form, another Fund or another Union instrument.
- To ensure the respect of the above mentioned paragraphs of Article 58 CPR, paragraph 6 of the same article stipulates the obligation of separate records for each source of combined support.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- In addition, funds under CPR are subject to eligibility rules (e.g. national rules, CPR or the Fund-specific Regulations (Article 63(1) CPR)) and management verifications and audits (Title VI CPR).

These CPR requirements aim to ensure that the expenditure which is included in the payment application to the Commission is legal and regular or that the necessary measures are taken in case of irregularities.

The rule of avoiding the double funding is regulated in Article 9 of the RRF Regulation, which also requires that the RRF support does not cover the same costs. In the context of RRF (see recital (18)), payments are not subject to controls on the costs actually incurred by the beneficiary. Instead, the costs are defined in the recovery and resilience plans on the basis of documents submitted by Member States (MS). **It means that all the costs which were covered by the estimates used under the plans, should be excluded from financing under the CPR**.

Section 2 of Part 3 of working document SWD(2021) 12 final includes the relevant requirements, such as:

- since the same cost cannot be financed twice, national authorities should have described in their plans how they will ensure compliance with Article 9 of the RRF Regulation and avoidance of double-funding. MS were required to clearly and strictly differentiate the specific measures, activities and projects funded under the RRF from those financed under other Union programmes and instruments. Moreover, the RRF, as a rule, should not cover mandatory national co-financing rates under other programmes.

- MS should have provided a dedicated section on financing and costs with granular information identifying for each component, which costs are covered (or are expected to be covered) by other sources of funding as well as the amounts concerned. High granularity is necessary to ensure that there is no double funding for measures benefitting from different sources of Union financing.

In order to be able to differentiate costs within an investment, granularity of information would be very important. Thus, unless such a combination was already envisaged during the preparation of the plan, it could bear a risk of double funding.

If the MS still considers such combination of support, the Commission invites the MS to discuss on a case-by-case basis and demonstrate that the specific costs to be covered by CPR Funds were excluded under the RRF. It should also explain how the management and verification of the operation, the adequate audit trail of the expenditure as well as contractual relationship between the MA, MS authorities responsible for implementation of RRF and the bodies implementing FI would be ensured.

[1] The reply refers to 2021-2027 programming period. Should the programme authorities of the Member State wish to combine the programme support of 2014-2020 programming period with the support from the RFF in the form of financial

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

instruments (as mentioned in the question above), the same principles discussed in this reply should be respected yet with regard to the provisions in Article 37(8) and (9), Article 65(1) of Regulation (EU) 1303/2013 (the Common Provisions Regulation for 2014-2020 programming period).

[2] Question 619 section 'Coordination with other EU funds' RRF - Frequently asked questions - RECOVER FAQs for Member States - EC Extranet Wiki (europa.eu)

QA00063 - DOUBLE FINANCING OF VAT

Relevant Article: Article 64 of the CPR

Member State: SE

Question 1 (including any relevant facts and information):

Article 64 (Non-eligible costs) of the CRP states

"- 1. The following costs shall not be eligible for a contribution from the Funds:

(c) value added tax (VAT), except:

(i) for operations the total cost of which is below EUR 5 000 000 (including VAT) (ii) for operations the total cost of which is at least EUR 5 000 000 (including VAT) where it is non-recoverable under national VAT legislation;

The effect is that in projects of less than EUR 5 000 000 VAT is eligible even in cases where VAT costs are recovered under national law — there is therefore double financing because the project owner receives the VAT twice. We expect that national regulation will deal with the issue, but are wondering about the wording.

Answer:

According to Article 63(1) CPR eligibility is 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 Regulations. With regard to value added tax (VAT), Article 64(1)(c)(i) regulates that for operations for which the total costs is less than 5 000 000, including VAT, value added tax is eligible to contribution from the Funds, regardless of the national rules on recoverability of VAT. The rationale behind is to simplify the rules on eligibility of VAT for small operations as it has been considered that the benefits of reduction of administrative burden outweighed the risks of double financing in these cases (i.e. risks of support to recovered VAT).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00064 - MANAGING AUTHORITY RESPONSIBILITIES AND ACCOUNTING FUNCTION

Relevant Articles: 72 and 76 of the CPR

Member State: DE

Question 1 (including any relevant facts and information):

Germany has a question on the EU legal requirements regarding the structure of authorities in the new funding period in respect of the accounting function of the EMFAF programme.

The CPR Regulation (Regulation (EC) No 2021/1060) makes the following specifications regarding the structure of the authorities:

- The CPR defines the tasks of the programme authorities in Article 72 ff., whereby the original tasks of the managing authority are first outlined in Articles 72 to 75. This is followed in Article 76 by the description of the accounting tasks, which correspond to the previous tasks of the certifying authority.
- - Article 72(2) stipulates that the accounting function may be carried out by the managing authority or by a separate body.
- - Article 71(4) stipulates that the principle of functional independence between and within the programme authorities must be respected.

What exactly does the concept of functional independence now mean in the event that the managing authority takes over the area of responsibility for accounting in the future and the existing certifying authority is cancelled in its previous form?

Option 1:

The original tasks of the managing authority (Articles 72 to 75) and the accounting tasks (Article 76) represent two different roles or functions in the processing of the funding. The requirement that the Member State must ensure functional independence between or within the programme authorities (Article 71 (4)) means that a clear functional separation would have to be ensured in the future handling of the accounting tasks by the managing authority. A staff member who would be entrusted with the accounting function would therefore not be allowed to perform any of the other original tasks of the managing authority.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Option 2:

The requirement to ensure functional independence between or within a programme authority (Article 71 (4)) is to be understood as a fundamental, appropriate and clear separation of functions the between the managing authority and the intermediate body (Article 71 (3)) or between the audit authority and its subordinate bodies (Article 71 (2)). The performance of accounting tasks and other basic tasks of the managing authority by one and the same staff member within the managing authority would therefore not be problematic.

Of course, Article 72 of the EU Financial Regulation, according to which the authorising and accounting functions are separate, would have to be observed in any case. This would be ensured by a clear separation of tasks between the intermediary body (where the authorising power is held) and the managing authority (which will in future be responsible for accounting, among other things).

Answer:

In accordance with Article 72(2), CPR 'the Member State may entrust the accounting function referred to in Article 76 to the managing authority or to another body'.

When the accounting function is embedded in the functions to the managing authority, duties of staff performing the accounting function do not need to be separated from other duties of the managing authority.

QA00065 - DIRECT STAFF COSTS CONCERNING GRANTS

Relevant Article: Article 55 of the CPR

Member State: BE

Question 1 (including any relevant facts and information):

Article 55(5) provides an exception for part-time working staff (i.e. *'5. **Staff** costs related to individuals **who work on part-time assignment on the operation may be calculated** as a fixed percentage of the gross employment costs, in line with a fixed percentage of time worked on the operation per month, **with no obligation to establish a separate working time registration system**.'*.....).

Article 55(3) provides the general way of how to declare hours, which is left open to interpretation.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

1. Should the interpretation be in the way that, unlike the exception foreseen in paragraph 5, there is an obligation to have a separate working time registration system for staff working full time on a project.
2. Or should the interpretation be that the exception is an exception for part-time staff only, where the general rule is that a separate working time registration system is used but that this point deviates from the general rule for part-time staff.

If this interpretation is correct are there guidelines on how the time worked by full time staff should be declared in order to be acceptable?

Could for example the interpretation be that the exception foreseen in paragraph 5 for part-time staff is the general rule for full-time staff?

Answer:

Article 55 of the CPR provides general provisions for direct staff costs concerning grants. As regards the calculation of direct staff costs of an employee working part-time on an operation, this article provides to either multiply the hours actually worked by an employee in the operation as registered in a separate working time registration system by the hourly rate calculated on the basis of Article 55(2) CPR; or apply a fixed percentage on the gross employment costs equivalent to the fixed percentage of time worked on the operation in accordance with Article 55(5) CPR.

Where employees work part-time on an assignment but with a fixed percentage of time per month, Article 55(5) CPR provides that there is no requirement for a working time registration system in order to verify the number of hours worked. However, the employer should issue a document setting out the fixed percentage of time worked on the operation per month and this percentage can be used to calculate the eligible staff costs.

Further guidance is provided in the Commission notice guidelines on the use of Simplified Cost Options within the European Structural and Investment Funds – revised version (2021/C 200/01), section 3.2 the principles of which remain applicable for the 2021-2027 period.

QA00066 - QUESTIONS ON ELIGIBILITY UNDER JTF

Relevant Articles:

Articles 8 and 9 of JTF regulation

Article 107 of TFEU

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State: CZ

Question 1 (including any relevant facts and information):

1. It is possible to support the productive investment in large enterprises, irrespectively of the concerned sector, if it is in line with article 8 (2) JTF and properly justified in line with the transition needs of the region. It is applicable to any productive investment in large enterprises eligible under JTF, in areas designated as assisted areas in accordance with points (a) and (c) of Article 107(3) of the TFEU. See the recital no 16 of JTF Regulation proposal "For enterprises other than SMEs, productive investments should only be supported if they are necessary for mitigating job losses resulting from the transition, by creating or protecting a significant number of jobs and they do not lead to or result from relocation. Investments in existing industrial facilities, including those covered by the Union Emissions Trading System, should be allowed if they contribute to the transition to a climate-neutral economy by 2050 and go substantially below the relevant benchmarks established for free allocation under Directive 2003/87/EC of the European Parliament and of the Council14 and if they result in the protection of a significant number of jobs. "Can we expect that within the "Country Report on the Czech Republic 2021" (compared to the 2020 report) the investment guidelines for the JTF for the period 2021-2027 will be modified / supplemented in some way (taking into account e.g. the importance of the role of large enterprises in the transformation process)?

2. Do we understand it well that a (large but also smaller) enterprise which operation has a negative impact on climate change and contribute to the production of greenhouse gases cannot be supported from JTF in this particular situation: Such an enterprise has an intention to receive some financial support from JTF for transition to or development of new economic activity in eligible region where former workers could be relocated. Such an activity would be otherwise eligible for support from JTF (do no significant harm) and would preserve jobs in the same time. However, the former climate intensive industry would be moved outside of EU where there are low or no emission limits. Is this the case when the support from JTF is not allowed? And the following question, imagine the same situation of support of productive investment just without relocation of harmful business outside of EU (former business would be closed). For example, such an enterprise would move from the segment of heavy engineering to light engineering using new technologies and would preserve most of jobs from the previous business (but in fact not creating new - additional jobs). Would such an enterprise be supported or under which conditions could be supported from JTF?

3. Please, could you further clarify the support of sustainable tourism as an activity related to economic diversification of coal regions? Should sustainable

tourism be associated with mining heritage and "mining tourism" or can be understandable more broadly? Which kind of projects in the sphere of tourism are eligible for JTF? Each of the Czech coal regions has a territory for which the support for tourism could be an interesting alternative to other transformation projects.

4. Article 9(a) JTF excludes support of nuclear power stations. Does it mean that activities related to used nuclear fuel are allowed, i.e. the use of waste heat not directly linked to the nuclear plant? Article 9(d) JTF excluding fossil fuels is much broader, and it is clear that JTF cannot support anything somehow connected to fossil fuels. Unfortunately, Article 9(a) is not that clear.

Example: We have a district heating power plant that can use spent nuclear fuel. It will use its waste heat to produce steam; there is no nuclear fusion. You can find additional technical information here https://www.teplator.cz/. (It is a research project which would like to continue into the phase of a pilot project.)

Answer:

1. In accordance with Article 8(2) of the JTF Regulation, the productive investments in large enterprises could only be supported if:

   - It is necessary for the implementation of the territorial just transition plan

   - It is necessary to create jobs and to offset the job losses stemming from the transition process, at a scale that could not be achieved through the support to SMEs;

   - Such an investment contributes to the transition to a climate-neutral economy by 2050 and to related environmental targets;

   - Such an investment does not lead to relocation as defined in point (27) of Article 2 of the CPR.

The envisaged productive investment should be included in the indicative list in the approved territorial just transition plan and shall contribute to its

implementation. In this respect, it should directly link and contribute to the JTF specific objective, which is about enabling regions and people to address the social, economic and environmental impacts of the transition. It should also not fall into the scope of exclusions under Article 9 of the JTF Regulation. Moreover, productive investments in large enterprises are possible under the JTF in areas designated as "assisted areas" in accordance with points (a) and (c) of Article 107(3) of the TFEU.

Generally, Annexes D to the country reports, issued in the context of the 2020 European Semester, could not emphasize the need to support productive investments in large enterprises due to the fact it was impossible for the Commission to assess whether the large enterprises' capacity would meet or not the above conditions. Such an assessment should be carried out by competent national authorities and its results should be summarised in the territorial just transition plan. (*The question regarding the investment guidelines in Annex D and if it will be modified does not fall under the merits of the QA as it is not about legal interpretation.)*

In general, the 2020 European Semester has been adapted to adopt national recovery and resilience plans that will replace the country reports. However, it is not expected that the Commission will change its position on the role of large enterprises in the just transition.

Moreover, the European Semester Package lacks the legal quality to amend the JTF Regulation in any regard.

2. Financial support from the JTF for development of new economic activity benefiting the eligible region should correspond to the development needs identified in the territorial just transition plan, in line with Article 11(2)(c) of the JTF Regulation. These development needs should in turn be consistent with the transition process and its key steps, as outlined in the National Energy and Climate Plan and other relevant national, regional or local climate strategies (under section 1.1 of the territorial just transition plan).

   Nevertheless, the JTF support shall not substitute the applicable social obligations of the climate intensive industry in terms of reconversion of jobs, when applicable.

   In addition, there are strict conditions on the support to productive investments to large enterprises, as laid out in Article 8(2) of the JTF Regulation, as well as a requirement to reduce GHG emissions in the European Trading System activities. They shall in particular contribute to the transition to a climate-neutral economy by 2050. In case the productive investments do not comply with these conditions, they would not be eligible.

3. According to recital 12 of the JTF Regulation, the investments for sustainable tourism financed under JTF should support local economies through stimulating

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

their endogenous growth potential in accordance with the respective smart specialisation strategies. Concrete projects should be in line with the respective just transition plan(s), i.e. they should contribute to the mitigation of the negative social, economic and environmental impacts of the transition, in line with the JTF specific objective explained in Article 2 of the JTF Regulation.

Support to sustainable tourism does not need to be related necessarily to mining heritage.

4. According to Art. 8(2)(g) JTF investments in heat production are only eligible provided that they are supplied exclusively by renewable energy sources, i.e. the proposed project is not eligible.

QA00073 - IS THE CONSTRUCTION OF ACCOMMODATION INSIDE CASTLES ELIGIBLE FOR FINANCING IF THE REVENUE IS USED FOR THE PURPOSE OF FINANCING THE MAINTENANCE COSTS OF THE MENTIONED BUILDINGS?

Relevant Article: Article 3 ERDF Regulation

Member State: HU

Question 1 (including any relevant facts and information):

We would like to inquire about whether, in general, the construction of accommodation inside castles is eligible for financing if the revenue is used for the purpose of financing the maintenance costs of the mentioned buildings. In this case the operating organization is a non-profit one.

Based on the available information, Hungary proposes the development of touristic attractions under PO5, which would include inter alia the refurbishment of (state-owned) castles for touristic use by creating accommodation inside. After the renovations, the castles would operate as museums/touristic attractions. The revenue

from the accommodation would be used to maintain the castles (further renovations, pay for the staff etc.).

Answer:

Investments in tourism and cultural heritage are in principle eligible under all policy objectives.

Such an investment must fall within the scope of the relevant Fund and programme and contributes to the specific objectives concerned, and comply with the relevant enabling conditions or minimum requirements established for the concerned policy objective.

For example, specific objectives referred to in Article 3(1)(a)(iii) ERDF/CF regulation on "enhancing sustainable growth and competitiveness of SMEs and job creation in SMEs, including by productive investments"; Article 3(1)(b)(i) promoting energy efficiency measures and reducing greenhouse gas emissions; Article 3(1)(d)(vi) on "enhancing the role of culture and sustainable tourism in economic development, social inclusion and social innovation"; and Article 3(1)(e)(i) and (ii) on "fostering the integrated and inclusive social, economic and environmental development, culture, natural heritage, sustainable tourism, and security" in either urban or non-urban areas; are particularly relevant in this regard.

If programmed under PO5 specific objectives set out in the Article 3(1)(e) of the ERDF/CF regulation, such a support shall be provided through territorial and local development strategies, through the forms set out in Article 28 of the CPR.

The investment must also comply with the principles for the selection of operations set out by the managing authority (Article 73 of the CPR) and national eligibility rules. The managing authority shall ensure that the investments are environmentally, socially and economically sustainable. Particular attention should be paid to financial sustainability of tourism investments.

Concerning the revenues issue raised, although, pursuant to CPR 2021-2027, there is no more legal requirement to carry out a quantification of revenues generated by the project, the latter may need to be taken into account in conformity with the applicable State aid rules.

QA00074 - ELIGIBILITY OF FUA/METROPOLITAN AREA INVESTMENTS IN RURAL AREAS

Relevant Articles:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 29 of the CPR

Article 4b of Regulation (EU) 1059/2003

Member State: RO

Question 1 (including any relevant facts and information):

Investments in functional urban areas/metropolitan areas are envisaged under the integrated urban development approach. Urban functional areas/metropolitan areas are made up of urban municipalities and cities but also administrative-territorial units in rural areas (villages/communes). Within these areas - FUA/metropolitan area- can operations located outside the urban administrative-territorial units (municipalities and cities), respectively in the rural area, be eligible for funding, or are there restrictions in terms of ERDF eligibility?

Answer:

The Common Provisions Regulation does not contain any restrictions as regards location of the operations supported by the ERDF in rural areas.

Within the framework of sustainable urban development, the ERDF shall support integrated territorial development based on territorial and local development strategies that are focused on urban areas, including functional urban areas, while taking into account the need to trigger cooperation and strengthen urban-rural linkages. Following the Union territorial typology, functional urban areas (as defined in Article 4b of Regulation (EU) 1059/2003) can include the rural areas that are part of the commuting zone around cities.

The identified functional urban area and the territorial strategy designed for this geographic area constitute the basis for investments to sustainable urban development in the given area. The strategies shall respect the criteria set out in Article29 of the CPR.

The national authorities should ensure coordination, demarcation and complementarities in terms of funding provided to rural areas under ERDF and the one foreseen under the EAFRD.

QA00075 - CAN ERDF PROGRAMMES SUPPORT INFRASTRUCTURE FOR VOCATIONAL TRAINING CENTRES UNDER POLICY OBJECTIVE 1

Relevant Article: Article 73 of the CPR

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State: DE

Question 1 (including any relevant facts and information):

Can ERDF programmes support infrastructure for vocational training infrastructures under policy objective 1?

Answer:

Support to vocational training infrastructures is possible under policy objective 1 under specific objective 1.4 "Developing skills for smart specialisation, industrial transition and entrepreneurship" specifically designed for that purpose provided that, pursuant to Article 73(2) CPR, the operations are consistent with the smart specialisation strategies (S3). It means that investments shall be directly linked to the training activities and/or update of curricula addressing the needs of companies in the smart specialisation priority areas.

Support for vocational training centres may be legally envisaged also under specific objective 1.3 **"**Enhancing sustainable growth and competitiveness of SMEs and job creation in SMEs, including by productive investments" provided that such investments are directly linked to the training activities or update of curricula that address the actual needs of companies. In accordance with Article 73(2)(a) CPR, the managing authority shall ensure, when selecting such operations under this specific objective, that they comply with the programme, including their consistency with the relevant strategies underlying the programme, as well as provide an effective contribution to the achievement of the specific objective 1.3, i.e., that they enhance sustainable growth and competitiveness of SMEs and job creation in SMEs.

For all other cases, the most suitable is policy objective 4, either through ERDF or through ESF+, using cross-financing, pursuant to Article 25(2) CPR. Such investments could as well be supported under policy objective 5, through territorial and local development strategies, as set out in Article 28 CPR.

QA00076 - GRANTING STATE AID BY BENEFICIARIES NOT BEING PART OF THE MANAGEMENT AND CONTROL SYSTEM OF OP IN POST-2020

Relevant Article: Art. 2 of the CPR

Member State: LT

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

In case a project is financed by the State aid, is the beneficiary able to grant the State aid larger than EUR 200 000 to final recipients (so-called umbrella projects)? If the beneficiary is not a part of the management and control system, does it need the approval from the Managing Authority or any other body which is part of the management and control system?

The question is formulated in the light of the following definitions set out in Art. 2 of the CPR:

(3)'operation' means:
(a) a project, contract, action or group of projects selected under the programmes concerned;
<…>
(8) 'beneficiary' means:
(a) a public or private body, an entity with or without legal personality or a natural person, responsible for initiating or both initiating and implementing operations; in the context of de minimis aid provided in accordance with Commission Regulations (EU) No 1407/2013 or (EU) No 717/2014, the body granting the aid, where it is responsible for initiating or for initiating and implementing the operation;
<...>
(c) in the context of State aid schemes, the undertaking which receives the aid, except where State aid per undertaking is less than EUR 200 000, the Member State may decide that the beneficiary for the purposes of this Regulation is the body granting the aid;
<…>
(17) 'final recipient' means a legal or natural person receiving support from the Funds through a beneficiary of a small project fund or from a financial instrument.

We would like to clarify the implementation of operations, which are group of projects and are subject to State aid (not de minimis). Could a beneficiary, which is not an intermediate body, but implements an umbrella project assess and select final recipients and grant them State aid or should such project be selected and the State aid granted by a managing authority/intermediate body?

Answer:

The definition of "beneficiary" provided by Article 2(9) of the CPR, particularly under points (a) and (c), is the following:

(a) a public or private body, an entity with or without legal personality or a natural person, responsible for initiating or both initiating and implementing operations;

(c) in the context of State aid schemes, the undertaking which receives the aid.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

According to Article 2(9)(c) of the CPR, in the context of State aid schemes the beneficiary is the one who receives the aid. Thus, it cannot at the same time be recipient of aid and select final recipients. Therefore, all projects receiving State aid, regardless of its volume, have to be selected by the managing authority/intermediate body.

However, according to Article 2(9)(d), in case of de minimis aid provided in accordance with Commission Regulations (EU) No 1407/2013 or (EU) No 717/2014 (which is not considered State aid according to the State aid framework), there is a possibility for the Member State to decide that the beneficiary is the body granting the aid where it is responsible for initiating or for initiating and implementing the operation - not necessarily the undertaking receiving the aid. In such configuration, the beneficiary of the operation – who cannot be the beneficiary of State as the question suggests – would not be able to grant per final recipient an amount higher than the thresholds laid down in the relevant de minimis regulation. Under the 1407/2013 Regulation this threshold is set at EUR 200 000 per undertaking over three fiscal years.

QA00077 - TERRITORIAL STRATEGIES AND CONFLICT OF INTEREST

Relevant Articles: 29, 71 and 73 of the CPR

Member State: SK

Question 1 (including any relevant facts and information):

Territorial strategies are prepared by the territorial authorities. Territorial strategies may also include a list of operations to be supported or selected by territorial authorities. Is there a conflict of interest if territorial authorities (their representatives) propose an operation which they subsequently select for support from EU funds and then they will implement it?

Do we need to ensure separation of functions when territorial authorities are involved in the selection of operations and are at the same time the beneficiary of this operation?

What about if the territorial authority proposes the operations by including them in the strategy from where the Managing Authority will select them with the involvement of territorial authorities?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

When operations under the territorial strategies are selected, the managing authority must ensure that all the requirements of Article 73 of the CPR have been complied with and as well as those of the Article 29(3) and (5) CPR.

In particular, Article 29(2) of the CPR requires that the territorial strategies are prepared under the responsibility of the relevant territorial authorities. Article 29(3) of the CPR further clarifies that in cases when the list of operations is not included in the territorial strategy, the relevant territorial authorities need to select or to be involved in the selection.

Article 29(4) of the CPR clarifies that when the strategies are being prepared, the territorial authorities have to cooperate with relevant managing authorities in order to determine the scope of operations to be supported under a relevant programme.

Therefore, the responsibility for the selection being compliant with the requirements outlined in Articles 29 and 73 of the CPR remains with the managing authority, in spite of the territorial authorities' involvement in the selection process.

Thus, a potential conflict of interest situation remains limited as long as the territorial authority is only involved in the selection and carries out no other tasks falling under the responsibility of the managing authority. A separation of functions in the meaning of Article 71(4), CPR – mitigating the risk of conflict of interest – may be needed where, in accordance with Article 29(5) CPR, the territorial authorities perform functions other than selection of operations and are identified as intermediate bodies.

Article 61 of the Financial Regulation on the conflict of interest remains applicable in the context of integrated territorial investments as for any other operations. The provision states that national authorities of any level involved in budget implementation shall take appropriate measures to prevent a conflict of interest from arising in the functions under their responsibility and to address situations which may objectively be perceived as a conflict of interest.

QA00078 - EVALUATIONS BY THE MEMBER STATE

Relevant Articles: Articles 36 and 44 of the CPR

Member State: HR

Question (including any relevant facts and information):

1. *Can we, as an evaluation unit within the Managing Authority for the Operational Programme Efficient Human Resources 2021-2027, be considered*

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

as functionally independent internal experts, as per the CPR Article 44, and therefore in position to conduct ourselves the evaluations provisioned by Article 44?

2. *Within the Evaluation Plan:*
    a. *Is it acceptable to allocate funds from the Technical Assistance for the policy framework that is wider than ESF funding?* Namely, this question refers to those policy areas in Croatia that are funded from both ESF and national resources, for example, Active Labour Market Measures or Personal assistants that are funded both through ESF and national resources.
    b. *Alongside that, is it acceptable to allocate funds from the Technical Assistance for conducting evaluations planed as part of conditions for fulfilment of thematic enabling conditions, for example for Roma or Gender.* These evaluations will be conducted by national bodies thematically responsible for those policy areas, but their financing would be considered (from the perspective of Technical Assistance) to be part of the assistance provided to the potential beneficiaries and relevant partners (Article 36 CPR).
3. *As an addition to the question 2, are we on a right track to group all the evaluations, directly or indirectly linked to MA activities, in the Evaluation plan?* Respectively, instead of planning all the evaluations in the Evaluation plan, should some evaluations be part of activities in the priority axes / specific objectives? For example, should evaluation of the whole Active Labour Market Measures (ALMPs) policy framework (ESF and national funding) be considered as an intervention in a specific objective related to labour market or as we have stated above, part of the Evaluation plan and financed through TA.
4. *Is there a stipulation of the highest level of generality (scope) at which the evaluations by the Member State should be conducted?*
5. *Article 44 of the new CPR does not mention impact among the evaluation criteria in the Paragraph 1, but it mentions it in Paragraph 2.*
    a. *Does this mean that these are separate (different) evaluations prescribed in Paragraphs 1 and 2?*
    b. *In Paragraph 1 there is no defined deadline for conducting evaluations, while in Paragraph 2 it is prescribed. Does this mean that the evaluations from the Paragraph 1 are supposed to be planned as mid-term, and the one from the Paragraph 2 as ex-post evaluation?*

Answer:

1. Article 44(1) of the CPR, beyond Member States (MS), explicitly mentions Managing Authorities (MAs) as bodies that may be subject to the obligation of

carrying out evaluations. Article 44(3) of the CPR requires that "evaluations shall be entrusted to internal or external experts who are functionally independent". In principle, the explicit reference to internal experts implies entrusting evaluations to evaluation units within Managing Authorities provided that safeguards for independence are in place. Regardless of the organisational setup, the independence of the evaluators is a key principle to be ensured throughout the evaluation process[1]. It is considered good practice to set out the specific safeguards that ensure evaluators' functional independence in the evaluation plan.

2. Article 36(1) of the CPR formulates two criteria as regards the scope of technical assistance (TA). On the one hand, the TA actions are necessary for the effective administration and use of the Funds, ie. the funds covered by the CPR. On the other hand, "for carrying out, inter alia, functions such as preparation, training, management, monitoring, evaluation, visibility and communication". As a consequence:
    a. It is not possible to use TA to evaluate policy areas, actions or group of actions that are solely financed from national resources. National resources may only be taken into account to the extent they represent co-financing to EU-funds.
    b. It is possible to finance from TA by the MS evaluations that contributes to the fulfilment of enabling conditions.
3. The evaluation plan is meant to plan the evaluations necessary to evaluate the programme or programmes under its scope. The programme describes the supported actions that contribute to the programme's specific objectives. In practice, an evaluation may be relevant to one, the other or both documents. For instance, supposed ESF+ will support institutional capacity building in the field of ALMPs within specific objective (b) 'modernising labour market institutions and services to assess and anticipate skills needs and ensure timely and tailor- made assistance and support for labour market matching, transitions and mobility'. The actions will include creating evaluation capacities, part of which will evaluate ESF co-financed ALMPs. In this case, the evaluations will be relevant both to the programme's intervention logic, as they will contribute to e.g. assessing skills needs; as well as to the evaluation plan, as it will evaluate ESF co-financed ALMPs.
4. The MS interpretation is correct: the MS has the competence for organising the evaluations of the programmes at the most suitable level. The Commission services do not plan issuing any guidelines for monitoring or evaluation.
5. Article 44(1) of the CPR broadly refers to programme evaluationsto be carried out by the MS or the MAs , while Article 44(2) CPR refers particularly to the evaluation assessing the impact of the programme.
    a. Impact is not considered as an evaluation criterion. The impact evaluation will conclude on the programmes' contribution to its specific objective. For that, it may use the evaluation criteria set out in Article

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

44(1) of the CPR (effectiveness, efficiency, relevance, coherence and Union added value).

b. The deadline of 30 June 2029 only refers to the evaluation referred to in Article 44(2).[2]

---

[1] Cf. ' The New Programming Period 2007-2013 - Indicative Guidelines on Evaluation Methods: Evaluation during the Programming Period - https://ec.europa.eu/regional_policy/sources/docoffic/2007/working/wd5_ongoing_en.pdf

[2] It should be noted that Article 44(5) CPR defines a further deadline for a mid-term evaluation for the purpose of the AMIF, the ISF and the BMVI. This mid-term evaluation is to be completed by 31 March 2024.

QA00079 - ANNEX D WITH THE SPECIFIC FOCUS ON POLICY OBJECTIVES (PO) NO 1, PO 2 AND PO 5

Relevant Articles:

Article 5 of the ERDF regulation

Article 73 of the CPR

Member State: LV

Question 1 (including any relevant facts and information):

PO1

Innovation and competitiveness.

1.In ERDF/Cohesion fund regulation compromise, productive investments in small mid-cap companies in research and innovation activities are included. Please clarify what will be the new definition of "small mid-cap companies".

Answer:

Points (c) and (d) of Article 5(2), ERDF list cases where productive investment in small mid-cap and mid-cap companies can be supported. The definitions of 'small mid-cap companies' and 'mid-cap companies' are provided respectively in points (6) and (7) of Article 2 of Regulation (EU) 2015/1017 of the European Parliament and the Council of

25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal (OJ L 169, 1.7.2015, p. 1).

According to that regulation:

- 'small mid-cap companies' means entities having up to 499 employees that are not SMEs;

- 'mid-cap companies' means entities having up to 3 000 employees that are not SMEs or small mid-cap companies

2. Please clarify if support for strengthening innovation, research and entrepreneurial skills for students and academic personnel with particular attention to STEM can be included in PO1.

Answer:

In accordance with Article 5(3), ERDF/CF the ERDF may support training, life-long learning, reskilling and education activities under specific objective "Developing skills for smart specialisation, industrial transition and entrepreneurship". Pursuant to Article 73(2) CPR, such investment need to be consistent with the smart specialisation strategies (S3) and other relevant strategies underlying the programme.

Under SO 1.4, ERDF priorities for investments can be actions linked to supporting innovation management in SMEs; specific training and reskilling for identified S3 areas at all levels within firms; promotion of entrepreneurship skills at all levels in enterprises; education and training and development of skills in higher education and research institutions to deepen their cooperation with economic actors, increase the commercial viability and market relevance of their research projects. The intervention logic should be clear on how the suggested interventions under SO 1.4 contribute to the smart economic transformation of the region through the entrepreneurial discovery process. This requires a case-by-case assessment.

QA00080 - ELIGIBILITY OF CERTAIN FORMS OF SUPPORT TO BUSINESS FOUNDERS

Relevant Article: Article 5 ERDF regulation

Member State: DE

Question 1 (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

As part of specific objective 1.3 (competitiveness of SMEs), a German region wishes to support the creation of businesses focused on the time period shortly before and after the establishment of the enterprises. Several building blocks are planned:

- Universities etc. receive a grant. They use the grant to employ founders (e.g. former students) temporarily for a limited period of time, up to the formal establishment of an enterprise. The grant is also used to pay for other expenses linked to the business foundation. (Block "ego.-Gründungstransfer")

- Counties or business promotion agencies receive a grant. They use the grant to coach and train founders for a certain number of hours during several months before and after the establishment of the business. (Block "ego.-Wissen")

- Founders receive a grant. In module one, founders can use the grant for coaching services linked to the foundation. If the future business is technology-oriented, in module two the grant (scholarship) can also be used to pay for (a part of) the cost of living for several months before and after the establishment of the business. (Block „ego.-Start")

Draft answer:

The described scheme seems to have the characteristics of academic entrepreneurship support programmes that might play important role in influencing university spinoff performance or promoting student start-ups. This type of scheme typically provides funding to activities executed by universities, technology transfer offices, science parks, individual researchers or entrepreneurs. Their success depends on multiple factors, including entrepreneurial environment or managing within the scheme issues related to adverse selection or moral hazards. However, in order to ensure that it contributes to the objectives of a programme the design of the scheme needs to be further detailed and clarified in the related programme.

In principle, it could be supported under policy objective 1, provided the scheme is designed in a way that it effectively contributes to the development of start-ups and it promotes development of innovation capacities, commercialisation, developing skills and entrepreneurship, provision of targeted services for companies. The selection of specific objectives to be supported under the ERDF/CF would depend on the detailed design of the scheme.

Of note that under specific objective 1.3 (Art. 3(1)(a)(iii) of the ERDF/CF Regulation), ERDF supports SMEs through transformation processes, such as creation of new firms, start-up/scale-ups, accelerators, support to investment, internationalization and developing new products and processes, etc. with the aim of increasing their productivity and competitiveness.

As it concerns the coverage of a part of cost of living for the academic-entrepreneurs for a limited period, it could be justified if it is necessary to achieve the objectives of the scheme and of the programme.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00081 - CLIMATE CONCENTRATION REQUIREMENT AND TECHNICAL ASSISTANCE

Relevant Articles:

Art. 6 of the CPR;

Art. 4.1 of the ERDF;

Member State: IT

Question 1 (including any relevant facts and information):

Do the 30% ERDF and 37% Cohesion Fund climate contribution targets of Art. 6 CPR apply to the total ERDF/CF allocation, or to the ERDF/CF allocation excluding technical assistance?

Note in this respect that:

- the ERDF thematic concentration requirements under Article 4.1 of the ERDF/CF regulation apply to the ERDF amount excluding Technical Assistance ;

Answer:

Article 6(2), CPR states that the climate contribution targets (30% for the ERDF and 37% for the Cohesion Fund) are to be established as a percentage of total ERDF and Cohesion Fund allocation, so including the resources for technical assistance. The regulatory thresholds such as climate targets need to be calculated based on the amount actually programmed in ERDF and Cohesion Fund programmes, so the amount after all transfers and contributions.

QA00082 - ASSESSMENT OF THE DO NO SIGNIFICANT HARM (DNSH) PRINCIPLE FOR ESF+

Relevant Article:

Recital (10) and Article 9(4) of the CPR;

Article 17 of Regulation (EU) No 2020/852" ("The Taxonomy Regulation").

Member State: n/a

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

For ESF+ programmes, once the MA have completed their assessment, the sentence proposed as for the DNSH principle is "The types of actions have been assessed as compatible with the DNSH principle, since they are not expected to have any significant negative environmental impact due to their nature".

How can the MA perform the assessment as for ESF+ (for operations for which a SEA is not compulsory)?

Answer:

The ex-ante compatibility with the DNSH principle under cohesion policy is to be ensured at the level of the definition of the types of actions in the programmes. It is therefore essential that the compliance with the DNSH principle shall be assessed and ensured during the process of defining the types of actions in the programme.

Given the scope of the ESF+ and where the section of the programme on types of actions for a certain specific objective is sufficiently detailed and suggests that they have no or an insignificant foreseeable impact on the environmental objectives, the Member State may take a simplified approach in its assessment as below:

The first step of the method may be sufficient to justify DNSH compliance. That comprises namely to perform a screening for all the types actions envisaged covering the six following points[1] :

Is the activity considered to do significant harm

1. to climate change mitigation if it leads to significant greenhouse gas (GHG) emissions?

2. to climate change adaptation if it leads to an increased adverse impact of the current climate and the expected future climate, on the activity itself or on people, nature or assets?

3. to the sustainable use and protection of water and marine resources if it is detrimental to the good status or the good ecological potential of bodies of water, including surface water and groundwater, or to the good environmental status of marine waters?

4. to the circular economy, including waste prevention and recycling, if it leads to significant inefficiencies in the use of materials or in the direct or indirect use of natural resources, or if it significantly increases the generation, incineration or disposal of waste, or if the long-term disposal of waste may cause significant and long-term environmental harm?

5. to pollution prevention and control if it leads to a significant increase in emissions of pollutants into air, water or land?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

6. to the protection and restoration of biodiversity and ecosystems if it is significantly detrimental to the good condition and resilience of ecosystems, or detrimental to the conservation status of habitats and species, including those of Union interest?

If the reply is yes to any of the 6 points mentioned above, Member States should use Part 2 of the checklist (see Annex I)[2] to perform a substantive DNSH assessment for those environmental objectives selected with a 'yes' under Step 1.

In case the reply to all six questions above is "no", one single brief justification covering all six questions would be sufficient.

This would justify the inclusion of one of the following statements in the programme under the heading *The related types of actions* in section 2.1.1.1.1 *Interventions of the Funds* (within the programme template, Annex V CPR) under each specific objective:

"The types of actions have been assessed as compatible with the DNSH principle, since:

- *they are not expected to have any significant negative environmental impact due to their nature, or*
- *they have been assessed as compatible under the RRF, or*
- *they have been assessed as compatible under the RRF DNSH technical guidance, or*
- *they have been assessed as compatible according to Member State's methodology."*

If the assessment would lead to identical conclusion in case of all types of actions in all specific objectives of the programme, thus the same statement out of those above applies to the entirety of the programme, it is sufficient to include this statement once into section 1 of the programme on Programme strategy.

The supporting documentation, including the completed and signed checklist with the brief justification, in any case, should be kept by the MA and made available upon request to the Commission services during the informal dialogue with the national authorities.

---

[1] Article 17 of Regulation (EU) No 2020/852" ("The Taxonomy Regulation").

[2] of the Commission notice on Technical guidance on the application of 'do no significant harm' under the Recovery and Resilience Facility Regulation (2021/C 58/01)

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00083 - APPENDIX 1 TO ANNEX XXIII AND APPENDIX 3 TO ANNEX XXIV

Relevant Article: Annexes XXIII and XXIV

Member State: DE

Question 1 (including any relevant facts and information):

ANNEX XXIII

Fields A and B shall include information on the amount indicated in the first payment application and paid to the financial instrument in accordance with Article 92 of Regulation (EC) No 2021/1060 (maximum 30 % of the total programme contributions for the financial instrument [s] under the relevant funding agreement).

Boxes C and D shall contain information on the corresponding amount entered in the accounts in accordance with Article 92(3). In accordance with Article 92 (3), these relate to the clearance of the 30 % advance payment no later than in the final accounting year.

It is not clear to what extent all programme contributions under Article 92 (2) (b) are to be covered in boxes C and D or only those which have incurred expenditure for the first 30 % payment, which is almost an advance payment ('winding up' of the 30 % advance payment). Footnote 1 indicates that boxes C and D are intended to cover only those programme contributions which undercut the 30 % advance on the expenditure side. However, this raises the question of how current payments and administrative costs under Article 92 (2) (b) (reference to Article 68 (1)) are to be settled between the advance payment and the 'winding up' of the advance payment.

1. If in the first payment application a lower proportion than the 30 % (e.g. 20 %) of the programme contributions was paid into the financial instrument, can the difference with the 30 % (e.g. 10 %) still be cleared in another payment application? The same question applies if, in the course of the funding period, it is decided and approved to increase the financial resources of the entire financial instrument, thereby increasing the 30 % share.

2. If subsequent increases are possible, how should columns A and B of Appendix 1 to Annex XXIII be entered?

3. In what form and from when is the expenditure declared under Article 92 (2) (b) (eligible expenditure under Article 68 (1))?

(a) Do we understand that, as from the second and subsequent payment claims, this eligible expenditure is regularly accounted for under the respective priority axes?

(b) Is it correct that the eligible expenditure used to underwrite the 30 % advance payment (usually at the end of the funding period) is not to be included in the payment claims, but must be reported in Appendix 1 (columns C and D)? A contrario: Is

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

it correct that expenditure which is not yet used to support the 30 % advance payment is not to be shown in columns C and D of Appendix 1?

If the answer to question (b) is yes:

(c) Is it correct that, until the 30 % advance payment is underwritten and columns C and D are filled with values > EUR 0,00, no expenditure under Article 92 (2) (b) (eligible expenditure under Article 68 (1)) must be included in the payment claims?

ANNEX XXIV

Fields A and B shall include information on the amount specified in the first payment application and paid to the financial instrument in accordance with Article 92 (maximum 30 % of the total programme contributions for the financial instrument [s] under the corresponding funding agreement).

Box C and D shall contain information on the corresponding amount entered in the accounts in accordance with Article 92(3). In accordance with Article 92 (3), these relate to the accounting of the 30 % advance payment no later than in the final accounting year.

Accordingly, the same questions arise as for Appendix 1 to Annex XXIII, as the accounts are based on the information relating to the payment claims, assuming that no amount claimed to date in the payment application is disputed.

Answer:

1. It would follow from Article 92(2)(a) CPR that there is only one first payment application for each funding agreement under which the programme resources are committed; and the first payment application may include 'up to 30%' of the amount when the payment application is submitted.

Therefore, the managing authority may choose to claim an amount lower than 30% in the first payment application, for example, 20% of the total amount of programme contributions committed under the relevant funding agreement. That will be the amount to be cleared no later than in the final accounting year in line with Article 92(3) CPR. When this option is chosen, it is not possible to claim the remaining amount in subsequent payment applications (i.e. the difference between the advance amount claimed and the maximum 30%) as an advance.

Likewise, where the amounts committed in an existing funding agreement are increased by additional programme resources after submission of the first payment application linked to it, it is not possible to claim the advance for the top-up (i.e.: the difference between the percentage of the initial and the increased programme contributions of the funding agreement).

2. Please see reply to question 1.

3. In accordance with Article 92(2)(b) CPR the amount included in subsequent payment applications submitted during the eligibility period should include the eligible expenditure as referred to in Article 68(1) CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

a) The first and the subsequent payment applications should be submitted in accordance with template set out in Annex XXIII and in accordance with the relevant priority and category of region, where applicable (Articles 91(3) and 92(2)(a) CPR).

b) Yes, the eligible expenditure to clear the advance of up to 30% included in the first payment application should be disclosed in the columns C and D of the Appendix 1 of the payment application. These amounts should not be included in the payment application itself, as it would constitute double declaration. This is also clarified in the footnote of the Appendix 1 of the payment claim template (Annex XXIII).

Expenditure which is not yet used to clear the advance should not be recorded in the Appendix 1 columns C and D.

c) Once the eligible expenditure referred to in Article 68(1) CPR included in the payment applications has reached at least 70% of the total amount of programme contributions committed in the funding agreement, the managing authority will have to start clearing the advance of up to 30% requested in the first payment application. The amounts of eligible expenditure for clearing the advance should be recorded in columns C and D until the advance is fully cleared but no later than in the final accounting year.

The same principles as for filling in Appendix 1 of the payment claims apply also to filling in the Appendix 3 of annual accounts. Please see replies to the questions above.

QA00084 - CROSS-FINANCING AND ELIGIBILITY

Relevant Articles: Articles 25(2) and 50(1)(c) CPR

Member State: CZ

Question 1 (including any relevant facts and information):

The Article 25 (2) of CPR states that „the ERDF and ESF+ may finance…….all or part of the operation for which the costs are eligible for support from the other Fund on basis of eligibility rules applied to that Fund…..".

We would like to get assurance that our interpretation of the term „eligibility rules" is correct. We are currently assessing this question in relation to the obligations in the visibility and communication area (see Art. 46-50 CPR), especially the rules set out in the Art. 50 (1) (c) CPR where different limits for displaying durable plaques or billboards are set for the ERDF and the ESF+ operations.

In the past we received a reply from the EC stating that the "eligibility rules' have to be understood as any rule that has an impact on the eligibility of expenditure. In case of cross financing in ESF+ programmes it means that the ESF+ can only finance costs, which are eligible for ERDF support, that is clear.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

However is the rule set out in the Art. 50 (1) (c) CPR considered also as a rule that has an impact on the eligibility of expenditure? From our point of view "eligibility rules' are only the rules set out in the Chapter III, Articles 63-68 CPR and the eligibility rules set out in the Fund specific regulations. Thus we believe that in case of the ESF+ projects using cross financing from ERDF the requirement set up in the Art. 50(1)(c) relates to all operations with total costs exceeding 100 000 EUR.

Could you please confirm our understanding? We would like to get a clear interpretation of how to define the set of rules that has an impact on eligibility of expenditure in relation to the Art. 25 (2) of the CPR.

Answer:

In this case (ESF+ support to expenditure that falls under the eligibility rules of the ERDF), reference to eligibility rules "applied to that Fund" in Article 25(2) CPR means all eligibility rules applicable to the ERDF, which are laid down in the CPR and in the ERDF and Cohesion Fund Regulation. Non-compliance with these rules will render (part of) the expenditure ineligible.

Responsibilities of beneficiaries referred to in Article 50(1) CPR do not fall under eligibility rules but could render underlying expenditure irregular if they are not complied with. Given that these obligations are linked to the specificities of each Fund, the rules of the Fund under which operations are implemented should be respected.

In conclusion, it is the ceilings for the ESF+ referred to in Article 50(1)(c)(ii) CPR that apply to ESF+ operations, even if it is supporting costs which are eligible under the ERDF rules through cross-financing.

QA00087 - INTERREG AND TERRITORIAL DEVELOPMENT

Relevant Articles:

Article 28 and 29 of the CPR

Article 20 and 21 of the Interreg Regulation

Member State: n/a

Question 1 (including any relevant facts and information):

1-Do Interreg Programmes fall under the category c – other territorial instruments? (Art. 28 CPR).

Answer:

Interreg programmes can use all territorial instruments listed in Article 28 of the CPR according to the rules set out in Article 20 and 21 of the Interreg Regulation. It is also noted that programmes, in general, are not considered to be a territorial instrument in the meaning of Article 28 CPR.

2 Would Interreg Programmes need to define territorial strategies for (parts of) their area as part of the CP document? Are macro-regional strategies (MRS) such strategies? Could instead projects define or relate to such strategies relevant for their specific partnership area? (Art. 23 (1) and (2) Interreg regulation)

Answer:

All operations selected under ITI or other territorial tool have to comply with the territorial strategy that comply with the requirements of Article 29 CPR. The term "territorial strategies" does not specify, on purpose, the specific territorial level at which these strategies need to be drawn up. This term is used to enable the use of territorial instruments below the programme level (i.e. NUTS2, the usual regional programme level). It is understood that "relevant territorial authorities or bodies" comprise levels below NUTS 2 level in function of the territory covered.

In case of cross-border cooperation programmes, where the programmes may cover functionally coherent subregional cross-border areas, it is possible to have a single territorial strategy for the entire programme area, provided that role of the relevant territorial authorities or bodies of the area is ensured.

In case of transnational cooperation programmes, macro-regional strategies as such do not satisfy this requirement, as they are operating at the level of transnational programmes, and decisions are taken by Member States and not by the relevant territorial authorities or bodies. However, the local, urban and territorial strategies under the macro-regional strategic framework may satisfy the requirement if they fulfil the conditions set out in Article 29 of the CPR. This needs to be examined on a case-by-case basis.

3 - If relevant territorial authorities are to be involved in the selection of projects, could this be the regional level that is represented in Interreg Committees? Otherwise, how can local administration be involved in selection when at the same time they are partners? (Art. 29(3) CPR)

Answer:

Relevant territorial authorities or bodies can be involved in selecting the operations either by drawing up a territorial strategy which would entail a list of operations (Article 29(2) CPR), or at the later stage (Article 29(3) CPR).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

According to Article 20 of the Interreg regulation, those relevant territorial authorities or bodies should **represent at least two participating countries, of which at least one is a Member State**.

There should be an agreement between the body managing the integrated territorial development tool and the managing authority on the modalities of the involvement of the former in the project selection.

In case of community-led local development implemented in Interreg programmes, the relevant local action group is composed of representatives mentioned in Article 21 of the Interreg regulation.

In order to avoid potential conflict of interest, Article 28 of the Interreg regulation requires that the rules of procedure of the monitoring committee and, where applicable, of the steering committee prevent any situation of conflict of interest when selecting Interreg operations.

A declaration of conflict of interest needs to be signed between the MA and the bodies participating in the call launching and the selection process and it has to contain appropriate measures to prevent conflict of interest situations that may arise or that may objectively be perceived as a conflict of interest.

QA00088 - REIMBURSEMENT OF UNION CONTRIBUTION TO THE PROGRAMME BASED ON UNIT COSTS, LUMP SUMS AND FLAT RATES

Relevant Article: Article 94(3) and Article 91(4)(b) of the CPR, Appendix 1 to Annex V of the CPR

Member State: DE

Question 1 (including any relevant facts and information):

One German region has a question on the date on which the simplified cost option is applicable to the 2021 – 2027 programme in case it is added in appendix 1 through a request for programme amendment.

The question is:

In case a Member State submits a proposal, as part of a request for programme amendment, in order to make use of reimbursement of the Union contribution to the programme based on unit costs, lump sums and flat rates, as from when will the reimbursement of the Union contribution in line with appendix 1 to the programme be applicable? Will it be the date of submission of the request for programme

amendment (in line with Article 63(7)) or will it be the date of adoption of the request for programme amendment (in line with Article 94(1) and section 8 of Annex V).

Answer:

In accordance with Article 94(3) CPR, the decision approving the programme or its amendment shall set out, inter alia, the types of operations covered by the reimbursement based on unit costs, lump sums and flat rates, the definition and the amounts covered by those unit costs, lump sums and flat rates.

In addition, Article 91(4)(b) CPR specifies that where the Union contribution is made pursuant to points (c), (d) and (e) of Article 51, the amounts included in a payment application are the amounts determined in accordance with the above-mentionned decision pursuant to Article 94(3) [ ]. Therefore, the managing authority can only include the agreed amounts in payment applications after ther determination and approval in the decision approving the amendment of the programme introducing such form of Union contribution.

The Commission will also start reimbursing the Union contribution to a programme on the basis of unit costs, lump sums and flat rates after their approval in the decision approving the amendment of the programme.

QA00089 - USE OF THE EURO

Relevant Article: Articles 87 and 94 of the CPR

Member State: BG

Question 1 (including any relevant facts and information):

Can we use Bulgarian Leva instead of amounts in euro for the simplified costs according to Article 94 CPR in a proposal to the Commission in accordance with the templates set out in Annexes V and VI, as part of the programme submission or of a request for its amendment ?

Answer:

According to Article 87 CPR all amounts set out in programmes, reported or declared to the Commission by Member States shall be denominated in euro.

As set out in Art. 94 CPR, the proposal submitted by a Member State to the Commission shall be part of the programme submission or of a request for its

amendment. It shall be submitted in accordance with the templates set out in Annexes V and VI ie the programmes' templates. Appendix 1 (Union contribution based on SCOs) is part of Annexes V and VI. Thus, the financial amounts in this proposal (Appendix 1) shall be denominated in euro.

QA00090 - WHERE TO MENTION 'BENEFICIARIES' IN THE PROGRAMME?

Relevant Article: Recital (60) and Articles 22, 38, 40, 73 of the CPR and Annex V progamme template of the CPR

Member State: n/a

Question 1 (including any relevant facts and information):

We understand that there is no specific requirement in CPR to list beneficiaries to whom the MA intends to award grants directly, i.e. without a competitive call.

Answer:

Correct. Contrary to the previous programming period, Regulation (EU) 2021/1060 does not require that the MA provides any information regarding the beneficiaries to be supported (i.e types of beneficiaries to be supported under each specific objective) nor the guiding principles for the selection of operations. The objective is to simplify the content of the programme and therefore we would discourage Member States from including this information in the programme. However, if the MA wants to include information a list of potential (or types of) beneficiaries in the programme, it must make clear in the text that the information is "indicative".

Question 2 (including any relevant facts and information):

We are aware of Recital (60), second sentence, of the CPR that most likely relates to Article 73 CPR "Selection of operations by the managing authority", in particular its paragraph 1:

"Procedures for the selection of operations can be competitive or non-competitive provided that criteria applied and procedures used are non-discriminatory, inclusive and transparent and the operations selected maximise the contribution of the Union funding and are in line with the horizontal principles defined in this Regulation."

Could you confirm if this recital relates to Article 73 and to the selection of operations by the managing authority?

Answer:

Indeed, as stated in the first sentence of that recital, it concerns selection of operations by the managing authority and provides the rationale for Article 73 CPR .

Question 3 (including any relevant facts and information):

Article 40(2)(a) CPR is about – selection methodology and criteria to be adopted by the monitoring committee. In this context, we refer also to Article 38(2) CPR – the monitoring committee's rules of procedure must contain provisions on conflict of interests which may arise as "named beneficiaries" are often institutional actors who are likely to be represented on the monitoring committee. Could it also be possible that the selection methodology contains the identification of named beneficiaries, the parts of the programme they will implement as well as the justification compliant with Article 73 CPR as supported by Recital (60)?

Answer:

In accordance with Article 40 CPR, the monitoring committee approves the selection methodology and the selection criteria. However, in accordance with Article 73 CPR the managing authority is responsible for the selection of operations. Due to the fact, that members of the monitoring committee may be beneficiaries under the programme monitored, the rules of procedure of the monitoring committee, as well as the selection procedures where needed, should provide a practical and transparent solution for these cases

Question 4 (including any relevant facts and information):

It has been mentioned that a possible place to list "named beneficiaries" would be the list of types of actions within each SO/priority (the list of types of actions, we also learned, is exhaustive). Is this correct?

Answer

Regarding types of actions referred to in Art. 22(3)(d)(i) CPR, the list is exhaustive. As explained under the reply to question 1, Regulation (EU) 2021/1060, in particular Article 22(3) CPR, no longer requires the types of beneficiaries to be identified in the programme. Eventually, if provided, the indicative list of potential beneficiaries could be referred to as examples under the description of the (exhaustive) list of types of actions or wherever else the MA considers it relevant.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00091 - ELIGIBILITY OF AIRPORT INFRASTRUCTURE IN OUTERMOST REGIONS

Relevant Article: Art. 7(e) of the ERDF/CF regulation

Member State: n/a

Question 1 (including any relevant facts and information):

Regulation EU 2021/1058 of 24 June 2021, on the ERDF and on the CF, establishes exclusions from the scope of the ERDF and the CF in Art. 7.

Specifically, in Art 7 e), it determines that the ERDF and CF shall not support "investment in airport infrastructure, except for outermost regions or in existing regional airports (…) in any of the following cases:

(i) in environmental impact mitigation measures; or

(ii) in security, safety, and air traffic management systems resulting from Single European Sky ATM research;"

The PT authorities ask for confirmation if investment in airport infrastructure in O.R. is eligible for ERDF/CF funding **only if it concerns investments in (i) and (ii)**. They raise this doubt since they believe that the Regulation wording could suggest that *all* investments in O.R. airports are eligible and that it would be investment in existing regional airports to be conditioned to (i) and (ii).

Answer:

Article 7(1) (e) ERDF/CF allows for exceptions to the exclusion of scope of support for airport infrastructure in three cases:

- in outermost regions irrespective of the passenger traffic; or
- in regional airports in environmental impact mitigation measures; or
- in regional airports in security, safety and air traffic management systems resulting from SESAR.

In other words,

- all investment in airports in the outermost regions are eligible;
- the limitations referred to in letters (i) and (ii) of Article 7(1)(e) of the ERDF/CF Regulation are only applicable to existing regional airports (outside outermost regions).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00092 - 2ND Q&A DOCUMENT ON SIMPLIFIED COST OPTIONS (SCOS) IN THE 2021-2027 PROGRAMMING PERIOD

Relevant Article:

Member State: n/a

2nd Q&A document on Simplified Cost Options (SCOs) in the 2021-2027 programming period

DISCLAIMER: This set of replies was prepared by and expresses the view of the Commission services and does not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

N.B.: Questions relating to compliance with public procurement and state aid in SCO operations implemented in line with Art.94/53 CPR as well as management verifications and audit in this respect have been taken out of this Q&A document, as they will be the subject of a separate document to be prepared by the COM.

	Question	Answer
Article 94 CPR		
1	Is it correct that no delegated act referred to in Article 88(4) exists right now? And consequently the managing authority currently fills Annex V concerning every simplified cost option it would like to use to reimburse expenditure by Commission as it seems to be adequate?	Yes, it is correct. No delegated act exists. Appendix 1 is to be filled out when the Member State wishes to be reimbursed by the COM based on SCOs. The assessment by the audit authority (AA) of the proposals submitted by Member States is a pre-condition for including SCOs in Appendix 1. Submission of Appendix 1 is not needed if SCOs are applied exclusively at beneficiary level in line with Article 53 CPR and Member States declare these amounts to the Commission (see Articles 63(5) and 91(4)(c) CPR). It is also not needed when the Union level SCOs, their amounts and adjustment methods are defined by a delegated act in accordance with Article 94(4) CPR.
2	Could you please clarify the degree of "binding nature" of the SCO methodology once approved for the purpose of the OP (either Annex V or Art. 48) in relation to the entire OP / priority axis / call? Once the SCO is approved (e.g. unit costs for project management), is it possible that it does not apply to the same type/nature of operation/expenditure within several priority axes of a given OP (so for one priority axis unit cost would be applicable, and for another priority axis real costs based approach?	As regards SCOs approved in a programme, once they are approved, they become mandatory and there is no possibility that the concerned types of operations are reimbursed to the MS by the COM based on actually incurred costs. The modes of reimbursement by the COM based on SCOs concern the specific types of operations, SCOs and amounts approved in the COM decision. For SCOs applied exclusively at the beneficiary level in line with Article 53 CPR: a) Appendix 1 should not be filled in and b) the SCO methodology is not approved by the Commission. If the MS decides to reimburse the beneficiary based on SCOs in line with

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

		Article 53 CPR, as SCOs have to be defined in advance, their use should be mentioned in the calls for proposals addressed to the potential beneficiaries in order to ensure respect of the principle of transparency and equal treatment.
3	Is it possible to start using SCO methodology nationally, if the SCO methodology has not yet been included/accepted in the Annex V of OP?	It is always possible to implement SCOs at the beneficiary level under Article 53 CPR, which does not require any approval by the COM. Concerning SCOs under Article 94 CPR, the COM will start reimbursing the MS based on SCOs once they are approved in a programme through a decision approving the programme or its amendment. Therefore, the managing authority (MA) can only include the agreed amounts in payment applications after their determination and approval in the decision approving the amendment of the programme introducing such form of Union contribution. The Commission will also start reimbursing the Union contribution to a programme on the basis of unit costs, lump sums and flat rates after their approval in the decision approving the amendment of the programme.
4	What is the minimum amount of EUR to be covered by the specific SCO methodology in order to be included in the Annex V of OP?	CPR does not provide for a minimum amount, therefore, the MS can include SCO in Appendix 1 to the programme regardless of the amount to be covered. However, taking into account the requirements and related work by MA to design the SCO (including any adjustment methods, data collection, etc.) and for the AA to assess it, it is recommended that SCO schemes covering a considerable amount of programme contribution and a considerable number of operations/beneficiaries are submitted for approval in Annex V.
5	To make it easier for the MSs, would it be possible to create EU level SCOs implemented under art 88?	Article 94(4) CPR foresees for the COM the possibility to establish Union level SCOs through a delegated act. The COM is looking into this possibility and has launched a study in this respect.
6	How will be dealt with programme amendments which may affect SCOs in practice and lead to a time-consuming process?	As already replied in the previous Q&A document, if SCOs are introduced in a programme with a programme amendment request, the normal procedure for amendment of a programme applies. In order to allow the COM to adopt swiftly the programme amendment, all required documents should be duly completed and include a positive AA assessment. Informal exchanges with the COM prior to submission of a programme or an amendment request could accelerate the process of formal amendment procedure.
7	Which MS plan to use SCOs under Art. 88 on	We do not dispose of this information.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

	the upper level (EC-MS) and a different reimbursement method on the lower level (MA-beneficiary)?	
8	What would the approval of the Annex 1 look like? Is it a separate approval letter? Or simply a decision on the programme's approval? In terms of audit trail.	Appendix 1 to a programme will be approved as part of the programme approval or amendment procedure: the decision approving or amending the programme will encompass also SCOs described in Appendix 1.

SET UP/ADJUSTMENT OF METHODOLOGIES		
9	Is the draft budget methodology only suitable to create lump sums that cover the whole project? Taking into account the risk that this may entail for community organisations participating in small projects and SPFs, could the draft budget methodology be used to create other SCOs (e.g. unit costs, flat rates, lump sums applied to specific element of the projects, etc.)?	A draft budget is not a type of SCO but a method to establish lump sums, unit costs and flat rates Please refer to the revised Guidance Note on SCOs (EGESIF 14-0017) (section 4.3.). Flat rates, lump sums and unit costs may be based on a draft budget in relation to the whole or part of the budget of the operation/project. As an example, for an operation composed of 5 different activities: - Activity 1 and 2 of the operation is reimbursed on the basis of real costs or on the basis of another SCO (for example lump sums coming from another EU policy) - Activity 3, 4 and 5 of the operation is reimbursed as unit costs established on the basis of a draft budget
10	Using the calculation method of the Draft budget, is it necessary to insert each lump sum in the Annex V of OP, or should the overall Draft budget approach be harmonised with the EC? There can be a situation where 100 different lump sums will have to be added to the Annex V.	It is not clear what is meant by "overall draft budget approach harmonised with EC". Based on Article) 94(2) CPR, and Appendix 1 to CPR, the Member State should submit the appropriate information/data per type of operation. This means that it is possible to submit a proposal for one single lump sum based on a single draft budget to reimburse all operations of the same type.
11	In the CPR it is stated that the periodic adjustments are a good practice in the context of multi-annual programme implementation to take into account factors affecting rates and amounts. In our view the best solution is to include the method for the automatic adjustment of the amounts of units or the input costs forming part of the lump sum in the methodology and to avoid periodical change of the SCO methodology. We wonder how to deal with it especially in case of amount or rates that reflect the market prices or are based on the non-statistical data such as the analysis of the historic data. We mean the other adjustment	Under part B, section 9 in Appendix 1, the MS may include a description of an adjustment method. If the adjustment method is included in the methodology, applying the adjustment is not considered as a modification of the SCO methodology. The revised Guidance Note on SCOs (EGESIF 14-0017) mentions, as example, linking the adjustment with the inflation, but the MS are free to establish other adjustment methods, as long as they are documented and justified. Annex V should include sufficient details about the adjustment method foreseen to allow to the audit authority and the Commission services to

	method than the periodical change reflecting the indexation published by the Statistical Office or set by law. Can we set it in the methodology in a general way that e.g. the re-evaluation of the amount will be realized based on the actual market survey done on a yearly basis? Could you please provide us some examples of good practice how such automatic adjustment of amounts or rates can be set in the methodology?	assess the SCO scheme. The MS may decide not to include the adjustment method in the methodology if they consider that the SCO will not need adjustment for the period of its application. A market-survey may be considered as other objective information and thus be used to establish SCOs on the basis of Article 53(3)(a)(i) CPR. It may also be used to periodically re-evaluate the amounts; in that case, the methodology of this market survey should be clearly defined and would be subject to audit. For examples from the ESF (2014-2020 period) please refer to Commission Delegated Regulation (EU) 2015/2195 of 9 July 2015.
12	When setting up the SCO methodology, cooperation with official "suppliers" of data is advised or it is requested to use statistical, historical or other relevant data (sources). We would like to ask, whether it is presumed to oblige the MA to collect such data and evaluate them in respect to the possibility of submitting updated or new SCOs or for the need of future possibilities for updating Annex V? According to our previous experience, if projects/operations are result-based or output-oriented, it is necessary to define by MA a solid framework for the collection, recording, storage or evaluation of data. Can the AA also assess this process and set up during ex-ante assessment?	When submitting Appendix 1, the MS will need to state in Part C the source of data used to calculate the SCOs providing detailed information on where produced, collected and recorded data come from, where they are stored, any cut-off dates as well as how they are validated. In addition, if the MS wish to adjust methodologies included in Appendix 1, they will need to include a description of the adjustment method. This means that the MA will need to dispose of data in order to be able to adjust methodologies. The AA will assess if the data used are reliable and relevant, as foreseen in part C, section 4 of Appendix 1 to the programme as part of its audit assessment prior to the submission of Annex V to the Commission.
13	Does the EC envisage any recommendation for the Member State to create space/platform for the electronisation of the official SCO methodologies, including supporting documentation or its assessment at Member State level, after the adoption by the Regulation? Is it possible to apply such a procedure at national level without recommending it from EC? How to ensure and maintain follow up methodologies? For example, adjustments of the adopted methodologies for the needs of future verification?	There is no such requirement in the existing EU legal framework on SCOs. The COM does not have a general recommendation on this. The Member State may do so, if they deem appropriate. It is reminded, however, that proper audit trail on the setting up of SCO methodologies and their implementation needs to be ensured (see Article 69(6) CPR and Annex XIII, section III to CPR). The MA also has the obligation to record and store electronically the data on each operation (see Article 72(1)(e) CPR and Annex XVII to CPR).
14	Is it possible to create more universal SCO methodologies, which the MA can update without official "adjustments" of the SCO methodology (e.g. just updating of basic	For SCOs under Article 94 CPR, to avoid the need for modifications, Appendix 1 to the programme foresees the possibility to include a description of an adjustment method in part B, section 9. If the

	amounts)? Could such an update be without the need for ex-ante assessment? What is the approach towards tailor-made SCO methodologies developed e.g. just for one call? Is it advised to create methodology valid for certain period of time or to create methodology for longer period/even the whole programming period - if so, how to manage their actualisation?	MS includes therein such a method, it will be covered by the decision approving the programme and the methodology will not need to be assessed again. As far as SCOs applied exclusively at beneficiary level are concerned, the possibility to use tailor made SCO just for one call is always possible under Article 53 CPR, which does not require COM approval. It is recommended that the MA adapts the SCOs when launching a new call for proposals in order to take account of an indexation or economic changes, e.g. in energy costs, levels of salaries, etc. In addition, it is suggested to enshrine in the methodology some automatic adaptations (based on inflation, or evolution of salaries for instance). It is recommended that SCOs submitted to the Commission for approval under Article 94 CPR cover a considerable amount of programme contribution and a considerable number of operations. See also reply to question 18.
15	Can there be an overlap of some SCO methodologies within the same program/priority axis or call? How to approach the combination of SCO in case of SCO adopted by delegated act within the meaning of Article 88 and the SCO methodology established and approved by the MA and assessed by AA within the meaning of Article 48?	Methodologies approved in a programme in line with Article 94 CPR can also be used for SCOs applied at the beneficiary level. In such a case, there is no discrepancy between the SCOs used at both levels (COM-MS and MS-beneficiary). It is possible to apply a different SCO under Article 53 CPR to the relation MS-beneficiary than the one applied under Article 94 CPR between COM - MS although not recommended.
16	We would like to get more detailed explanation (preferable by giving examples of EC approach) how to set the amount of SCO (e.g. unit price) while adhering to the "real proxy" principle (reflecting the real costs of the activity/operation) and at the same time ensuring compliance with the principles of simplification (i.e. how to set the "acceptable amount "of standard deviation when calculating e.g. unit cost, with ensuring the sufficient treatment of the extreme values).	When setting up the SCO, the MA may use one of the methods listed in Articles 53(2) and 94(2) CPR. The calculation of the SCO should be reasonable and prudent, i.e. based on reality, not excessive or extreme, reflecting the market situation. When assessing the data in order to set the SCO, extreme values should be excluded from the calculation to respect the principle of sound financial management. The MA must be able to explain and to justify its choices. The amounts should be adapted to specific conditions or needs. For example, the execution of a project may cost more in a remote region than in a central region because of higher transport costs; this element should be taken into account when deciding on a lump sum or amount to be paid for similar projects in the two

		regions.
17	In the programming period 2014-2020 many operations were financed in the form of SCO defined at the national level (in accordance with article 67 1303/2013) that were based on verified historical data from perspective 2007-2013. MS therefore doesn't have any more recent data of verified expenditures. Is it possible that in these cases for defining SCO under article 88 CPR data from operations in 2007-2013 is used and adopted by official inflation rates? The same inflation rate will then be used for adoption of SCO under article 88.	The use of "verified historical data from perspective 2007-2013" may be accepted if it is demonstrated that the amounts are still relevant. This means that the programme authorities should satisfy themselves that this data is still a reliable proxy for the real costs, and adjust it where needed.
18	In case MS is planning to use the methodology from current (14-20) period, and there are no more historical data stored, what could be used as justification to "prove" that the unit cost/lump sum is still appropriate?	The methodologies from the programming period 2014-2020 can be reused. In this case, the AA should check if the methodology is adapted to the new legislation applicable to the programming period 2021-2027 and if there are changes, which require an adaptation/update of the methodology. See also reply to question 17 above.
19	We understand that if AA and EC confirms the methodology for SCO under article 88, it can be directly used also under article 48 (for payments to beneficiaries). Or separate methodology should be prepared? Please confirm.	It is possible to apply the same SCO under Article 94 CPR (COM-MS level) to the relation MS-beneficiary (Article 53 CPR). In such a case, no separate methodology needs to be prepared.
20	We understand that "verified historical data of individual beneficiaries" in article 48.2(a)(ii) refers to historical data from single beneficiary when we want to define SCO for this particular beneficiary from its historical data. If we prepare the methodology for SCO on the basis of historical data from several beneficiaries (e.g. from past calls of proposals) this method can be understood as statistical data or other objective information (article 48.2(a)(i)). Please confirm our understanding.	Article 53(3)(a)(ii) CPR indeed refers to historical data from an individual beneficiary when the MS wants to define SCO for this particular beneficiary from its historical data. If historical data from different beneficiaries are used to establish a SCO amount for future calls, such method of establishing SCO is covered by Article 53(3)(a)(i) CPR. As clarified in section 4.2.2.2 of the revised Guidance Note on SCOs (EGESIF 14-0017), the methods based on verified historical data of individual beneficiaries are in particular simplifications for beneficiaries who will implement many projects over the programming period.
21	1) Data processing: what is the Commission's view of the minimum number of data needed to calculate a flat-rate average cost? 2) Use of national statistics: can an average statistical unit cost based on a population covering all social categories of employees be used on this smaller part of this population whose average cost is different?	1) There is no minimum data requirement. The sources of the data used for the analysis and the calculations, including an assessment of the relevance of the data to the envisaged operations, and an assessment of the quality of the data need to be documented when setting up SCOs. Please see also reply to question 28. 2) The question is unclear. More information is required in order to consider all parameters at

		stake.
22	In Luxembourg during the general lockdown but also later when school were kept closed, the state largely financed (via the social security) the staff costs. Special parental leave were granted (one of the two parents was allow to stay home to take care of the kids with cost fully covered by the state, no limitation on the time, until the school were closed, even partially). Taking into account that the SCOs will be applied as from 2022 and not earlier and that we all hope that we will be back to something more similar to normal life by then, we would like just to skip the data of 2020 and rather use the data of 2016-2019 to establish the flat rate. I am sure we are not the only ones having this problem and we are wondering if: 1) The proposed approached would be acceptable from the EC point of view (the auditors in particular) 2) How other are solving this issue.	Data needs to be relevant for the SCO considered. The sources of the data used for the analysis and the calculations, including an assessment of the relevance of the data to the envisaged operations, and an assessment of the quality of the data should be provided. Therefore, when setting up the SCO the MS has the possibility to explain why the data from these years is not relevant and exclude it from the calculation basis. In the concrete example, the relevance of data from COVID years (2020-2021) for expenditure starting in 2022 depends on how the social and economic reality will be at that moment in time in particular, it could be justified to exclude data from 2020-2021 as not representative for establishing the SCO in question.
23	In the event that an SCO is established on the basis of an expert judgement in the absence of historical or statistical data, the AA must verify the competence and independence of the experts but does not verify the amounts. Do you confirm this position?	The AA shall verify not only the competence and independence of the expert but also if the expert judgement is well documented, coherent and specific to the particular circumstances of each case.
24	Can the methodology for unit cost calculation be based on data from planned budget from application form rather than approved payment claims?	No, the methodology may not be based on data from planned budget, as such data is not certified, their reliability is not ensured.
25	How should we ensure similarity of projects in order to use the method copy paste?	There is no indication in the CPR of what is understood by similarity of operations. It is for the MA to assess whether in a particular case the condition of similarity is fulfilled. Please note that all elements of the method that could have an impact on the unit cost / lump sum / flat rate should be taken into consideration. A case-by-case examination is necessary. Please also refer to section 4.4 of the revised Guidance Note on SCOs (EGESIF 14-0017).
26	Are mean hourly rates based on historical data for f.e. R&D projects be an art 88 SCO with amount of spent hours as indicator/trigger? Are there examples of this	Averages, or median values or other statistically sound methods may be used to calculate SCOs. The indicator triggering reimbursement will be the hours. It is reminded that when setting the SCO the MA may use one of the methods listed in the CPR (Articles 53(2) and/or 94(2) CPR). Sources of the data used for the analysis and the calculations, the relevance of the data to the envisaged operations, and the quality of the data should be

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

		assessed.
27	Examples of good practices of methodologies which are not based on statistics published by the national statistics office but on market research data.	Such examples could be the objective of discussions and exchange of experience between the members of the TN ERDF SCO practitioners.
28	How can MA/AA be sure that the used data for the methodology is reliable? What is the minimum of data which supports calculated SSCU or lump sums?	There is no minimum data required to calculate SCOs. Data can be taken from many sources. Reliability of data used will depend on the source of data used. For example, data coming from national statistical offices or EUROSTAT can be considered reliable. For some sources of data, more detailed checks could be needed to confirm the reliability of data In some cases, the professional judgement of the AA could be used to decide whether additional checks on a sample basis should be carried out or not (taking into account any information available to AA on the type of data, the way of compilation, internal procedures of bodies for approving the provided information etc.)
29	Is it possible to use two different flat rates for different categories of costs applied to the same base cost (e.g. staff costs)?	Yes, it is possible. For example, a flat rate of x % of staff costs can be used to calculate the indirect costs and the same basis i.e. the staff costs can be used to calculate the other direct costs of the operation at a flat rate % as well. Attention is drawn to the need for the basis not to include costs that will be covered by the flat rate to avoid double financing.
30	We would need some more clarification on using historical data in preparing methodologies. Is this applicable only when defining SCOs for a single beneficiary? We understand "historical" data from more than one beneficiary as other objective information or statistical data.	The historical data (both, on projects or operations funded from CPR Fund or from different sources) can be considered as statistical data.
31	How to make use of already available knowledge on the market prices for (specific) goods/ services? Is such a thing (market maps) available somewhere?	The COM does not have this information.
32	Can you take a national scheme (not in total, just a part of it), if this part itself will be used in its totality (but not the methodology itself)? For example, the national scheme covers different types of costs (salaries, material costs, etc.) but only the part of the national methodology covering the salaries will be used in the SCO methodology?	In the specific example used it seems you wish to set up a SCO in accordance with the rules for application of corresponding SCOs applied under a scheme funded entirely by the Member State for a similar type of operation). If the national scheme sets up SCOs for several categories of costs but you only wish to use the SCO set up for one of those categories of costs included in the scheme, it is possible to do so. However, when re-using the existing national method you need to ensure that:

		• the method is re-used in its entirety for this specific SCO established under the national scheme (for instance and where applicable, eligible expenditure, scope) and not only its result (lump sum of EUR X); • it normally applies to the same geographical area or a smaller one (if a methodology is applied in only one region, it can be re-used by the region concerned but not by another region of this Member State where the national methodology is not applicable); • the method is applied to a similar type of operation; • reference is made to the method and justification that it is in use for operations supported from national sources.
33	When setting up the methodology for unit costs, is it correct to include a flat rate within the unit costs calculation, or is it necessary to develop other methodology?	The question is not clear.
34	What documentation should we have on file of the proposal when we use draft budget?	All supporting documents that relate to the calculation or justification of the costs of all categories of the draft budget. In addition, the document containing the budget itself (i.e. the draft budget) is to be archived by the managing authority as a supporting document to justify the SCO used.
35	When designing SCOs if we should check all the documents as the primary data sources or it is enough to use the data that will be provided for us by institution that is responsible for such data collection and the correctness of provided data?	In case the AA considers the source of data as reliable (for example, data coming from the national statistical offices), the check will focus on the verification that the data actually inputted in the calculation correspond to the source data and that they are eligible and relevant for the SCO scheme. For some sources of data, more detailed checks could be needed to confirm the reliability/correctness of data. A specific case merits special attention: it is when data coming from reliable sources (for example, published reports and official internet databases) are not used directly as such (automatically generated from the source's database) but are compiled to a unified form by hand. In such cases, it would be a good practice to compare (on a sample basis) whether the compiled numbers are in line with official reports. As, however, this will not always be practically easy to do, the AAs may use their professional judgement to decide whether additional check on the sample basis should be carried out or not taking into account any information available to AA on the type of

		data, the way of compilation, internal procedures of such body for approving the provided information, etc.
36	FEV method: is it ok for the MA to combine different sources of information in order to establish its methodology? For example "expert judgement" and "other objective information".	The objective of the methodology is to set up a SCO. Articles 53(3)(a)(i)] and 94(2)(a)(i) CPR refer to "other objective information" and "expert judgment" next to the use of statistical data. In relation to the example given, if there is data available from a source, which qualifies as objective, and the methodology can be set up using this source, it is not clear why an expert judgment would also be needed to set up the SCO, as an expert judgment can be used when there is no objective information available. Likewise, the same applies for the other methods. However, a combination is not legally excluded.
37	Considering the data used to create / calculate the SCOs, what is the influence of the ongoing pandemic? For example, costs for traveling differ a lot between the year 2020 and the previous years. The is quite a big deviation. It should be considered to leave out the data of the years after 2019 because they are not representative for an assessment. The scope should be adjusted.	In case the MA considers (and the AA agrees) that certain data is not representative (outlier), they can remove that data from the basis but a sound justification needs to be provided. Please see also reply to question 22.
38	Can article 50.2 be used even if such historical data under article 50.4 is available (dated 12 months and older)?	The question is not clear. Please be aware that the CPR refers to the calculation of the hourly rate using the 'latest' documented annual gross employment cost. The term "latest" in Article 55(2) CPR means that the data used must be recent enough, i.e. indicative of real staff costs. This means that a calculation method based on historical data of the beneficiary is not relevant.
39	How will the SCO update need to be performed and with whom we should consider this, if indexation is planned, and we change it according to the provided adjustment conditions?	Updates (adjustments, such as indexation) maybe foreseen when establishing the methodology and, for SCOs under Article 94 CPR, described in Appendix 1. The adjustments will then follow the pattern approved with the programme. Any deviation from it will be considered irregular, as long as it is not agreed with COM in a programme amendment, amending the approved SCO scheme.
APPENDIX 1		
40	Appendix 2 is less taxing than Appendix 1 given that Section C of Appendix 1 is not included in Appendix 2. That being so, will auditors and the Commission be verifying the sources used and the calculation method adopted before approving an SCO based on FNLTC?)	Based on Article 95 CPR the COM will approve the scheme and the overall amount for the implementation of the scheme. In addition, as specified in recital 34 CPR: "the respect of the principle of sound financial management should be ensured. In particular, as regards the appropriateness of the amounts linked to the fulfilment of the respective conditions or the achievement of results, the Commission and the Member State should ensure that resources

		employed are adequate for the investments undertaken". This means that the COM should agree with the MS that the overall amount linked to the fulfilment of conditions/results is appropriate. This entails a dialogue with the MS as they both bear responsibility on ensuring the respect of sound financial management. The dialogue will involve presentation and discussion of the calculation method leading to an overall agreement on the resources employed for the implementation of the scheme.
41	Is it possible to fill in Annex V. Appendix 1 with SCO methods that are planned to be applied between MA and beneficiary? It would help us with legal certainty and of course would be preceded by AA assessment.	Appendix 1 is to be used for SCOs under Article 94 CPR (COM-MS level). However, in case the MA plans to apply the same SCO at the level MS-beneficiary (Article 53 CPR) as well, it surely can. Please see also replies to questions 15 & 19.
42	1) Is it acceptable to indicate in appendix 1 Annex V CPR SCOs implemented in accordance with Article 48 CPR, incl. off-the-shelf options or the EU level SCOs from the EC delegated act ? 2. Is it required to indicate in appendix 1 Annex V CPR 7% flat rate in accordance with art. 49(1)(a) CPR, which is considered as a fulfilment of the obligation of the mandatory use of SCOs (Article 48(1) CPR)?	1) No, SCOs that will be exclusively implemented in line with Article 53 CPR shall not be included in Appendix 1. However, it is possible that the same SCO applied as a mode of reimbursement between COM-MS also applies at the level MS-beneficiary (Article 53 CPR). Moreover, Union level SCOs that will be established by delegated act pursuant to Article 94(4) CPR will not need to be included in Appendix 1, either. 2) No, off the shelf options mentioned in Articles 54-56 CPR are absolutely not to be included in Appendix 1. Their legal certainty is ensured by the CPR provisions (the MS is not required to confirm that these rates are reliable proxy of costs for their operations).
43	Can the same template as used for SCO according to Art. 88 be used also for the SCO methodology according to Article 48?	No, Appendix 1 is only used for SCO under Article 94 CPR as a mode of reimbursement between COM-MS and is not applicable in the case of SCOs under Article 53 CPR (MS-beneficiary), as such SCOs will not be approved within the programme. See also clarification under question 42 above.
44	Question related to article 88 and articles 49 - 51? Is there any document similar to Annex V-Appendix 1 which the MS has to fill up and send to EC or nothing like that is necessary?	No, SCOs that will be implemented in line with Article 53 CPR are not approved by the COM and consequently there is no template to submit.
45	LV: regarding projects below 200 k- what COM would expect from MS regarding methodologies in these projects and whether these methodologies should be included in Annex 5, given that there might be a large number of methodologies	See replies to questions 41 to 44 above.
46	A practical step by step guide/example how	This exercise has been carried out at several

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

	Appendix I is completed by a MS.	meetings and especially at meetings of TN ERDF SCO practitioners (Simplified Cost Options - Regional Policy - European Commission (europa.eu)) as well at meetings of the TN on Simplification for ESF authorities.
47	Should part B of Appendix I be filled in multiple times if the selected methodology applies different rates according to the pertinent project size.	For operations encompassing several SCOs covering different categories of costs, different projects or successive phases of an operation, the fields 3 to 11 of part B of Appendix 1 should be filled in for each indicator triggering reimbursement.
48	How to fill in the first part of Appendix I with regards to operations that are using different SCOs to meet individual Actions.	In Appendix 1 only the SCOs used for reimbursement by the COM to MS should be included which should be calculated based on the methodology indicated in Article 94(2) CPR. The way beneficiaries will be reimbursed (SCOs or costs actually incurred and paid) is irrelevant for Appendix 1 purposes. For simplification purposes, the Commission recommends the use of the same SCOs as a mode of reimbursement between COM-MS and at the level MS-beneficiary.

EX ANTE ASSESSMENT OF SCOs		
49	Are all SCO foreseen for the funding period 2021-2027 to be approved and certified by the audit authority (or only those to be submitted with the operational programme)?	SCOs included in the programme (Article 94 CPR) must be assessed by the AA before the submission of the programme to the COM. The AA is not approving the SCO. The approval is done by the COM, within the adoption of the programme. SCOs under Article 53 CPR are subject to the regular risk assessment of the AA (covering both system audits and audits of operations). Depending on this risk assessment, the AA may envisage an early (ex-ante) assessment, a system audit or include a check of the methodology when auditing its sample for the audits of operations.
50	Given the voluntary nature of the SCO and the non-binding nature of the ex-ante assessment of the SCO methodology based on the Art. 48 by the AA, is it possible to set up an obligation on the MA to use this tool?	Ex-ante AA assessment of SCOs methodologies developed under Article 53 CPR is not mandatory (it was not mandatory in the programming period 2014-2020, either). With regard to the need for an ex-ante audit assessment of Article 53 CPR, please see the reply to question 49 above. The need of an early audit will be decided with the overall audit risk assessment and audit plan of the AA, which will take into account the characteristics of all measures funded under the programme.
51	Is it possible to jointly execute the ex-ante assessment of the SCO methodology (outside Annex V) based on Article 48, with the EC representatives/auditors? In such a case, which body carries	Whereas in the programming period 2014-2020 the COM provided this possibility, for the moment no such joint audits focused on SCOs are foreseen for the programming period 2021-2027. For SCOs under Article 94 CPR, COM will approve the programme, including the developed SCOs methodologies. As part of the approval process, SCOs are reviewed, including the

	out the ex-ante assessment "officially"? Is it AA or EC?	ex-ante assessment provided by the AA. COM services are available in case of questions and requests for interpretations, for both MA and AAs.
52	Where is the border line between the SCO methodology and other supporting documents? Should the AA ex ante assessment be focused only at the methodology or should it also concern the broader context of the operation, for example the content of the operation, target group, beneficiaries, activities, publicity, state aid, data collection, public procurement, personal data protection, etc.?	For SCOs developed under Article 94 CPR, Appendix 1 requires the information necessary to assess the methodology (details on operation, possible perverse incentives or problems etc.). The AA should assess all relevant documentation for the proposed SCO.
53	To what extent methodologies already in use should be reassessed?	As required by the CPR, methodologies for the SCOs under Article 94 CPR should be assessed by the AA. Even if methodologies are in use, they should be reconfirmed, as there may be elements that need update so that SCOs still constitute a reliable proxy of real costs. The AA assessment should be submitted together with Appendix 1. As clarified in the COM SCO checklist : "Please note that in line with Article 49 CPR, where a Member State has calculated a flat rate for indirect costs based on eligible direct costs in accordance with Article 67(5)(a) of Regulation (EU) No 1303/2013 (fair, equitable and verifiable calculation method), that flat rate may be used for a similar operation for the programming period 2021-2027. In case the MA considers that any other SCO methodology developed for 2014-2020 is also of relevance for 2021-2027 (there are no major developments/legal changes which would require change of the methodology), then the AA can rely on the assurance obtained on that methodology in its previous audits. In such a case, the additional analysis of the AA for the 2021-2027 SCO could be limited (in particular to ensure that the old methodology is in line with the new legal framework and to confirm that there are no major developments which would require change of the methodology)." For the ESF, this applies most notably to unit costs and lump sums adopted by a delegated act (see Commission Delegated Regulation (EU) 2015/2195 of 9 July 2015, amended 9 times - https://ec.europa.eu/esf/main.jsp?catId=1490&langId=en)

AUDIT OF SCOs		
54	What is the scope of AA's role in the preparation and approval of bespoke SCOs (unit costs, flat rates etc.) and in giving security and reassurance to project partners before incurring costs. In the	The decision and responsibility of the development of an SCO scheme lies with the MA, not the AA. As regards SCOs under Article [94 CPR, before programme

	current programmes the AA's role has focused on auditing the SCOs, however this has created several problems	submission to COM, the AA will perform an assessment of the calculation methodology and amounts and the arrangements to ensure the verification, quality, collection and storage of data. The COM will review this assessment together with the SCO methodology submitted and will approve SCOs as part of the programme. With regard to SCOs under Article 53 CPR, please see the reply to question 49.
55	Can the Commission present an updated checklist of how audits will be carried out?	COM shared its draft SCO checklist for the programming period 2021-2027 with the AAs on 15/12/2020. The final version was distributed in the meeting with AAs of 12/03/2021. It was also shared with the MAs at the 8th meeting of the Transnational Network of ERDF/CF practitioners (Simplified Cost Options - Regional Policy - European Commission (europa.eu)).
56	If in the COM's checklist there are minimum requirements of questions for AA to address, what could be the maximum, for example: in case the statistical data are used, AA could - actually should, rely on?	See reply to questions 58 & 59 below.
57	What are the lessons learned from the technical meeting of the EC Audit Unit and the AAs?	In the technical meetings of 15/12/2020 and 12/03/2021 the AA and COM agreed on the minimum audit work to be performed for SCOs under Article 94 CPR. These technical meetings focused on the methodology-checklist to be applied during the assessment of SCOs under Article 94 CPR (and other audit work for SCOs) and on the assessment template to be included in the programmes for part C, section 5 of Appendix 1. Although the checklist and template are not legally binding/mandatory, the AAs are strongly recommended to use them (or to treat them as a minimum requirements) in order to speed up the SCO assessment and approval by COM. In particular, using the assessment template will result in reduced or no need to request additional confirmations from the AAs related to the scope of the audit work and the conclusions reached.
58	Are the checklist and template for the audit assessment mandatory for AA to follow? Is it minimum requirements to be followed? Could/ should other questions be added?	The checklist and template for audit assessment were agreed between COM and AAs during the technical meeting of 12/03/2021. They are not legally binding, however, if not followed, COM may require additional information to ensure that all legal requirements have been verified and to be able to approve the SCO scheme under Article 94 CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

		For the remaining two questions, see reply to question 59.
59	Can the checklist prepared by the COM be supplemented by the MS's AA during an SCO's assessment as currently its format is too general	The checklist is agreed between the AAs and the COM as a minimum basis for the assessment. The AAs can further develop it to their needs.
60	Checklist – section 1.2, (vii) – TA – for Interreg programmes it is mandatory to use flat rate for TA – should the AA still check this (part 1 of the checklist, which is about SCO methodology and not application)	No, it should not.
61	Does the AA need to prepare a separate assessment report for each SCO method assessed? In case multiple SCOs have been assessed by the AA simultaneously can a single assessment report be submitted	The question does not clarify if the SCOs concerned here are foreseen to be submitted to the Commission for approval under Article 94 CPR or under Article 53 CPR without submission to COM for approval). • For SCOs under Article 94 CPR: AA can prepare one assessment (but include details for each methodology). Checklist questions need to be duplicated per methodology. • For SCOs under Article 53 CPR: The AA will perform its system audit or audit of operations at a certain moment and can equally issue one report per system/audit of operation covering all SCOs concerned. Here again, if several SCO methods are under assessment, checklist questions need to be duplicated per methodology.
62	Who will be the recipient of the AA's assessment reports and will the AA be required to submit its assessment reports separately in the SFC?	We expect that the filled template for audit assessment is submitted with the programme document. Therefore, the Managing Authorities will submit the ex-ante assessment of the SCO schemes via SFC at the stage of programme submission.
63	Is it mandatory to audit all SCO methodologies developed under Art. 48 and/or during the development?	No, it will depend on the risk-assessment of the AA and the resulting audit plan.
64	What will be the impact if, for example, we use flat rate and the activity will not be implemented, how to calculate the error rate for financial corrections?	It is not clear from the question whether the whole operation or an activity within the operation is not implemented. If the whole operation is not implemented, this will result in a financial correction of the full amount affected. If it is one activity not implemented, the amount corresponding to the activity non implemented will be ineligible. The error rate will be calculated as usual.
65	How the EC will identify or control that the State declare expenditure as agreed under Article 88? Because in the form of declaration it is not excluded that expenditure is declared under	MS and COM will verify the implementation based on the conditions approved within the programme. The control cycle contains first level controls before declaration of

	Article 88.	expenditure to the COM, second level controls (audits) providing assurance that the expenditure in the accounts is legal and regular, and audits by COM and ECA on the submitted accounts. SCOs under Article 94 CPR will be verified at each of these stages against the above-mentioned conditions.
66	If we will have positive feedback on SCOs from AA. What is the probability of COM later to question it. What would be the consequences for the Programme?	Regarding SCOs submitted to the COM in line with Art.94 CPR the COM will assess Appendix 1 based on the information included in it and the AA assessment. The COM will rely on the assessment provided by the AA if it is positive without any reservations and based on the COM review of the documents submitted there are no issues detected with regard to the reliability of the assessment.
SCOs & PUBLIC PROCUREMENT		
67	As provided in Article 68a CPR, the calculation of direct staff costs of an operation at a flat rate of up to 20% of the direct costs other than staff costs will not require a calculation to determine the methodology unless the operation includes public works contracts which exceed the threshold set out in point (a) of Article 4 of Directive 2014/24/EU. This means, that if the direct costs of the operation are even partially covered by such a public works contract which exceeds the threshold set out in point (a) of Article 4 of Directive 2014/24/EU, the use of the 20% flat rate defined in the Regulation is possible but will require the establishment of a methodology to determine the applicable rate. Could Commission please clarify if, should staff costs calculated on the basis of direct costs covered by such a public works contract were proven NOT to be externalized, does the 20% flat rate still require to establish of a methodology? In the case for example of an operation that has two types of costs: acquisition of research equipment (some of them exceeding the threshold) and staff costs (people, on the beneficiary's payroll, in charge of operating and of the maintenance of this equipment).	The provision mentioned concerns CPR for the programming period 2014-2020. However, the rule is the same in CPR for the programming period 2021-2027 (Article 55(1) CPR). Yes, staff costs in the example given should be calculated based on methodology in line with Article 53(3) CPR, as the provision does not differentiate between direct staff costs externalised or not, but the criterion is rather to ensure that the direct costs of the operation (staff costs excluded) do not include public works contracts which exceed the threshold set out in point (a) of Article 4 of Directive 2014/24/EU 4 of the European Parliament and of the Council (or in Article 15 of Directive 2014/25/EU of the European Parliament and of the Council).
68	Based on revised Guidance on SCO (14-20), When operations are implemented through public procurement procedures, the price in the contract notice is by definition a unit cost or lump sum constituting the basis of the payments by the beneficiary to the contractor. However, for the purposes of Article 67 CPR, costs determined and paid by the beneficiary based on amounts established through public procurement	This relates to the programming period 2014-2020 period and not to the programming period 2021-20027. This approach in the revised Guidance Note on SCOs (EGESIF 14-0017) is based on the Joint Statement by the COM and the Council in the CPR for the programming period 2014-2020 on Article 67 and is linked to the prohibition of implementing SCOs in fully procured

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

	procedures constitute real costs actually incurred and paid under Article 67(1)(a) CPR. Question: In case an SCO methodology is applied for works contract, it is assumed that the conditions for payment by the MA to the Beneficiary may not be the same as the conditions for payment by the Beneficiary to the Contractor (this specifically applies to unit cost contracts) .	projects. In the CPR for the programming period 2021-2027, there is no such prohibition, i.e. it is not excluded that the unit cost or lump sum paid to a contractor constitutes a SCO. However, it is not clear what is meant by "conditions for payment". If it is meant a different form of reimbursement (i.e. reimbursement from the MS to beneficiary based on a lump sum (and from the beneficiary to a contractor based on a unit cost (for example)), this is not excluded but the concept seems against simplification.
69	Is it reasonable to use contracts, contract addenda (not the whole procurement procedure documents) and BoQ from the Contractor as the basis for assessment of progress of operation (milestones) which serve as basis for reimbursement based on SCO, and not as basis for taking into consideration the real costs (which will be clearly stated in the documents, but should not be relevant for SCO).	It is for the MA to set out the conditions for reimbursement of the operations, the indicators and the milestones/steps. The way mentioned in the question seems reasonable and acceptable.
70	Article 50, CPR 2021-2027 – is the value of specific contracts or the value of the procurement procedure relevant with recept to above threshold rule since procurements may be divided into lots, and each lot contracted with different contractor, and those separate contracts may be of value below threshold	Article 55(1) CPR mentions public works contracts or supply or service contracts "which exceed in value the thresholds set out in Article 4 of Directive 2014/24/EU of the European Parliament and of the Council or in Article 15 of Directive 2014/25/EU of the European Parliament and of the Council". Article 4 of Directive 2014/24/EU refers to "procurements with a value net of value-added tax (VAT)" being equal to or greater than the specific thresholds stated therein". The same provision is enshrined in Article 15 of Directive 2014/25/EU. This means that it is the procurement value that will be taken into account irrespective of the lots that a procurement maybe divided in.
71	For fully procured operations, how to set up the price (e.g., for the unit costs)? What would the process look like? What is acceptable/proportionate in this case (especially in the context of small markets, limited number of offers, inflated prices knowing that the public funds will be financing specific types of operations, very specialised goods for procurement). How can we ensure that the work put into setting up a unit cost for fully procured operations is not for the sake of simply avoiding the public procurement?	This question is under assessment. The COM will reply at a later stage when all elements have been clarified.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

MANDATORY USE OF SCOS		
72	We suppose the only moment when the mandatory use of SCOs must be checked is at the time of issuing the decision on the support of the project from EU funds. E.g. if initial planned costs of the project are over 200 000 EUR and the support is thus based on the real costs but finally the really incurred total costs decrease below 200 000 EUR, does this situation have any implications toward the assessment of the mode of the financing? We assume that it is in any case possible to change the mode of the financing after the decision is issued but we would like to get the assurance from your side as well. How to deal with the operation whose part of costs is supported by the state aid (e.g. the regional investment aid according to GBER) and the other part of costs is supported by de minimis aid (e.g. in the total amount of 100 000 EUR) and the total cost of the operation does not exceed 200 000 EUR? We suppose that as the operation is provided with the state aid regardless the volume of costs covered by GBER and de minimis aid is provided as well, there is no obligation to use SCOs on this operation	The moment of signature of the document setting out the conditions for support is the moment where the application of Article 53(2), first subparagraph CPR enters into play. The costs actually incurred by a beneficiary are irrelevant as regards the application of this Article. The CPR (2014-2020 and 2021-2027) has not established primacy among the types of aid, when, notably, in the same operation, ERDF comes under the de minimis and the national support comes under a State aid regime (GBER). Where combination of State aid and de minimis in the same operation is possible, subject to conditions under the State aid rules, the most adequate solution is not to impose the use of the SCOs. This solution offers the maximum simplicity and flexibility for the managing authority.
73	1 Is the use of SCOs mandatory, if de minimis and state aid (GBER) are combined in 1 operation the total cost of which does not exceed EUR 200.000? 2. Is the use of SCOs mandatory, if operation, the total cost of which does not exceed EUR 200.000, is fully procured? How to fulfill the obligation of Article 48(1) CPR, if none of the SCOs in outsourced operation is reasonable and effective?	• 1) No. See reply to question 72 above. 2) a) Yes, it is. b) The purpose of Article 53(2), first subparagraph CPR is that controls of low value (small) operations are not efficient and the application of SCOs would bring simplification. The CPR foresees several possibilities to establish SCOs for small operations to fulfil this requirement; one suitable option is the use of a draft budget.
74	If the contract of project is above 200 000 EUR, but savings have occurred during implementation and the total amount of the request for final payment is below EUR 200 000, what action the EC is expecting from member state in this case regarding to mandatory use of SCOs?	No action. The obligation to use SCOs is at the moment of signature of the document setting the conditions for support where all costs are taken into account for the application of the threshold. There is no change of this during or after the implementation of the operation irrespective of whether the real costs are lower due to savings made.
75	At what level the mandatory use of SCOs apply?	Mandatory use of SCOs applies at the level of the operation to be co-financed. Therefore, depending on what the operation is in this scheme, mandatory use will apply at that level. To be able to reply clearer, more details need to be provided on the implementation scheme

		and what the different levels refer to. As regards ETC, SCOs are mandatory for small projects with total costs below 100 000 EUR implemented under small project funds, Article 25(6) ETC Regulation.
76	HU: In case of mandatory use under 200 000 EUR total cost, do we understand correctly that cost can be covered by a combination of SCOs? Of course avoiding double financing.	The mandatory use of SCOs (Article 53(2), first subparagraph CPR) requires that all categories of costs are covered by SCOs except where specific exceptions are provided in this Article. In line with Article 53(1)(e) CPR, the different forms may be combined provided that the combination 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. The above means that a combination of different forms of support (i.e. different SCOs or a combination between real costs and SCOs) is possible. However, it needs to be ensured that no double financing occurs.
77	Germany and RO: mandatory use of SCOs for projects of less than 200.000 EUR also for De-minimis aid projects?	Yes, in line with Article 53(2) CPR, first subparagraph CPR operations subject to de minimis aid must be implemented by SCOs.
78	Please, could you confirm that the mandatory use of SCOs to de minimis projects was approved with the legal services of COM?	It is not clear what is meant by "approved by legal services". This provision has been interpreted by COM services and in line with this interpretation, mandatory use of SCOs covers operations subject to de minimis aid.
79	For the projects where the total cost of an operation does not exceed 200kEUR and according to the requirements of Regulation it is mandatory to use a SCO, is it possible allowances and salaries paid to participants may be reimbursed in real costs as an exemption?	Yes, this is clearly stated in Article 53(2), second subparagraph CPR.
80	What kind of criteria/arguments can a MA use to exempt some operations in the area of research and innovation; and if the same intervention in the area of research and innovation is supported by different MAs, can one exempt and the other not?	The CPR does not specify criteria for such exemption. It is to the Managing authority to decide on such exemptions based on professional judgement and to ensure they have been approved by the monitoring committee.
81	In a call for proposal, can we let the choice to the candidate to use or not the SCO proposed by the managing authority and can the MA propose different SCO for a same category of costs?	No, the use of SCOs and what categories of costs they will include should be clearly set out in the call for proposals and applicable for all operations selected for example under the call in order to avoid discrimination. See also reply to question 89.
82	What is the consequence if there are projects not implemented as SCOs if they should?	The provisions of the CPR must be respected. If this is not the case, depending on the specifics of the issue, the non-use of SCOs may be considered as a systemic weakness of the

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

		management and control system in which case a financial correction may be applied.
83	Is it sufficient to use the 7% flat rate, in cases where the SCO use is mandatory and when the operation is fully procured? What will happen if the MS does not use the mandatory SCO, when it should have done so?	1) Yes. 2) For the second part of the question please see reply to question 82 above.

STATE AID		
84	Is correct the conclusion that MAs or AAs are not obliged to do the control or audit of compliance with the state aid rules if the state aid rules are taken into consideration in the methodology on SCOs setting? Is necessary to have the SCOs methodology verified by the AA in such a case?	The verification of State aid/de minimis rules is required at the stage of the methodology preparation as well as at the stage of selection of operations/implementation, depending on individual cases. See also reply to question 86.
85	In case the state aid rules are not taken into consideration in the process of setting the SCOs methodology, my understanding is that the MAs should control the compliance with state aid rules before the decision on the EU funds provision is issued and the amount set based on the SCOs methodology (e.g. amount per unit multiplied by the number of units, the lump sum or the amount of costs, which should be reimbursed based on FR) is considered to be the amount of eligible costs, to which the relevant state aid intensity is applied. Is my understanding correct?	The moment in time when you establish eligible categories of costs to set up the methodology for the application of SCOs and the calculation of the aid intensity is the moment where you should check compliance with State aid rules. In any case, the grant agreement would clearly state the categories of costs (eligible for both State aid and CPR rules) as well as the funding of the project, i.e. the amount to be supported by public co financing to which State aid intensity will be applied. See also reply to question 86.
86	How the State aid issues can be addressed - assessed, when flat rates and/or off-the shelf methodologies are used?	1. At the stage of the SCO methodology: Assess whether the support to be granted is subject to considered State aid/de minimis rules (more clarification in this regard could be found in the Commission Notice on the notion of State aid (OJ C 262, 19.07.2016, p. 1.). a. In case of de minimis aid check that the thresholds are not exceeded at the stage of selection of operations. b. In case of state aid verify which rules are applied (GBER, SGEI, notified scheme, etc.). Then check if the categories of costs covered by the flat rate/off the shelf amount are eligible under the State aid rules applied. 2. At the stage of selection and implementation of operations Check if the aid does not exceed de minimis

		thresholds, or that it complies with any aid intensity rules. If relevant, check whether the beneficiary complies with SME status (if required by State aid applicable rules).

GENERAL QUESTIONS ON SCOs		
87	How to deal with the case when the VAT is part of eligible costs used for the calculation of the SCOs (e.g. lump sum or unit costs) and in the course of the project implementation or during the sustainability period the beneficiary changes its status from the VAT point of view and becomes the VAT payer with the right of the VAT deduction (i.e. the VAT becomes ineligible). How to process possible corrective measures especially in case of the lump sum in a case the output of the project was delivered in time and in a quality requested?	• For operations the total cost of which is below EUR 5 mio (including VAT) VAT is eligible. • For operations the total cost of which is at least EUR 5 mio (including VAT): • In case of reimbursement of costs based on a flat rate, VAT eligibility is assessed for the basis costs, i.e. the costs to which the flat rate is applied. As regards the "real" costs covered by the flat rate (i.e. costs underlying categories of expenditure reimbursed based on the flat rate) VAT eligibility will not be assessed, ○ In case of reimbursement of operations based on unit costs and/or lump sums, if the MA applies the same SCO rate for all operations (regardless whether they are above or below EUR 5 mio), in practice no adjustment is needed.
88	Are SCOs applicable for RRF support as well?	Please refer to RRF website: RRF - Frequently asked questions - RECOVER FAQs for Member States - EC Extranet Wiki (europa.eu)
89	How to make sure that the costs are equal between different SCOs (different calculation on same things etc)?	The question is unclear. There is no requirement or need for equality when a SCO method is set up to calculate the costs of an operation. There can be different calculation of the same costs. Different methods do not need to have the same calculations; however, they need to be fair, equitable and verifiable. It is also reminded that if within the same programme/call for proposals the MA applies different amounts/rates to the same types of beneficiaries or operations, it needs to ensure that it does not favour some beneficiaries or operations over others, i.e. equal treatment principle is followed (if different amounts/rates are applied to the same types of beneficiaries or operations, it must be based on objective elements).
90	Regarding flat rate, what sort of good practices had been identified relating to reckoning basic cost and calculated costs, in order to fulfil the requirement that calculated costs shall always be paid together with basic costs?	There should be due proportionality between basis costs and calculated costs: 1. For example in the case of flat rate of direct costs for the calculation of indirect costs: • No 'indirect costs' should be declared to the

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

		COM without underlying direct costs having been incurred. • if for example X % of the direct costs are paid by the beneficiary, around the same percentage of the indirect costs (not exceeding the regulatory % for the direct costs) may be considered as paid. 1. Another example: • 20 % flat rate for staff cost is used. • The reimbursement claim by the beneficiary is EUR 50.000 for equipment. • The MA will reimburse EUR 50.000 for equipment + EUR 10.000 for staff costs (20 %, automatically calculated when basis - real costs are included in the reimbursement claim). Total amount of eligible expenditure subject to reimbursement: EUR 60.000.
91	Art. 53 para.1 subparagraph 2 allows that the managing authority exempts operations from the obligatory implementation of SCO in the case of research and innovation. The monitoring committee has to give its prior approval. As regards the future funding period, when does the monitoring committee has to approve and which monitoring committee (of funding period 2014-2020 or 2021-2027)?	Monitoring committee of the 2021-2027 programme, at the moment assessed as suitable by the MA, e.g. for a whole call of proposals given the specificity of the operations sought or upon closure of submission of proposals to a call and assessment of (some specific) projects (to become operations).
92	Which categories of sco have to be submitted with the operational programme? How to distinct these sco from other sco?	Appendix 1 should include all categories of costs that will be covered by unit cost, lump sum or flat rate of a specific type of operation. There is no restriction with regard to which SCOs can be submitted under Article 94 CPR. However, it is strongly recommended to use it for SCO schemes, and not for SCOs targeting a specific operation, e.g. a draft budget for a specific operation. The second question is not clear. For SCOs under Article 53 CPR (MS-beneficiary level), such costs should not be included in Appendix 1. However, as already replied, SCOs in Appendix 1 may be the same as SCOs applied at the level of the beneficiary.
93	How to ensure that expenses to be covered by simplified cost options and other expenses can be clearly distinguished (especially indirect costs/administrative personnel costs to be distinguished from other personnel costs). Which criteria are appropriate for such a distinction?	The MA needs to define specifically the categories of costs of an operation to be covered by SCOs. This means that the MA should define and clearly separate direct costs from indirect costs by their link to the operation. By clearly separating the categories of costs and the application of different SCOs for each category, the MA will ensure that no double financing occurs.
94	If I use SCOs between MA-beneficiaries, how the EC will reimburse me at programme level, on which basis. What	The COM will reimburse the MS based on Article 51(b) CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

	about legal certainty? This in the case I do not submit any SCOs under article 88, for instance.	

SCOs IN PAYMENT APPLICATIONS		
95	1. Could you please indicate and correct if wrong the following understanding of "template for payment applications - Article 85(3)": 1. Column B, corresponding to level Member State - beneficiaries, is the column in which the "real costs" under article 48 (a) and simplified costs options under article 48 (b), (c) and (d) should be declared. 2. Column B bis, corresponding to level Commission - Member State, is the column in which simplified costs options and financing not linked to costs under article 46, 88 and 89 should be declared. Could Commission indicate to what type of costs article 85 (3) (a) and article 46 (b) refer exactly and in which column the costs under 46 (b) should be declared? 2. Article 88 states that "Member States shall reimburse beneficiaries for the purposes of this article. This reimbursement may take any form of support". So we can have different modes of reimbursement between the two levels. But do both amounts have to appear in the application for payment: the amount Member state has reimbursed to the beneficiary has to appear in column B and the amount the Commission reimburses Member States in column B bis? Or should only the amount that the Commission reimburses Member State appear in column B bis?	1) a) When no use of Articles 94/95 CPR is made: • If the MA reimbursed the beneficiary based on costs actually incurred by beneficiary and paid, these amounts should be put in column B of the template set out in Annex XXIII, in line with Article 91(3)(a) CPR. • If the MA reimbursed the beneficiary based on SCOs, the SCO amounts calculated according to Article 53(b),(c) and (d) CPR should be put in column B in line with Article 91(4)(c) CPR. Both options as above concern reimbursement by the COM in line with Article 51(b) CPR. b) Correct: In line with Article 91(4)(a) and (b) CPR, where use is made of Articles 94/95 CPR (Article 51(a), (c), (d) and (e) CPR), the corresponding amounts (as approved by the COM decision) should be put in column C of the template set out in Annex XXIII. 2) Where use is made of Article 94 CPR, the SCO amounts as approved by the COM decision covering the relating categories of costs should be put in column C of the template set out in Annex XXIII, and not the corresponding amounts between the MS and beneficiaries.
96	Following the answer to question 12 of the Commission's FAQ, we have two questions about the methods of storing data on payment to beneficiaries: 1-a) should the data relating to payments to beneficiaries be recorded and stored in the program' single information system in order to satisfying the requirements of article 87-5-b? 1-b) is it confirmed that these data will not be	1-a) Yes, they should. The audit trail for SCOs under Article 94 CPR (Annex XIII, section III) and for FNLTC under Article 95 CPR (Annex XIII, section IV) requires proof of payment of the public contribution to the beneficiary and its date.

	auditable by EC or MS audits (in accordance with article 88-3 paragraph 3) even though they are in the same IS of the program? Or conversely: 2) Is it not necessary to record these data relating to payments to beneficiaries in the program's single information system because these data cannot be audited in accordance with article 88-3 paragraph 3? Can the MA satisfying the requirements of article 87-5-b at the closing (of the program) by sending a simple report held outside IS?	
97	Presentation of private means in payment requests – If co financing comprises only private means how to deal with the payment request (Draft CPR, Annex XIX, p. 162). Should column « B » record the amount paid via sco plus the amount of private means? How should the private means be calculated? The amount for sco can be calculated by means of submission of offers. Can the amount of private means cofinancing the operation be calculated on the basis of the offers and the difference to the amount of sco actually paid ?	In column A of the template set out in Annex XXIII, the MS has to indicate whether the calculation basis is total or public and then all information provided follows this scheme. • If the MA reimbursed the beneficiary based on costs actually incurred by beneficiary and paid (public and/or private), these amounts should be put in column B of the template set out in Annex XXIII, in line with Article 91(3)(a) CPR. • If the MA reimburse the beneficiary based on SCOs, the SCO amounts calculated according to Article 53(b),(c) and (d) CPR should be put in column B, in line with Article 91(4)(c) CPR. The SCO amounts are calculated in line with the methods provided in Article 53(2) CPR. • In line with Article 91(4)(a) and (b) CPR, where use is made of Articles 94/95 CPR (Article 51(a), (c), (d) and (e) CPR), the corresponding amounts (as approved by the COM decision) should be put in column C of the template set out in Annex XXIII.

N.B.: The questions included in this Q&A document have been sent by Member States when the regulatory framework for the 2021-2027 programmes was still under negotiations. Therefore, the numbering of articles to which they refer differs from the one adopted in the Regulation (EU) 2021/1060 (hereafter CPR). The correspondence of articles between the draft and final versions of CPR is the following:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Draft CPR	Final CPR
Article 46	Article 51
Article 48	Article 53
Article 49	Article 54
Article 50	Article 55
Article 51	Article 56
Article 85	Article 91
Article 87	Article 93
Article 88	Article 94
Article 89	Article 95

QA00093 - CLIMATE PROOFING

Question 1 (including any relevant facts and information):

Relevant Article: Article 73 (2)(j) of the CPR

Member State: DE

Question 1 (including any relevant facts and information):

Administrative burden caused by climate proofing, documentation and control requirements and especially the resulting consequences for the implementation of the project might be quite high. To illustrate this: E.g. the guidance mentions the requirement of a short summary of 10-20 pages per project – this seems a lot of effort in the case of smaller infrastructural projects which may be easily standardized via technical standards, such as building refurbishment measures, e.g. the replacement of windows or the insulation of public buildings. Would the European Commission agree if the Member states would follow a pragmatic approach to avoid administrative burden, in particular for projects falling only within phase 1 examination? E.g., would it be a practicable approach to reduce climate proofing and documentation effort by setting minimum thresholds, such as minimum energy efficiency standards oriented towards the 2030 and 2050 climate goals for the construction or renovation of buildings, so that project promoters would, with respect to climate change mitigation, only have to proof compliance with the efficiency standard?

Answer:

The Technical guidance on the climate proofing of infrastructure in the period 2021-2027, published in the Official Journal OJ C373 of 16.9.21 (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2021:373:TOC), hereafter "the guidance", divides the climate proofing process in two phases (See e.g. table 1 of the guidance). The detailed analysis (phase 2) is subject to the outcome of the screening phase (phase 1), which helps reduce the administrative burden. Where the outcome of

phase 1 would show that phase 2 is not necessary, the summary can be shorter than 10-20 pages (Annex B, B1, pg. 50). As regards mitigation, table 4 of the guidance defines a threshold for greenhouse gas emissions, which – for instance for typical construction or renovation of buildings projects – could substantiate (based on a carbon footprint analysis) that this project category could be added to the top of table 2 of the guidance (for which a carbon footprint assessment will not be required).

Question 2 (including any relevant facts and information):

For phase-1-only-projects, is it sufficient to cover direct GHG emissions or are primary indirect GHG emissions to be covered as well? If primary indirect GHF emissions are to be covered, what does this require/comprise?

Answer:

As regards mitigation, Phase 1 is based on the "categories of infrastructure projects" in table 2 of the guidance. The top group of project categories WILL NOT require a carbon footprint assessment, whereas the bottom group will require the detailed Phase 2 analysis (see section 3.2.2 of the guidance).

Question 3 (including any relevant facts and information):

Given that the technical instructions on Climate Proofing have been recently published and the informal consultations on the operational programmes with the Commission are in many cases well advanced, would the Commission agree that member states can already start with program implementation without having a fully functioning Climate Proofing installed? Otherwise this would result in a further day delay of programme start as all infrastructure projects falling under this proofing would have to be put on hold until the climate proofing system is working.

Answer:

Guidance cannot modify the provisions of the CPR. Therefore, in accordance with Article 73(2)(j), in course of the selection of operations the Managing Authority needs to ensure the climate proofing of investments in infrastructure for operations with an expected lifespan of at least 5 years. In relation to this, the Member States need to ensure the respect of the `energy efficiency first` principle during the selection of operations as stipulated by recital (60) of the CPR.

QA00094 - NEED FOR EC DECISION FOR SOME TYPES OF PROGRAMME AMENDMENTS

Relevant Articles:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Articles 22, 24, 40 and 42 of the CPR

Annexes I and V to the CPR

Member State: IT

Question 1 (including any relevant facts and information):

In the 2014-2020 period (Art. 96(10) of Regulation (EU) No 2013/1303) MS can amend some parts of the operational programmes without the need of a Commission decision. These parts include the table with the categories of interventions (corresponding in practice, as for ESF, to the investment priorities): it was then possible to transfer resources within each priority axis without a Commission decision.

Regulation (EU) No 2021/1060 (Art. 24) does not seem to include the possibility to modify the corresponding part (i.e. budget of specific objecives and category of interventions) in the 21-27 programmes. The changes which do not require a Commission decision are limited to:

a) Changes at the level of a priority, within specific thresholds (Art. 24(5)), and related changes;

b) Changes of purely clerical or editorial nature that do not affect the implementation (Art. 24(6)).

Is a Commission decision necessary to amend a 21-27 programme as for

- the budget by specific objectives (within a given priority) and the budget by category of intervention, i.e. table 4 of point 2.1.1.1.3. of Annex V, based on Art. 22(3)d(viii); and

- the amounts indicated in the other tables (form of financing, territorial delivery mechanism and territorial focus, ESF+ secondary themes, ESF+*, ERDF, Cohesion Fund and JTF gender equality dimension) of point 2.1.1.1.3. of Annex V (art. 22(3)d(viii) ?

Answer:

Article 24(5) of of Regulation (EU) No 2021/1060 sets out the cases of programme amendment that are considered as non-substantial and therefore, do not require the Member State to formally submit a request for programme amendment. These cases for the ERDF, CF, ESF+ and JTF are as follows:

"… transfer during the programming period an amount of up to 8 % of the initial allocation of a priority and no more than 4 % of the programme budget to another priority of the same Fund of the same programme. For programmes supported by the ERDF, the ESF+ and the JTF, the transfer shall only concern allocations for the same category of region."

Furthermore, in accordance with Article 24(6) of Regulation (EU) No 2021/1060, the Member State does not have to ask for the approval of the Commission in case of

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

corrections of a purely clerical or editorial nature that do not affect the implementation of the programme.

As regards the concrete cases mentioned in relation to ERDF and ESF+ financing in the question:

- ***if the allocation among specific objectives within the same priority is amended***

In accordance with Article 22(3)(g), the total financial allocation should be broken down by Funds, category of region, year. Break-down by specific objective is not an obligatory element of the financial table. Therefore, any change in the allocation to specific objectives within the same priority does not require the Member State to submit a formal request for amendment of the programme.

- ***if the allocation by type of interventions is amended***

In accordance with Article 22(3)(d)(viii) CPR, the following information should be provided in the programme for each specific objective:

"the types of intervention and an indicative breakdown of the programmed resources by type of intervention;"

This entails that the breakdown of resources amongst those types of interventions are of indicative nature.

Therefore, there is no requirement for changes in the indicative amounts within a priority and between the types of intervention during the implementation of the programme, to be followed up by a programme amendment. Nevertheless, in case the Member State would like to formally amend the programme to reflect these changes the modification of the programme is subject to Commission decision.

- ***if amounts included in Tables 5-8 in section 2.1.1.1.3 of the programme are amended***

The same rule applies for the indicative amounts indicated in Tables 5-8 as for the indicative amounts included into Table 4 (Dimension I – intervention field) of section 2.1.1.1.3 of the programme(for the rule, pls see the previous point).

It should be noted that, without prejudice to the above, any changes within priorities or transfers between priorities pursuant to Article 24(5) of Regulation (EU) No 2021/1060 need to comply with all regulatory requirements, in particular the thematic concentration requirements (Article 4, ERDF/CF and Article 7 ESF+ Regulation), the climate targets (Article 6 CPR), the urban earmarking (Article 11 ERDF/CF) or regulatory limits related to investment in natural gas (Article 7 ERDF/CF).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00095 - THE IMPACT OF THE DEFINITION OF "BENEFICIARY" IN ARTICLE 2 OF THE CPR ON STATE AID SCHEMES

Relevant Article: Art. 2(9) of the CPR

Member State: LV

Question 1 (including any relevant facts and information):

Please explain the impact of the definition of "beneficiary" in Article 2 of the Common Provisions Regulation on state aid schemes where the beneficiary is the body granting the state aid (for example, business incubators, competence centres). Does the new CPR change in substance the perception and admitting of Latvian national support schemes (currently under PO1 & PO3) implemented via competence centres, clusters, associations, etc.

Answer:

The definition of a beneficiary in Article 2(9), CPR introduced changes in comparison to the amendments introduced by the Omnibus regulation.

In relation to *de minimis* schemes, a definition of beneficiary from Article 2(9)(d), CPR would apply meaning that the body granting the *de minimis* aid could be the beneficiary in case it is initiating or initiating and implementing the operation. In the context of State aid schemes, point (c) of Article 2(9),CPR would apply, meaning that the undertaking which receives the aid would be the beneficiary.

Compared to the 2014-20 period, in case of State aid schemes, when State aid per undertaking is less than EUR 200 000, the Member State would not be able anymore to decide that the beneficiary is the body granting the aid.

Since it is not clear from the question if the Latvian schemes are State aid or the *de minimis* aid, or what are the tasks of the beneficiary, it is not possible to give a straightforward answer on the possibility to continue every single one of the current schemes. It would have to be analysed on a case-by-case basis.

QA00096 - INCLUSION OF ENERGY EFFICIENCY MEASURES FOR SECONDARY SCHOOLS AND SOCIAL HOUSING IN PO2

Relevant Article: Article 73(2) of the CPR

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State: LV

Question 1 (including any relevant facts and information):

We would like to clarify if energy efficiency measures for secondary schools and social housing can be included in PO2.

Answer:

It could be included in **PO2** provided it is in line with Article 73(2)(b) CPR on selection of operations and therefore consistent with the national long-term renovation strategy to support renovation of the national stock of residential and non-residential buildings as foreseen in the enabling condition for PO2.

As it concerns the areas of education and social housing, these measures should be closely coordinated with the measures envisaged for PO4 in the MS.

QA00097 - PRODUCTIVE INVESTMENTS

Relevant Article: Article 5 ERDF/CF regulation

Member State: LV

Question 1 (including any relevant facts and information):

1. Are support measures for industry investment in energy efficiency equipment eligible?
2. Would Commission treat investments in energy-efficient equipment under PO2 as "productive investment when primarily supporting energy efficiency measures and renewable energy under point (b)(i) and (ii) of Article 3(1) of the ERDF"?
3. What is the borderline between productive investment in PO1 and PO2?
4. What type of investment could be supported? Is it possible to support, for example, investment of large enterprises in activities like 3.1.1.5 "Support for reconstruction and development of industrial property and infrastructure" in this planning period?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Investment of SMEs in energy efficiency equipment are eligible. Support for companies other than SMEs needs to comply with the conditions set out in Article 5(2), ERDF/CF Regulation.

There is no absolute borderline between PO1 and PO2; it depends on the main objective of the investment. Under PO1, in specific objective 1.1, ERDF can support the development and testing of innovative technologies and solutions for green transitions and circular economy in identified S3 areas. The deployment and uptake including first movers in the early adoption of innovative solutions however could be supported under PO1, specific objective 1.3, PO2 or other POs where relevant.

'Primarily' means that energy efficiency measures or renewable energy have to be the main goal of the operation).

QA00098 - TARGETS CONCERNING CLIMATE CHANGE

Relevant Article: Article 6 and Article 42 of the CPR

Member State: LV

Question 1 (including any relevant facts and information):

Has a target (minimal amount %) been set for member states for investments to measures concerning climate change like it is in planning period 2014- 2020 and, if so, what monitoring mechanism will be used in 2021-2027 as there is no obligation for Partnership Agreement and CPR does not cover European Agricultural Fund for Rural Development.

Answer:

According to Article 6 of the CPR information on support for environment and climate objectives will be provided by using a methodology based on types of intervention (Annex 1, table 1 CPR).

The preliminary climate contribution target will be established in the Partnership Agreement. The final target will be established on the basis of information included in programmes and will be monitored on the basis of data submitted by Member States in accordance with Article 42 and the template set out in Annex VII, CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00099 - USE OF ITI, CLLD, NATIONAL SPECIFIC APPROACHES

Relevant Article: Article 5, 28, 29, 31-34 of the CPR

Member State: LV

Question 1 (including any relevant facts and information):

Latvia appreciates that thematic framework of PO5 investment directions, which are included for cohesion policy 2021–2027 implementation in Latvia correspond to Latvia's challenges. Meanwhile, the proposed regulation defines that under PO5 Member States may also support operations, which can be funded under the specific objectives, set out under PO1–PO4 (Article 5 of the CPR) . Therefore, PO5 is not only a thematic framework, but also one of the three (ITI, CLLD, national specific) implementation models for integrated territorial development (Article 28).

1. Is there still an option for a member state to choose the most appropriate integrated territorial development model taking into account Article 5 of the CPR and Article 28 of the CPR.
2. Could content of an integrated territorial strategy be broader than investments foreseen under PO5, including complementary investments supported under PO1 or PO2 without applying an ITI approach?
3. Could a "national specific" solution include investments under PO5 and other POs, offering nationally specific solution for integrated planning?

Answer:

Article 28 CPR defines tools that Member States can use when supporting integrated territorial development: integrated territorial investments (ITIs), community-led local development (CLLD) and other territorial tools supporting initiatives designed by the Member State.

The tools can be programmed under all policy objectives

Territorial strategies supported through ITI or a another territorial tool need to respect minimum requirements set out in Article 29 CPR. In the case of CLLD, this delivery mechanism must follow a specific method and respect the requirements defined in Articles 31-34 CPR. The content of the strategy would depend on the development needs and the potential of the area covered.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00100 - TECHNICAL QUESTIONS ON PAYMENT APPLICATIONS AND ACCOUNTS 2021-2027 PROGRAMMING PERIOD

Relevant Article: Art. 91 and 93 of the CPR;

Annex XXIII and Annex XXIV of the CPR

Member State: LV

Question 1 (including any relevant facts and information):

Payment application (PA):

1. *Column (B) – whether our understanding is correct that in this column all beneficiaries eligible expenditure approved by Intermediate body could be declared, except those, which are agreed in the Programme to be covered as Union contribution according to Article 51 point a), c), d) and e)?*
2. *Should established irregularities be deducted (withdraw) from the PA? The Regulation does not provide clear guidance on this issue.*
3. *Is it possible that expenditure of one operation can be declared based on different forms of Union contribution (for example) 1) reimbursement of support – therefore expenditure should be reflected in column (B), and 2) based on unit costs, lump sums and flat rates – therefore expenditure reflected in column (C))?*
4. *Column (C) – whether our understanding is correct, that in this column expenditure agreed in the Programme to be covered as Union contribution according to Article 51 point a), c), d) and e) should be reflected and only EU co-financing, not total expenditure (+ National co-financing)?*
5. *Column (D) – according to Your reply of 15.07.2021 the amount to be reflected in this column should be calculated automatically from data entered in column (B), why data on expenditure declared in column (C) also should not be taken into account?*
6. *Column (E) – please explain what information should be provided both in the PA and Accounts in column "the total amount of public contribution made or to be made in the meaning of point (c) of Article 91 (3)":*

6.1. By whom the public contribution is made or to be made –beneficiary or Managing Authority/Intermediate body?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

6.2. In case it is meant Managing authority/Intermediate body, then what data should be reflected in case:

6.2.1. the Union contribution from EC is paid according to Article 51 point a), c) and d);

6.2.2. the beneficiary is 100% pre-financed from state budget and no reimbursement is needed;

6.2.3. the beneficiary is public body (for example municipality) and part of the financing is provided by itself and is considered as public co-financing, but the Managing Authority/Intermediate body does not reimburse it.

7.How the amount requested should be calculated? Where the total amount declared is indicated in the PA, to which data the co-financing rate should be applied? In addition please clarify point 4 of Article 93 (Where the Union contribution takes any of the forms listed in Article 51, the Commission shall not pay more than the amount requested by the Member State), since there is no other choices of support from the Funds except those mentioned in Article 51.

Accounts:

1. *Column (A) –please explain what data should be reflected in this column and to what data from the last PA of accounting year it should correspond to - column (B) or sum of columns (B) and (C)?*
2. *Regarding column (B) and (C) please see questions No. 5 and 6;*
3. *Please clarify how the Commission will be aware of the information mentioned in point b) of Article 93 (5) (The support from the Funds to a priority in the payment of the balance of the final accounting year shall not exceed any of the following amounts:…. (b) support from the Funds paid or to be paid to beneficiaries).*

Answer:

Payment application (PA):

1.Yes, the column B should include all expenditure declared linked to fulfilled enabling conditions or contributing to their fulfilment, with two exceptions:

a) TA flat-rate amount (where relevant, calculated in column D), and

b) total eligible expenditure covered by Simplified Cost Option (SCO) schemes pursuant to Article 94 CPR (see also Art. 91(4)(b) CPR) or Financing Not Linked To Costs (FNLTC) schemes pursuant to Article 95 CPR (see Art. 91(4)(a) CPR), (where relevant, included in column C).

2. Yes, irregular expenditure should be withdrawn from payment applications or deducted from the accounts as relevant. The amounts withdrawn from payment

applications during the accounting year should be reported in the accounts in Appendix 2 - Amounts withdrawn during the accounting year – point (b) of Article 98(3) and Article 98(7). Appropriate audit trail should be ensured.

3. Please, see the reply in points 1 and 4.

4. In column C you should include eligible expenditure where the Union contribution is made pursuant to Article 51 (a), (c), (d) and (e). These are linked to the amounts as either approved in the programme (Article 94(3) or 95(2) CPR) or as set out in a delegated act (Article 94(4) or 95(4) CPR). These correspond to the total eligible expenditure included in payment applications pursuant to Article 91(4) (a) and (b) CPR. The amounts reimbursed to beneficiary for the cases covered by Article 91(4)(a) and (b) CPR shall not be included in column (B) to avoid double financing of the same expenditure. Such amounts are irrelevant for declaration in payment applications/accounts. [N.B.: However, the amounts reimbursed to beneficiary for the cases covered by Article 91(4)(c) CPR shall be included in column B.]

In case a part of expenditure of the operation is declared to the Commission based on eligible expenditure incurred by the beneficiary and paid in implementing the operation, and another part is covered by a SCO/FNLTC scheme agreed between the Commission and the Managing Authority and included in the programme, then the expenditure of such an operation will be partially included in column (B) and partially in column (C) of payment applications.

5. The reference in Article 36(5) CPR to Article 91(3)(a) or (c) CPR should be understood as encompassing also its derogations referred to in Article 91(4)(a)-(c) CPR. Amounts included in Columns B and C would cumulatively be the basis for calculation of the flat rate technical assistance where programmes chose total eligible expenditure and amounts included in Column E would be the basis where programmes chose public contribution.

6. The amount included shall reflect the definition provided by Article 2(28) CPR. In line with Article 2(28) CPR 'public contribution' means any contribution to the financing of operations the source of which is the budget of national, regional or local public authorities or of any European grouping of territorial cooperation (EGTC) established in accordance with Regulation (EC) No 1082/2006 of the European Parliament and of the Council, the budget of the Union made available to the Funds, the budget of public law bodies or the budget of associations of public authorities or of public law bodies and, for the purpose of determining the co-financing rate for ESF+ programmes or priorities, may include any financial resources collectively contributed by employers and workers.

6.1. The public contribution could be made both by the MA and the beneficiaries provided it fulfils the definition above.

6.2. The financial flows between bodies involved are irrelevant to establish the amount of public contribution reported in column E. The amount in column E includes also part of financing provided by beneficiaries which are public bodies.

7. The co-financing rate will be either applied to the total eligible expenditure (sum of amounts included in columns B, C and D) or to the amount of public contribution

(sum of amounts included in column E and in column D) in line with the programme. Article 93(4) CPR provides a safeguard that the Commission, irrespective of the form of the Union contribution, does not reimburse more than the Member State requested in a payment application.

Accounts:

1.Column A in the accounts corresponds to the sum of column B and C in the payment applications.

2. See the relevant clarifications on questions 5 and 6 on the related points above.

3. Article 93(5)(b) of the CPR requires that the support from the Funds to a priority in the payment of the balance of the final accounting year shall not exceed support from the Funds paid or to be paid to beneficiaries. Article 94(3), second subparagraph CPR states that "MS shall reimburse beneficiaries for the purposes of this Article" and the exact same wording is included in Article 95(3), first subparagraph CPR. Furthermore, the audit trail for SCOs under Article 94 CPR (Annex XIII, section III) and for FNLTC under Article 95 CPR (Annex XIII, section IV) requires proof of payment of the public contribution to the beneficiary and its date. MS should ensure compliance with these requirements and underlying audit trail.

QA00101 - PROCEDURE OF SELECTION OF PROJECTS OF PRODUCTIVE INVESTMENTS IN LARGE ENTERPRISES FOR THE INDICATIVE LIST OF THE TERRITORIAL JUST TRANSITION PLAN

Relevant Articles:

- Article 73 of the CPR
- Article 8 of the JTF regulation
- Article 11 of the JTF regulation
- Paragraph 14 of the Regional State Aid Guidelines
- Paragraph 45 of the Regional State Aid Guidelines
- Article 107 of the TFEU
- Article 108 of the TFEU

Member State: ES

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

Spain has doubts about how to ensure the principle of competition when completing the Territorial Just Transition Plan´s list of specific projects and companies in relation to productive investments in large enterprises (ref. the second paragraph of Article 8(2) and Article 11(2) (h) of the JTF regulation).

To this end, the Member State is considering launching a call prior to the approval of the plan, which would be notified to DG Comp in advance and that would ensure the requirements laid down in the JTF Regulation were met (eligible sectors, job creation, contribution to climate and environmental objectives, contribution to the objectives of the TJTP, non-relocation, etc.).

The successful tenderers of the call would form the list proposed to include in the TJTP, thus complying with the competition principle. Once the plan and programme are approved, they would certify the expenditure of these investments. Would this scheme be possible and does the Commission envisage any difficulties/remediation?

Answer:

This answer was updated on 13 February 2023 to avoid misunderstanding. The text changed is struck through.

According to Article 11(2)(h) of the JTF Regulation, where support is to be provided to productive investments in enterprises other than SMEs, the territorial just transition plan (TJTP) should include an indicative list of operations and enterprises to be supported together with a justification of the necessity of such support through a jobs gap analysis. This provision should be understood as a requirement from Member States to explicitly name such operations and enterprises in the plan.

The JTF regulation does not prescribe how the indicative list of operations and enterprises should be established. It only specifies, in its Article 8, the four criteria such investments should comply with to be considered as eligible for JTF support. In that regard, they should be necessary for the implementation of the TJTP, contribute to the transition to a climate-neutral economy of the Union by 2050, support job creation (jobs gap analysis) and do not lead to relocation as defined in Article 2(27) of the Common Provisions Regulation (CPR).

It is therefore for Member State to define the method to identify productive investments in large enterprises. This process should be carried out in a transparent manner, targeting enterprises and productive investments meeting the above criteria. The identification of investments should also be done in a smooth and effective manner not to delay the preparation of the TJTP.

In principle, the list of productive investments and enterprises remains indicative even once approved by the Commission within the TJTP as part of the programme. The identification of new productive investments in large enterprises after the approval of the TJTP will require neither a modification of the relevant list in the TJTP nor an amendment of the programme. However, the list of Article 11(2)(h) of the JTF Regulation loses de facto its "indicative" character as regards support to large

enterprises for productive investments located in 'c' areas, covered by paragraph 14 of Regional State aid Guidelines (the RAG).

Productive investments in large enterprises (from the list or identified later on) also have to undergo the formal selection process pursuant to Article 73 of the CPR (see below).

In line with recital (16) of the JTF regulation, support to undertakings should comply with Union State aid rules, as set out in Articles 107 and 108 TFEU. In particular, support to productive investments in enterprises other than SMEs should be limited to enterprises located in areas designated as assisted areas, which can be either 'a' or 'c' for the purposes of points (a) and (c) of Article 107(3) TFEU:

- 'a' areas cover territories with GDP lower than 75% of EU average and outermost regions.
- 'c' areas are identified based on a wider range of criteria, e.g. socioeconomic, geographical and structural problems at national level, former 'a' areas, sparsely populated areas etc. Member States can also propose other 'c' areas to the Commission, such as JTF areas.

Member States must notify to the Commission their proposal for the new regional aid map, identifying all future 'a' and 'c' areas. The regional aid maps need to be approved by the Commission decision. Member States can also establish a reserve for future designation of JTF areas on the map, in particular when the regional aid map is established before the territorial scope of the JTF areas is defined in the approved TJTP, which is the case for most Member States.

According to the RAG, these two categories of areas follow different rules as regards eligible investments (cf. paragraph 45 thereof) and corresponding maximum aid intensities (cf. Section 7.4 thereof). In particular, as stipulated in paragraph 45 of the RAG: *'Regional aid schemes may be put in place in 'a' areas to support initial investments made by SMEs or large enterprises and in 'c' areas to support initial investments made by SMEs and initial investments that create a new economic activity made by large enterprises'.*

For productive investments in large enterprises in 'c' areas, paragraph 14 of the RAG provides for exception. More specifically, regional aid to such enterprises can also be considered as compatible with the internal market in line with the criteria of these guidelines if it is granted for the diversification of the output of an establishment into products not previously produced in the establishment or for a fundamental change in the overall production process of the product(s) concerned by the investment in the establishment, provided that:

1. it concerns an initial investment in a territory identified for co-financed support from the JTF in a 'c' area that has a GDP per capita below 100 % of the EU-27 average;
2. the investment and the beneficiary are identified in the territorial just transition plan of a Member State approved by the Commission; and
3. The State aid for the investment is covered by the JTF to the maximum allowed.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Such aid is always subject to individual notification pursuant to Article 108(3) TFEU.

The sequence of the two procedures before the Commission is as follows:

- As a first step, the Commission approves the TJTP, including the indicative list of operations and large enterprises to be supported.
- As a second step, each individual State aid support, included in the approved TJTP, as indicated in paragraph 14 of the RAG, must be notified to the Commission for prior approval before it is implemented. The initial call for identifying productive investments in large enterprises in 'c' areas (as indicated in the question from the Spanish authorities) for the purpose of the TJTP is not subject to the notification requirement under Article 108(3) TFEU (State aid).

N.B. Support to large enterprises for initial investments in areas 'a' and support to initial investments that create a new economic activity made by large enterprises in areas 'c' and that fall outside the scope of the GBER, can be notified pursuant to Article 108(3) TFEU before the Commission approves the relevant TJTP as part of the programme. This statement equally applies to SME investments going beyond the framework of the GBER.

Finally, as mentioned above, productive investments in large enterprises from the indicative list in the TJTP approved by the Commission and those productive investments in large enterprises that may be identified in the future (after the approval of the TJTP) should still undergo the selection procedure in line with Article 73 of the CPR. This means that such investments will have to be assessed according to applicable selection criteria, as established by the monitoring committee. In this regard, verifying the compliance with the criteria set out in the CPR and JTF Regulation falls primarily under the competence of the managing authorities, together with the verification of their compliance with applicable law, including state aid rules. ~~Only once the selection of an operation is confirmed, its implementation can start and the incurred expenditure can be certified.~~

QA00102 - ELIGIBILITY OF ENERGY EFFICIENCY INVESTMENTS FOR LARGE ENTERPRISES, INCLUDING ENERGY EFFICIENCY INVESTMENTS IN PRODUCTION LINES

Relevant Article: Art.5.2(b) ERDF/CF Regulation

Member State: LT

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

Are investments in energy efficiency in large enterprise and in production lines when based on energy audit eligible?

What primarily supporting efficiency measures means?

Answer:

ERDF support for companies other than SMEs needs to comply with the conditions set out in Article 5(2) ERDF/CF Regulation.

In accordance with Article 5(2)(b) ERDF/CF Regulation, ERDF may support productive investments in such enterprises for energy efficiency or renewable energy measures under specific objectives 2.1 and 2.2– through grants or financial instruments – when primarily supporting such measures. 'Primarily' means that the energy efficiency measures or renewable energy measures have to be the main goal of an operation.

In accordance with Article 6(1)(a) ERDF/CF Regulation, the Cohesion Fund can support investments in SMEs and non-SMEs in the environment, including investments related to sustainable development and energy presenting environmental benefits, with a particular focus on renewable energy, as long as the support provided contributes to one of the specific objectives set out for the Fund concerned.

QA00103 - TECHNICAL ASSISTANCE VS. CAPACITY BUILDING ACTIONS

Relevant Articles:

Article 36(1) and Annex I of the CPR

Articles 4(1), 9(1), 9(2) and 16(4) of the ESF+ Regulation

Article 3(4) of the ERDF Regulation

Member State: IT

Question 1 (including any relevant facts and information):

What is the difference between actions for the capacity building of partners referred to by Art. 36(1) of Regulation (EU) No 2021/1060 and actions for the capacity building of partners described by Art. 9(2) ESF+ Regulation?

Answer:

Actions for capacity building of social partners and civil society organisations, in accordance with recital (28) and Article 9(1) of Regulation (EU) 1057/2021 (ESF+ Regulation), have the overall goal to ensure the meaningful participation of these social partners and civil society organisations in the delivery of employment, education and social inclusion policies supported by the ESF+. Therefore, these actions go beyond the capacity building for the effective administration and use of the Funds and should be programmed under any of the specific objectives set out in Article 4(1) ESF+ Regulation.

Question 2 (including any relevant facts and information):

For which types of actions above would MA use intervention code "170 – Improve the capacity of programme authorities and bodies linked to the implementation of the funds" since it cannot be used for TA priorities but only for interventions under POs 1-5?

Answer:

Code "170 – Improve the capacity of programme authorities and bodies linked to the implementation of the funds" in Annex I CPR, is to capture capacity building activities pursuant to Article 3(4)(a) and (b) of Regulation (EU) 2021/1058 embedded in the support under the ERDF/CF specific objectives and should not to be used in the context of technical assistance, for which dedicated codes 179-182 have been envisaged.

As regards the ESF+, capacity building of social partners and civil society organisations will be tracked for the purpose of Article 9 of the ESF+ Regulation through the secondary themes, namely by codes 07 and 08 of Table 6 of Annex I to the CPR.

Question 3 (including any relevant facts and information):

Can financing for capacity building interventions pursuant to Art. 9(2) ESF+ Regulation cover salaries of social partners/civil society organisations staff?

Answer:

Supporting solely salaries in social partners and civil society organisations is not considered as a capacity building operation for the purposes of meeting the requirement set out in Article 9(2) ESF+ Regulation. Such support as part of a capacity-building operation under Art. 9(2) ESF+ could be considered eligible by the MA provided and to the extent only it relates to measures that are demonstrated to increase capacity of these organisations to deliver employment, education and social inclusion policies supported by the ESF+.

Question 4 (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Can financing for capacity building interventions pursuant to Art. 9(2) ESF+ Regulation take the form of annual "operating grants", i.e. the Managing Authority publishes on an annual basis a call for the support of social partners/civil society organisations active in a specific EMPL-policy field to finance the "regular activity" of these organisations?

Answer:

As regards financing operating grants, the same logic is to be followed as for salaries. (see answer to question 3).

QA00104- DURABILITY OF OPERATIONS AIMING AT ADAPTING PRIVATE HOUSEHOLDS TO THE PERSONS IN NEEDS (E.G. ELDERLY)

Relevant Articles: Article 2 and 65 of the CPR

Member State: PL

Question 1 (including any relevant facts and information):

In the context of measures addressed to persons in need of support in their daily functioning (e.g. elderly), is it possible to finance the adaptation of private housing, in order to allow them to stay in their homes for as long as possible? Is it possible to exclude it from the requirement of the durability of investment?

Answer:

Based on the definition of a beneficiary provided by Article 2(9)(a) of the CPR, natural persons (individuals) or private bodies can benefit from the EU support, if they are responsible for initiating or both initiating and implementing an operation. There is no prohibition preventing a natural person to be a beneficiary.

In practical terms, this refers to adaptation of the house with equipment, for instance, and other tools that facilitates living in the personal house. This is something that follows Commission policy lines to support that people (e.g. elderly, persons with disabilities) can live in their homes with the necessary equipment and adapted infrastructure and have access to the services they need in the community.

The provisions on durability, pursuant to Article 65 CPR shall apply.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00105 - PHASING OF REACT-EU OPERATIONS AND TREATMENT OF CO-FINANCING

Relevant Articles:

Article 92b(2) of Regulation (EU) No 1303/2013;

Article 118 of Regulation (EU) 2021/1060;

Article 112 of Regulation (EU) 2021/1060

Member State: ES

Question 1 (including any relevant facts and information):

- Is it possible to phase projects financed under REACT-EU?
- If yes, is the co-financing rate at 100% maintained during the period 2021-2027?

Regulatory framework:

- Article 92b(2), third subparagraph of Regulation (EU) No 1303/2013[1] on implementing arrangements for the REACT-EU resources:

"[…]The phasing provisions set out in a Regulation laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument are applicable to operations supported by the REACT-EU resources".

- Article 118 of Regulation (EU) 2021/1060 on conditions on operations subject to phased implementation

"1. *The managing authority may proceed with the selection of an operation consisting of the second phase of an operation selected for support and started under Regulation (EU) No 1303/2013, provided that the following cumulative conditions are met:*

(a) the operation, as selected for support under Regulation (EU) No 1303/2013, has two phases identifiable from a financial point of view with separate audit trails;

(b) the total cost of the operation referred to in point (a) exceeds EUR 5 000 000;

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

(c) expenditure included in a payment application in relation to the first phase is not included under any payment applications in relation to the second phase;

(d) the second phase of the operation complies with applicable law and is eligible for support from the ERDF, the ESF+, the Cohesion Fund or the EMFAF under the provisions of this Regulation or the Fund-specific Regulations;

(e) the Member State commits to complete during the programming period and render operational the second and final phase in the final implementation report, or in the context of the European Maritime and Fisheries Fund in the last annual implementation report, submitted in accordance with Article 141 of Regulation (EU) No 1303/2013

2.The provisions of this Regulation shall apply to the second phase of the operation."

- Article 112 of Regulation (EU) 2021/1060 on determination of co-financing rates

"*1. The decision approving a programme shall fix the co-financing rate and the maximum amount of support from the Funds for each priority.*

2. For each priority, the Commission decision shall set out whether the co-financing rate for the priority is to be applied to either of the following: (a) total contribution, including public and private contribution; (b) public contribution. […]"

[1] As amended by Regulation (EU) 2020/2221 of the European Parliament and of the Council of 23 December 2020 (OJUE L-437, 28.12.2020, p. 30) as regards additional resources and implementing arrangements to provide assistance for fostering crisis repair in the context of the COVID-19 pandemic and its social consequences and for preparing a green, digital and resilient recovery of the economy (REACT-EU)

Answer:

1st question:

According to Article 92b(2), third subparagraph of Regulation (EU) No 1303/2013, as amended, the phasing provisions of Article 118 of the CPR 2021-2027 (Regulation (EU) 2021/1060) are applicable to operations supported by REACT-EU resources. Therefore, if all the conditions established by the above-mentioned Article 118 of Regulation (EU) 2021/1060 are complied with, operations supported by REACT-EU resources can be phased into the 2021-2027 programming period.

Please note relevant section 6 of the Guidelines on the closure of the operational programmes adopted for assistance from the ERDF, ESF, Cohesion Fund and the EMFF (2014-2020)[1] detailing the requirements and responsibilities of Member States in this regard as well as the potential implications.

2nd question:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The co-financing rate at the priority axis of the programme is fixed by the Commission decision adopting a programme, while the rate of the Union support at the operation level is established by the Member State authorities in the document setting out the conditions for support and it can be higher or lower than the co-financing rate at the priority axis of the programme. In conclusion, it is up to the Member State to establish the rate of the Union support at the operation level following its national eligibility and the programme rules.

[1] OJ C-417, 14.10.2021, p.1

QA00106 - REQUEST OF CLARIFICATION REGARDING THE APPLICATION OF FINANCIAL INSTRUMENTS

Relevant Article: 58-60 of the CPR

Member State: HR

Question 1 (including any relevant facts and information):

We made an ex-ante assessment which recommends that most suitable types of financial instruments in the analysed sectors include debt products in the form of investment risk sharing loans, guarantees, micro and small loans and combination of support.

Our questions refers to Investment risk sharing loan:

Namely, ex-ante assessment suggests that the implementation of this particular financial instrument is to be carried out by state owned development bank - Croatian bank for reconstruction and development (CBRD).

It is envisaged that through transparent and competitive procedure CBRD selects commercial banks that will be financial intermediaries. The individual loan would be financed from EMFAF program contribution to the financial instrument and from the funds of the commercial bank in the ratio of 50:50).

QUESTIONS:

In case commercial banks are not interested in implementation of this financial instrument (i.e. due to excessive administrative burden, sufficient own liquidity), can CBRD as a state development bank contribute with its own funds to this particular FI.

In this way, leverage effect would still be above 1, CBRD would lend the loans directly to final recipients without financial intermediaries. *Take a note that CBRD implements its loan programs directly and through commercial banks.*

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

If the funding contribution from state owned bank is not allowed, another option is that each individual loan is 100% financed from EMFAF (leverage effect is 1). In this case, CBRD would still manage the implementation of this FI, and therefore would lend the funds directly to final recipients.

Answer:

The managing authority (MA) may directly award a contract for the implementation of a financial instrument to a publicly-owned bank or institution respecting the conditions of Article 59(3) CPR. If the conditions listed in this Article or in Article 12 of Directive 2014/24/EU are not met, the MA should launch a tender to select the body implementing a financial instrument.

The risk sharing loan means that it pools together CPR Funds, in this case EMFAF, and funds from the financial intermediary. To respect the principle of risk sharing, the body implementing the financial instrument should contribute its own resources (typically 25% minimum). So, it is possible that the body implementing the financial instrument contributes with own funds to the FI, if it can act as financial intermediary under national law. In this case, state aid rules should be respected.

The CBRD could alternatively disburse directly the loans to final recipients as a body implementing a specific investment risk-sharing loan fund (see Article 2(21) CPR).

The option that each individual loan is 100% financed from EMFAF does not comply with the presented outcome of the ex ante assessment and the objectives of an investment risk sharing loan. In this case, there is no sharing of the risks, as they are all taken by the EMFAF.

QA00107 - USE OF AMOUNT REIMBURSED FROM TECHNICAL ASSISTANCE UNDER ARTICLE 36(5) (FLAT RATE) OF THE CPR FOR WHICH THERE IS NO UNDERLYING TECHNICAL ASSISTANCE EXPENDITURE

Relevant Article: Article 36 of the CPR

Member State: DE

Question 1 (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In case the EMFAF programme foresees the use of Technical Assistance by applying the flat rate of 6 % as according to Article 36(5), the reimbursement of a payment application is done by calculating the 6% of the certified eligible expenditure.

If there is no real expenditure for Technical Assistance included in the payment application, or if such expenditure is lower than the 6%, what are the rules for making use of the amount reimbursed from the Commission that does not correspond to any real expenditure incurred for Technical Assistance? As a matter of example, can such amount be used to fund other operations within the EMFAF programme, and/or within the same Specific Objective other than Technical Assistance?

Answer:

Where a Member State decides to use the flat-rate financing for technical assistance, the relevant flat-rate percentage for the Fund concerned provided in Article 36(5)(b) CPR (i.e. 6% for the EMFAF support) will be applied automatically to non-TA expenditure or public contribution, as appropriate, included in each payment application submitted to the Commission.

It is the responsibility of the Member State to decide how to use the amounts reimbursed for technical assistance.

QA00108 - Gross Grant Equivalent calculation for FIs with capital rebate

Relevant Article: Article 58 of the CPR

Member State: IT

Question (summarized):

How and when to calculate the aid element when the grant element combined within a single financial instrument operation is conditional on the performance achieved by the final recipient?

The MS would like to know, if the grant element which is conditional upon reaching the targets defined for the project[1], needs to be calculated and taken into account in the Gross Grant Equivalent of the financial instrument support (1) at the time of signing the initial loan contract (including the potential grant element clause), or (2) it is sufficient to calculate and take the grant into account when the related conditions are fulfilled and the actual entitlement for the grant element is verified (e.g. in year 3).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The MS states that if the conditional grant element were taken into account already from the beginning in the Gross Grant Equivalent calculation, this would be disadvantageous for the final recipient, for example in the case of aid subject to ceilings in absolute value (de minimis or similar). The final recipient would see this ceiling consumed already in year 0 even if he does not actually benefit from the capital rebate or recoverable grant, which he will eventually benefit in the fourth year.

Answer:
The question concerns the ex-ante calculation of the conditional grant part of an aid granted in the form of capital rebate or recoverable grant. In our best understanding 'capital rebate' or 'recoverable grant' should be analysed in the context of State aid as 'repayable advance', i.e. "repayable advance' means a loan for a project which is paid in one or more instalments and the conditions for the reimbursement of which depend on the outcome of the project" (cf. Article 2(21) of the GBER[2]).

We understand that the gross grant equivalent of the loan part is not an issue, but the questions are:

(1) When should the conditional grant part of the repayable advance be taken into account in the calculation of the GGE, from the start when the subsidised loan is granted or when the trigger condition is fulfilled, i.e. at the end of year 3?
(2) How to calculate the aid content of the grant element?
(3) How to do the adjustment of the aid amount in year 3, if the conditions are finally met/not met?

On the first question, in accordance with Article 2(28) of the GBER: the "date of granting of the aid means the date when the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime". The aid is considered to be granted when the granting decision is taken at the beginning, since this is the moment when the Member State gives the beneficiary a legally enforceable right to the aid. Even if there are certain conditions to be met, the Member State has no influence on whether or not the condition materializes in the future, and the Member State will not have any discretion to change or not to grant the aid at that moment, if the conditions are indeed met. Therefore, the conditional grant should be taken into account in the calculation of the GGE from the moment the subsidised loan is granted, i.e. method (1) described in the original question is correct.

On the second question, on how to calculate the aid content of the grant element, Article 7(3) of the GBER states that "Aid payable in the future, including aid payable in several instalments, shall be discounted to its value at the moment it is granted. The eligible costs shall be discounted to their value at the moment the aid is granted. The interest rate to be used for discounting purposes shall be the discount rate applicable at the moment the aid is granted." Therefore, the conditional grant should be taken

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

into account at its nominal value (or at its discounted value, if it is payable in the future) at the time of the initial granting of the loan to calculate the gross grant equivalent of the repayable advance.

On the third question, for the purpose of State aid, de minimis ceiling or respecting the applicable support rates under Regulation (EU) 2021/2115, since the final recipient received a legally enforceable right to the aid at the beginning, the calculated aid amount of the support cannot be changed depending on whether the conditions are finally met or not met by the final recipient. In other words, the support rate of the project remains unchanged irrespective of the repayment obligation in case of failing the set conditions.

Your questions concern both support under the SPR and under state aid rules. The above explained principles to calculate the public aid amount are based on the GBER but can apply to all support provided under the CAP Strategic Plans.

---

[1] The question included numerical examples with two types of combined grant element within financial instruments: A) financial instrument with a capital rebate option allowing for cancellation of part of the loan, B) financial instrument with recoverable grant element allowing for recovering the initially provided grant element, both after meeting or failing the pre-defined trigger events by year 3, e.g. reaching certain employment target.

[2] Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty Text with EEA relevance, OJ L 187, 26.6.2014, p. 1–78

QA00109 - TRANSFER OF ADDITIONAL FUNDING FOR OUTERMOST REGIONS

Relevant Article: Articles 26 and 110 of CPR, Annex V of Commission Implementing Decision (EU) 2021/1131

Member State: PT

Question 1 (including any relevant facts and information):

Commission Implementing Decision (EU) 2021/1131, in its Annex V, sets out the annual breakdown by Member State of global resources allocated to additional

funding for the outermost regions. The Member State was not aware of the split by funds (namely ERDF and ESF+) of this additional funding.

1. Can the MS propose in the Partnership Agreement (PA) a transfer of the total ESF+ share of the additional funding for outermost regions to ERDF?
2. Can this transfer be justified solely by reasons of simplification? (ie. rather concentrate all ESF+ support without splitting a part in another priority axis supported by ESF+ OR)
3. Table 5B of the PA template does not include any row for ERDF/ESF+ transfers so which sections of the PA should reflect this type of transfers?

Answer:

1. For 2021-27 programming period, the CPR sets out in Art. 110 (1e) the additional funding for the outermost regions and sparsely populated areas as part of the resources for the Investment for Growth and Jobs goal. To pursue the objectives of more social and inclusive Europe, Article 110(2) CPR sets out the amount to be allocated to the ESF+ of this additional funding. Commission Implementing Decision (EU) 2021/1131 of 5 July 2021 sets out the breakdown of global resources by Member State , in particular breakdowns by fund (Annexes VI, VII), by category of region (Annexes II-IV) and of the specific allocation (Annex V). The initial split of the specific allocation for the outermost regions between the ERDF and the ESF+ is included in Annexes VI and VII, respecting the amount to be allocated to the ESF + in Article 110 (2) second subpara. CPR (see reference in recital 4 to the annual breakdown by Member State of specific resources for the European Regional Development Fund (ERDF) and the European Social Fund Plus (ESF+) taking into account that the amounts of the ERDF and the ESF+ allocated to each Member State should equal the amounts of specific resources allocated according to the different categories of regions and specific resources in favour of outermost regions in France, Spain and Portugal, and regions in Finland and Sweden fulfilling the criteria laid down in Article 2 of Protocol No 6 to the 1994 Act of Accession allocated to the same Member State.

Article 26 CPR allows for transfers from the "initial national allocation for each Fund", subject to certain ceilings. According to the above, the initial national allocation by Fund is set out for each MS in Annexes VI and VII of the implementing decision and includes the respective allocation of the outermost regions specific allocation to the ERDF and ESF+. Even though there is no explicit reference to the possibility of transferring resources from the specific allocation in Article 26 CPR, this provision can be interpreted as allowing for a transfer of resources between the ERDF and the ESF+ within the specific allocation while respecting the ceilings for transfers at the fund level set out in paragraph 3 and 4 of Article 26(1) CPR established by reference to the initial national allocation set out in Annexes VI and VII of the implementing decision.

2. Additional funding for the outermost regions is to offset the structural social and economic situation of the outermost regions together with the handicaps resulting

from the factors referred to in Article 349 TFEU. For the ERDF, Article 14 of the ERDF/CF Regulation sets out specific provisions for the use of the specific allocation. The proposal for a transfer between the funds within the specific allocation will be assessed in this context, in particular if such a transfer would undermine the achievement of the objectives of the funds in the outermost regions. Simplification alone cannot be considered as a sufficient argument.

3. The rationale for the specific additional allocation to the outermost regions is set out in Article 14 ERDF/CF Regulation. Transfer provisions do not ensure that the specific allocation will be used for the benefit of the outermost regions or sparsely populated areas and in line with objectives of Article 349 TFEU. Due to this fact, the specific allocation for the outermost regions is not reflected in transfer tables in the Partnership Agreement as those resources should not be transferred out (to other regions, EU instruments or funds). The amount of the specific allocation by Member State as defined in Annex V of the the Commission Implementing Decision (EU) 2021/1131 cannot be changed. However, the transfer between the ERDF and the ESF+ within the specific allocation can be reflected in "Table 8 Preliminary financial allocation from ERDF, Cohesion Fund, JTF, ESF+, EMFAF by policy objective, JTF specific objective and technical assistance" since it demonstrates the split of the specific allocation for outermost regions by fund and policy objective. In the case asked, if the entire ESF+ allocation within the additional funding for the outermost regions was proposed to be transferred to the ERDF respecting the ceilings set out in Article 26 CPR, it could be reflected in table 8 of the PA: the ESF+ allocation for the outermost regions under PO4 may even be zero.

QA00110 - PROGRAMMING OF CLLD

Relevant Article: 31-34 of the CPR

Member State: PL

Question 1 (including any relevant facts and information): Committee selecting the local development strategies

Article 32 (2) of the CPR stipulates: "The relevant managing authorities shall define criteria for the selection of those strategies, set up a committee to carry out this selection and approve the strategies selected by that committee. "

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

What functions should this Committee have? Should it be a monitoring committee such as the MCs for regional programmes, involving partners, etc., or rather a body composed of representatives of the MAs for the Funds that finance the local development strategies in a given region? Is it possible to set up a single joint committee for all MAs implementing CLLD or should such a committee operate in each region implementing multi-funded CLLD?

Answer:

The committee referred to in Article 32(2) of the CPR is responsible for the selection of community-led local development strategies.

If a Member State so decides, it may confer additional functions to the committee but without prejudice to the exclusive tasks of the local action groups as set out in Article 33(3) CPR and functions of the monitoring committee of the programme pursuant to Article 40(1) CPR.

Question 2 (including any relevant facts and information):

Can a local development strategy cover an area and support operations outside the programme area?

If the local development strategy covering more than one voivodship extends beyond the area of the regional programme, can the programme support municipalities from another voivodship, or only those situated in the voivodship providing funds?

And if it is possible to support municipalities outside their voivodship, how should this be included in the regional programme? Is it sufficient to indicate in the CLLD measure that this concerns the area covered by the strategy?

Answer:

The programme may support operations outside the area covered by a programme provided that they contribute to the objectives of the programme. A CLLD strategy defines its geographical area, while Member State is to ensure that the CLLD is focused on sub-regional areas. Thus, a regional programme may support a CLLD, which covers also municipalities from another region (voivodship). A reference in the programme to the areas covered by CLLD strategies would be sufficient.

Question 3 (including any relevant facts and information): Verification of eligibility of CLLD projects

In standard calls, the LAG evaluates and selects projects, and then the MA verifies the eligibility of costs. Should the MC approve the criteria (or the conditions for the granting of support) for this verification? This is not a factual assessment (because it is the LAG's competence), so in theory there is no such requirement, but it is practically analogous to the assessment, so maybe for the sake of clarity and a uniform approach, it should be submitted to the MC?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

The managing authority responsible for overall implementation of a programme should perform verification to ensure that proposals are in line with eligibility rules set out pursuant to Article 63(1) CPR. Member State may envisage a role in the procedure for the monitoring committee of the programme without prejudice to the responsibilities of the Managing Authority as laid down in Articles 73 and 74 of the CPR.

Within the EAFRD, the body responsible for the verification of eligibility is the paying agency.

Question 4 (including any relevant facts and information): Setting indicators and targets for CLLD in ESF+

Several Polish regions are interested in implementation of CLLD from the ESF+ what raises a lot of questions which indicators to use and how targets should be estimated.

There are two ways of programming CLLD in the programme:

- CLLD can be programmed under each specific objective (and in the consequence under many priorities)
- CLLD can be programmed under one separate priority – this is an attractive option as according to the CPR the co-financing is higher -95%.

Under the first option estimation of targets is not so difficult, because CLLD will be a small part of the allocation of the priority and CLLD actions will contribute to the indicator for a given specific objective. Even if the estimates will not be fully correct, it should not be visible in the programme as the amount should be smaller than the estimation error.

The situation is much more complicated when an MA selects the second option. MAs would like to use the indicator of supported CLLD strategies but this is not a common indicator for the ESF+, so it can be used only as a specific indicator. The targets can be estimated based on the needs of Local Actions Groups (LAGs) which are known when their local strategies will be selected by the MA what will happen after the adoption of the programme (probably in 2023). Is it possible to adopt a programme without target values or so should some fictional targets be established which will be amended later on? Most regions do not know the historical data since CLLD will be implemented for the first time.

Answer:

Pursuant to Article 22(3)(d)(ii) CPR, each specific objective, including those implemented through CLLD and regardless of the delivery mode, needs to set out output indicators and result indicators with the corresponding milestones and targets.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The estimates for milestones and targets need to be developed in line with the methodology set out in Article 17 CPR.

In duly justified cases, the estimates may be revised by means of request for programme amendment.

QA00111 - TERRITORIAL DEVELOPMENT - IMPLEMENTING CLLD STRATEGIES THROUGH OPERATIONS CONSIDERED AS A GROUP OF PROJECTS

Relevant Article: Articles 2(4) and 33 of the CPR

Member State: LT

Question 1 (including any relevant facts and information):

Could the implementation of local strategies under the provisions of the CPR lead to the formation of group of projects which, in accordance with Article 2(4) of the CPR, would be considered as operations where the implementation of such actions would be the responsibility of the local action groups themselves?

Answer:

In line with Article 2(4)(a) CPR, an operation means 'a project, contract, action or group of projects selected under the programmes concerned'. As such, a local action group (LAG), selected as a beneficiary pursuant to Article 33(5) CPR, may initiate or implement an operation consisting of a group of projects.

Nevertheless, in accordance with Article 33(3)(d) CPR, it is the LAG that is responsible for selecting pre-defined operations (regardless if they are a project or a group of projects) in line with the community-led local development strategy. It is noted that the functions of a LAG as a beneficiary (initiating or implementing operations) and as a body responsible for selection of operations have to be separated.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00112 - CUMULATIVE FUNDING OF DIGITAL AND ERDF (EDIH)

Relevant Article:

Article 63 (9) of the CPR;

Article 22 of the DEP

Member State: FR

Question 1 (including any relevant facts and information):

DG CNECT is planning to co-finance the creation of a network of approximately 200 EDIH (with an average of 1 EDIH/region) under the "DIGITAL" programme. The support of DIGITAL should take the form of co-financing of up to 50 % of the running costs of each EDIH (= personnel costs, travel costs, purchase of equipment, depreciation costs). The challenge is therefore to find co-financiers to finance the remaining 50 % for each EDIH.

On the French side, several regions are strongly considering to mobilise the ERDF on this subject.

- French authorities would like **to get confirmation if and how it is possible to mobilise ERDF contribution to cover 40% of a given expenditure (or cost) and to cumulatively mobilise EDIH direct fund to cover 50% of that <u>same</u> expenditure base** (assuming this same expenditure base is eligible under both the ERDF and the Digital programmes)**.** For information: the remaining 10% of the expenditure would be covered by other sources than ERDF or Digital programme contribution.
- Assuming the answer to question 1 confirms the possibility for combining the ERDF and DIGITAL on the same expenditure base as long as the public funding does not exceed 100 % of the project costs, it is then demanded:
    a. To confirm that, **for checking that the public funding does not exceed 100% of the project costs:** the **ERDF** funding is calculated by considering the **co-financing rate at the operation level** and not by considering the co-financing rate at the axis level;
    b. To confirm that, following the submission by a managing authority (MA) to the Commission of a payment claim including eligible expenditures of an EDIH operation(under an ERDF programme priority axis): the contribution from the **ERDF** programme **effectively disbursed by the Commission** to the MA follows the Article 112 CPR rules of the co-financing rate, meaning that the **co-financing is at priority** level and not at operation level.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

The possibility of cumulating funds coming from two different Union funds or EU instruments is allowed by Article 63(9) CPR, which provides that an operation may receive support from one or more Funds or from one or more programmes and from other Union funds provided the same expenditure is not declared twice to the Commission. There is a corresponding provision in the Regulations for directly managed instruments, including in the Regulation on the Digital Europe Programme (see its Article 22).

The Commission services are currently preparing guidance with operational solutions and practical implementation elements that would be particularly useful for managing authorities deciding to allow such combined support to synergy operations. The guidance on synergies should tackle the questions raised.

QA00113 - SCOPE OF SUPPORT DEFINED IN ART. 3 (1) (A) (III) "ENHANCING SUSTAINABLE GROWTH AND COMPETITIVENESS OF SMES AND JOB CREATION IN SMES, INCLUDING BY PRODUCTIVE INVESTMENTS"

Relevant Article: Art. 3(1)(a)(iii) of the ERDF

Member State: PL

Question 1 (including any relevant facts and information):

Is the scope of support under this specific objective limited to enterprises from the SME sector, or does it focus on SMEs, but may go beyond them (i.e., supporting small mid-caps and mid-caps)?

In particular, is it legally possible to support small mid-caps and mid-caps under SO1.3 by financial instruments or combinations of grants and reimbursable financing?

Answer:

Article 5(2) ERDF/CF lists exhaustively the possibilities to support productive investments other than for SMEs. Unlike in Article 5(2)(a), (b) and (d) ERDF/CF, provisions in Article 5(2)(c) ERDF/CF do not make reference to any concrete specific objective. Therefore productive investments in small mid-caps and mid-caps financed through financial instruments can be supported under any specific objective, including the specific objective under Article 3(1)(a)(iii) ERDF/CF.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00114 - ELIGIBLE ACTIVITIES UNDER JTF – ACTIVITY (K) 'UPSKILLING AND RESKILLING OF WORKERS AND JOBSEEKERS'

Relevant Article: Articles 2 and 8(1)-(2) JTF

Member State: FR

Question 1 (including any relevant facts and information):

The question relates to the scope of the interventions under paragraph (k): the Commission notes there that *« Workers to be supported under (k) should be working in industries and sectors impacted by the transition* ***OR*** ***in industries/sectors that will play a role in addressing the social, employment, economic and environmental impacts of the transition (e g green companies, sectors with high potential for job creation) »***

Is it correct for to interpret that, once an economic sector is identified (justified with regard to the objectives of the TJTP and consistent with the principle of the DNSH) as a vector of diversification for an eligible territory, the MA may not only use the JTF to support and train job seekers or employees in polluting industrial sectors in decline towards this sector, but also support employees already employed within a company in this sector in the development of their skills? We had understood until now that these sectors of diversification constituted sectors of destination for the priority publics that are the job seekers and the employees of the most emitting industries, it seemed to us excluded from being able to work directly on the reinforcement of skills, for example, from the green economy sector. Confirmation of an openness on this subject (or of a previous misunderstanding on our part?) would open up operational perspectives that we had ruled out until now.

Answer:

In line with Art. 8(1) JTF: "The JTF shall only support activities that are directly linked to its specific objective as set out in Article 2 and which contribute to the implementation of the territorial just transition plans established in accordance with Article 11."

As stipulated by Art. 2 JTF, the JTF shall contribute to the single specific objective of enabling regions and people to address the social, employment, economic and environmental impacts of the transition towards the Union's 2030 targets for energy and climate and a climate-neutral economy of the Union by 2050, based on the Paris Agreement.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Activities (k), (l), (m) and (o) of Art.8(2) JTF are aimed at addressing in particular the social and employment impact of the transition.

To be eligible, activities should be justified in the territorial transition plans and their link to addressing the impact of the transition should be established.

Workers in sectors, which will play a key role in the transition, for example as vectors of economic diversification, may be eligible if the Member State can demonstrate that the upskilling and reskilling of those workers will help address the impact of the transition on the region and people concerned.

As outlined in section 5.1 of the Commission's Staff Working Document on the Territorial Just Transition Plans concerning economic diversification, "due importance should be given to sectors with a strong job creation potential, so to mitigate negative repercussions on employment, particularly in sectors with growth potential, such as the raw materials value chain".

The Member State should therefore explain in its TJTP how the upskilling and reskilling of workers already employed in a sector with, for example, high growth potential would play a role in mitigating the negative repercussions on employment.

QA00116 - How to apply in practice "multi-fund operation" and how does it differ from the "cross-financing" mechanism?

Relevant Article: Article 63(9) and 25(2) of the CPR

Member State: PL

Question 1 (including any relevant facts and information):

In the current programming period 2014-2020, Member States have been using the multi-fund option when programming their Operational Programmes: multi-fund OPs, multi-fund Priority Axis and even integrated ESF/ERDF projects. The latter were projects selected within joint calls for proposals. Although such approach was a step towards complementarity, it turned out to be burdensome – the "multi-fund" projects had in fact two sets of different implementation rules, 2 separate contracts, 2 separate payment claims.

In the draft Regulation for 2021-2027, Article 63(9) CPR foresees that "*An operation may receive support from one or more Funds or from one or more programmes and from other Union instruments".*

The questions are:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

1. How is it foreseen that this provision will apply in practice to individual operations? Can you provide an illustration and indicate what the MA would need to do? Would it work in the same way as integrated ESF/ERDF projects in the current period, and if not what would be different?
2. In which way does this option differ from the "cross-financing" mechanism, as defined in Article 25 ("*The ERDF and the ESF+ may finance, in a complementary manner and subject to a limit of 15 % of support from those Funds for each priority of a programme, all or part of an operation for which the costs are eligible for support from the other Fund on the basis of eligibility rules applied to that Fund, provided that such costs are necessary for the implementation*")?

Answer:

Article 63(9) CPR provides that an operation may receive support from one or more Funds or from one or more programmes and from other Union instruments, provided the same expenditure is declared to the Commission only once. It gives the possibility of cumulating support coming from different Funds under the CPR (the ERDF, the ESF+, the JTF, the EMFAF, the AMIF, the ISF and the BMVI) and from other Union instruments. Expenditure to be included in payment applications may be calculated on a pro-rata basis.

The Commission services are currently preparing guidance with operational solutions and practical implementation elements that would be particularly useful for managing authorities deciding to allow such combined support to synergy operations. The guidance on synergies will tackle the questions raised.

Cross-financing under Article 25(2) CPR allows the ERDF and the ESF+ to finance all or part of an operation for which the costs are eligible for support from the other Fund. In contrast to 2014-2020, the 2021-2027 CPR Article 25(2) allows for complementary financing of an entire operation. Issues related to cross-financing have been explained in QA00026.

QA00117 - Clarification regarding Annex XXIII (payment application) and XXIV (accounts) of the CPR in 2021-2027 programming period

Relevant Articles: Art. 2, 91, 94 and 95 of the CPR

Annex XXIII (Payment Application), Annex XXIV (Accounts)

Member State: CZ

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

Payment Application – Annex XXIII

Table "Expenditure broken down by priority and, where relevant, by category of region as entered into the accounts of the body carrying out the accounting function"

Payment Application – Annex XXIII

1. Table "Expenditure broken down by priority and, where relevant, by category of region as entered into the accounts of the body carrying out the accounting function"

a) It is not clear whether the amounts in columns B and E are mutually exclusive with the amounts in column C, in other words, should the amounts pursuant to Art 91(4)(a),(b) (Art 94 and 95) be also included in the column B (Total) and column E (Total public)?

b) Title of the column C suggests, that only the amount of the EU contribution should be included, however according to the underlying logic of the calculation of the payment (application of the co-financing rate of the priority to calculation basis in the column A) it would be more appropriate to submit the amount of the relevant calculation basis (Total or Total public), is our understanding correct?

c) The same goes for the column D (flat-rate for the technical assistance) where it is not clear whether EU, Total or Total public contribution should be submitted.

2. Appendix 2 - Information on expenditure linked to specific objectives (SOs) for which enabling conditions are not fulfilled, with the exception of operations that contribute to the fulfilment of enabling conditions (cumulative from the beginning of the programming period)

According to Article 15(5) or (6) the MS may include the expenditure linked to SO for which enabling conditions are not fulfilled in the payment applications. These amounts will not be included in the table "Expenditure broken down by priority and, where relevant, by category of region as entered into the accounts of the body carrying out the accounting function", but will be included in the Appendix 2 (columns B and C), therefore it will not be reimbursed until the enabling condition is fulfilled, however it will be taken into account for the N+3 rule.

What is less clear is the procedure once the enabling condition is fulfilled. For example, the MS will submit its first payment application where 10M EUR of the expenditure is related to not fulfilled enabling conditions (column B and C of the Appendix 2) and 90M EUR of the expenditure is related to fulfilled enabling conditions (column D and E of the Appendix 2). Subsequently, let's say before the submission of the second payment application (PA) all enabling conditions are fulfilled. New expenditure to be submitted in the second payment application is 200M EUR (all linked to fulfilled

enabling conditions). Should the amount of 10M EUR previously declared only in the Appendix 2 as linked to not fulfilled enabling conditions be added to the new expenditure in the table "Expenditure broken down by priority and, where relevant, by category of region as entered into the accounts of the body carrying out the accounting function" in the 2nd PA or not? If not, will the Commission add and reimburse this amount on the top of the amount that would come out of the standard payment calculation based on the amounts in the table Expenditure broken down by priority and, where relevant, by category of region as entered into the accounts of the body carrying out the accounting function?

3. Accounts – Annex XXIV

Appendix 1 - Amounts entered into the accounting systems of the accounting function

Compared to table Expenditure broken down by priority and, where relevant, by category of region as entered into the accounts of the body carrying out the accounting function, there is no specific column for the declaration of the amounts according to Article 94 and 95, could you please explain why it is not necessary to declare Article 94 and 95 separately in the Accounts. Do we understand correctly that amounts according to Article 94 and 95 should be included in columns A and C?

Answer:

Question 1 a)

This answer was updated on 23 April 2024. The changes are struck through.

Amounts in columns B and C are mutually exclusive.

Column C should include eligible expenditure where the Union contribution is made pursuant to Article 51 (a), (c), (d) and (e) CPR. These correspond to the total eligible expenditure included in payment applications pursuant to Article 91(4) (a) and (b) CPR.

Column B should include all expenditure declared linked to fulfilled enabling conditions or contributing to their fulfilment, with the exceptions of TA flat-rate amount (where relevant, calculated in column D) and the eligible expenditure included in column C.

The amounts reimbursed to beneficiary for the cases covered by Article 91(4)(a) and (b) CPR reported in column C shall not be included in column B to avoid double financing of the same expenditure.

In case a part of expenditure of the operation is declared to the Commission based on eligible expenditure incurred by the beneficiary and paid in implementing the operation, and another part is covered by a SCO/FNLC scheme agreed between the Commission and included in the programme, then the expenditure of such an operation will be partially included in column B and partially in column C of payment applications.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Columns E and C are not mutually exclusive. Expenditure in column E covers public contribution as defined in Article 2(28) CPR irrespective of the form of the Union contribution and is to be filled in.~~where appropriate in line with the programme (either column E is filled in or columns B+C).~~

Question 1 b)

Your understanding is correct. Column C should include total eligible expenditure where the Union contribution is made pursuant to Article 51 (a), (c), (d) and (e) CPR. This is linked to the amounts as either approved in the programme (Article 94(3) or 95(2) CPR) or as set out in a delegated act (Article 94(4) or 95(4) CPR).

Question 1c)

Amounts in column D will be calculated automatically by SFC2021, by applying the technical assistance flat rate percentages resulting from the financing plan of the programme (Table 11) either to the sum of amounts in Columns B and C (where programmes chose total eligible expenditure) or to the amount in column E (where programmes chose public contribution).

Question 2

When the enabling condition is fulfilled, the expenditure originally included in the Appendix 2 of the Payment Application (column B and C) should be included in the table "Expenditure broken down by priority and, where relevant, by category of region as entered into the accounts of the body carrying out the accounting function" of the next payment application. Calculation of the amounts to be reimbursed by the Commission is based on amounts included in this table.

Question 3

Column A in the accounts' template corresponds to the sum of columns B and C in the template for payment applications.

QA00118 - MID-TERM REVIEW AND ESF+ SUPPORT TO MATERIAL DEPRIVATION

Relevant Articles: 16(2) and 18 of the CPR

Member State: n/a

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

The MS would like to have a separate ESF+ Programme for SO (m). Will this Programme be subject to the mid-term review (i.e. is it obligatory)?

The MA's view is that the mid-term review is derived from the performance framework. The MA considers that Article 18(1) CPR does not concern the ex-FEAD Programme, because Article 16(2) excludes the "(m) addressing material deprivation" specific objective from having milestones and targets. Thus, the MA does not see the obligation to conduct a mid-term review for the Programme and has asked, if there is any guidance/ document which states otherwise.

Answer:

Article 18(1) of Regulation (EU) 2021/1060 (CPR) determines that the mid-term review shall apply to programmes supported by the ERDF, the ESF+, the Cohesion Fund and the JTF. Therefore, as there is no derogation provided for ESF+ programmes (or priorities) dedicated to support the specific objective set out in point (m) of Article 4(1) (specific objective "(m)") of Regulation (EU) No 2021/1057 (ESF+ Regulation), this mid-term review shall also apply to and cover this specific objective.

The progress in achieving milestones set for the specific objectives of a programme is only one of several aspects set out in Article 18(1) CPR, that need to be taken into account during the mid-term review.

Therefore, even though a specific objective (m) in programmes or priorities is exempted from the obligation to set out milestones and targets for indicators (Article 16(2) CPR), there are other elements which should be taken into account for the mid-term review.

Finally, although there are no milestones set for specific objective (m), it is still possible to assess the implementation of this specific objective, notably, based on the data reported for the indicators applicable to specific objective (m).

QA00119 - VISIBILITY, TRANSPARENCY AND COMMUNICATION PROVISIONS AND SPECIFIC OBJECTIVE ADDRESSING MATERIAL DEPRIVATION UNDER THE ESF+

Relevant Article: Article 50 of the CPR

Member State: n/a

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

Where the product, such as a toothbrush, is in an individual package, where the EU flag and the words "EU co-financed" should be placed - on the product packaging or on the brush itself, which is generally sold in a package?

Answer:

Article 50 CPR requires beneficiaries to acknowledge the support from the Funds to the operation. In addition, it imposes specific obligations to beneficiaries in this regard, *inter alia*, by requiring a statement highlighting the support of the Funds in documents and communication material regarding the operation. However, this provision does not require that for operations supported under the specific objective set out in point (m) of Article 4(1) of the ESF+ Regulation food and/or basic material assistance products have a label referring to EU support (food products are not "documents").

Question 2 (including any relevant facts and information):

For support granted in the form of a hot lunch (in most cases it is provided in disposable packaging, but there are also cases in which it is provided in containers to the final recipients? Given the fact that the product is a hot lunch and is placed in different packages / containers, should there be a visualization and how?

Answer:

As explained above Article 50 CPR provides flexibility to Member States on how to highlight the support to end recipients of operations under the specific objective set out in point (m) of Article 4(1) of the ESF+ Regulation. The CPR does not require that food products and basic material assistance have a label referring to the support provided by the EU. The beneficiary should use other means to inform the end recipients of the support provided by the EU which do not lead to their stigmatization (e.g documentation accompanying the distribution of the assistance).

Question 3 (including any relevant facts and information):

For the support provided by voucher / card for children's kitchen, should the voucher / card be visualized? In our opinion, it is necessary to visualize the voucher / card with the EU flag and the inscription "EU co-financed". Is this enough to follow the rules of visualization?

Answer:

Vouchers or cards are "documents" within the meaning referred to in Article 50(1) (b) and therefore they should refer to the support provided by the EU. This can be done by using the emblem of the Union and including a statement referring to 'Funded by the European Union' or 'Co-funded by the European Union' as set out in Article 49 CPR and Annex IX CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00120 - REGENERATION AND DECONTAMINATION OF BROWNFIELDS - REPURPOSING PROJECTS

JTF - EU 2021/1056 - Article 8 - Scope of support

Relevant Article: 8 (2) (i) of JTF regulation

Member State: CZ

Question 1 (including any relevant facts and information):

We would like to confirm the interpretation of art. 8 (2) (i) of JTF regulation. This article allows to supports „*investments in regeneration and decontamination of brownfield sites, land restoration and including, where necessary, green infrastructure and repurposing projects, taking into account the 'polluter pays' principle*".

Are there any limitations on what we can consider as a repurposing project?

We think that we can support any project that meets the following conditions:

1. It fulfills the JTF objective.
2. It contributes to the implementation of the territorial just transition plan
3. It is not excluded from the support by art. 9 of JTF regulation.
4. It is located on the site affected by coal mining or any related industry.
5. It has state aid clearance.
6. Large enterprises must meet conditions for productive investments.
7. If possible, it is recommended to utilize old buildings and mining heritage.

Could you confirm that our interpretation is correct and following activities can be considered as a repurposing project?

- Technical infrastructure
- Public functions (education, culture, sport and leisure)
- R&D (innovation centre, university)
- Infrastructure for SMEs or large enterprises
- Renewable energy sources
- Housing
- Waste
- Tourist attractions

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

According to Article 8(2)(i) of the JTF regulation, repurposing projects may, **wherever necessary,** be implemented as part of investments in regeneration and decontamination of brownfield sites or land restoration. This means that repurposing projects can be eligible only if such repurposing is necessary for the eligible investments primarily aiming at land restoration or regeneration and decontamination of brownfield sites (such as rehabilitatiation of totally or partly abandoned mine land, oil shale extraction sites or land of former peatlands and greenhouse-gas intensive industries while taking into account the 'polluter pays' principle).

The JTF regulation does not further restrict the scope of repurposing projects. Nevertheless, all support provided through the JTF has to fall under the scope of JTF support to be eligible, and this covers also repurposing projects necessary for the activities provided for in Art. 8(2)(i) JTF Regulation. Where a repurposing project is necessary for the activity envisaged under Art. 8(2)(i) JTF Regulation, all applicable support conditions under the CPR and the JTF Regulation apply. In particular, it should be in line with Article 8 and 9 of the JTF Regulation, should be directly linked to the JTF specific objective and contribute to the implementation of the territorial just transition plan (TJTP), and it needs to be justified by its contribution to mitigating the impacts of the transition and its link to the transition challenges identified in the TJTP.

As regards activities listed under the last paragraph of your question as potential repurposing projects, they may therefore qualify for support as part of land rehabilitation investments under the JTF if the above mentioned conditions are fulfilled. The Commission will be evaluating the concrete measures in the context of the submitted TJTP.

QA00121 - ELIGIBILITY OF URBAN INVESTMENTS UNDER PO5 SO E(II)

Relevant Article: Article 29 of the CPR

Member State: RO

Question 1 (including any relevant facts and information):

Investments in urban/functional urban areas are envisaged under the integrated territorial development approach and embedded in the county strategies designed to

target both smaller urban areas(urban/functional urban areas) and rural areas. Urban areas are made up of urban municipalities and towns but also administrative units in rural areas (villages/communes) located within functional urban areas. Within these non-urban territorial strategies, can operations located inside the urban administrative units (municipalities and town) be eligible for funding under PO5 SO e(ii)?

Answer:

The support under the ERDF specific objectives set out in Art. 3(1)(e) should be provided through territorial and local development strategies, through territorial tools set out in Art. 28 CPR.

The identified territory targeted by the territorial strategy constitutes the geographic scope for investments under the given specific objectives.

Under specific objective e(i), all measures should be based on territorial or local development strategies focused on urban areas, including functional urban areas, and thus contribute to sustainable urban development earmarking set out in Art. 11 ERDF.

Under specific objective set out in Article 3(1)(e)(ii) ERDF/CF (SO 5.2), the territorial focus of territorial or local development strategies can be any non-urban territories below the programme level (subregions, functional areas), if justified by the intervention logic of the programme. Such non-urban territorial strategies can include support to urban areas as well, but such support under SO 5.2 cannot be counted for the 8% urban earmarking.

QA00122 - ARE AERODROMES OTHER THAN AIRPORTS ELIGIBLE FOR SUPPORT UNDER SPECIFIC OBJECTIVE 3.2?

Relevant Article:

- Point (1)(e) of Article 7 of Regulation 2021/1058
- Points (144), (145), (146), (147) and (153) of Article 2 of Regulation (EU) No 651/2014
- Point 16 of Article 3 of Regulation 2018/1139
- Points 4 and 7 of Article 2 of Regulation 1008/2008

Member State: PL

Question 1 (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The Polish authorities requested support to certain types of aerodromes that are not used for commercial operations of air carriers. The scope of investment would cover all possible items of infrastructure, including runways, aprons, air navigation systems and other installations, buildings and equipment used for aircraft operations and movement.

Pursuant to Article 7(1)(e) of Regulation 2021/1058, the ERDF and the Cohesion Fund shall not support investment in **airport infrastructure**, save as otherwise provided for in this Article. The Polish authorities observe that following the terminology used in the international and the EU aviation law, the term '**airport'** is narrower than '**aerodrome',** as:

- 'aerodrome' means a defined area (including buildings, installations and equipment), intended to be used for the arrival, departure and surface movement of aircraft (point 16 of Article 3 of Regulation 2018/1139);
- 'airport' means any area in a Member State especially adapted for air services, i.e. a flight or a series of flights carrying passengers, cargo and/or mail for remuneration and/or hire (points 4 and 7 of Article 2 of Regulation 1008/2008).

This implies that the exclusion made in Article 7(1)(e) of Regulation 2021/1058 does not apply to aerodromes that are used for other purposes than the commercial carriage of passengers passengers, cargo and/or mail. Such other purposes may involve e.g.:

- aviation training;
- aerial sports;
- other aerial works that do not involve commercial carriage of passengers, mail or goods (i.e. aerial photography, aerial surveillance, fire-fighting flights, agricultural flights etc.)
- so-called 'general aviation', i.e. non-commercial operations performed by private aircraft owners (incl. for business, tourism or leasure).

Consequently, the Polish authorities seek for a confirmation that the aforementioned categories of aerodromes that do not constitue 'airports' can be supported by ERDF under specific objective 3.2 without any restrictions.

Answer:

In accordance with Article 7(1)(e) of Regulation 2021/1058, the ERDF and the Cohesion Fund shall not support investment in **airport infrastructure**, except for outermost regions or in existing regional airports as defined in point (153) of Article 2 of Regulation (EU) No 651/2014, in any of the following cases:

- in environmental impact mitigation measures; or
- in security, safety, and air traffic management systems resulting from Single European Sky ATM Research.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The ERDF/CF regulation does not provide a definition of 'airport infrastructure', however it refers to point (153) of Article 2 of Regulation 651/2014 for the definition of 'regional airport'. Taking into account the objectives pursued by the support through cohesion policy, in particular the ERDF and the CF and according to the rules of systemic interpretation, the same Article of Regulation 651/2014 should be taken into consideration when determining the notion of 'airport infrastructure' and not definitions in EU legal frameworks that serve different purposes.

According to point (144) in conjunction with points (145), (146) and (147) of Article 2 of Regulation (EU) No 651/2014, airport infrastructure means infrastructure and equipment for the provision of airport services by the airport to airlines and the various service providers, including runways, terminals, aprons, taxiways, centralised ground handling infrastructure and any other facilities that directly support the airport services, excluding infrastructure and equipment which is primarily necessary for pursuing non-aeronautical activities. Airport services mean, in line with point 147, services provided to airlines by an airport or any of its subsidiaries, to ensure the handling of aircraft, from landing to take-off, and of passengers and freight, so as to enable airlines to provide air transport services, including the provision of ground handling services and the provision of centralised ground handling infrastructure.

This implies that 'airport infrastructure' does not comprise infrastructure for the handling of aircraft, other than for the commercial carriage of passengers, cargo, and/or mail, and is not excluded from the ERDF support under Article 7 of Regulation 2021/1058.

This does not mean, however, that aerodromes serving for other air operations than the commercial carriage of passengers, goods or mail qualify for support under specific objective 3.2.

As stated in point 1(c)(ii) of Article 3 of Regulation 2021/1058, investments under specific objective 3.2 should contribute to 'developing and enhancing sustainable, climate resilient, intelligent and intermodal national, regional and local mobility'. In principle, aerodromes other than airports are not used for the movement of people and goods, and their primary function is to enable and promote aviation sports and training. Although these aerodromes may also be used for 'general aviation' operations, their usage for mobility purposes (as a mean of transport for business or tourism) is extremely rare, and the proportion of persons using their own private aircraft as a mean of transport – negligible.

Last, it is noted in addition that the intention of the co-legislators is clearly expressed in recital 41 ERDF/CF Regulation in the sense that only target measures in regional airports in line with state aid rules could receive support.

Therefore, it is concluded that general aviation operations play no practical role in enabling the movement of goods and people. Consequently, investments in aerodromes other than airports would not contribute to 'developing and enhancing sustainable, climate resilient, intelligent and intermodal national, regional and local mobility' and do not qualify for ERDF support under specific objective 3.2.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00123 - ELIGIBILITY OF OPERATIONS UNDER THE JTF

Relevant Article: Art. 8(2) and recitals 12 and 15 of the JTF regulation

Member State: PL

This Q&A was updated on 2 December 2025. The changes are struck through and the added text is in blue and underlined.

Question 1 (including any relevant facts and information):

By when should the MA sign the contract and spend for JTF NGEU resources and certify them to the Commission? Which of these steps is treated by the Commission as the financial/budgetary commitment? What is the margin of manoeuvre as regards regulatory deadlines signing contracts, effectively spending and certifying for NGEU resources according to Regulation 2020/2094 and financial regulation?

The managing authorities of Upper Silesia and Lower Silesia have serious concerns concerning the feasibility of quicker spending of the NGEU part of the JTF comparing to the MFF part. In view of the lengthy legislative process, participatory process and work to formulate the objectives for the Territorial Just Transition Plans and shape JTF implementation programmes, the timing related to the contracting of funds is a concern related to the effective implementation of the ambitious objectives of the European Green Deal.

Similar other European regions have concerns, as reflected in the discussion at the meeting "Just Transition Platform Meeting — Coal Regions in Transition virtual week and Carbon-intensive regions Seminars" where questions were raised on how the EU will deal with the problem of using funds from the NGEU by the end of 2023, which translates into the need to spend more than half of the funds from the JTF until 2026.

For the bodies implementing the JTF programme as well as the parties interested in post-mining transformation and planning projects there is a huge time pressure and risk of under-utilisation of the JTF co-financed dedicated funds. This is demonstrated by the deadlines for acceptance by the Commission. The JTF programmes, followed by the activation of the administration implementing the programme, who needs time to complete the publication and evaluation formalities for project proposals submitted. Beneficiaries, on the other hand, need time to implement and settle projects relevant to address the challenges arising in the transition process. The regional authorities would like to explore the possibility of rescheduling the period of disbursement of funds from the JTF.

The regional authorities also ask for clarity regarding when they have to spend the NGEU resources which have an impact on JTF programming. The response requires a combined legal interpretation of 4 regulations (JTF, CPR, NGEU and Financial Regulation).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer to question 1:

According to Article 4(2) of the JTF regulation, commitments in the EU budget for the external assigned revenues (NGEU) need to be made for the years 2021 to 2023. Yet, it does not mean that managing authorities should contract NGEU resources by end 2023. Commitments are done at the level of a programme.

- In programmes not submitted for adoption by end 2021, the 2021 tranche of JTF resources will be reprogrammed. Whereas the MFF part of the allocation will be split in four fourths from 2022 to 2025, NGUE resources will be split in two equal halves over 2022 and 2023. This should also be reflected in each programme's financial plan.
- If not committed by end 2022, the 2022 tranche of the NGEU benefits from an automatic carry-over to 2023, based on Article 12(4)(c) of the Financial Regulation. This rule does not apply to MFF appropriations.

Payments under NGEU at the programme level should be made by the Commission by 31 December 2026[1]. Until this deadline, JTF payments to programmes shall be made from open commitments made first from NGEU resources until they are exhausted.

In accordance with Article 4(4) of the JTF Regulation, the decommitment rules for the MFF resources, as set out in the CPR (the N+3 rule), also apply to the NGEU budgetary commitments. Therefore, the Commission will decommit NGEU resources which have not been used for pre-financing or for which a payment application has not been submitted by 31 December of the third calendar year following the year of the budget commitments for 2022 and 2023, in accordance with the rules laid down in Articles 105-107 of the CPR and the Commission Explanatory Note on N+3 decommitment in 2021-2027 (CPRE_24-0005-02 of 05/07/2024).

Question 2 (including any relevant facts and information):

To what extent can the JTF finance projects in areas outside the sub-region covered by Annex D and the TJTP?

In the case of two Polish Annex D regions, the regional authorities intend to finance projects which are not located in sub-regions concerned by the TJTP.

In the case of Malopolska, it is acknowledged that the area of Western Malopolska will also suffer heavily from the transition in neighbouring Silesia with ca 500 SMEs in value chains and ca 4500 miners from Małopolska working in Silesia. However, this sub-region will probably not be covered by the JTF as two remaining mines in Malopolska are planned to be closed in 2040 and 2049, which exceeds the 2030 perspective determining JTF eligibility. Commissioner Ferreira has asked to find a solution for the workers and SMEs of Malopolska. Silesia informed that they would be ready to support miners from Malopolska who would be negatively affected by the transition in Silesia. Silesian MA could provide JTF support for Malopolska SMEs from their regional programme, if Malopolska JTF proposed allocation is rechannelled to Silesia region.

Konin case is described in details under point 8.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer to question 2:

According to Article 8(1) of the JTF Regulation, the JTF shall only support activities that are directly linked to its specific objective and which contribute to the implementation of the territorial just transition plans established in accordance with Article 11. Thus, a project in an area outside the sub-region covered by the TJTP could be eligible for JTF funding provided that this project is, on the one hand, clearly linked to the objective of enabling regions and people to address the social, employment, economic and environmental impacts of the transition towards the Union's 2030 targets for energy and climate and a climate-neutral economy of the Union by 2050, based on the Paris Agreement and, on the other hand, contributes to implementing the TJTP.

Moroever, in accordance with recital (13) and Article 8(2)(k)-(m) all jobseekers, in this specific case eg. miners of Malopolska working in Silesia, who have lost their job in sectors affected by the transition in a region covered by the territorial just transition plan may be eligible to be supported by the JTF even if the workers who were dismissed do not reside in that region.

Question 3 (including any relevant facts and information):

Can sustainable tourism projects be supported by the JTF? What does it mean that "sustainable tourism could be part of the support to local economies through stimulating their endogenous growth potential"? What kind of projects can be qualified as sustainable tourism projects?

Recital 12 of the JTF Regulation refers to sustainable tourism as eligible type of projects. However, Article 8 para. 2 doesn't include touristic activities in the exhaustive list of JTF supported activities.

Answer to question 3:

Support to tourism infrastructure per se is not eligible under Article 8(2) of the JTF Regulation. Yet, sustainable tourism projects may be eligible under the JTF if, for instance, they aim to support tourism operators as a way to diversifying or modernising economic activity in the JTF territories and if they are part of other eligible measures under the JTF, e.g. e.g. productive investments in SMEs or support to the creation of new firms in the touristic sector etc.

As per recital 12 of the JTF regulation, such support should stimulate the endogenous growth potential and harness comparative advantages of the eligible territory in line with applicable smart specialisation strategies. The RIS3 should therefore demonstrate that the JTF territory holds significant potential in the tourism sector to sustain its productivity growth.

Tourism investments also need to be sustainable in the long-term, taking into account all the objectives of the European Green Deal. Eligible projects should contribute to a transition to a sustainable, climate-neutral and circular economy, including measures that aim to increase resource efficiency.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

All projects shall support activities that are strictly linked to the JTF specific objective and contribute to the implementation of the TJTPs (Article 8(1) JTF).

Question 4 (including any relevant facts and information):

Is revitalisation of degraded urban and rural areas, including housing buildings owned previously by coal mines, eligible for JTF support according to the JTF regulation?

Degraded areas by mining and para-mining activities very often require comprehensive revitalisation — not only replacing of heat sources and improving energy efficiency of buildings, but also the revitalisation of degraded urban areas, including green infrastructure and other outdoor infrastructure. The regional authorities envisage the regeneration and re-use of brownfield sites in cities and urban areas, which is an important factor in reducing the negative impact of the transition in coal regions. The efficient conversion of brownfield sites can create unique opportunities, but the regeneration of brownfields should be treated horizontally and should apply to the whole area of the sub-region, as the process of devaluing areas did not only concern post-industrial areas, including post-mining areas. As a result of the activities of the mining and energy sector, social, economic and economic degradation extends beyond the industrial site itself.

Residents of depopulated villages displaced by mines, in compensation for lost property, moved to other settlement units in the same municipality or to other municipalities and cities. The activities of the mine therefore affected, on the one hand, the dispersal of habitats and, on the other hand, their concentration. The socio-economic functions performed by municipalities or localities have been lost, leading to a worsening of existing problems, including: an increase in unemployment, a deterioration in the quality of infrastructure. Changing the environment has also adversely affected people's survival — social problems (social exclusion, addiction, etc.). Examples of municipalities show that one of the consequences of open-cast mining is increasing distances to basic public and cultural services (cultural centres, community centres, schools, health centres), e.g. by breaking the communication system, which has led to a slow concentration of negative social phenomena, in particular unemployment, poverty, crime, low levels of education, and insufficient participation in public and cultural life in the areas affected by the mining and energy sector. This has resulted in a reduction in the participation of the population in the social life of the region. Often, negative social phenomena are accumulating in localities affected by the mining and energy sector. In addition, a significant proportion of the inhabitants of municipalities affected by the mining and energy sector have been or are employed in the mining industry or in associated services supporting the extractive industry. Once the mine and power plant have come to an end, the inhabitants of such areas (often defined as regeneration areas in regeneration programmes) have to find themselves in a new reality and reinvigorate local entrepreneurship.

Finding a new application for urban and rural degraded areas can unleash business opportunities, create economic diversification and create new jobs that will underpin the success of a just transition in coal regions. In the opinion of the region, these actions fall within the scope of the Regulation, on the one hand, in Article 8 para. Article 2(i) and Article 8, paragraph 2. 2 (o).

As part of the framework developed by the Expert Group on Fair Transformation (15 May 2020) within the framework of the Renewable Industry Development Team for Energy Sources and Benefits for the Polish Economy under the Minister for Climate (Order of the Minister for Climate of 2.04.2020, item 2) pointed out that the challenge is the intensive regeneration of urban structures, which require intensive regeneration processes. The challenge and objective of just transition actions should be to promote and implement the circular economy in regeneration processes. The transition to a circular economy offers an opportunity to change approaches to space management and to create openness to eco-innovation in regenerated neighbourhoods, which are often the most valuable and valuable areas for the economy and the local community. Regenerated areas can not only be "healthy" per se through circular projects, but at the same time they can become a "motor" of circular changes in the structure of the whole city or rural area, from which a wider circular change will start. Such an approach creates great opportunities to achieve sustainability and effectiveness of regeneration processes. Using circular solutions, we have the chance to shape self-sufficient and regenerative areas. The process of assigning new functions to them using innovative and environmentally friendly methods, often seen as "revolutionary", should be carried out with the strong involvement of all local actors, thus increasing the sustainability, efficiency and effectiveness of regeneration processes.

Answer to question 4:

The JTF can only support activities that are directly linked to its specific objective as set out in Article 2 of the JTF Regulation. Such activities should also contribute to the implementation of the TJTP.

The general revitalization of urban and rural areas is therefore not eligible for JTF support, except for investments in regeneration and decontamination of brownfield sites (abandoned land of former mines or power plants) and land restoration, in line with Article 8(2)(i) of the JTF Regulation.

Revitalisation of post-mining or post-industrial sites should be implemented in a comprehensive manner, with accompanying support to economic diversification, reskilling/upskilling of affected workers and/or environmental rehabilitation. Such investments can also include, where necessary, green infrastructure and repurposing projects.

~~From a policy perspective of the Commission services, the focus should be on economic transition. Investments in purely residential housing (construction, reconstruction) should therefore not receive any support under the JTF.~~

~~Nevertheless, i~~In line with recital 12 and Article 8(2)(e) of the JTF Regulation, the JTF investments, which contribute to reducing energy poverty, principally through energy

efficiency improvements of housing stock, are eligible provided that they contribute to the achievement of the JTF specific objective and contribute to the implementation of the TJTPs.

Investment promoting access to affordable and sustainable housing are also eligible under Article 8(2)(p) of the JTF Regulation, introduced by mid-term review regulation, which extended the scope of JTF housing investments beyond energy efficiency measures and investments linked to land rehabilitation, broadening the possibilities for addressing social impacts of transition. JTF housing investments should follow the same approach as the ERDF investments in the construction and renovation of the affordable and sustainable housing stock. Such investments should be compatible with Energy Performance of Buildings Directive (EU) 2024/1275. Investments under the principles and values of the 'New European Bauhaus' initiative should make full use of those new possibilities. Costs resulting from the temporary renting of alternative accommodation for the occupants during the time of the renovation can also be eligible for support. Housing investments still need to contribute to the JTF's specific objective and to the implementation of the Territorial Just Transition Plan.

The general regeneration of degraded urban and rural areas can be supported through the ERDF. The managing authority should therefore explore possible synergies between investments implemented in the JTF territory under the different funds.

Question 5 (including any relevant facts and information):

What kind of types of projects are included in the definition of *sustainable local mobility, decarbonisation the local transport sector and its infrastructure* according to the JTF Regulation? Is railway rolling stock and the modernization of railway lines included in this definition?

Answer to question 5:

In accordance with Article 8(2)(f) of the JTF Regulation, the JTF can support investments in smart and sustainable local mobility, including decarbonisation of the local transport sector and its infrastructure, as well as the deployment of recharging infrastructure. Such investments should also contribute to addressing the impacts of the transition in the eligible territory and be justified in the TJTP. ~~From a policy perspective, they should therefore not aim to improve the general transport mobility.~~

Examples of investments may include public transport infrastructure, rolling stock, interchange stations, including park&ride or bike&ride parks, charging points for electric vehicles, and intelligent transportation systems that would improve population access to jobs.

From a policy perspective of the Commission services, developing sustainable local mobility under the JTF also needs an integrated approach. Thus, it is important to underpin such investments by a sustainable and multimodal urban/local mobility plan (SUMP). Linking support for urban mobility operations to the existence of a SUMP can be an effective mechanism for ensuring compliance with the requirements of Article

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

73 CPR in the selection of operations. The Commission could observe that it considers the existence of a sound strategic framework (such as a SUMP) key for selecting operations which "present the best relationship between the amount of support, the activities undertaken and the achievement of objectives".

The JTF regulation does not exclude the possibility of support to the rail rolling stock or to the modernisation of railways. However, due to their scope and objectives, railway investments may not fall into the definition of 'local' mobility' (except for metro or ground level commuter trains) and would therefore not qualify for JTF support. The Commission will be evaluating the concrete measures in the context of the submitted TJTPs.

Projects improving the railway connectivity of just transition regions might still be eligible by pillar 2 even if implemented in other regions if such projects benefit the JTF territory and are justified in the TJTPs.

Question 6 (including any relevant facts and information):

To which extent is the preparation of investments sites eligible for JTF financing according to the JTF Regulation?

Support for the preparation of investment sites is particularly important in the case of municipalities for which until now taxes and levies on the presence of coal-fired mines and coal-fired power plants have been a key source of revenue for the budgets. As a result of the closure of coalmines, these municipalities are at risk of a significant deterioration in their financial situation, which in the short term will lead to a deterioration in the quality of life of the inhabitants (also due to the loss of existing employment by a large part of the population). It is therefore extremely important to support this type of entity in attracting new investors who, on the one hand, create jobs for redundant miners and energy workers and, on the other hand, give the municipality itself a development opportunity (based on its development in completely new directions than hitherto). Konin subregion plans to qualify for support post-industrial areas, including post-mining and post-power plants areas. Support will also be given to the brownfield sites of other companies, in particular those linked to the mining and energy sector. A characteristic of coal regions is the location of industrial enterprises from other industries as well, so it should not be limited to supporting land after former mines or power plants. Article 8 para. 2 (i) of the JTF Regulation refers, inter alia, to the assignment of new functions, so that under this type of operation Konin foresee that one of the possible directions of support for brownfield sites, including mines, will be to develop them through the creation of investment sites. The guidelines of 30 September 2021 on the allocation of projects to the 3 pillars of MST, prepared by JASPERS experts, indicate that the pillar in the area of spatial transformation aims to make better use and repurposing of available brownfield sites, in particular by making them available to job-creating investors. The recommendations drawn up by the Expert Group on Just Transformation point to the need to create investment sites by supporting and developing brownfield sites and post-industrial sites of strategic importance for coal regions' municipalities. There is a need for

differentiated use of brownfield sites in terms of the economic re-use of brownfield sites by existing or new owners and by Special Economic Zones.

Answer to question 6:

The preparation of investment sites may be eligible under the JTF, for instance, as part of a broader investment in regeneration and decontamination of brownfield sites, in line with Article 8(2)(i) of the JTF Regulation ('repurposing projects'). Such investments should be directly linked to the JTF specific objective, need to contribute to alleviating the impact of the transition in the JTF territory and contribute to implementing the TJTP.

The necessity of such investments should stem from the development needs to address the transition challenges, as specified in the TJTP. The Commission urges the managing authority to put in place all necessary arrangements at the programme level to ensure that the financed operation reflects the actual demand for investment sites and that investment sites are effectively put into use (i.e. they are filled up with firms). To this end, the coordination with other eligible operations under the JTF will be necessary, e.g. with support to the creation of new firms etc.

The Commission will be evaluating the concrete measures in the context of the submitted TJTP.

Question 7 (including any relevant facts and information):

Can JTF finance the infrastructure of vocational and technical schools, which, despite the status of schools, they are de facto educational training centres in professions wanted by employers? Can Lower Silesian MA treat this infrastructure, as an education infrastructure in the meaning of JTF Regulation?

The financing of the infrastructure of vocational and technical schools which, despite their status as schools, they are de facto training centres for education in occupations sought by employers. In relation to identified needs in the TJTP for the development of new professions for a decarbonised economy, there is a need for adaptation of school and lab infrastructure for acquisition practical professional skills. So the regional authorities intend to treat this infrastructure, as an infrastructure for the education within the meaning of JTF Regulation.

Answer to question 7:

In line with Article 8(2)(o) of the JTF Regulation, investments in educational infrastructure for the purposes of training centres are eligible provided that they are duly justified in the TJTP and directly linked to the specific objective of the JTF. Thus, such investments should address the negative consequences of the transition process, e.g. by being used in upskilling/reskilling programs for former miners.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In this context and under the conditions set out above, the activity proposed by Poland may be eligible. Yet, the Commission will evaluate the concrete measure in the context of the relevant TJTP.

Question 8 (including any relevant facts and information):

To which extent is the restoring and increasing water resources in hydrologically degraded areas eligible under the JTF regulation?

Konin sub-region wants to reconstruct and increase water resources of areas degraded in terms of hydrology (including by creating water reservoirs in post-mining pits). Type of operation: restoring and increasing water resources in hydrologically degraded WW ('Western Wielkopolska') areas (including through the creation of water reservoirs in mine excavations) by, inter alia:

- investments in water facilities and hydrotechnical infrastructure;
- restoration of the hydrographic network and restoration of transformed watercourses;
- development of micro- and small-scale retention;
- conservation and restoration of natural habitats, including wetlands;
- development of green-blue infrastructure, removal of impermeable surfaces, development of rainwater management systems and rainwater drainage, protection of existing parks and rocks and tree woodlands.

In order to restore and enhance water resources, Konin wants to finance by the JTF action in areas outside the sub-region covered by Annex D and the TJTP.

Recital 12 of the JTF Regulation states that restoration projects should be able to support the restoration of sites and the development of green infrastructure and water management. The brownfield sites referred to in the Regulation should not be considered solely in the context of conversion to morphology of the site (surface/noise) or soil contamination. In the case of lignite mining, it is also important to define the extent of hydrologically brownfield sites. Open-cast coal mining in East Wielkopolska has led to nearly half of the subregion being in a zone of accumulation of water deficit phenomena, the extent of which is defined as hydrologically degraded land. In the light of the above, Konin cannot agree with the Commission's proposed amendment to: 'reconstructing and increasing WW's water resources by creating water reservoirs in mine excavations' — the project of the Wody Polskie (Polish national water manager) covers a wider range of actions aimed at restoring normal water relations in the subregion.

Hydrotechnical infrastructure and the establishment of one of the TJTP of WW flagship projects, i.e. PGW Wody Polskie project "Increase of retention and restoration of water resources of post-mining areas in Eastern Wielkopolska region".

The Eastern Wielkopolska region, which has been under severe anthropogenic pressure for decades, taking into account climate change, is at risk of water stress like

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

any other region in Poland. The long-term operation of open-cast lignite mines, which has led to long-term reductions in groundwater levels, has played a major role in this regard, with the result that many water bodies and wetlands in the area have dried or drastically reduced their surface area, and many watercourses have changed their nature completely and have not experienced natural water flows for a long time.

This situation should be addressed by restoring the hydrographic network by carrying out measures to increase the water retention potential and restoring natural levels of surface water and groundwater.

The response to problems relating to the water resources of Eastern Wielkopolskie is the project entitled *Increasing retention and restoring post-mining sites in Eastern Wielkopolska*. The implementation of the project will consist of more than 20 tasks whose activities are aimed at slowing down and halting water run-off from river basins through construction or reconstruction:

- stability thresholds in the form of bulls on natural watercourses and canals;
- hydrotechnical structures located on lake outflows that will allow the restoration of historical water levels in and around lakes;
- pipelines and transfers with a pumping station system, which feed water from rivers with greater water resources to post-mining excavations and watercourses, which are within the reach of the colonies of depression associated with functioning and closed lignite open-cast mines.

It is also important to regenerate anthropogenically transformed watercourses, which currently act as canals that discharge mine water.

The planned dam structures aimed at restoring the water resources of, inter alia, lakes by stabilising the water mirror will make it possible to halt uncontrolled run-off and lower water levels in the lakes and to generate water retention in the watercourses. In order to interfere with the environment as little as possible, most dams are planned to be made of natural materials, such as trigger thresholds as rock prisms in the form of bulls, which will also allow the migration of aquatic organisms. River/watercourses in the area of the structures will be strengthened by a stone pitch or rock bed with a tip in the form of a wooden palliade. Works are planned during construction without the need to carry out temporary channels.

In order to maintain river basins with water, it is planned to build transfer pipelines — the construction of a transit transfer of water, e.g. from the river Warta, in order to improve the general hydrological conditions in the catchment areas of the river Teleszyna, Warcica, Bishopna Strugi or Noteci. In most cases, the construction of pipelines and associated pumping stations will use post-mining infrastructure (railway embankments, roads, piercks, ditches and drainage ducts) so as not to interfere with areas of high natural value.

These activities will ensure that the available surface water will be directed to the excavations of open-cast lignite mines in order to refill them more quickly and restore lost groundwater resources in their area. In the absence of additional water supply for flooded excavations and nearby watercourses, with an exceptionally unfavourable land

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

configuration (location in a watershed zone) and with the lowest rainfall in Poland, it will take 30-40 years to fill the excavation voids and restore natural surface and groundwater levels in the area concerned. The implementation of the above-mentioned investments will make it possible to achieve the objectives set, with a view to fully restoring water relations in the area, within 5-6 years of the end of the last one.

In view of the above, the project ' Increasing retention and rebuilding post-mining sites in Eastern Wielkopolska's area is based on the use/construction of hydrotechnical infrastructure, without which it is not possible to rebuild eastern Wielkopolska's water resources, it is justified that 'investments in water equipment and hydrotechnical infrastructure' are recognised by the Commission and the funds allocated for their implementation are eligible.

The proposed measures will improve the water management system in Poland, facilitate access to water, reduce the negative effects of droughts, improve and maintain the good status/potential of waters and ecosystems dependent on waters and improve the safety of water management. They will also allow the restoration of environmentally valuable wetland habitats, the number of which has been reduced by half in the region over the last 50 years.

Without the support of EU funds, the implementation of such a large and important project for Poland will be a long-lasting process and may further exacerbate the already reduced water deficit.

Failure to undertake the project will lead to the continuation of the lack of flows in the East Wielkopolska rivers and the gradual reduction of water levels in lakes and other water bodies, their scrubbing and run-off, and changes in the habitat communities of plants surrounding waters and watercourses.

The provisions of the draft Partnership Agreement provides for the necessary measures under PO 2 in the field of water equipment and hydrotechnical infrastructure to reduce the impact of floods and droughts, if natural ecosystem mechanisms are insufficient and the implementation of these measures does not increase the risk in emergency situations.

In addition, a comment on the draft PA concerning hydrotechnical equipment in the framework of inland waterway transport and Article 4.7 of the Water Framework Directive was submitted to the Commission. The planned investments will not be linked to activities that could worsen the ecological status of water bodies. Thanks to the tasks planned by the RBMP Wody Polskie, the morphological continuity of many rivers, which have remained dry for decades, will be restored, many of the watercourses that are now being calibrated will be restored and, through faster flooding of opencast mines and the construction of thresholds to stabilise the discharges from lakes, it will be possible to achieve good ecological status for many lakes currently degraded.

Investments outside the Eastern Wielkopolskie region and the establishment of one of the TJTP of WW flagship projects, i.e. the PGW Wody Polskie project "Increase of

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

retention and restoration of water resources of post-mining areas in Eastern Wielkopolska region"

The provision in the TJTP 'In order to restore and increase water resources in the WW may take action in areas outside the sub-region' is linked to the planned project of the RBMP Wody Polskie ' Increase of retention and restoration of water resources of post-mining areas in Eastern Wielkopolskie'. The implementation of the investment consists of more than 20 tasks spread over a period of 6 years. These tasks are complementary through integral measures to increase retention in the Eastern Wielkopolska region. The hydrographic network of the site can be restored thanks to the interaction of many elements of the various tasks, which are complementary, and the implementation of the whole component will affect the water resources of both surface and underground districts in the area of direct and indirect mining impact.

The project is located in Wielkopolska East, but the different activities cover and will have an impact on the wider territorial scope. In addition to the municipalities located in East Wielkopolskie, the investments are planned to be carried out in the following municipalities: Wittokowo, Trimeszno, Lake Great, Mogilno, Dąbrowa, Strzelno, Warta. In view of the fact that some of these municipalities are located outside the boundaries of the Regional Water Management Board in Poznań, it is planned that the Regional Water Management Board in Bydgoszcz participates in the implementation of the project in order to maximise the expected results.

In view of the location of the open-cast mines and watercourses necessary to carry out the tasks, in areas outside the city of Konin, the Konin district, the districts of Kolski, Turkey and Słupecki, it is necessary to allow the transfer of water to reservoirs and rivers located in the Konin subregion, also outside Wielkopolska East. The hydrographic network does not follow administrative boundaries, but is dependent on the terrain and geological structure of the substrate, and it is therefore difficult to carry out the project to the boundaries of administrative units.

In addition, Minister Tadeusz Kościński informed about the possibility of carrying out certain investments outside Wielkopolska East by letter of 23 February 2021. He stressed that, in principle, the JTF could carry out activities in the areas defined in the TJTP, but that projects could be carried out in areas of neighbouring provinces not eligible for JTF support — to this end, it is essential that the scope of the activities proposed for implementation in such an area is derived from the TJTP and that the objectives of the TJTP in question are implemented.

Answer to question 8:

Pursuant to Article 8(2)(i) of the JTF Regulation, water management as such is not eligible under the JTF.~~It may be supported only as part of land restoration projects (Article 8(2)(i) of the JTF Regulation), as referred also by recital (12) of the JTF regulation. This means that the relevant water projects should focus on soil restoration.~~

The Commission services will be evaluating the concrete measures in the context of the submitted TJTP.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 9 (including any relevant facts and information):

To which extent is economic and investment promotion eligible for JTF financing?

There is the need for diversification, dynamism of development and improvement of productivity in coal regions. A broad approach to the development of entrepreneurship will require the creation of investment incentives for people leaving the mining and conventional energy sectors, companies in the mining industry to set up a business. However, it will be important to create investment incentives for external investors from modern industries and services in coal regions — without proper economic promotion, a comprehensive approach to the development and diversification of existing economic sectors will not be possible. In addition, the OECD report (Regions in Industrial Transition, Polices for people and places) points out that industrial transformation requires support for knowledge sharing between local leaders and enable new players to enter existing markets and/or industries. The relevant tool includes the promotion of internal events (e.g. local networking) or external events (e.g. representation of the region, regional entrepreneurs at fairs) and incentives for R&D cooperation. Improving and supporting the business environment should include promotion, including through media campaigns or direct interactions.

Answer to question 9:

Projects related to economic and investment promotion are not eligible according Article 8(2) of the JTF Regulation. Such support may however be provided through the ERDF. Therefore, the managing authority could explore possible synergies between investments implemented in the JTF territory under the different funds and plan them in a coordinated manner.

Question 10 (including any relevant facts and information):

To which extent are projects for the preservation of cultural identity and heritage, including industrial heritage, aimed at social activation, eligible for JTF financing?

The JTF Regulation indicates in recital (12) that the list of investments should include investments that support local economies by stimulating their endogenous growth potential in line with relevant smart specialisation strategies, including sustainable tourism where appropriate. In the Regional Innovation Strategy for Wielkopolskie 2030 (RIS 2030), the analyses made it possible to identify the potential of the Konin subregion to become an area linked to sub-regional specialisations. In addition to Wielkopolskie regional specialisations, the following sub-regional smart specialisations have been identified in order to reduce population outflows from the Konin subregion:

- RES and modern hydrogen technologies
- Tourism
- Logistics
- Producing healthy food

In addition, recital (15) of the JTF Regulation indicates the need to preserve the identity of mining communities and to ensure the continuity of past and future communities. This entails paying particular attention to their tangible and intangible mining heritage, including culture.

In addition, in the region's opinion, this action is in line with Article 8 paragraph. JTF Regulation, point (o) other activities in the areas of education and social inclusion.

These activities are to be carried out by communes or other entities as part of grassroots initiatives for the preservation of cultural identity or cultural heritage (where industrial heritage will be specifically favoured) aimed at social activation of the inhabitants of coal regions. It should also be borne in mind that, as a result of people leaving the mining industry, they are in fact changing, developed over many years of work in the mine, their lifestyles (three shift work, commuting to mines/power plants, etc.). As a result of the change (retiring or changing jobs), there is a risk of social exclusion and the emergence of pathologies. In order to counter this, it may be important to provide different ways of spending leisure activities, including by increasing access to culture for residents. Of course, this element can be extended to include job creation, in which case this type of operation will also fit into Article 8 paragraph. JTF Regulation, paragraph 1) job-search assistance to jobseekers.

Answer to question 10:

Cultural projects are not eligible under Article 8(2) of the JTF Regulation. However, recital 15 of the JTF Regulation underlines the need to preserve the identity of mining communities during the implementation of the JTF and to ensure the continuity of past and future communities. This involves paying special attention to their tangible and non-tangible mining heritage, including their culture, while carrying out eligible investment under Article 8(2) of the JTF Regulation (e.g. restoration of post-mining or post-industrial assets or sustainable tourism - see reply to question 3).

---

[1] Article 3.9 of Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis

QA00124 - VERIFICATION OF APPLICANTS FOR SUPPORT UNDER ERDF FROM THE PERSPECTIVE OF AN UNDERTAKING IN DIFFICULTY

Relevant Articles:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Art. 7(d) of the ERDF/CF regulation

Art. 63(1) of the CPR

Member State: CZ

Question 1 (including any relevant facts and information):

Application of the Article 7(1)(d) of ERDF and CF - Based on what conditions and in which cases should the applicants be verified from the perspective of an undertaking in difficulty (special case of self-governing units)?

1. In cases where territorial self-governing units (municipalities or regions) carry out both economic and non-economic activity and the support is intended only to the non-economic activity;
2. In cases where the economic activity of the applicant covers only up to 20% of its activities as defined in the Commission Notice on the notion of State aid;
3. In cases where the region or municipality is an eligible applicant but the grant goes to an organization established by the region or municipality, for example reconstruction of kindergarten, primary or secondary school;
4. In cases of the de-minimis aid;
5. In cases where a public entity (municipality or a region) owns 100% share in a company that is the beneficiary of the intended support:

1. Example: The aid applicant is a transport company established by the municipality that has a 100% share in the company. Is it necessary to view such an applicant and the relevant municipality and its other commercial entities as one entity (one undertaking), or can the interconnection be ruled out precisely through the link with a public entity (the municipality) and the applicant would be verified separately.

Should only applicants whose projects are subject to State aid rules be verified or all applicants who are considered an "undertaking" within the meaning of the European law?

Answer:

Questions 1 - 3:

According to Article 7(1)(d) of Regulation No 2021/1058 (ERDF/CF Regulation) the ERDF and the Cohesion Fund do not support undertakings in difficulty. For the purposes of application of this exclusion in scope, ERDF/CF Regulation refers to the definition set out in Article 2(18) of the General Block Exemption Regulation (GBER), an act of EU State aid law.

Article 7(1)(d) ERDF/CF:

- applies to (potential) beneficiaries that carry out economic or both economic and non-economic activities, independently of the presence of State aid in the ERDF or CF support;
- does not apply to (potential) beneficiaries that carry out exclusively non-economic activities. N.B. Under EU State aid law, including the GBER, beneficiaries carrying out only non-economic activities are not considered as undertakings. Therefore, the GBER definition of undertakings in difficulty applies only in relation to beneficiaries that act as undertakings.

The financial situation of the (potential) beneficiary that carries out economic or both economic and non-economic activities, even if the economic activity is purely ancillary to the main non economic activity, needs to be verified against the occurrence of one of the circumstances defined in point (18) of Article 2 of Regulation (EU) No 651/2014.

Question 4: The support for undertakings in difficulty granted in accordance with one of the Commission *de minimis* regulations (but regulation n° 360/2012 of 25 April 2012 on de minimis aid granted to undertakings providing services of general economic interest[1]) does not fall under the exclusion in scope of the ERDF/CF Regulation.

Question 5: The financial situation of (potential) beneficiary of ERDF/CF is verified against the GBER definition of 'undertaking in difficulty', set out in Article 2(18) GBER, listing the occurrences when an undertaking is regarded in difficulty. Any beneficiary of ERDF/CF should fulfil the GBER criteria regarding not being in financial difficulty.

The GBER provisions are interpreted in the light of the general principles of State aid law. Two main principles need to be outlined.

First, the classification of a particular entity as an undertaking depends entirely on the nature of its activities and is not dependent on its status under national law or form of ownership. Hence, all criteria of the definition of undertaking in difficulty set out in Article 2(18) of the GBER are in principle applicable to public law bodies, as long as they carry out an economic activity, however only for their economic activity. The fulfilment of the criteria should be assessed based on separate financial accounts for the economic activities that the entity carries out, setting aside non-economic activities.

Second, in accordance with case law, an undertaking is defined as a single economic entity having a common source of control. Therefore, as long as the group acts as a single economic unit, it shall be considered as one undertaking and the economic situation of all the legal persons part of the group shall be considered when granting aid under the GBER. Any of the economic units which will be taking part in an an operation as beneficiaries of the aid should fulfil the GBER criteria regarding not being in economic difficulty. In practice, if the beneficiary is not a 'limited liability company', as described in Article 2 (18) (a), nor 'a company where at least some members have unlimited liability for the debt of the company', as described in Article 2 (18) (b), the circumstances described in points (a) and (b) would not be relevant for the assessment. In cases where no incorporation has taken place and no separate accounting is done, it is not possible to verify whether aid is not granted to a company in difficulty. However, in such a scenario, it would seem hard to imagine that the

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

conditions could actually be met to be considered a company in difficulty (e.g. loss of capital requirement, conditions for national insolvency procedures, etc.)

In the example described by the Czech authorities, it may be necessary to consider if the applicant and the controlling municipality (only with regard to its economic activity(ies)) as well as other depending economic entities act as one undertaking.

On the last question: The financial situation of all applicants/potential beneficiaries, qualifying as 'undertaking', as clarified by the constant case law, should be assessed against the criteria laid down in Article 2(18) GBER. As long as they act as undertakings, public finacing of their activity(ies) is subject to State aid rules. cf. answer to Questions 1-3.

---

[1] Because this Regulation does not apply to undertakings in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty.

QA00126 - TECHNICAL ASSISTANCE FINANCED BY THE JUST TRANSITION FUND

Relevant Article:

Article 8(2) of the JTF Regulation

Article 112 of the CPR

Member State: PL

Question 1 (including any relevant facts and information):

In accordance with the national indications, technical assistance financed from a separate fund, i.e. JTF, will be designed under the new priority axis related to this scope in the Regional Programme for Wielkopolska region. **In the view of building an appropriate administrative potential on the level of the subregion (as close to the inhabitants as possible), is it possible to increase the level of co-financing for projects implemented/financed under this Priority, e.g. up to 85%?**

Answer:

In line with Article 112(1) CPR, the co-financing rate should be set by the decision approving a programme **at the level of each priority**. The applicable rates are indicated in Art. 112(3) of the CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

This means that **the co-financing rate can be modulated within the priority - at the level of individual operations** provided that the maximum Union contribution for the priority is not exceeded. In this respect, the level of co-financing for individual projects financed under the TA priority supported by the JTF may reach 100%.

QA00127 - CONTENT OF TABLE 11A AND CALCULATION OF PAYMENT CLAIMS, INCLUDING TECHNICAL ASSISTANCE UNDER ARTICLE 36(5) (FLAT RATE)

Relevant Article: Article 36 of Regulation (EU) 2021/1060 CPR

Member State: SE

Question 1 (including any relevant facts and information):

1.How should table 11A be filled in and the co-financing calculated when making use of the 6% flat rate to calculate the amount of technical assistance?

MS questions the inclusion of TA in the national share in table 11A. It makes the tables inaccurate when the co-financing rate for TA is not the same as that for the SO to which it gets linked in table 11A. MS has chosen a co-financing ratio of 70/30 for most of its programme, with two exceptions where the co-financing ratio is 60/40 and 20/80 respectively due to additional national funding. For TA the co-financing ratio has been set to 45/55. When the numbers are entered into table 11A with National TA included, the table does not provide the actual co-financing ratio for the SO without TA. MS would like the national share to be without TA and that the co-financing rate per SO is calculated by dividing EMFAF without TA / (EMFAF without TA +national share without TA).This because otherwise the MS has to process programme amendments every time it would like to change the way the national amount of TA is distributed.

2. How will the amount for reimbursement of the payment claims be calculated?

Answer:

To question 1:

Article 40 EMFAF provides that the maximum co-financing rate per specific objective should be 70% (with the exception of support under Art 14(1)).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 36(5) CPR provides that the amount of the Fund allocated to technical assistance is identified as part of the financial allocation of each specific objective, and does not take the form of a separate priority, also for the EMFAF. Table 11A of a programme template for EMFAF programmes choosing reimbursement of TA through a flat rate allows to verify if the maximum allowed co-financing rate per specific objective is not exceeded (the amount of Union contribution in relation to the total per specific objective cannot be higher than maximum co-financing rate). National public contribution in Table 11A includes, but does not specify the amount for technical assistance within each SO.

The co-financing rate applied at the level of operations may differ from the co-financing rate for the specific objective/priority. This flexibility existing for all operations should not trigger a programme amendment provided that the limits at the level of each priority set out in Article 93(3)-(5) CPR are complied with. It is noted specifically that given the nature of the technical assistance flat rate, CPR provides that amounts reimbursed pursuant to Article 36(5) CPR shall not taken into account for the purposes of calculating the ceiling of Article 93(5) CPR.

Where a Member State decides to use the flat-rate approach for technical assistance for 2021-2027, the relevant flat-rate percentage for the fund concerned provided in Article 36(5)(b) CPR (6% for EMFAF) will be applied automatically to each payment application submitted to the Commission. There will be no check of the underlying costs of the amounts reimbursed based on the flat rate at EU level.

Taking into account that:

- flat rate technical assistance will be calculated irrespective of the actual incurred expenditure in technical assistance operations;
- EU contribution for the specific objective (including flat rate technical assistance) will not exceed the ceilings provided for in the CPR and the co-financing rate defined in the Commission decision based on table 11A irrespective of the co-financing rate of technical assistance operations;

changes in a co-financing rate of operations within a specific objective should not require a programme amendment.

To question 2:

The amount of flat rate technical assistance in column D will be calculated by applying a 6% flat rate in relation to the expenditure in column E of a payment application. Expenditure related to technical assistance operations should not be declared separately in payment applications.

The reimbursements of the Union contribution will be done by applying the co-financing rate of the priority to the total amount of public contribution i.e. the sum of amounts included in column E and in column D of Annex XXIII in line with the programme.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00128 - JTF QUESTION ON WASTE RECOVERY AND LITHIUM

Relevant Article: Article 8 of JTF regulation

Member State: CZ

Question on waste recovery:

There are several issues regarding waste recovery and its eligibility:

1. 8(2)(j) allows investments in enhancing the circular economy, including through waste prevention, reduction, resource efficiency, reuse, repair and recycling. The list seems non-exhaustive. Is it possible to support also energy recovery, which is not explicitly mentioned?
2. Thermal depolymerization of plastics could play an essential role in waste management and the chemical industry's greening. It is chemical recycling. Could we consider this technology as eligible in the JTF? The same question is also relevant for gasification.
3. We would like to clarify compliance of energy recovery with article 17 of regulation 2020/852. This article excludes activities leading to a significant increase in the generation, incineration or disposal of waste, with the exception of the incineration of non-recyclable hazardous waste. From our point of view, it excludes activities falling under Annex I of directive 2008/98/EC. Energy recovery falls under Annex II. Therefore we do not see any conflict with article 17 in the case of energy recovery. Could you confirm this interpretation?

Answer:

This answer was updated on 1 September 2025. The changes are struck through and the added text is in blue and underlined.

1. As specifically mentioned in paragraph 2 of Article 8 of the JTF regulation, the list of investments eligible for JTF support under this article is exhaustive. Point (j) of Article 8 specifies the investment as "investments in enhancing the circular economy, including through waste prevention, reduction, resource efficiency, reuse, repair and recycling". In the Commission view, energy recovery from waste, where waste is used as a fuel and the recovered energy cannot be considered as renewable [1], shall not be supported from the JTF. ~~is not in line with the policy objectives of the circular economy.~~ Priority should be given to investments into maintaining the value of products, materials and resources~~is maintained~~ in the economy for as long as possible~~[1]~~. This view is reinforced by Recital 12 of the JTF Regulation, which specifically explains that waste incineration belongs to the lower part of the waste hierarchy and should therefore not be supported by the JTF. The Commission recalls that certain measures at the bottom of the waste hierarchy are also excluded from support from the ERDF and CF.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

2. From the question it is not clear what such thermal depolymerisation of plastics or gasification would mean, and whether they could be considered as recycling. The full details of the operations and their output would need to be provided. The Commission will evaluate the concrete measures in the context of the submitted TJTP.
3. The EU Taxonomy is a classification of financial activities in relation to their effect on climate and environment. The Taxonomy Regulation does not contradict, modify, restrict or extend the requirements under the JTF Regulation.

~~[1] COM(2015) 614 final~~

[1] Investments into energy production from biodegradable waste, where the waste can be considered as a renewable energy source in accordance with the definitions and requirements of Directive (EU) 2018/2001, can be supported from the JTF (in accordance with Art 8(2)(e) of the JTF regulation related to investments in renewable energy). To ensure compliance with Art. 8(1) of the JTF regulation, such investments shall contribute to phasing out fossil fueled industrial processes and reducing industrial greenhouse gas emissions.

Question on lithium:

The CZ TJTP proposes in two coal regions (Ústí and Karlovy Vary) "Supporting the creation of a value chain for the use of lithium and the production of battery cells for the development of an emission-free economy in the Czech Republic". It would include development of a new industry - lithium mining. The lithium mining is seen as part of the creation chain and it would include an investment in the deployment of technology as well as in systems and infrastructures for affordable clean energy, including energy storage technologies [art. 8(2)(d) JTF regulation]. The CZ authorities would like to support preparatory works, necessary infrastructure, etc., from the JTF. Do these investments fall under the scope of support of the JTF? State aid clearance and DNSH check will be performed in the following steps after eligibility confirmation.

Answer:

Creation of a value chain for the use of lithium and the production of battery cells for the development of an emission-free economy could be considered under the scope of the JTF and the Commission will be evaluating the concrete measures in the context of the submitted TJTP.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00129 - JTF ELIGIBILITY OF INTERVENTION (BIO MASS TERMINALS)

Relevant Article: Article 8(2)(d) of the JTF

Member State: FI

Question 1 (including any relevant facts and information):

Finland replaces the peat as energy source mainly by wood chips. Wood chips needs different logistical solutions and bio energy terminals are necessary. These terminals that are needed are basically open sites (2-5 hectares) covered with asphalt, close to the main roads, surrounded by fence and with access control. Weighbridge is commonly needed for measuring the cargo.

The purpose of the terminal is to improve the reliability of wood chip deliveries, e.g. during the difficult transport seasons (spring or autumn when snow is falling or frost is melting in forest roads and heavy vehicles can not operate) and during severe frost periods, as well as improving the quality of fuels and improving the logistics of transport and chipping. In addition, different energy sources, such as wood chip, crushing of recycled wood, logging residues and stump crush can be mixed in the terminal area. Fuel loads mixed in the terminal area take better account of the power needs of heating plants at different times of the year. An entrepreneur would be operating in these terminal areas.

The power plants are located in areas where there is usually no space for such terminals and as they are purchasing the fuel (=wood chips) as a service the power plants are not themselves interested in building such terminals.

Finland imports a significant amount of wood chips from Russia. The current situation with sanctions towards Russia is prevailing for undetermined period, the availability of this supply is becoming unreliable and possibly will cease in foreseeable future. Therefore, due to the security of supply reasons the importance of these bio energy terminals is growing significantly. The need for these terminals is identified in the TJTPs.

Are such bio energy terminals eligible for support from JTF/TJTP?

Answer:

Article 8(2) point (d) of the JTF Regulation allows for investments in the deployment of technology as well as in systems and infrastructures for affordable clean energy, including energy storage technologies and in greenhouse gas emission reduction. At the same time, point (e) of that provision allows for support to investments in renewable energy in accordance with the Renewable Energy Directive.[1] While the latter does not provide a definition of such infrastructure, it refers to reducing costs that "have a material impact on the cost of renewable energy projects and on their competitiveness" (see e.g. its Recital 13 and Article 3). Support to bio energy terminals

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

such as described in the question could in principle be considered eligible in that context.

However, it needs to be demonstrated that these investments are linked to the JTF specific objective, as laid down in Article 2 of the JTF Regulation, and that they contribute to the implementation of the territorial just transition plan (TJTP). They need to be justified by their contribution to addressing the impacts of the transition and their link to the transition challenges identified in the TJTP.

Please note however that the Commission services will be evaluating the concrete measure in the context of the submitted TJTP.

[1] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources

QA00130 - IMPLEMENTATION OF UMBRELLA PROJECTS UNDER CLLD

Relevant Articles: Articles 33, 71, 73, 74 of the CPR; Article 25 Interreg Regulation

Member State: PL

Question 1 (including any relevant facts and information):

Is financial support to third parties (umbrella projects) allowed? In particular, can Local Action Groups implement umbrella projects in the 2021-27 period? Under what conditions? Should competitive or non-competitive mode apply to such umbrella projects? Should Article 33.3(d) of the CPR regarding final verification of eligibility by the MA also apply in case of umbrella projects?

Several Polish regions consider programming CLLD in their regional programmes in the 2021-27 period. Some of them implemented umbrella projects in 2014-20 period, which are considered as simplification for both the LAG and the MA. Umbrella schemes are mainly supporting small projects where the administrative burden is perceived as disproportionately high. In particular, there is interest to use the umbrella projects for ESF+. In a typical application of such scheme the LAG is the beneficiary of the grant, it signs the grant agreement with the MA and takes the financial responsibility. In the next step the LAG grants support to different categories of final recipients, such as for example natural persons, NGOs, entrepreneurs, public bodies. Umbrella projects are selected in a competitive mode and have to support the local development strategies that were previously selected for support from the funds.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The same procedure as used in 2014-20 would be applied in 2021-27. Does Article 33(3) and (5) CPR provide sufficient justification to allow the implementation of umbrella schemes by LAGs?

Answer:

'Umbrella projects' or "cascading operations" have never been defined in the regulations. In the past, these terms commonly referred to operations which consist of re-granting support to recipients by the beneficiary or selecting projects within an operation, however they may refer to different implementing structures in different MSs or regions.

It is thus important to clarify at first in which cases the regulations allow that a beneficiary may select operations or grant support to recipients or select projects within an operation without being appointed as an intermediate body.

In accordance with Article 73 CPR, it is the managing authority that is responsible for the selection of operations except in a case envisaged in Article 33(3) CPR where selection of operations has been defined as an exclusive task of the local action group (LAG).

Article 71(3) CPR allows the managing authority to delegate, in written, certain tasks, to one or more intermediate bodies and one of tasks that can be delegated relates to the selection of operations. It should be noted that in cases where the managing authority or intermediate body or a local action group is also the beneficiary, the tasks related to initiating or implementing an operation should be separated from the responsibilities of selection of operations in line with Article 71(4) CPR (and Article 74(3) CPR and Article 33(5) CPR).

The tasks conferred on beneficiaries by the managing authority (or by the intermediate body) should not circumvent the responsibilities reserved by the CPR for the managing authority or other programme authorities.

CPR and funds-specific Regulations regulate the exhaustive cases where a beneficiary may select final recipients (outside financial instruments):

- In line with Article 25 Interreg regulation the beneficiary of small project fund (SPF) may select small projects within the operation (small project fund constitutes an operation within the meaning of point 4 of Article 2 CPR). The beneficiary of SPF initiates, but does not implement the operation – it is implemented by final recipients in line with Article 25(2) last sub-paragraph Interreg regulation. It is explicitly provided that selection of small projects by the beneficiary of that SPF operation does not require that the beneficiary is identified as intermediate body (unless other tasks than the selection are delegated).

The regulation also specifies where the beneficiary may further cascades the grant to other entities. In line with Article 2(9)(d) CPR in the context of de *minimis* aid, the

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

beneficiary may be the body granting aid. In such operations, the beneficiary may identify undertakings that are to receive support based on criteria established when the operation was selected. Conditions related to identifying undertakings under de minimis aid should be clearly pre-defined by the managing authority in order not to circumvent the responsibility of the MA for the selection of the operation. They should be clearly specified in the document setting the conditions for support between MA/IB and the beneficiary.

Other operations consisting of re-distributing financial support by the beneficiary to pre-defined types of bodies or natural persons based on pre-defined and clearly defined parameters without any discretion by the beneficiary (such as providing vouchers for energy efficiency) could be implemented provided that such parameters are specified before the operation is selected and reflected in the documents setting the conditions for support between MA/IB and the beneficiary. The tasks of beneficiaries in such an operation should be clearly defined in the document setting the conditions of support. In such a case, the operation would not affect the responsibilities of MA/IB or of a local action group implementing CLLD.

In the context of CLLD, in line with Article 33 CPR, local action groups, which may be a beneficiary, have an exclusive right to select operations. However, in line with Article 33(5) CPR the functions of local action group as a beneficiary responsible for initiating or implementing an operation and as a body responsible for selection of operations must be separated.

To conclude – LAG, in its capacity as a beneficiary may:

- implement small project fund in Interreg programmes, and, in such a case, may select small projects within the SPF (in line with applicable provisions for the constitution of the LAG as beneficiary and for the selection under Interreg (Articles 21 and 25 Interreg Regulation);
- identify and grant aid to undertakings within de minimis aid;
- initiate and implement operations – a project, contract, action or group of projects (including operations consisting of re-granting financial support as described above).

QA00131 - SUPPORT TO COMBINED INSTRUMENTS

Relevant Article: Article 58 of the CPR

Member State: LV

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

If the ex-ante assessment, performed in accordance to CPR Art 58.3, and it proposed to use a combined FI (grant+loan) for social enterprises, can a Member State decide to have two kinds of support: a) grant+loan, as suggested by the ex-ante assessment, and b) grants?

Can you confirm our understanding that they can do so, but they will have to split the two types of support into two separate operations.

Question 2 (including any relevant facts and information):

The ex-ante assessment has proposed to establish two financial products for social enterprises: a) 70% grants + 30% loan for start ups, and b) 50% grants and 50% loan for existing businesses.

CPR Art 58.5 says: *"Financial instruments may be combined with programme support in the form of grants in a single financial instrument operation, within a single funding agreement, where both distinct forms of support shall be provided by the body implementing the financial instrument. In such a case, the rules applicable to financial instruments shall apply to that single financial instrument operation.* ***The programme support in the form of grants*** *shall be directly linked and necessary for the financial instrument and* ***shall not exceed the value of the investments supported by the financial product****."*

Can you confirm our understanding that the Member State is not allowed to have an instrument, where 70% would consist of a grant and 30% would consist of a loan, because grants would exceed the value of the investments in the form of a financial product within one operation?

Answer 1:

Article 58(5) to (7) CPR and fund specific rules do not preclude the provision of a grant operation to beneficiaries that may also receive a combined support (grant and financial instrument) as final recipients through a single financial instrument operation set up in line with the ex-ante assessment.

The support taking the sole form of grant in a distinct operation should be established in accordance with non-discriminatory and transparent criteria and procedures for selection as referred to in Article 73 CPR

Answer 2:

Yes, your understanding is correct. Please note that the limit of the support in the form of grants as part of the combined financial instrument operation applies at the level of the financial instrument and not at the level of each investment.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00132 - CASCADE FUNDING

Relevant Articles: Article 2, 33, 71, 73 and 74 of the CPR and Article 25 of the Interreg Regulation

Member State: PT

Question 1 (including any relevant facts and information):

Portuguese authorities would like **to get confirmation if and how it is possible** to make use of cascade funding mechanisms (or Financial Support for Third Parties**)** for projects supported by the ERDF for the 2021-2027 programming period. Portugal is referring to the possibility of supporting beneficiaries that shall open and manage a call to grant support to the final ones (e.g. a call for clusters for them to support SMEs of their respective value chains).

The question is formulated in the light of the following definitions set out in Art. 2 (9) of the CPR:

beneficiary' means:

(a) a public or private body, an entity with or without legal personality, or a natural person, responsible for initiating or both initiating and implementing operations;

(b) in the context of public-private partnerships ('PPPs'), the public body initiating a PPP operation or the private partner selected for its implementation;

(c) in the context of State aid schemes, the undertaking which receives the aid;

(d) in the context of de minimis aid provided in accordance with Commission Regulations (EU) No 1407/2013 (37) or (EU) No 717/2014 (38), the Member State may decide that the beneficiary for the purposes of this Regulation is the body granting the aid, where it is responsible for initiating or both initiating and implementing the operation;

(e) in the context of financial instruments, the body that implements the holding fund or, where there is no holding fund structure, the body that implements the specific fund or, where the managing authority manages the financial instrument, the managing authority.

Answer:

At first, it is important to clarify in which cases the regulations allow that the beneficiary may select operations or final recipients or project within an operation – without being appointed an intermediate body.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In accordance with Article 73 CPR, it is the managing authority that is responsible for the selection of operations except a case envisaged in Article 33(3) CPR where selection of operations has been defined as an exclusive task of the local action group (LAG).

Article 71(3) CPR allows the managing authority to delegate, in written, certain tasks, to one or more intermediate bodies and one of tasks that can be delegated relates to the selection of operations. It should be noted that in cases where the managing authority or intermediate body is also the beneficiary, the tasks related to initiating or implementing an operation should be separated from the responsibilities of selection of operations in line with Article 71(4) CPR and Article 74(3) CPR.

The tasks conferred on beneficiaries by the managing authority (or the intermediate body) should not circumvent the responsibilities reserved by the CPR for the managing authority or other programme authorities.

CPR and funds-specific Regulations regulate the exhaustive cases where a beneficiary can select final recipients (outside financial instruments): or re-grant support i.e. further cascade support to other entities within the operation selected by the managing authority:

- In line with Article 25 Interreg Regulation the beneficiary of small project fund (SPF) may select small projects within the operation (small project fund constitutes an operation within the meaning of point 4 of Article 2 CPR). The beneficiary as SPF initiates, but does not implement the operation – it is implemented by final recipients in line with Article 25(2) last sub-paragraph Interreg Regulation. It is explicitly provided that selection of small projects by the beneficiary of that operation does not require that these are identified as intermediate bodies (unless other tasks than the selection are delegated).

The regulation also specifies where the beneficiary may further cascades the grant to other entities. In line with Article 2(9)(d) CPR in the context of de minimis aid provided to the beneficiary may be the body granting aid. In such operations, the beneficiary may identify undertakings that are to receive support based on criteria established when the operation was selected. Conditions related to identifying undertakings under de minimis aid should be clearly pre-defined by the managing authority in order not to circumvent the responsibility of the MA for the selection of the operation. They should be clearly specified in the document setting the conditions for support between MA/IB and the beneficiary.

Other operations consisting of re-distributing financial support by the beneficiary to pre-defined types of bodies or natural persons based on pre-defined and clearly defined parameters without any discretion by the beneficiary (such as vouchers for energy efficiency) could be implemented provided that such parameters are specified before the operation is selected and reflected in the documents setting the conditions for support between MA/IB and the beneficiary. The tasks of beneficiaries in such an operation should be clearly defined in the document setting the conditions of support. In such a case, the operation would not affect the responsibilities of MA/IB or of a local action group implementing CLLD.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In the context of the question asked the beneficiary may:

- implement small project fund in Interreg programmes, and, in such a case, may select small projects within the SPF;
- identify and grant aid to undertakings within de minimis aid schemes (to note: undertakings mean bodies engaged in economic activity);
- initiate or implement operations selected by the MA as defined by the CPR – a project, contract, action or group of projects (including operations consisting of re-granting financial support as described above);

In case a selected operation consists of a group of projects, the beneficiary may not select projects within the group as they are to be selected 'under the programme', thus by the managing authority or intermediate body in line with Article 73 CPR.

QA00133 - OPERATION CONSISTING OF GROUP OF PROJECTS – GRANT SCHEME

Relevant Articles: Art. 2(4), 2(9), 72(1), 73 of the CPR

Member State: CZ

Question 1 (including any relevant facts and information):

In the period 2014-2020, the Czech authorities use a scheme for the administration of boiler subsidies in Priority Axis 2 of the Operational Programme Environment. The scheme is very successful as it reduces administrative burderns for small recipients. The eligibility of this scheme was confirmed by the interpretation question IQ00110 - *Eligibility of heating boilers for individual households.* The Czech authorities intend to use similar schemes on other activities within the programmes in 2021-2027 period (Environment Programme, Just Transition Programme).

In such cases the managing authority plans to select operations in accordance with point (a) of Article 72 (1) and Article 73 (1) in open calls based on transparent and non-discriminatory criteria approved by monitoring committee. In the context of this scheme the operation means a group of projects as defined in point (a) of Article 2 (4). The beneficiary of this operation to be selected will be a regional authority or other public body, which will be the only eligible applicant in the specific call. The beneficiary will be a body responsible for initiating the operation but not for implementing the operation. The implementation of the operation activities will be delegated to final recipients to which the beneficiary grants the aid. It will provide administrative

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

simplification for small-scale projects (aid of less than EUR 200 000). The selection of final recipients will be based on transparent, non-discriminatory criteria established by the managing authority and approved by the monitoring committee.

From the answer to the interpretation question QA00076 - *Granting state aid by beneficiaries not being part of the management and control system of OP in post-2020* we understood that this type of scheme is possible when it complies with de minimis aid, i.e. the amount of aid granted to the final recipient is lower than the thresholds laid down in 1407/2013 Regulation (EUR 200 000).

The scheme has several benefits. First of all it will reduce the administrative burden for MA and final recipients such as natural persons, NGOs or small companies and micro-enterprises for whom the standard calls procedure is too complicated. From previous experience it is clear that the simplification contributes significatntly to desired results. The scheme will secure involvement of the regional level directly in the programme.

Answer:

CPR and funds-specific Regulations regulate the exhaustive cases where a beneficiary can select final recipients (outside financial instruments): or re-grant support within the operation selected by the managing authority. This is notably the case of small project Funds.

The regulation also specifies where the beneficiary may further cascade the grant to other entities. In line with Article 2(9)(d) CPR in the context of de minimis aid provided to the beneficiary may be the body granting aid. In such operations, the beneficiary may identify undertakings (so entities engaged in economic activity and not households) that are to receive support based on criteria established when the operation was selected.

Therefore, provided that the aid granted to undertakings falls within de minimis aid, the body granting the aid may be considered a beneficiary within the meaning set out in point (d) Article 2(9). It should be noted, however, that the conditions related to identifying undertakings under de minimis aid should be clearly pre-defined by the managing authority in order not to circumvent the responsibility of the MA for the selection of the operation. They should be clearly specified in the document setting the conditions for support between MA/IB and the beneficiary.

For further questions on the definition of beneficiary and the conditions under which a beneficiary may be responsible for granting aid, see replies to questions QA00132 and QA00130.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00134 - QUESTIONS RELATED TO THE DEFINITION OF THE CLEAN VEHICLE UNDER POLICY OBJECTIVE 4

Relevant Articles: Art.7.1 (h)(iii); Art.3.1 (d) (ii) and (v) of the ERDF/CF Regulation; CPR (Annex I)

Member State: LT

Questions (including any relevant facts and information):

1. Under PO4/Priority 4 of 2021-27 EU Funds' Investment Programme, the Lithuanian authorities plan the ERDF investments for acquisition of vehicles for collective transportation, i.e. the school buses (SO - Art. 3.1(d)(ii)), and the emergency ambulances/mobile health points (SO – Art.3.1(d) (v)). Please clarify whether this type of investments are subject to the legal provisions of the Art. 7.1(h)(iii) of ERDF and CF Regulation (EU) 2021/1058 for 'clean vehicle' as defined in recast of Directive 2009/33/EC of the European Parliament and of the Council for public purposes also apply to the listed special purpose vehicles.
2. If the reply to question No.1 is 'yes', please provide the definition of the 'clean vehicle' and conditions if any (type of engine) for these two specific type of investments.
3. Please clarify whether there are any exceptions in the said regulation for the purchase of this type of emergency transport in terms of environmental requirements? Please explain whether only environmentally friendly ambulances/school buses could be supported by the Programme's resources? According to the knowledge of the LT authorities, there are no hybrid plug-ins on the market (including international) at all. It would be impossible to purchase such type of school buses / ambulances. It should be noted that usage of only electric school buses would be problematic as transportation vehicles have to cover long distances in remote areas, or to make several itineraries in a short time. As for the ambulances, they receive a lot of calls during the day, too. Electric cars can only drive a certain number km, batteries charging takes time, at the same ambulances have to ensure timely emergency assistance. Please advice what are the alternatives?
4. Please also specify the selection of relevant fields of intervention (CPR, Annex I) and what are the conditions (intervention fields 082 'Clean urban transport rolling stock', 077 'Air quality and noise reduction measures' and 130 'Mobile health assets').
5. In case the exception from the legal provisions listed under point 1 is applied, please advice how it should be reflected in the DNSH principle assessment for ambulances/ school buses?

Answers:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

1. Article 7 ERDF/CF Regulation does not allow to support investments in vehicles which involve the "production, processing, transport, distribution, storage or combustion of fossil fuels". For vehicles which are used for "public purposes" there is an exception to this exclusion from the scope of support for "clean vehicles", such as plug-in hybrid vehicles. The definition of "clean vehicles" and the exclusions and exceptions of Article 7 ERDF/CF Regulation also apply "to the special purpose vehicles" as listed in the recast of Directive 2009/33/EC.

2. The definition of "clean vehicle" according to Article 4(4) of Directive 2009/33/EC depends on the vehicle category:

-
    - For light-duty vehicles (vehicle categories M1, M2 and N1, i.e. cars & vans), "clean vehicle" means a vehicle with tailpipe CO2 emissions from zero up to 50 g/km (WLTP values recorded in the vehicle's Certificate of Conformity).
    - For buses and other vehicle of category M3, clean vehicle means a vehicle running on alternative fuels as defined in Directive 2014/94/EU on the deployment of alternative fuels infrastructure, i.e. battery electric, plug-in hybrid, hydrogen, CNG, LNG, LPG, biofuels and synthetic and paraffinic fuels.

It is highlighted that the exception of "clean vehicles" only applies to the vehicles themselves and not related infrastructure, e.g. CNG refilling stations and storage.

3. The second hyphen of Article 7(1)(h)(iii) ERDF/CF Regulation covers financing of some special vehicles, namely "vehicles […] designed and constructed or adapted for use by civil protection and fire services". Vehicles under this exception are eligible even if they are not "clean". From a policy perspective, however, support of clean and zero-emission should be favoured where possible, in order to catalyse the market uptake of these more sustainable alternatives.

The category of "vehicles […] designed and constructed or adapted for use by civil protection and fire services" includes ambulances or mobile health points but not school buses.

4. Under PO4/Priority 4, investments related to acquisition of ambulances and health mobile points should be captured by the intervention field 130.

Should the LT authorities consider to plan the ERDF investments for acquisition of zero-emission vehicles for transportation, i.e. zero-emission (electric) school buses, the intervention field 082 could be used even in rural areas, as it could be considered the closest code available to capture the zero-emission element. In case of plug-in hybrid school buses, usage of intervention field 077 could be considered (unless for investments related to the acquisition of school buses *the closest available are considered to be intervention* fields 121, 122, 123 and 124 depending on the targeted level of education).

5. Eligible investments have to be implemented by taking into account the DNSH principle. Two objectives are particularly relevant here: (1) climate change

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

mitigation and (2) pollution prevention and control. The no significant harm to these objectives can be demonstrated by the low overall impact in case of emergency vehicles, and the reduced dependence on private car use and the use of fossil fuels in case of school buses (which must be clean vehicles).

QA00135 - APPLICATION OF CPR AND ETC FLAT RATES AND OTHER SIMPLIFIED COST OPTIONS INSIDE A SMALL PROJECT FUND

Question 1 (including any relevant facts and information):

Relevant Articles:

Articles 53 to 56 of the CPR

Articles 25 and 38 to 44 Interreg Regulation

Member State: n/a

Article 25 Interreg Regulation sets out **specific rules[1]** on Small project funds (SPF). Each SPF constitutes an *operation* (paragraph 2). The SPF manager is the (only) *beneficiary* (paragraph 2), whereas the *small projects*[2] are implemented by *final recipients*[3]. Each SPF is composed by two quite distinct parts of expenditure: 1° the "staff and other costs" under Articles 39 to 43 Interreg Regulation generated by the SPF manager and 2° the expenditure generated by the totality of the final recipients. Consequently, the CPR provisions on simplified cost options, which refer to the total expenditure of an *operation*, are not fit for the two parts of expenditure under a SPF, even less for the expenditure of a single *small project*. Some derogations to CPR rules are therefore already built into Article 25 Interreg Regulation[4].

Although the specific rules in Article 25 Interreg Regulation are meant to simplify the implementation of SPF and small projects considerably, several (future) programme authorities are faced with implementation issues.

Question 1 (including any relevant facts and information):

In order to achieve the simplification intended by Article 25 Interreg Regulation, we request to confirm that the maximum of 20% for staff and other costs generated by the SPF manager in Article 25(5) Interreg Regulation constitutes not only a ceiling, but also a case covered by point (e) of Article 53(3) CPR, i.e. a flat rate or a "specific method" established by or on the basis of this Regulation or the Fund-specific Regulations.

Question 2 (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In order to apply the simplification intended by the different forms of simplified cost options set out in Articles 53 to 56 CPR also to small projects often implemented by final recipients neither familiar with "normal" Cohesion policy rules nor with administrative capacity comparable to those of regular Interreg operations, we request to confirm that these provisions can also apply to that part of the operation constituted by the expenditure of the totality of all small projects, i.e. the total eligible cost of the SPF minus the part covered by the staff and other costs generated by the SPF manager.

Question 3 (including any relevant facts and information):

Should the 2nd question not be confirmed or should its application not fit for all kinds of SPF to address individual small projects, we request to confirm that the managing authority (MA) may establish programme-specific simplified cost options in accordance with point (e) of Article 53(3), i.e. by applying the flat rates, which are "established (…) on the basis of this [= CPR] Regulation and Fund-specific Regulations, meaning the same types and percentages, but based on that part of the operation constituted by the expenditure of the totality of all small projects.

Answer to question 1:

Article 53(3) CPR sets out specific ways in accordance with which the amounts for simplified cost options (SCOs) should be established. In particular, point (e) of Article 53(3) CPR mentions flat rates and specific methods established by or on the basis of this Regulation or the Fund-specific Regulations.

Where the CPR or the Fund-specific Regulations establish a flat-rate or a specific method to calculate SCOs, they make a specific reference to it, as the conditions for their use need to be clear from the outset (see for example Article 54 CPR, Article 55 (1) CPR, Article 56(1) CPR for a flat-rate or Article 55(2) CPR for a specific method). The Interreg Regulation contains specific references to flat rates and specific methods set out for the costs referred to in Art. 39 to 44.

On the contrary, Article 25(5) Interreg Regulation does not. Therefore, the percentage set out in Article 25(5) Interreg Regulation (for the costs categories in Articles 39 to 43 generated at the level of the beneficiary for the management of the small project fund) constitutes a ceiling and not a flat-rate (the 20% ceiling may be covered by real costs).

Answer to the 2nd and 3rd questions:

Article 25(6) Interreg Regulation specifies the case where SCOs must be used in small projects. In addition, the last subparagraph of this paragraph makes a direct reference to the application of a provision of the CPR. Outside the last subparagraph of Article 25(6) Interreg Regulation there is no direct reference to the application of the CPR to small projects, which are implemented by final recipients in line with Article 25 (1) Interreg Regulation.

Article 52 CPR provides that Member State shall provide support to beneficiaries in the form of grants, financial instruments or prizes or a combination between these forms.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Final recipients are not concerned by the provisions of Articles 53-56 CPR. This means that there is no direct application of the provisions of the CPR or Interreg Regulation (except where specifically referred to in) to small projects.

It is possible, however, that the beneficiary of the small project fund sets out a methodology for the application of SCOs to small projects taking inspiration from the CPR or Interreg rules on SCOs. In doing so the beneficiary should ensure that point (e) of Article 25(3) Interreg Regulation is respected.

_____

[1] Recital26: "… *So far they have been supported via small-project funds or similar instruments, although they have never been covered by* ***specific provisions****, making it necessary to clarify the rules governing those funds. …"*

[2] Legally defined in point 10 of Article 2 CPR.

[3] Legally defined in point 18 of Article 2 CPR.

[4] E.g. the 2nd subparagraph of Article 25(6) ETC derogates to point (b) of Article 53(3) CPR.

QA00136 - QUESTIONS RELATED TO THE LIST OF OPERATIONS AND TRANSMISSION OF DATA

Relevant Articles: Art. 49(3), Art. 42(2)(a) and (b), Art. 42(5) of the CPR

Member State: FI

Question 1 (including any relevant facts and information):

List of operations - CPR Art. 49(3)

- Can we add any other information that we consider useful in addition to those listed in the Regulation?
- Sub-section (h) 'total costs of the operation' is likely to refer to public + private financing? In the present period we have reported only the EU+ State and the total public funding, as the EU co-financing rate is calculated from our public funding.
- If we report total costs in the new period, including private funding, can we still report as additional information the EU + the State and the public funding?
- Sub-section (k) Union co-financing rate: In Finland, EU and State funding are in the same budget line, i.e. they are not dealt with separately in the context of

project financing. Depending on the amount and distribution of the national counterpart, the actual rate of EU co-financing may also vary from project to project. In addition, there are no fewer than five co-financing ratios in the new programme (including the JTF). Under the circumstances, would it not be the best (if not the only) option to indicate a categorical EU co-financing rate calculated on the basis of public funding, in accordance with the relevant category of region, specific objective or Fund?

- If the answer to question 1) is yes: can we place "additional" data columns in the most natural places (including between (a) to (n) of the General Regulation) or should they only appear in the last columns in the table structure?

Transmission of data - CPR Art 42(2)(a) and (b) and (5)

- Does "for selected operations" mean that the indicator data should be provided on a project-by-project basis or only cumulatively at the level of specific objectives and categories of regions?
- The minimum mandatory requirement in point 5 appears to be that a link to the information provided to the Commission should be published on the website? Given the number and distribution of indicators in the three categories of regions, there is a fairly large amount of data and difficult for the general public to approach => Is it permissible to refine the data in a more illustrative format or must it be in exactly the same format as it is submitted to the Commission?

Answer:

- Article 49(3) CPR provides a minimum set of data required. It is in the discretion of the managing authority to add in the list any data it deems useful.
- Total 'cost of an operation' referred to in Article 49(3)(h) CPR should be understood as the amount of the total eligible cost of the operation approved in the document setting out the conditions for support (referred to in the Annex XVII CPR). Depending on an operation, it may include private financing. For financial instruments, the document setting out the conditions for support is the funding agreement which should include the amount of programme contribution (as defined in Article 2(19) CPR) committed to the financial instrument, which includes national public and private, if any, co-financing to a financial instrument. The managing authority may inform the public about private resources outside the financial instrument operation raised in addition to the programme contribution if it deems it necessary.
- Yes, see answer no. 1.
- Article 49(3) CPR requires the managing authority to provide information at the level of an operation.
- It is in the discretion of the managing authority to organise the data in a way it deems most useful.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- Data submitted on the basis Article 42(2)(b) CPR (according to the templates in Annex VII CPR) requires the Member State or the managing authority to provide cumulative data at the level of specific objective (or, for technical assistance pursuant to Article 36(4) CPR at the level of a priority). Data reported to the Commission need to be based on data stored electronically for each operation in line with Annex XVII CPR.
- Article 42(5) CPR requires the Member State or the managing authority to publish or to provide a link to all the data transmitted to the Commission. It is permissible to display the data in an illustrative format as long as all the data is accessible.

QA00137 - CONDITIONS FOR GRANTING REGIONAL AID TO LARGE ENTERPRISES

Relevant Articles: Article 112 of the CPR

Articles 8(2) second subparagraph and 11(2(h)) of the JTF regulation

Point 14 of the Guidelines on regional State aid (2021/C 153/01)

Member State: n/a

Question 1 (including any relevant facts and information):

What does the third condition in point 14 of the Guidelines on regional State aid (2021/C 153/01) for granting regional aid to large enterprises for the diversification of the output or for a fundamental change in the overall production process with the JTF in certain 'c areas' mean ("the State aid for the investment is covered by the JTF to the maximum allowed")?

According to paragraph 14 of the Guidelines on regional State aid (RAG), regional aid to large enterprises in 'c' areas for the diversification of the output of an establishment into products not previously produced in the establishment or for a fundamental change in the overall production process of the product(s) concerned by the investment in the establishment, can be considered as compatible with the internal market, if:

- it covers an initial investment in a territory identified for co-financed support from the JTF in a 'c' area that has a GDP per capita below 100 % of the EU-27 average;
- the investment and the beneficiary are identified in the territorial just transition plan of a Member State approved by the Commission; and

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- the State aid for the investment is covered by the JTF to the maximum allowed.

What does the third condition mean, i.e. "the State aid for the investment is covered by the JTF to the maximum allowed"?

Does it mean that

1. the co-financing rate at the priority has to correspond to the maximum rate allowed by article 112 of the Regulation (EU) 2021/1060 (2021-2027 CPR)?
2. the co-financing rate of the individual investment is "at the maximum allowed" (which would mean that 100% of the public support would have to be covered by the JTF, as the co-financing rate at project level can deviate from the co-financing rate of the priority)?
3. something else?

There is one Member State which applies the co-financing rate for the concerned JTF priority to the total contribution, including public and private contribution (article 112(2(a)) CPR). In its first programme submitted to the Commission, this Member State has proposed a lower co-financing rate than the maximum allowed by the CPR, and will cover the national co-financing with private funds. If the answer to this ESIF Q&A would be option 1 mentioned above, this Member State could only use the possibility provided for in point 14 of the Guidelines on regional State aid, if it increased the co-financing rate of the concerned JTF priority to the maximum allowed by article 112 CPR. This would lead to an increase of the JTF resources in this priority, and a respective decrease of national and therefore also private funds.

Answer:

In the territories most affected by the transition to climate neutrality, the Commission has considered that the structural advantages available to large enterprises may be insufficient for investments that would ensure a balanced socio-economic transition and offer sufficient employment opportunities to offset jobs lost. For this specific reason, it has designed specific derogatory rules for assessing regional aid to large enterprises, granted for initial investments in 'c' areas, other than aimed at the creation of new activities, namely for:

- the diversification of the output of an establishment into products not previously produced in the establishment or
- a fundamental change in the overall production process of the product(s) concerned by the investment in the establishment.

The approval of such aid is subject to the general compatibility criteria developed in the RAG and to three specific conditions spelled out in paragraph 14 of the RAG and here below.

- The aid concerns an initial investment in a territory identified for co-financed support from the JTF in a 'c' area that has a GDP per capita below 100 % of the EU-27 average;

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- The investment and the beneficiary are identified in the territorial just transition plan of a Member State approved by the Commission; and
- The State aid for the investment is covered by the JTF to the maximum allowed.

From a procedural point of view, upon approval of the relevant territorial just transition plan by the Commission as part of the corresponding programme and prior to implementation, Member States must notify to the Commission any aid granted in accordance with these provisions.

The Commission has designed the three specific conditions as safeguards against unnecessary distortions of competition, which would be contrary to the common interest. Most specifically, the third condition, stated in paragraph 14 of the RAG, requires that *'State aid for the investment be covered by the JTF to the maximum allowed'.* The purpose of this condition is to limit the risk of exponential growth of the public funding made available to large enterprises in the 'c' areas via the national co-financing. In fact, it requires that the support at project/beneficiary level comprises to a maximum extent resources from the JTF.

The implementation of this condition requires an articulation between the two sets of rules, which relevant to this question specificities are highlighted below:

Under State aid rules:

- The State aid comprises the whole public financing, captured by the notion of State resources of Article 107(1) TFEU, in this case – JTF and the national public co-financing.
- The maximum aid intensity is assessed at the level of project/beneficiary.

Under cohesion policy rules:

- The maximum level of co-financing rate, for the regions concerned by the derogation under State aid rules, i.e. transition areas, is limited by the ceiling established in Article 112(3) of the 2021/1060 Regulation, including possible exceptions e.g. under Article 112(5) of the 2021/1060 Regulation.
- The co-financing rates are set for each priority in the programme and are approved by the Commission decision approving a programme (Article 112(1) CPR).
- The co-financing rates apply at the level of each priority (Article 112(1) CPR). This means that within a priority the co-financing rate for specific projects/operations might be different from the one of the priority and may also vary from one operation to another.
- the co-financing rate for each priority is applied either at:
-
    - the total contribution, including public and private contribution; or
    - the public contribution.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Against this background:

The maximum co-financing rates for priority axes under cohesion policy are set out in Article 112(3) et seq. of the Regulation 2021/1060. These are only maximum rates, meaning that Member States may include lower rates in their programmes. Additionally, it should be noted that under cohesion policy, there is no legal basis for imposing a certain co-financing rate at the level of individual operations.

Given that the Union contribution will be calculated by application of the co-financing rate of each priority to the total eligible expenditure or to the public contribution, as set out in the financing plan of the programme, this is considered as the reference point for the JTF support applicable to the projects co-financed under the priority for the purposes of paragraph 14 of the RAG.

Therefore, the third condition set out in paragraph 14 of the RAG requiring that *'the State aid for the investment is covered by the JTF to the maximum allowed'* should be read as meaning that the JTF support to a project amounts to the maximum co-financing rate set out in the corresponding programme, for the related priority.

It should be noted that the third condition set out in paragraph 14 of the RAG does not preclude that JTF covers the entire State aid support.

This distribution of the public financing national and JTF sources does not affect the maximum aid intensities for large enterprises in these 'c' areas. The latter are fixed in the national regional maps in accordance with Section 7.4.2. Maximum aid intensities in 'c' areas, paragraph 182(4) of the RAG) and cannot exceed 15% of the eligible costs.

QA00138 - How to declare expenditure in case SCOs are implemented under Art.53-56 CPR and then introduced in a SCO scheme under Art.94: options and risks

Relevant Articles: Art. 53-56 and Art. 94 of the CPR

Member State: FR

Q1 : Pouvez-vous nous confirmer que nos services seraient en mesure de programmer dès approbation par la CE de la version initiale du PO (donc sans ce BSCU) des opérations de ce type sur la base d'un BSCU, conformément à l'article 53 du RPDC, avant la validation de la décision permettant l'adoption de cette OCS au niveau du programme conformément à l'article 94 ?

***EN**: Can you confirm that our services would be able to program, as soon as the initial version of the PO is approved by the EC (therefore without this SSUC) operations of this*

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

type on the basis of a SSUC, in accordance with article 53 of the CPR, before the validation of the decision allowing the adoption of this SCO at program level in accordance with Article 94?

Q2 : En cas de réponse positive à cette première question, nous confirmez-vous que la règle selon laquelle les dépenses/réalisations d'une opération antérieures à la date d'introduction de la demande de modification du PO visant à intégrer le nouveau BSCU dans SFC ne sont pas éligibles, ne s'applique pas dans le cas présent au niveau du bénéficiaire (mais seulement à l'AG pour la réalisation de ses demandes de paiement / appel de fonds) ?

Très concrètement, pour des opérations de rénovation de logement social qui seraient éligibles dès le 1er janvier 2021 et programmés par l'AG avec un BSCU n'ayant pas été encore approuvé par la CE dans le PO (par exemple juste après l'approbation du PO initial en juin 2022), l'AG introduit formellement une demande de révision du PO pour introduire le BSCU en septembre 2022 : l'AG pourra-t-elle bien inclure les dépenses correspondantes (opération réalisée entre janvier 2021 et décembre 2022) dans une demande de paiement adressée à la CE en 2023 ? Quelle forme devra alors prendre la demande de paiement par l'AG auprès de la Commission européenne au titre de ces opérations ?

EN: In the event of a positive answer to this first question, can you confirm that the rule according to which the expenditure/implementation of an operation prior to the date of submission of the request for modification of the OP aiming to integrate the new SSUC into SFC are not eligible, does not apply in this case at the level of the beneficiary (but only to the MA for the submission of its requests for payment / call for funds)? Very concretely, for social housing renovation operations which would be eligible from 1 January 2021 and scheduled by the GM with a SSUC that has not yet been approved by the EC in the OP (for example just after the approval of the initial PO in June 2022), the MA formally submits a request for revision of the PO to introduce the SSUC in September 2022: will the MA be able to include the corresponding expenditure (operation carried out between January 2021 and December 2022) in a request for payment sent to the EC in 2023? What form should the MA request for payment from the European Commission for these operations then take?

Q3 En cas de réponse positive, pouvez-vous aussi nous indiquer si nous serions en mesure, le cas échéant, de faire remonter à la CE une demande de paiement incluant ces opérations programmées sur la base d'une OCS « bénéficiaire » telle que prévue à l'article 53, en incluant de fait les coûts calculés sur la base applicable ?

EN : In the event of a positive response, can you indicate to us if we would be able, if necessary, to forward to the EC a request for payment including these operations

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

programmed on the basis of a "beneficiary" SCO such as provided for in Article 53, de facto including the costs calculated on the applicable basis?

…

Answers:

1. Member States can implement SCOs at the level of the beneficiary in line with Articles 53-56 CPR directly and without submitting to the Commission Appendix 1 of Annex V for approval. Related costs can be declared for such SCOs in accordance with Article 91(4)(c) CPR.

It is not exluded that the programme decides to include them at a later stage in Article 94 CPR schemes. These will be then covered by reimbursment by the Commission in line with Art. 94 CPR after the relevant programme amendment is approved. It is possible that the programme already starts implementing (at their own risk however) SCOs at the level of the beneficiaries as asked before approval by the Commission of the schemes submitted in Appendix I to the programme. **Thus, the reply to question 1 is yes.**

2. Regarding the first part of question 2, Article 63(7) CPR does not apply at any level in the situation presented as the expenditure for operations that are under implementation in line with Articles 53-56 CPR as of programme approval and are to be covered by the SCO scheme as of programme amendment is understood as being already eligible as of 1 January 2021 according to Article 63(2) CPR. This is because the programme amendment has no impact on the eligibility of expenditure, i.e no new expenditure will become eligible as a result of the programme amendment. Programe amendment adopting the SCO scheme impacts only the mode of reimbursement between the Commission and the Member State.

3. Regarding the second part of question 2, until a decision in line with Article 94 CPR is adopted, the Managing Authority may declare to the Commission the amounts corresponding to the costs calculated on the applicable basis (ie SCOs implemented in line with Articles 53-56 CPR). This means that **the MA may include the expenditure for SCO operations carried out between January 2021 and December 2022 under Articles 53-56 CPR in a payment application to the COM in column B of the payment application template (Annex XXIII CPR)** in line with Article 91(4)(c) CPR. The COM will reimburse the Member State accordingly.

After the decision on the programme amendment is adopted, **the Commission will start reimbursing the Union contribution to a programme on the basis of SCOs**. The Managing Authority will include these amounts into a payment application in column C of the payment application template (Annex XXIII) in line with Article 91(4)(b) CPR. The Commission will reimburse the Member Satte accordingly. As of the inclusion of these amounts in the Column C in the payment application, the amounts reimbursed to the beneficiary should not be included in the payment application (column (B) of the payment application template) to avoid double financing of the same expenditure.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

We consider that **question 3 is addressed in point 3 above**. Therefore, a separate reply is not necessary.

QA00139 - CPR AND INTERREG REGULATION 2021-2027 - POTENTIAL DOUBLE CORRECTION

Relevant Articles:

Article 98(6)(a) and Article 103 of the CPR

Article 52 of the Interreg Regulation

Member State: CZ

Question 1 (including any relevant facts and information):

Which is the legal basis enabling the EC to avoid double correction - that is not to issue a recovery order according to Article 52 Interreg Regulation if the amount was already withdrawn in the annual accounts?

Example provided by requester explaining the risk of double correction

During the accounting year 2024/2025 the MA identifies irregular expenditure in the payment claim by the beneficiary (for example 100 000 EUR) that has already been submitted in the interim payment application in the accounting year 2024/2025. MA subsequently opens the recovery procedure, which is however not concluded before the accounts for 2024/2025 are approved by the EC.

According to Art 98(6)(a) of the CPR this irregular amount (100 000 EUR) still has to be and will be deducted from the accounts irrespective of status of the recovery (in our example recovery procedure not concluded). Therefore the total amount declared in the accounts (for example 1 mil. EUR) will be lowered to 900 000 EUR. This means that the financial correction has been applied by the MS and this irregularity should be resolved in relation to EU budget.

However, once the recovery procedure is concluded with the outcome that both relevant partners and MS failed to reimburse unduly paid amounts back to programme, the Commission is in our opinion obliged to issue the recovery order according the Art 52(5) of the Interreg Regulation for those 100 000 EUR, that relevant MS failed to reimburse, even though the financial correction has been already applied in the 2024/2025 accounts.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

This in our opinion means, that one irregular amount (100 000 EUR) will be deducted twice from the payments at the level of EU – programme (deduction in the accounts as well as additional offset by the Commission).

This would lead to a double correction, therefore we are trying to find the legal basis (which we are currently not aware of) that would enable the Commission not to issue recovery order according to Article 52(5) of the ETC Interreg Regulation where the correction has already been applied by the MS.

Answer:

It is important to distinguish between two distinct procedures:

- financial corrections carried out by the MS hosting the MA of the Interreg programme after identifying irregular expenditure on the basis of Article 98(6)(a) CPR and Article 103 of the CPR;
- recovery orders issued within the procedure of examination of accounts, when the Commission determines the amount chargeable to the Funds for the accounting year and the consequent adjustments in relation to the payments to the MS hosting the MA on the basis of Article 100 CPR.

The MS hosting the MA, after identifying irregular expenditure, should apply financial corrections in accordance with Article 103 CPR and withdraw the irregular amounts from the interim payment application as set out in Article 98(3)(b) CPR or, at the latest, deduct such amounts from the accounts in accordance with Article 98(6)(a) CPR.

When, as a result of the examination of the accounts, the amount chargeable to the Funds for the accounting year is determined, the Commission will apply the consequent adjustments in relation to the payments made to the Member State to balance the accounts. To that end, the Commission will issue a recovery order on the basis of Article 100(2) CPR executed, where possible, by offsetting against amounts due to the Member State hosting the MA in subsequent payments to the same Interreg programme.

It is important to note that such recovery orders do not constitute financial corrections by the Commission on the basis of Article 104 CPR and they do not reduce the support from the Funds to the Interreg programme.

Article 52 Interreg Regulation provides important procedural adjustments aimed at establishing a clear chain of financial liability in respect of recovery for irregularities, taking especially into account the situation when the lead or sole partner is located in a different country than the MS hosting the MA.

Based on the example provided – if the EUR 100 000 irregular expenditure was present in a payment claim but afterwards deducted in the accounts, it would indeed lead to an amount to recover. This amount would be recovered in the context of the annual balance of the accounts by determining the amount chargeable to the Funds for the accounting year and the consequent adjustment in relation to the payments to the MS hosting the MA. The Commission would not issue another recovery order on the basis

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

of Article 52(5) Interreg Regulation for the same expenditure as the financial interest of the EU budget would have already been secured by applying Article 100 CPR. There cannot be double recovery of the same expenditure.

To conclude, the European Commission will not recover twice towards the MA of the Interreg programme the same irregular amount.

QA00140 - CLLD PROGRAMMING IN ESF

Relevant Article: Art 34 (1) of the CPR

Member State: RO

Question 1 (including any relevant facts and information):

The authorities have programmed under ESF + Specific objective (K) (to improve equal and timely access to quality, sustainable and affordable services, including services promoting access to person-centred housing and care, including healthcare; modernising social protection systems, including promoting access to social protection, with a particular focus on children and disadvantaged groups; improving the accessibility, including for persons with disabilities, of the effectiveness and resilience of health systems and long-term care services) the following activities for urban LAGs:

(a) preparatory support for the development of Local Urban Strategies (Art. 34 (1) CPR);

(b) preparatory support for national and transnational cooperation between LAGs and other actors;

(c) support for the operation, management and evaluation (impact studies) of urban LAGs, as provided for in Article 34 (1) -c of the CPR.

This also includes cooperation activities between LAGs to strengthen urban-rural linkages.

The Local Urban Strategies under CLLD in Romania are financed both from ESF+ and ERDF.

In this context, we would welcome your advice to the following questions

1. Can only ESF+ finance the activities above even though the Local Urban Strategies are financed both from ERDF and ESF+?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

2. In case not, is there any possibility that only ESF+ could do that (maybe under Technical Assistance)?
3. Is such an allocation adequately programmed under Specific Objective (k)?
4. In case not, which would be the most relevant Specific Objective for such activities to be programmed/financed?

Answer:

1. As explained in the reply to QA00058, where a community-led local development (CLLD) strategy is financed from more than one Fund, Article 31(3) CPR allows the relevant MAs to support all preparatory, management and animation costs referred to in points (a) to (c) of Article 34(1) CPR from one Fund. As explained in the reply to QA00052, the support referred to in Article 34(1)(c) CPR shall not exceed the 25% of total public contribution to the CLLD strategy .

It should be noted that some of these activities, within the limit set out in Article 34(2) CPR, may also be financed from technical assistance, e.g. impact studies and evaluations of local development strategies or CLLD as a whole.

2. See point 1.

3.CLLD and any related expenditure may be financed under any of the specific objectives of the ESF+ as listed in Article 4(1) of the ESF+ Regulation, with the exception of specific objective (m). It is the responsibility of the Managing Authority to define the intervention logic of the programme and include CLLD under the specific objective that best reflects the purpose of financing. Therefore, provided that these strategies contribute to specific objective (k), they may be supported under that specific objective.

As far as the ERDF is concerned, there are possibilities under policy objective 4 linked to the Social Pillar, and under policy objective 5 'Europe closer to citizens', in particular specific objective 5.1, which is dedicated to integrated urban strategies, including urban CLLD strategies. It is for the Managing Authority to include a CLLD strategy within the specific objective that best reflects the purpose of the planned activity.

4. See point 3.

QA00141 - SUPPORT TO COMBINED INSTRUMENTS

Relevant Article: Article 8 of the JTF

Member State: PL

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

1.Will the European Commission during the process of verifying / auditing the manner in which the regions spend JTF funds question the non-compliance with the solutions adopted for similar types of operations financed from ESF + funds?

This fund was set up specifically to address the problems of transition. It can be assumed that the nature of operations financed from its resources, in particular under the activities referred to in article 8.2(k-m) of the JTF Regulation may differ from similar ESF + operations.

2. Pursuant to Regulation (EU) 2021/1056 of the European Parliament and of the Council of 24 June 2021 establishing the Just Transition Fund, one of the possible actions is raising and changing the qualifications of employees and jobseekers. In view of the above, and taking into account the provisions on State Aid, the managing authority of Wielkopolska region addressed the Commission asking **whether it is possible to finance the following operations from the JFT funds**:

-
    - reskilling and upskilling of the employees in a holding company (the main entity undergoing transformation, consisting of several related companies, "parent company" and "related companies") for the needs of the new areas of the company's operations. Due to the closing of the mining operations, the holding company, in order to change its business profile to green energy production, will require employees with different qualifications than the current employees. In the interest of employees and local government authorities, in order to avoid negative social phenomena, it would be the current employees of the holding company to be considered in the first place as staff for new ventures. **Is it possible to implement this type of support from the JTF in terms of the provisions of EU regulations regarding the perspective 2021-2027, including the JTF Regulation and the provisions on State Aid?**
-
    - **If there is a company operating within the holding company (e.g. operating in the field of renewable energy sources), intending to employ employees previously employed in a related company (e.g. in a mine; the relationship "parent company" - "daughter company" or " daughter company "-" daughter company "), is it possible to support retraining activities from the JTF?** In such a case, will the principle of excluding any relationship between actions for the benefit of employees and the benefit that could be obtained by the entrepreneur dismissing the employee be maintained? In such a situation, will the purpose and scope of raising / changing qualifications not correspond to the specific needs of a given enterprise, but only to the needs of the dismissed employee in accordance with the requirements of the regional labour market, which will mean that there will be no state aid? Or, the purpose

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

and scope of raising / changing qualifications will correspond to the specific needs of a given enterprise, which will be tantamount to the fact that state aid for a given company will occur?

Answer:

1.The actions carried out under JTF, first of all, have to contribute to the JTF single specific objective (Article 2 JTF Regulation), fit into the scope of support as set out in Article 8 of the Regulation (EU) 2021/1056 (JTF Regulation) and help implement the relevant Territorial Just Transition Plan (TJTP).

JTF actions may be delivered differently from the similar measures developed under ESF+ provided that their implementation fully complies with the legal framework established by Regulation (EU) 2021/1060 (Common Provisions Regulation) and the JTF Regulation.

2. On the basis of the information provided, it is difficult to establish whether such an operation may be implemented under the JTF.

Further to the conditions already mentioned in Reply 1, any action aiming at upskilling and reskilling (including training) should primarily target workers affected by the transition, irrespective of whether they are still employed or have lost their job due to the transition instead of targeting specific companies and their needs and priorities.

The measures designed in the programme for support by the JTF should be consistent with the requalification needs as detailed in section 2.1 in the TJTP.

As regards State aid, recital (16) of JTF Regulation recalls that JTF support to undertakings should comply with Union State aid rules as set out in Articles 107 and 108 TFEU. It is the responsibility of Member States to ensure compliance with State aid rules. In case the measure qualifies as State aid and, depending on the specific characteristics of the project, there may be several grounds of compatibility, e.g. under the Training aid guidelines, Regional aid Guidelines, Climate, Energy and Environmental Guidelines, or under the corresponding parts of the GBER.

Assuming that all conditions mentioned above are met, expenditure incurred and paid in implementing operations benefitting employees who ultimately had not lost employment may be eligible.

QA00142 - APPLICABILITY OF ARTICLE 36(2) OF THE CPR ON TECHNICAL ASSISTANCE TO THE JTF

Relevant Article:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Art. 36.2 of the CPR

Article 8 of the JTF

Member State: PL

Question 1 (including any relevant facts and information):

Almost the entire NUTS 2 Silesia (PL) region except one NUTS 3 sub-region was indentified by the Commission services as eligible for the Just Transition Fund's support. The JTF will be programmed at the level of the region, therefore the regional programme will include a relevant priority dedicated to the specific JTF objective. JTF measures will implemented by the same entities as for the ERDF/ESF+. The Managing Authority identified a need to include in the programme a separate technical assistance priority for the JTF. In line with Article 36 para. 2 CPR each Fund may support technical assistance actions eligible under any of the other Funds. **Can it then be confirmed that Article 36 para.2 CPR applies also to technical assistance funded under the JTF? Can the MA support in sequence of time similar operations and the same entities firstly by TA JTF ressources and then by TA ERDF/ESF (or other way round) while avoiding double financing?**

Answer:

Among the Fund-specific Regulations, the JTF contains specific rules regarding the support of activities relating to Technical Assistance. In line with article 1(6) of the CPR, these rules complement and qualify the general rules of the CPR (Article 36), including the flexibility provided in Article 36(2) CPR:

- In accordance with point (n) of Article 8(2) of the JTF Regulation, technical assistance (TA) actions are eligible under the JTF.
- In addition, according to Article 8(1) of the JTF Regulation, the JTF should only support activities that are directly linked to its specific objective as set out in Article 2 and which contribute to the implementation of the territorial just transition plans (TJTP).

The JTF may also support TA actions eligible under any of the other Funds, as allowed under Article 36(2) of the CPR. In this case however, to ensure full compliance with Article 8(1) of the JTF Regulation given that it specifies the conditions under which TA activities can be supported by the JTF, a Member State would need to prove that such actions are directly linked to and also benefit the JTF specific objective and contribute to the implementation of the relevant TJTP. The examples of eligible measures may include management and control systems or information and communication web tools that are common to the JTF and other Funds under a multi-fund programme.

Due to specific rule set out in the JTF Regulation, a TA measure which does not contribute to the JTF specific objective at all, should be included in a TA priority supported by another Fund.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In any case, the Member State should avoid the duplication of costs and eliminate the risk of double-financing in line with sound financial management. The approach proposed for a sequential support for the same type of measure, first received from JTF TA and afterwards from other Funds' TA, would ensure the absence of double declaration and double funding of the same expenditure.

QA00144 - SCOs IN OPERATIONS SUBJECT TO DE MINIMIS AID

Relevant Article: Art. 53 (2) of the CPR

Member State: CZ

Question 1 (including any relevant facts and information):

According to the Art. 53 (2) of the CPR, there is the obligation to use SCOs for operations with a total cost of up to EUR 200,000. This condition applies to projects implemented outside the scope of State aid, as well as to projects subject to de minimis aid.

Does "de minimis aid" mean all de minimis regulations, ie all de minimis regimes (including e.g. the Regulation (EU) No 360/2012 setting out de minimis aid granted to undertakings providing services of general economic interest), or only the Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid?

Answer:

In accordance with Article 53(2) of the CPR, where the total cost of an operation does not exceed EUR 200 000, the contribution provided to the beneficiary from the ERDF, the ESF+, the JTF, the AMIF, the ISF and the BMVI shall take the form of unit costs, lump sums or flat rates, except for operations for which the support constitutes State aid. By virtue of Regulation (EC) No 994/98 the Council decided, in accordance with Article 109 of the Treaty, that *de minimis* aid being aid granted to a single undertaking over a given period of time that does not exceed a certain fixed amount, is deemed not to meet all the criteria laid down in Article 107(1) and thus, it is not considered as State aid. Therefore**,** as operations subject to de minimis aid are not considered as State aid, they are not exempted from the mandatory use of SCOs laid down in Article 53 (2) CPR irrespective of which de minimis regulation is applied in a particular case. It includes:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- Commission Regulation (EU) No 1407/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid;
- Commission Regulation (EU) No 1408/2013 - de minimis aid in the agriculture sector;
- Commission Regulation (EU) No 717/2014 - de minimis aid in the fishery and aquaculture sector;
- Commission Regulation (EU) No 360/2012 - de minimis aid granted to undertakings providing services of general economic interest.

QA00145 - FOSSIL FUEL EXCLUSION (OIL SHALE AS NON-FUEL AND OIL SHALE LEGACY ASH)

Relevant Articles: Article 8 and Article 9 of the JTF

Member State: EE

Question 1 (including any relevant facts and information):

First of all, as far as the the fossil fuel exclusion is concerned, it is very clearly explained in the JTF regulation that investments related to fossil fuels are not eligible for support via the JTF. This is understood and clear, and we are not challenging it.

What we would like to clarify, though, is that not all fossils can automatically be considered fuels. A fossil is any preserved remains or trace of any once-living thing from a past geological age. Fossil fuels are, indeed, a sub-type of a broader category of fossils, but not all fossils are fuels. For example, phosphorite – a non-detrital sedimentary rock that contains high amounts of phosphate minerals and is found in high quantities in Estonia. It is a fossil, but it is used almost entirely for the production of fertilizers and animal feed supplements, as well as a balancing agent for the production of industrial chemicals. It is not – and cannot be – used as fuel. Another example could be coal: there is a difference between using coal for energy production or steel production; in one case it is a fuel, in the other – input for an industrial process – although it is essentially the same fossil.

The JTF regulation expressly excludes „fossil fuels" – not fossils in general. The SWD also states: „investments in fossil fuel by-products or in the non-energy uses of fossil fuels (e.g. by-products of shale oil or oil shale ashes) are ineligible when they are technically inseparable from the ongoing production of the fossil fuel itself." However, it seems that according to the Commission's interpretation, even non-fuel use of

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

fossils (in Estonia's case, oil shale), in processes that are not technically related to the ongoing production of fuels, would be excluded from JTF support.

It is a fact that oil shale may be – and so far has mostly been – used as a fuel. However, that is only one use of this particular material. It can also be used in innovative chemicals production processes that have nothing to do with fuels.

Hence, throughout the process of preparing our TJTP, our interpretation has been the following:

- When oil shale is used as a fuel (whether combusted for electricity production, pyrolyzed for the production of shale oil, coke gas or any other sort of fossil fuel), it is deemed not eligible for JTF funding. This is clear.

- When oil shale is used for the production of chemicals in a process, which is separated and independent from the ongoing production of fossil fuel, it should be eligible for JTF funding.

Can you please comment, if we are interpreting the text of the JTF regulation and the SWD correctly or incorrectly in this case?

Answer:

Fossil fuels are non-renewable carbon-based energy sources such as solid fuels, natural gas and oil, as defined in Article 2(62) of the Energy Union and Climate Action Governance Regulation (2018/1999 of 11.12.2018).[1] Article 9(d) of the JTF regulation excludes support related to the production, processing, transport, distribution, storage or combustion of fossil fuels, without specifying the purpose or end use. It includes the processing of fossil fuels, which means that the JTF cannot support investments in the fossil fuel processing, including oil shale and shale oil for both fuel and nonfuel products.

In addition, from a policy perspective, the JTF should not support any new value chains based on fossil fuels, in particular because it contributes 100% to climate change objectives in the context of the EU budget.

---

[1] In the energy statistics, fossil fuels cover: solid fossil fuels (coal), manufactured gases, peat and peat products, oil shale and oil sands, oil and petroleum products (excluding biofuels), natural gas and non-renewable waste. See https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Fossil_fuel

Question 2 (including any relevant facts and information):

We would like to comment on the topic of reuse of oil shale ash, which is the subject of one of the potential projects by non-SMEs, outlined in out TJTP (Ragn Sells).

As already referred to above, according to the SWD, „investments in fossil fuel by-products or in the non-energy uses of fossil fuels (e.g. byproducts of shale oil or oil shale ashes) are ineligible when they are technically inseparable from the ongoing production of the fossil fuel itself." Hence, we understand that according to the SWD,

investments in ash that is not related to the ongoing production of fossil fuels, is eligible.

In case of the potential project by Ragn Sells, outlined in our TJTP, only legacy ash will be used as input for the project. Currently, there are ca 600 mln tons of oil shale ash in Ida-Virumaa that have been deposited into the environment of the region in the form of so-called "ash mountains" over the last 50+ years. Oil shale ash is classified as a chemical by the REACH regulation and is registered in the European Chemicals Agency's database (Reg.nr: 01-2119703178-42-0002). In 2018, it was also excluded from the list of hazardous waste items, which has presented an opportunity to recycle it and solve a major environmental issue for Ida-Virumaa.

In our understanding, this project – which is not related to the ongoing production of fuels – should technically be considered eligible to apply for JTF funding. Obviously, polluter pays principle is also followed in case of this project.

Could the Commission please confirm that our interpretation of the SWD and the eligibility of this particular project is correct?

Answer:

The use of legacy ash is considered as eligible for JTF as far as it contributes to the regeneration of extraction sites and land restoration under article 8(2)(i) of the JTF Regulation.

In case of particular projects' eligibility, it needs to be demonstrated that these investments are linked to the JTF specific objective, as laid down in Article 2 of the JTF Regulation, and that they contribute to the implementation of the territorial just transition plan (TJTP). They need to be justified by their contribution to addressing the impacts of the transition and their link to the transition challenges identified in the TJTP. Therefore, the Commission services will be evaluating the concrete measure in the context of the submitted TJTP. In this particular case, it will be important to demonstrate that the project deals only with legacy ash and cannot be seen to support the continued extraction of oil shale.

QA00146 - INVESTMENT IN ETS ACTIVITIES WITH NO EXISTING BENCHMARK

Relevant Article: Art.8(2) and 11(2)(i) of the JTF regulation

Member State: SE

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

The JTF Regulation provides an opportunity to support investments to reduce greenhouse gas (GHG) emissions from activities listed in Annex 1 to Directive 2008/87/EC under several conditions, including that they lead to a substantial reduction of GHG emissions going below the relevant benchmarks.

In the Västerbotten region, one of the planned types of operations is concerning support for the reduction of GHG emissions from activities listed in Annex I to Directive 2003/87/EC in the ETS plant Rönnskär, Boliden Mineral. However, there is no existing benchmark for the processes considered by the Swedes. The reason for not having benchmarks in this specific field, is due to the fact that there is not enough historical data available, too few installations in Europe are active in this specific field of operation so there is no possibility to retrieve enough data for a benchmark. Instead, the Rönnskär facility in Västerbotten receives free allocation of emission allowances according to fall-back benchmarks, i.e. based on the use of fuel, production of heat and/or district heating and process emissions. The GHG emissions from the ETS plant (Rönnskär) in question are reported to the European Commission, which also monitors Member States' compliance with the relevant rules.

The Swedish Environmental Protection Agency makes decisions on the allocation of emission allowances, is the supervisory authority and is responsible for following up the companies' annual reporting of greenhouse gas emissions. The Swedish Energy Agency administers the Swedish part of the Union Register. Both the Swedish Environmental Protection Agency and the Swedish Energy Agency will have active roles in the Just Transition Fund's implementation, and participate in consultations prior to financing decisions made by the managing authority.

As the JTF Regulation clearly refers to the necessity to compare the reduction of GHG emissions with the relevant benchmark, could such a project be considered as eligible in the absence of a benchmark?

Answer:

As a preliminary remark, the Swedish authorities should ascertain whether the activity of the Rönnskär facility in Västerbotten, which is not properly defined in the question, falls within the scope of application of Directive 2003/87/EC, as Article 8(2) of the JTF Regulation refers to that directive (see next paragraph). It should therefore firstly be cleared exactly which of the categories of activities of Annex I of that Directive corresponds to the Rönnskär facility. Only then it will be possible to further analyse which benchmark is to be used and how to be calculated taking also into account Regulation 2019/331. The developments below are considered to apply only in the event that the activity at stake falls within the scope of the referred Directive.

Article 8(2) second subparagraph of the JTF Regulation states that support can be provided to *"investments to achieve the reduction of greenhouse gas emissions from activities listed in Annex I to Directive 2003/87/EC provided that such investments have been approved as part of the territorial just transition plan based on the information*

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

required under point (i) of Article 11(2)". In that Article, it is specified that the territorial just transition plan (TJTP) shall contain "*a list of operations to be supported and a justification that they contribute to a transition to a climate-neutral economy and lead to a substantial reduction in greenhouse gas emissions going substantially below the relevant benchmarks established for free allocation under Directive 2003/87/EC and provided that these operations are necessary for the protection of a significant number of jobs*". The Commission's Staff Working Document on the territorial just transition plans (SWD(2021) 275 final) further explains how the Commission will assess such proposed investments.

The methodology for free allocations and benchmarking is described in Article 10(a) of Directive 2003/87/EC ('ETS Directive'), in Regulation 2019/331 on determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10(a) of the ETS Directive, and in Regulation 2021/447 on determining revised benchmark values for free allocation of emission allowances for the period from 2021 to 2025.

Almost all activities receiving free allocation under the ETS have a product benchmark defined. Where defining a product benchmark is not possible, fall-back benchmarks based on heat production or fuel consumption are used (see Regulation 2019/331).

In some very limited cases it was not possible to define a benchmark either because of the limited number of installations, lack of data, etc. This is the case for process emissions (emissions related to the production process of a product) where free allocation is based on historical emissions (for instance linked to the processing of non-ferrous metals like copper):

- no product benchmark is available,
- heat is not measurable and
- GHG emissions do not result from the combustion of fuel (so no fall-back benchmarks are available).

The Commission services consider that investments to reduce GHG emissions from ETS activities can be proposed for JTF support also for activities in industrial facilities[1] for which free allocations are given due to process emissions, provided it is demonstrated and justified in the relevant TJTP that the level of emissions per unit of product after and before the investment is significant compared with published data for other similar plants including best available technologies (i.e. BREF or other publicly available reports).

However, for the proposed project for Boliden Mineral to be considered eligible, all other conditions linked to ETS investments also need to be met along with further support criteria under the CPR and JTF regulations.

---

[1] In contrast, such investments remain excluded in the power sector, because of the exclusion of support for fossil fuels (Art. 9(d) JTF) and because no relevant benchmarks exist for that sector.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00148 - SUPPORT BY THE ERDF OF ACTIVITIES FOR APPLIED RESEARCH AND INNOVATION UNDERTAKEN BY ENTERPRISES OTHER THAN SMES

Relevant Article: Article 5 of the ERDF regulation

Member State: ES

Question 1 (including any relevant facts and information):

Spain would like to support activities for applied research and innovation (R&I) undertaken by enterprises other than SMEs. Spain argues the following:

1. the exception linked to the cooperation with SMEs allowed by Article 5, paragraph 2, letter (a) applies only to productive investments (Article 5, paragraph 1, letter d), but not to activities for applied R&I (Article 5, paragraph 1, letter b)
2. R&I activities represent a different intervention than productive investments, and this is confirmed by the intervention codes included in Annex I of Regulation (EU) 1060/2021: codes 009-012 are dedicated to R&I activities, while codes 001-008 are to be used for productive investments.
3. The support provided will respect the relevant state aid rules, namely the General Block Exemption Regulation (EU) 651/2014, the De Minimis Regulation, and the State Aid Framework for Research, Development and Innovation.
4. Support for R&I activities in non-SME enterprises would be provided only under the following conditions: the projects must have a high technological component, the enterprises supported must benefit or have a positive impact in the SMEs of the area where the project is implemented, support is provided only in less developed regions or outermost regions.
5. According to the latest figures, the total R&I expenditure in Spain represented 1.41 % of the GDP, compared to the EU average of 2.32%. This difference is explained mainly by the private expenditure in R&D, that accounted only for 0.78% of the GDP, well below the EU average of 1.53%. The low private expenditure in R&I can only rise with an increased effort of all types of companies, including non SMEs, and this holds true in particular for less developed regions, where SMEs tend to invest less in R&I.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Following these arguments, could the ERDF support activities for applied research and innovation undertaken by enterprises other than SMEs under the conditions proposed by Spain?

Answer:

As a rule, the ERDF supports productive investment in SMEs (Article 5(1)(d) ERDF/CF). The ERDF may support productive investment in enterprises other than SMEs only in cases defined in Article 5(2) ERDF/CF Regulation. In particular, points (a) and (d) of this provision set out the conditions for investment of enterprises other than SMEs in 'research and innovation activities' under the specific objective 'developing and enhancing research and innovation capacities and the uptake of advanced technologies'.

Applied research in enterprises aims at developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. Such activities fall within the notion of productive investments set out in recital 38 of the ERDF/CF Regulation as they constitute investment in fixed capital or immaterial assets with a view to producing goods and services and thereby contributing to gross capital formation and employment.

It is noted that the types of intervention set out in Annex I serve statistical purposes (and thus distinguish between investment in fixed assets, intangible assets or research and innovation activities), however they do not define eligibility.

E

QA00149 - SUPPORT OF LNG ALTERNATIVE FUEL INFRASTRUCTURE, ELIGIBILITY OF BIOMETHANE FOR ALTERNATIVE FUEL INFRASTRUCTURE

Relevant Article: Article 7 of the ERDF

Member State: CZ

Question 1 (including any relevant facts and information):

Support of LNG alternative fuel infrastructure, eligibility of biomethane for alternative fuel infrastructure

There are several issues LNG refueling infrastructure and its eligibility:

1. The Regulation (EU) 2021/1058 on the European Regional Development Fund and on the Cohesion Fund in general does not allow the projects related to

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

*"investment related to production, processing, transport, distribution, storage or combustion of fossil fuels"(*see Article 7, letter h). However according to point iii) of that provision there is an exception for *"investment in: in clean vehicles as defined in Directive 2009/33/EC of the European Parliament and of the Council (2) for public purposes".*

2. Since fossil-based clean vehicle (LNG/CNG vehicle) could not operate without existence of respective refuelling infrastructure, the Czech Republic interprets the exception referred to above in a way that also support of LNG refuelling infrastructure from Cohesion fund should be possible. From the Member State perspective, Commission should take into account particularly the fact that LNG infrastructure in cohesion countries is still lagging behind. At the same time, in the existing legal framework for development of infrastructure for alternative fuels (Directive No. 2014/94 – so called "AFID") as well as in proposed new regulation dealing with this issue (so called "AFIR") there are some targets for Member States in relation to LNG refuelling infrastructure.
3. Same time the CZ authorities have raised the question as to whether biomethan could qualify for support and could be used as an alternative fuel in the alternative fuel infrastructure (e.g. liquified biomethane, compressed biomethane). In a view of the CZ authorities biomethane does not qualify as fossil fuel and as a consequence the exclusion referred to in Article 7 of the Regulation EU 2021/1058 *"investment related to production, processing, transport, distribution, storage or combustion of fossil fuels"* does not apply. Could you confirm this interpretation?

Answer:

1. The support for the LNG (liquefied natural gas) as a fuel to be distributed via the network of the alternative fuel infrastructure falls under the Article 7 REGULATION (EU) 2021/1058 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund: The ERDF and the Cohesion Fund shall not support: (h) "investment related to production, processing, transport, distribution, storage or combustion of fossil fuels…".
2. An exception for "investment in: in clean vehicles as defined in Directive 2009/33/EC of the European Parliament and of the Council (2) for public purposes" does apply only for clean vehicles and cannot be extended to the alternative fuel infrastructure. As a consequence, LNG alternative fuel infrastructure using natural gas is not eligible for the Cohesion Fund support. As to Directive 2014/94/EU it establishes a common framework of measures for the deployment of alternative fuels infrastructure in the Union. That Directive is based on Article 91 TFEU, on the Transport Policy, and sets out minimum requirements for the building-up of alternative fuels infrastructure, including recharging points for electric vehicles and refuelling points for natural gas (LNG and CNG) and hydrogen, to be implemented by means of Member States'

national policy frameworks. These objectives cannot influence the interpretation of the policy choices made under the Cohesion Policy as regards the measures eligible for support by the ESI Funds. Thus, ERDF/CF could just support refuelling facilities (storage and distribution) exclusively dedicated to clean vehicles used for public purposes.

3. As biomethane does not fall under the category of fossil fuels, it is eligible for support from the ERDF and Cohesion Fund. In this respect, the relevant provisions of Directive(EU) 2018/2001 on the promotion of the use of energy from renewable sources have to be respected. Complementarities and synergies with potential support through the Common Agricultural Policy should be taken into account. The support to biomethane production facilities under cohesion policy should be limited to infrastructure based on input coming from sorted municipal biowaste. Where biomethane production facilities are developed and operated by a farmer or a farming related structure (such as cooperative of farmers), there should be no cohesion policy support to the production facility itself.

QA00150 - DIRECT STAFF COSTS CONCERNING GRANTS

Relevant Article: Art. 55 of the CPR

Member State: CZ

Question 1 (including any relevant facts and information):

Article 55 of the CPR sets rules for flat rate of 20 % on calculating the direct staff costs. It contains special rule for Home Affairs Funds. We would like to ask you for clarification of this rule.

1. The paragraph 1) says that direct staff costs may be calculated at a flat rate of up to 20 % of direct costs other than the direct staff costs of that operation (…) provided that the direct costs of operation do not include (…) contracts which exceed in value the thresholds (…) directive 2014/24/EU and 2014/25/EU.
2. It also says that for AMIF, ISF and BMVI the flat rate shall only be applied to the direct costs of the operation not subject to public procurement.
3. Our question is what is meant by public procurement? Is our interpretation correct that within EU law the public procurement is defined as procurement which exceed in value the thresholds set in directives 2014/24 or 2014/25?
4. Do we understand it correctly that for AMIF, ISF and BMVI it is allowed to use the 20 % rule also for operations which include contracts exceeding the

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

thresholds, however as the basis for calculation serves the costs of the operation minus the costs of the public procurements? And that the difference for other Funds is that when there is a procurement exceeding the thresholds in an operation they cannot use this paragraph 1) rule at all?

Answer:

In relation to the flat rate of up to 20 % provided for in Article 55(1) of the CPR to calculate the direct staff costs of that operation, the 1st subparagraph limits its use (for all CPR Funds), where the direct costs of the operation include costs of public works contracts or supply or service contracts which exceed in value the thresholds set out in Article 4 of Directive 2014/24/EU or in Article 15 of Directive 2014/25/EU. In other words: the 20% flat rate under Article 55(1) CPR may only be used in operations implemented trough public procurement where the direct costs of such operations include costs of public works contracts or supply or service contracts which do not exceed in value the thresholds set out in those Directives.

In addition, as regards the AMIF, the BMVI and the ISF specifically, **any costs subject to public procurement** (i.e. the subcontracted/externalised costs) have to be excluded from the basis for the calculation of the flat rate *(cf. Article 55(1)CPR 2nd sub-paragraph)*.

Where an operation includes costs of public works contracts or supply or service contracts which exceed in value the thresholds set out in those Directives, any type of simplified cost options may be established in accordance with the methods set out in Art. 53(3) CPR for the reimbursement of direct staff costs. Article 55(2) CPR may equally be used.

Public procurement within the European Union is governed by Directive 2014/24/EU and the Directive 2014/25/EU. The Directives define inter alia the concept of 'procurement', including thresholds. It is the responsibility of the Member States to apply the EU and national rules on public procurement.

Finally, the Czech authorities are invited to refer to the Commission Notice Guidelines on the use of simplified cost options within the European Structural and Investment Funds (ESI) – Revised version following the entry into force of Regulation (EU, Euratom) 2018/1046 *(cf. 2021/C 200/01, in particular points 2.4.1., 2.4.2, 3.1.2.2 and 3.1.2)*. While these Guidelines refer to the legal framework of the 2014-20 programming period, the same principles may be applied during the 2021-27 programming period. This is particularly relevant for legal provisions that have been carried over from 2014-20 to the new programming period.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00153 - TREATMENT/VERIFICATION OF INFRINGEMENTS - REQUEST FOR CLARIFICATION (CPR AND ETC REGULATION 2021-2027)

Relevant Articles:

Article 258 TFEU

Article 97 (1) (d) CPR

Article 22 (4) (j) Interreg Regulation,

Article 22(4)(h) Interreg Regulation

Member State: N/A

Question 1 (including any relevant facts and information):

Article 22 (4) (j) Interreg Regulation foresees that the monitoring committee should *"ensure that selected operations are not directly affected by a reasoned opinion by the Commission in respect of an infringement within the scope of Article 258 TFEU that puts at risk the legality and regularity of expenditure or the performance of operations; (..)"*.

1. How Interreg programmes should obtain information about the list of infringements? Could this website be sufficient: Infringement Decisions (europa.eu)? Should the managing authorities from Interreg programmes rely on the information provided by national/regional authorities? Screening all kind of infringement procedures (even if limited to 'direct impact' will be a huge challenge for MA and MC members.
2. What to do in case of an infringement in an area covered by a specific project? How to assess that selected operations are '*directly affected*' by a reasoned opinion? A very wide interpretation could potentially 'block' several Interreg projects/programmes.

Question 2:

Article 97 (1) (d) CPR provides that the Commission may suspend all or part of payments (…) if any of the following conditions is met: (d) *"there is a reasoned opinion by the Commission in respect of an infringement procedure under Article 258 TFEU on a matter that puts at risk the legality and regularity of expenditure".*

It is not clear to us how checks should be carried out by the desk officers when processing interim payments.

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In accordance with Article 69(2) CPR Member States are to ensure the legality and regularity of expenditure included in the accounts submitted to the Commission and shall take all required actions to prevent, detect, correct and report on irregularities including fraud.

Ensuring that selected operations are not directly affected by a reasoned opinion by the Commission in respect of an infringement under Article 258 TFEU aims at preventing irregularities. In accordance with Article 22(4)(i) ETC, the monitoring committee or steering committee is responsible for this task in Interreg programmes.

In supporting the work of the monitoring committee, the managing authority is to provide the monitoring committee in a timely manner with all information necessary to carry out its tasks (Article 75(a) CPR).

A reasoned opinion (a formal request to comply with EU law) may be sent to the Member State when the Commission concludes that the Member State is failing to fulfil its obligations under EU law. It explains why the Commission considers that the country is breaching EU law. This justification is the basis for the Member State to establish if there is a direct link between the matter addressed by the reasoned opinion and the expenditure at stake so that to put at risk its legality and regularity or the performance of operations. Programme authorities should be engaged in such an assessment. Partners may bring valuable expertise in such an assessment. The MA or Monitoring Committee may consult the database of infringement decisions as one of the sources of information. It is for the participating Member States to establish efficient communication on infringement cases.

It is up to the Managing Authority and Monitoring Committee to decide, based on all the information available, if an operation or a type of operations are directly affected on a case by case basis.

It should be noted that the reasoned opinion within the infringement procedure may lead to suspension of payments (Article 97(1) CPR). In its assessment if the 'sufficient direct link' mentioned in Recital 70 CPR exists, the Commission will base itself on this notion as set-out by the ECJ case-law and will consider the situation on a case by case basis and taking into account the principle of proportionality and depending on the expenditure at stake (QA00152).

QA00154 - Reporting requirements for data fields 112 and 115 – Annex XVII to the CPR

Relevant Article: Art. 72(1)(e), Art.91, Art.94, Art.95 CPR

Member State: DE

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

"With regard to the preparation of flat-rate payments under Article 94/95 CPR, we have examined the data fields for these flat-rate amounts in Annex XVII. The following questions have come up:

1) Data field 112: Does the indication "type of reimbursement" refer to the forms of grants referred to in Article 53 of the CPR (costs actually incurred, unit costs, lump sums, flat rates, combination of the above-mentioned, financing not linked to costs)? Do the types of expenditure also include the information in Article 67 CPR (benefits in kind and depreciation costs)? If so, which other types of expenditure are also meant?

Original text: *Datenfeld 112: Handelt es sich bei der Angabe ‚Art der Erstattung' um die Formen der Zuschüsse nach Artikel 53 Dach-VO (tatsächlich entstandene Kosten, Kosten je Einheit, Pauschalbeträge, Pauschalfinanzierungen, Kombination aus vorgenannten, nicht mit Kosten verknüpfte Finanzierung)? Gehören die Angaben in Artikel 67 Dach-VO (Sachleistungen und Abschreibungskosten) zu den Ausgabearten? Wenn ja, welche Ausgabearten sind darüber hinaus gemeint?*

2) Data field 115: Does the indication "kind of support" refer to the subdivision under Article 52 CPR (grant, financial instrument, prize money)? With regard to "type of reimbursement" see question on data field 112.

Original text: *Datenfeld 115: Geht es bei der Angabe ‚Art der Unterstützung' um die Unterteilung nach Artikel 52 Dach-VO (Zuschuss, Finanzinstrument, Preisgeld)? Bzgl. ‚Angabe der Erstattung' siehe Frage zu Datenfeld 112.*

3) The above data fields 112 and 115 provide information on the reimbursement to the beneficiary. If the reimbursement to the beneficiary is different from the reimbursement by the European Commission to the Member State, how should this be recorded in the electronic system? The electronic system is based on information at project level. The accounts to the European Commission have so far been based on the data on the projects. The possibility for lump sums and flat rates under Articles 94 and 95 change this system. Is the presentation of the statement to the European Commission in SFC2021 sufficient?

Original text: Die vorgenannten Datenfelder 112 und 115 geben Auskunft zur Erstattung gegenüber dem Begünstigten. Wie soll im elektronischen System die Erfassung erfolgen, wenn die Erstattung an den Begünstigten nicht identisch ist mit der Erstattung durch die EU-Kommission an den Mitgliedstaat? Das elektronische System basiert auf Angaben auf Ebene des Vorhabens. Die Abrechnung gegenüber der EU-Kommission hat sich bislang aus den Daten der Vorhaben ergeben. Mit den Pauschalen nach Artikel 94 und 95 Dach-VO ändert sich diese Systematik. Ist die Darstellung der Abrechnung gegenüber der EU-Kommission in SFC2021 ausreichend?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Annex XVII provides the 'Data to be recorded and stored electronically on each operation'. Data fields 112-114 of Annex XVII to the CPR are only relevant for expenditure reimbursed by the Commission based on simplified cost options (Article 94 CPR) whereas data fields 115-117 are relevant only in case expenditure is reimbursed by the Comission based on financing not linked to costs (Article 95 CPR). In such cases:

1) For data field 112 related to simplified cost options: what should be introduced is a) when (date) expenditure was paid to the beneficiaries of operations covered by Art. 94 and b) the form of grant of this reimbursement i.e. costs actually incurred and paid or a type of SCO (the form of grant as per Art. 53(1) CPR)). The wording "each type of expenditure in a payment application" refers to the type of SCO declared to the COM in line with the type of SCO approved under Article 94 (art. 51(c)-(e) CPR).

2) Data field 115: what should be introduced is a) when (date) expenditure was paid to the beneficiaries of operations covered by Article 95; b) the form of grant of this reimbursement i.e. costs actually incurred and paid or a type of SCO or FNLC (the form of grant as per Art. 53(1)(a)-(f) CPR) and c) the "kind" of support refers to whether it is provided through grants or financial instruments or prize (the form of support as per Art. 52 CPR)

3) It is noted that data fields 112 and 115 of Annex XVII CPR do not require information on the amounts reimbursed to the beneficiaries regarding the schemes approved on the basis of Article 94 or 95 CPR.

QA00155 - VERIFICATIONS REGARDING RELOCATION - CPR AND ETC REGULATION 2021-2027

Relevant Articles:

Article 22 (4) (h) Interreg Regulation,

point (27) Article 2 of the CPR,

point (a) of Article 65(1) of the CPR

Member State: n/a

Question 1 (including any relevant facts and information):

Article 22(4)(h) Interreg Regulation foresees that the Monitoring Committee shall *"ensure that operations do not include activities which were part of an operation subject to relocation within the meaning of point (27) of Article 2 of Regulation (EU)*

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

2021/1060 or which would constitute a transfer of a productive activity within the meaning of point (a) of Article 65(1) of that Regulation"

Should the managing authorities from Interreg programmes rely solely on the information (declarations) provided by national/regional authorities?

Answer:

In accordance with Article 22(4)(h) ETC in selecting operations the monitoring or steering committee is to ensure that operations do not include activities which were part of an operation subject to relocation in accordance with Article 66 CPR.

In accordance with Article 66 CPR where a contribution from the Funds constitutes State aid, the managing authority shall satisfy itself that the contribution does not support relocation in accordance with Article 14(16) of Regulation (EU) No 651/2014.

The procedure under Article 14(16) of Regulation (EU) No 651/2014 requires that the beneficiary confirms that it has not carried out a relocation to the establishment in which the initial investment for which aid is requested is to take place, in the two years preceding the application for aid and give a commitment that it will not do so up to a period of two years after the initial investment for which aid is requested is completed.

Therefore, the confirmation of the beneficiary is necessary to obtain the assurance required in Article 22(4)(h) Interreg Regulation.

In supporting the work of the monitoring committee, the managing authority is to provide the monitoring committee in a timely manner with all information necessary to carry out its tasks (Article 75(a) CPR).

At the stage of selection of operations, the monitoring committee or steering committee needs to satisfy itself that the application for assistance contains the applicants' confirmation (declaration) about the relocation in accordance with Article 14(16) of Regulation (EU) No 651/2014.

QA00156 - EXCHANGE RATE IN CASE OF SCOS AS UNION CONTRIBUTION

Relevant Articles:

Article 54 of the CPR

Article 76 of the CPR

Article 94 of the CPR

Member State: CZ

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Background

CZ had submitted end of last year a question on the exchange rate to use when declaring the SCO amounts under Article 94 to the Commission. In particular the question as asked is presented below:

"We would like to verify the correctness of our intended approach to the conversion of amounts set out in the SCO methodologies from CZK into EUR in order to fill in part A of the appendix 1 of the programme in SFC2021.

The amounts of the unit costs or lump sums set out in the methodologies by the MAs are expressed in the national currency (CZK). In order to fill in the information in the appendix 1, part A, column „Amount (in EUR) or percentage (in case of flat rates) of the SCO" in SFC2021 we have to convert these amounts into EUR.

For this purpose we plan to coordinate the process horizontally and set the exchange rate used for the conversion in a uniform manner. We plan to use the monthly exchange rate of the Commission in the month, in which the individual MA will submit the programme for the approval in SFC2021.

We consider using the said exchange rate for the conversion only as a necessary administrative step in order to fulfil the requirements set out in the programme template because SFC2021 does not allow us to enter amounts in national currency.

However in practice the amounts to be paid to beneficiaries as unit costs or lump sums will be set in CZK. Only later, when these amounts are included in payment claims submitted to the body responsible for carrying out the accounting function conversion into EUR will take place using the monthly accounting exchange rate of the Commission applicable in the month during which the expenditure is registered in the accounting system of the body entrusted by the accounting function.

It may thus happen that due to the exchange rate fluctuations the amounts in EUR filled in the part A of the appendix 1 will be different from the amounts used for the calculation of the amounts claimed in the payment applications to the Commission.

This issue relates also to the EU level SCOs once approved by the Commission, which may bring the same question on the correct exchange rate to be used for the conversion of the amounts set in EUR into CZK. As EU level SCOs haven´t been used in Czechia so far we would appreciate some guidance on this issue.

Please could you confirm that CZ understanding regarding the use of the exchange rate for the conversion of the amounts into EUR for purposes of the appendix 1 submission is correct and that this amount may differ from the actual amounts used when calculating payment claims due to exchange rate fluctuation? We would very appreciate the advice from you in this regard."

Following internal consultation and with DG EMPL by e mails the reply provided to CZ was the following:

"Regarding the submission of Appendix 1 (actually it the programme submission stage): Programmes should be submitted in euro. So, indeed, the CZ SCO amounts

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

should be converted in euros when submitting the programme. CZ can proceed as suggested ie using the monthly exchange rate of the Commission in the month, in which the individual MA will submit the programme for the approval in SFC2021.

For the declaration of expenditure stage: The SCO amounts will be approved in the COM decision approving the programme. In such case, as the amounts are decided and approved in euros, the provision in Art. 76(1)(c) CPR is not relevant. In line with Art.91(4)(b) CPR, where the Union contribution is made pursuant to points (c), (d) and (e) of Article 51, the amounts included in a payment application are the amounts determined in accordance with the decision referred to in Article 94(3) or the delegated act referred to in Article 94(4). Therefore, legally the amount in the COM decision is binding for the COM & the Member State and this amount should also figure in the declaration of expenditure from the Member State.

This means that for reimbursements in case of SCO schemes under Art.94 CPR, CZ proposal (that the amounts declared to the COM do not necessarily match the SCO amount in EUR of Appendix 1 due to potential fluctuations of the exchange rate) may not be accepted. It is also reminded that the risk deriving from exchange rate is for both parties, and the difference for the MS could be positive/or negative. In the long term, the difference may not be that much or marginal."

Question

The authorities came back with a follow-up question stating the following:

"We clearly understand that the amounts of the unit costs or lump sums set out and described in Appendix 1 have to be expressed in EUR.

However, we don't see the reason why in this case use of Art. 76(1)(c) is not relevant. It's clear that SCO according to Art. 94 (3) have to be approved in the COM decision and every amount in the programme has to be expressed in EUR, but in our opinion the basic principle of converting the amounts of expenditure incurred in another currency into EUR is defined by Art. 76(1)(c). This view is supported by Art. 76(3) which provides specific derogation from Art. 76(1)(c) for the Interreg programmes, but there is no derogation regarding Art. 94.

We perceive the amounts adopted pursuant to Art. 94 as very similar to those in the current programming period 2014-2020 laid down for ESF in the Delegated Acts adopted by the Commission pursuant to Art. 14(1) of the Reg. 1304/2013 (see delegated Act 2015/2195 (C(2020) 8641 from December 2020)). There all amounts are expressed in the national currency and only later for the purposes of calculating the amount to be included in the payment application these amounts are converted into EUR using the monthly exchange rate of the Commission as laid down in Art. 133(1) Reg. 1303/2013.

Moreover, the amounts and rates proposed according to Art. 94 are based on a detailed fair, equitable and verifiable calculation method carried out in national currency. The calculation method together with the amounts established in the national currency are also assessed by the audit authority. On contrary, the Audit

Authority does not issue any opinion on the euro amounts included in Appendix 1 nor on the exchange rate used. As a result different amounts would be declared to the Commission in EUR than those precisely calculated and reviewed by the AA.

Besides, in Czechia we have planned to use the same amounts and the same method of declaration on the level COM - MS and MA – beneficiary, which would however not be possible anymore if the current explanation applied. In this way, Member States which have adopted euro as their currency would be put in a more advantageous position compared to those who use national currencies.

Finally we don't understand why there should be different converting principle in case of using real costs and SCO according to Art. 94, notably when calculation of SCOs amount is determined on the basis of real costs. In our opinion the simplified costs should come as close as possible to the real costs. This can only be achieved by using the amounts set in the national currency and converting them with the actual exchange rate."

Answer

1. In line with Article 94 CPR the Commission may reimburse the Union contribution to a programme on the basis of SCOs based on the amounts and rates approved by a Commission decision.

To this effect a Member State must submit a proposal to the Commission in accordance with the templates set out in Annexes V and VI, as part of the programme submission or of a request for its amendment.

In accordance with paragraph 3 of Article 94 CPR the decision approving the programme or its amendment shall set out the types of operations covered by the reimbursement based on unit costs, lump sums and flat rates, the definition and the amounts covered by those SCOs, and the methods for adjustment of the amounts.

In accordance with Article 87 CPR all amounts set out in programmes, including in the appendices on simplified cost options, reported or declared to the Commission must be denominated in euro. The exchange rate used by the accounting function on the basis of Article 76 CPR cannot change the financing decisions adopting or amending the programme.

1. Article 91(4)(a) and (b) CPR defines the amounts to be included in payment applications when the Union contribution is made pursuant to Article 51 (a)-(d) CPR: these are the amounts expressed in euro as set out in the decisions referred to in Article 94(3) or 95(2) CPR or the delegated acts referred to in Article 94(4) or 95(4) CPR. Due to that reason Article 76 does not apply to such cases.
2. The legislative framework for the ESF Regulation is different from the one of the 2021 -2027 programming period, so the comparison to Regulation 1304/2013 and delegated act 2015/2195 is not relevant. In particular the SCO amounts in the Delegated Act are set out in national currency which is not the case of SCO amounts in the Commission decision under Article 94 CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Therefore such amounts being in national currency will be converted in euro by the national authorities when declaring expenditure the Commission in line with Article 133 (1) CPR. The legal framework is thus fully respected and no discrepancies between the amounts of the two levels may occur due to conversion.

Concluding:

- The Commission decision approving the programme approves the SCO amounts under Article 94 CPR in euro. Amendment of the amount agreed requires an amendment of the financing decision. Irrespective of the result of the conversion at national level the amount included in a payment application to the Commission in accordance with Article 91(4)(b) cannot be different than the SCO amount approved in the decision.
- If the national authorities consider that this method is not suitable to them, they may just apply SCOs under Articles 53 to 56 CPR. In this case based on 91(4)(c) payment applications would include the SCO amount calculated on the applicable basis. This amount being set out in national currency would be then converted in euro in line with Art.76 CPR.

QA00157 - IRRECOVERABLE AMOUNT BELOW EUR 250 IN THE 2021-2027 PROGRAMMING PERIOD

Relevant Article: Article 69 of the CPR

Member State: LV

Question 1 (including any relevant facts and information):

In the context of 2014-2020 Council Regulation (EC) No 1083/2006 Article 122 providing that "..When amounts unduly paid to a beneficiary cannot be recovered and this is as a result of fault or negligence on the part of a Member State, the Member State shall be responsible for reimbursing the amounts concerned to the budget of the Union. Member States may decide not to recover an amount unduly paid if the amount to be recovered from the beneficiary, not including interest, does not exceed EUR 250 in contribution from the Funds.

- What would be an appropriate amount unduly paid for a Member State to decide not to recover from the beneficiary in the 2021-2027 funding period? What principles and provisions would we need to take into account in deciding the appropriate amount?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- Is it appropriate to continue with the existing practice from 2014 -2020 funding period and choose not to recover an amount unduly paid if the amount to be recovered from the beneficiary, not including interest, does not exceed EUR 250 in contribution from the Funds? Or would it also be acceptable to choose any other amount that we consider appropriate not to recover?

Answer:

As explained in the QA00054, recovery of funds is a Member State responsibility in all cases. The Commission is concerned only with regard to withdrawals of amounts, in accordance with Articles 98(3)(b), 98(6) and 98(7) of the CPR.

In accordance with Article 69(2) CPR Member States are responsible for taking all required actions to prevent, detect, correct and report on irregularities including fraud. As long as expenditure is withdrawn from the accounts, it is up to the Member States to set out the approach towards recoveries.

Unlike in 2014-2020 programming period, the Common Provision Regulation (CPR) for 2021-27 does not contain any provision with regard to the recovery of amounts unduly paid.

On the other hand, Article 52(2) ETC set out the specific conditions for recoveries under Interreg programmes. It indicates that amounts below 250 EUR do not need to be recovered from the project partners to avoid cumbersome recovery procedures between countries for smaller amounts.

QA00158 - USE OF FINANCIAL INSTRUMENTS UNDER THE EMFAF

Relevant Articles: Articles 58-62 of the CPR

Member State: HR

Questions (including any relevant facts and information):

1. Is it acceptable to use Financial Instruments financed with EMFAF support in the form of micro and small loans for working capital?
2. Instead of providing Financial Instruments for investment risk sharing loans to large enterprises as initially envisaged, it is possible to finance them with Financial Instruments for working capital loans?
3. Is it possible to use portfolio guarantees for working capital loans instead of individual guarantees (for micro, small and medium entrepreneurs) especially in a current economic crises when the capital investments have slowed down and there is more need for working capital.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answers:

To 1. and 2. :

First of all, in accordance with Article 58(3) of the CPR, support from the Funds through financial instruments should be based on an *ex ante* assessment, which should include at least the proposed amount of programme contribution, the most appropriate financial products to address the market gaps, the proposed final recipients and the expected contribution of the financial instrument to the achievement of specific objectives.

Loans for working capital can be supported from the EMFAF through financial instruments, if they contribute to the achievement of specific objective/s of the EMFAF programme.

In accordance with Annex X of the CPR, the terms and conditions of programme contribution to the financial instrument should clearly identifiy the final recipients[1] (SMEs, large companies) as to address market gaps identified in the *ex-ante* assessment.

Finally, please, note that Article 61 of the CPR allows for differentiated treatment of investors operating under the market economy principle through an appropriate sharing of risks and profits, taking into account the principle of sound financial management. The level of such differentiated treatment shall not exceed what is necessary to create incentives for attracting private investors.

3. Nothing in the legal framework forbids the use of portfolio guarantees for working capital loans, if they are clearly justified by the *ex-ante* assessment.

---

[1] In line with the eligibility rules of the underlying programmes.

QA00159 - THE FUTURE STRUCTURE OF THE EMFF MONITORING COMMITTEE DURING THE FUNDING PERIOD OF THE EMFAF

Relevant Articles:

Art 38 and Art 39 of the CPR

Art 49 of the CPR 2014-2020

Member State: FI

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

Regarding the future of the EMFF Monitoring Committee, can the new EMFAF Monitoring Committee also handle EMFF questions, or can the Finnish Monitoring Authority run the EMFF MC via written procedure until 2023?

Answer:

Concerning the overlap between the two periods, 2014-2020 MCs will continue to fulfil their tasks until closure of the relevant programme (including the examination and approval of the final implementation report or the last annual implementation report for the EMFF). In the case of continuity of the programme into the 2021-2027 period, the new monitoring committee (MC) can take over the tasks of the 2014-2020 MC, which then should be properly reflected in the rules of procedure, the membership and agendas. For programmes that do not continue into the 2021-2027 period, the tasks of the 2014-2020 MC may not be taken over.

When the MC covers both periods, this distinction has to be made clear in the rules of procedure of MC. The MA has to ensure that the partners of the previous period, if different from the ones in the new period, are present for the agenda items related to 2014-2020. The agenda has to clearly distinguish the items which concern 2014-2020 and 2021-2027.

In particular, if the 2021-2027 MC will have a different composition of members to the previous MC, it must be clearly established in the rules of procedure the implications this will have on the right of members to vote: members of the 2014-2020 MC can vote on questions relating to the 2014-2020 OP, members of the 2021-2027 MC can vote on questions relating to the2021-2027 programme(s), and members of both MCs can vote on all questions.

Article 49(1) CPR 1303/2013 states that "*The monitoring committee shall meet at least once a year and shall review implementation of the programme and progress made towards achieving its objectives*." This provision requires at least one physical or online meeting to be held every year. Such a meeting cannot be replaced by written consultations of the MC.

QA00160 - RESPONSIBILITIES OF BENEFICIARIES

Relevant Article: Article 50 of the CPR

Member State: DE

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

Article 50(1)(a) of the CPR

Accordingly, the beneficiaries are obliged to describe the funding project (including the objectives and results) on their official website - "if such a website exists" - or in the social media.

Since there are constant changes, especially in the area of internet/social media, the question arises as to which point in time is decisive for this obligation? Is it the time of application? That would mean:

If there is no website or no activity in social media at the time of application submission, then no corresponding obligation has to be included in the notice of approval!

This would be a practicable and sensible solution, because a corresponding query can be made when the application is submitted, the granting authority is then aware of the corresponding sites and compliance with this obligation can be checked in a targeted manner.

Article 50(1)(d) of the CPR

Does the obligation to provide information according to Art. 50, Para. 1d) only apply to investment projects (construction projects, technical investments)? This would make sense insofar as it is usually connected with specific locations ("visible locations"). However, in the case of mobile technical investments (vehicles, equipment), the question arises as to whether or where the corresponding information should be displayed.

Answer:

Art. 50(1) states: "1. Beneficiaries and bodies implementing financial instruments shall acknowledge support from the Funds". The rules on information and communication apply to operations that have already been selected and approved for support as their objective is to provide information on and give visibility to operations that are being funded by the Funds. This is also implied by the wording of Article 50 of the CPR, which refers to "beneficiaries" and "support from the Funds." This means that after support has been provided to the operation, full compliance with information and communication rules should be ensured.

Article 50 applies to all forms of support. Article 50(1)(d) applies to operations relating to physical investments whose cost is below the thresholds set out in point (c) (€100.000 for EMFAF projects), and to any operations which do not involve such physical investments.

For mobile equipment, the relevant display should be clearly visible to the public. It may be placed where such equipment is normally stored, for example on the exterior of a warehouse, if it is not possible to put a plaque on the object itself. It is considered

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

good practice to indicate the support from the Union on all equipment for example by using stickers.

QA00161 - CLLD SUPPORT

Relevant Articles: Article 34 and 63 of the CPR

Member State: EE

Question 1 (including any relevant facts and information):

According to the Article 29 paragraph 6 of Regulation 2021/1060 the support may be provided for the preparation and design of territorial strategies.

Article 34 paragraph 1(a) establishes that the Member State shall ensure that support from the Funds for community-led local development covers capacity building and preparatory actions supporting the design and future implementation of the strategy.

Article 34 paragraph 2 establishes that the support referred to under point (a) of paragraph 1 shall be eligible regardless of whether the strategy is subsequently selected for funding.

Article 63 paragraph 1 establishes that 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 Regulations.

1. Does it mean that, unlike to other forms of integrated territorial development listed in the Article 28, in case of CLLD the provision of support mentioned in the Article 34 paragraph 1(a) is mandatory?
2. Does Article 34 paragraph 2 establish requirement to pay support for the preparation of strategies that are not selected? Does this requirement also apply in case the reason for non-selection is non-compliance of the action group or the strategy?
3. Can Member States define national eligibility rules with regard of the support for the preparation and design of territorial strategies?

Answer:

1. In accordance with Article 34(1) CPR, Member States shall ensure that support for the CLLD covers **all** activities listed under points (a)-(c) of that Article, including preparatory actions supporting the design and future implementation of the strategy.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

2. The rationale for the preparatory support under Article 34(2) CPR was (apart from capacity building of local actors), to enhance the creation of local partnerships and assist them in designing the local development strategies even before these strategies are selected. As such it is expected that Member States will support the preparatory actions for all CLLD strategies (as outlined in the CPR) that may participate in a selection process designed by the Managing Authority under a programme, providing that these strategies set out the elements referred to in Article 32(1) CPR and regardless of whether they are selected in line with Article 32(2) CPR.
3. In accordance with Article 63(1) CPR, eligibility of expenditure is 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 Regulations. Article 34(2) clearly sets out the specific rule that the support for preparatory actions supporting the design and the future implementation of the CLLD strategies is eligible, regardless of whether the strategy is subsequently selected for funding.

QA00162 - SINGLE FI RECEIVING CONTRIBUTION FROM DIFFERENT FUNDS

Relevant Articles:

Article 2 of the CPR

Article 59 of the CPR

Member State: FR

Question 1 (including any relevant facts and information):

One of the regions in France, Occitanie, wants to use financial instruments for the ESF+ (actions on social economy and individual entrepreneurship - microcredit). There are already 2 funds in place, one fund for FI for ERDF and one for EARDF managed by the EIF.

As the amount for the FI for the ESF+ is limited (10 million €) the authorities would like to integrate this into the contract currently in place for managing the financial instrument funded by the ERDF (90 million €). This means that there will be only one mandate or contract for both funds.

We would like to ask your advice whether there would be any legal obstacle or constraint to conclude one contract for both funds.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

We understand the question that France would like to contribute ESF+ funds under shared management to a financial instrument ('FI') for the 2021-2027 programming period. This FI is a continuation of the 2014-2020 FI setup in Occitanie with ERDF resources. The ESF+ resources are contributed to the FI as a separate stream of support to be implemented under the same FIs. The intention is to have one funding agreement covering the terms and conditions for the use of ESF+ and ERDF contributions under the same multi-fund programme.

Article 58(1) of Regulation 2021/1060 ('CPR') states that managing authorities may provide a programme contribution, from one or more programmes (e.g. ERDF and ESF) to existing or newly created FI.

The MA may entrust the management of one or multiple FIs to the same body implementing a holding fund or a specific fund provided that the provisions under Article 59 CPR on the selection of the body implementing the FI are respected.

The MA must conclude a funding agreement with the body implementing the FI in accordance with Article 59(5) and Annex X of the CPR. For the sake of simplification, the MA may conclude one funding agreement with a body implementing multiple FIs but needs to make sure that the terms and conditions for programme contribution for each FI are clearly identifiable. The update of the funding agreement to include the additional ESF+ programme contributions should define the terms and conditions of their use, including their audit trail in accordance with Section II of Annex XIII to the CPR.

The obligations stated in Article 59(9) CPR should be ensured by the body implementing the FI.

According to Article 92(2) CPR, the first payment claim may be up to 30% of the total amount of the programme contributions committed to the financial instruments under the relevant funding agreement at the date of the submission of the first payment claim (see also QA00083).

QA00163 - ARE COSTS FOR THE MANAGEMENT VERIFICATIONS PAID FROM THE PROJECT BUDGET BY THE BENEFICIARIES IN THE ETC PROGRAMMES IN LINE WITH THE CPR 2021-2027?

Relevant Articles:

Article 72 and 74 of the CPR

Article 46(1) and 42(k) of the ETC

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State: n/a

Background:

As for the managing authorities of the IGJ goal, the managing authority of an Interreg programme shall also carry out management verifications to verify that the co-financed products and services have been delivered, that the operation complies with applicable law, the programme and the conditions for support of the operation (Article 74(1) CPR). The managing authority can carry out the management verifications with its own staff or out-source this task to external service providers (Article 42, point (k), ETC[1]).

Moreover, management verifications shall be risk-based and proportionate to the risks identified *ex ante* and in writing. Management verifications shall include administrative verifications in respect of payment claims made by beneficiaries and on-the-spot verifications of operations.

In some of the 2021-2027 Interreg programmes, the costs of the management verifications will be part of the total project budget and have to be paid by the project partners. There are different models who will actually be the person to carry out management verifications. One model is that the project partners will have to select controllers from the pre-defined list of experts at MS level. Another model is that the management verifications are carried out by staff of the MA or by persons working under the responsibility of the MA and the respective costs are part of the project budget, accounted as a certain percentage. Those costs of management verification have to be planned already in the application form for support, reported as eligible expenditure under the "external expertise and services cost" budget line in the partner's progress reports. The managing authorities refer to Article 42, point (k), ETC as legal basis for this procedure. After the project progress report is approved, the ERDF reimbursement is paid out by the managing authority to the lead beneficiary (Lead Partner).

Question (including relevant facts and information):

Is it possible for a beneficiary to select controllers and pay for their work on management verification from the project budget? Is this procedure in line with the Articles 72 and 74 CPR and Article 46(1) and 42, point (k), ETC?

Answer:

In accordance with Articles 46(1) ETC and 74(1) CPR, it is for the managing authority to carry out management verifications.

In accordance with Article 46(3) and (7) ETC, the Member States participating to Interreg programmes may decide that these management verifications are to be done through the identification by each Member State of a body or person (the national 'controller') responsible for these verifications on its territory.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In accordance with Article 46(8) ETC, each Member State shall identify as controller either a national or regional authority or a private body or a natural person. In case the controller is a private body or a natural person, the requirements set out in Article 46(9) ETC need to be complied with.

Article 42, point (k), ETC –which builds on previous Article 6(k) of Commission Regulation 481/2014 – states that *"verifications pursuant to point (a) of Article 74(1) of Regulation (EU) 2021/1060 and Article 46(1) of this Regulation"* can be part of eligible expenditure paid by the beneficiaries.

Article 38(2) ETC requests that any expenditure eligible under the ETC Regulation shall relate to the costs of initiating or initiating and implementing an operation or part of an operation and Article 42, point (k) *(on the contrary of points (l) and (m) on accounting and audit costs)*, does not specify that the management verifications costs should be at programme level.

If the programme allows for it and the beneficiaries do use external services and expertise to carry out management verifications, this should be under the following conditions:

- the public or private body or natural person carrying out these verifications should be selected among a pre-defined list of experts established at programme or at national level and complying with the requirements mentioned in Article 46(9) ETC.
- it does not remove the responsibility of the Managing Authority to carry out management verifications or to satisfy itself that the expenditure of beneficiaries participating in an operation has been verified by an identified controller in accordance with Article 46(5) ETC.

In conclusion and in principle, management verifications should be carried out and paid by the Managing Authority or under its responsibility i.e. from the technical assistance of the programme as it is the case in the majority of ETC programmes.

However and pursuant to Article 42(k) ETC, management verifications of an operation could be carried out by a public or private body or natural person under the conditions mentioned above and their costs being paid by the beneficiaries at an operation level.

[1] (k) verifications pursuant to point (a) of Article 74(1) of Regulation (EU) 2021/1060 and Article 46(1) of this Regulation.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00164 - COMBINATION OF FINANCIAL INSTRUMENT AND INTEREST RATE SUBSIDY AND CALCULATION OF MANAGEMENT COSTS AND FEES

Relevant Article: : Article 58(5) of the CPR

Member State: PL

Question 1 (including any relevant facts and information):

The Polish authorities wish to clarify the following two further points in relation to the financial instruments set up to provide combined FI and grant support, i.e. interest rate subsidy specifically, in one operation in line with Article 58(5) CPR:

1. The meaning of the investment cost and whether the interest rate subsidy constitutes part of the investment cost as well as the VAT treatment of the interest rate subsidy; and
2. The calculation of the management costs and fees if the combined support of interest rate subsidy is provided by other body implementing FI, i.e. holding fund, than the body implementing the product fund.

Answer:

1) We understand that the first question concerns the eligibility of VAT where interest rate subsidies are linked to a loan co-financed from the funds. The question asks in that respect whether interest rate subsidies could constitute 'investment costs' within the meaning of Article 64(1)(c)(iii) CPR.

It follows from Article 64(1)(c)(iii) CPR that where an investment is supported by a financial instrument combined with a grant, VAT is eligible for the part of the 'investment cost' that 'corresponds' to the grant support where the grant part is below 5 million EUR or for any amount where VAT is non-recoverable under national VAT legislation.

A loan may support the full cost of the investment or part of it. If the loan from the programme resources supports part of the cost of investment, the rest of the investment may be supported by other resources - either programme or non-programme resources (e.g. a commercial loan or a grant).

Grants provided to final recipients with a view to financing investments could be directly linked to the cost of investment by such final recipients. However, interest rates subsidies are intended to facilitate access to financing by reducing the applicable interest rate with the result that they cannot be linked to specific investment costs, i.e. no part of the investment 'corresponds' to the support in the form of interest rate subsidies. The interest rate subsidy concerns the interest rate which constitutes the financial cost for the loan, therefore the interest rate subsidy is not an investment cost or part of it within the meaning of Article 64(1)(c)(iii) CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

2) According to Article 68(1)(d) CPR, the payment of management costs and the reimbursement of management fees incurred by bodies implementing the financial instruments constitute eligible expenditure. Those financial instruments include financial instruments with a grant component under Article 58(5) CPR. Therefore, in the 2021- 27 programming period, when grants and financial instruments are combined in one single financial instrument operation, management costs and fees incurred in relation to the grant component of that operation will also be eligible.

Article 58(5) CPR allows either the body implementing a holding fund or a specific fund to manage the grant element in case of a combination with a financial instrument in one operation.

For example, it is possible to have a set-up where the body implementing the loan fund (i.e. a specific fund) is providing loans to final recipients, and the body implementing the holding fund is managing the interest rate subsidy to or for the benefit of the final recipients.

This provides some organisational flexibility, but it has no impact on the total level of the management costs and fees that can be declared to the Commission as eligible expenditure calculated on the basis of the loans disbursed to final recipients for the loan component and on the basis of the interest rate subsidy disbursed to or for the benefit of final recipients for the grant component.

QA00165 - PURCHASE OF LAND LIMIT

Relevant Article: Article 64(1)(b) CPR

Member State: CZ

Question 1 (including any relevant facts and information):

Our question relates to the Article 64(1)(b) CPR, namely to the application of 15 % limit for the eligibility of land purchase in case of „derelict sites and those formerly in industrial use which comprise buildings". Is the application of 15 % limited in a manner that both sites (derelict sites and sites formerly in industrial use) must comprise buildings, or the use of this higher limit of 15 % is possible regardless the derelict site or site formerly in industrial use is built-on or not?

Answer:

In accordance with Article 64(1)(b) CPR, for derelict sites and for those formerly in industrial use which comprise buildings limit shall be increased to 15 %.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The limit of the total eligible expenditure used for land purchase is increased to 15 % to favour purchase of 'brownfields' (derelict sites and for those formerly in industrial use) over 'greenfields'. The building is not considered to be a condition for application of 15 % limit. Nevertheless, in case the land is built-on, the 15 % limit covers the cumulative value of both land and the building.

QA00166 - ELIGIBILITY AND TREATMENT OF COSTS GENERATED BY NEGATIVE INTEREST RATES UNDER INTERREG 2021-2027

Relevant Articles:

Article 63(1) and (2) and 90(6) of the CPR

Article 37(2) and (3) of the ETC

Member State: n/a

Question 1 (including any relevant facts and information):

In 2020 few Interreg programmes raised the question about the eligibility of costs generated by negative interest being charged by banks since 1 January 2020 on EU-funds held on account by programmes under shared management. By the end of 2020 it was clarified (in a letter signed by Marc Lemaître, following replies to interpretation questions) that such charges would be eligible under the technical assistance priority axis, applying the corresponding co-financing rate. However, programme managing authorities were requested to establish first that the negative interests charged by the banks are bank charges which are linked to the usual administration of the accounts and therefore eligible.

For 2021-2027, we have received again questions from programmes regarding the costs resulting from negative interest rates. Referring to point 6 of Article 90 CPR (on interest gained), they believe that negative interest should be treated in the same way and covered from ERDF fully.

We seek confirmation on the following:

- are such charges eligible as already confirmed for 2014-2020?

- are these charges covered by the TA (even though a flat rate) and co-financed at the TA co-financing rate, thus not 100% from ERDF?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

The negative interests costs being charged by some banks on EU-funds held on account by programmes under shared management are eligible when they are linked to the usual administration of the accounts.

As regards the treatment of such eligible costs, they should be covered by the technical assistance (Article 27(2) and (3) Interreg).

Given the nature of the flat-rate, there will be no check of the underlying costs of the amounts reimbursed based on the flat rate at EU level.

Furthermore, these costs should first be offset against any 'positive' interests potentially earned (not declaring negative interest already covered by positive interest earned).

At the same time, the managing authority should take all possible actions to avoid the negative interest charges, in line with the principle of sound financial management. This should be done e.g. by more frequent and swift payments to beneficiaries and payment applications to the Commission; by negotiating a more favourable agreement with the bank; by moving to a bank with more favourable conditions.

QA00167 - COLLECTION OF DATA

Relevant Article: Article 72(1)(e) of the CPR and Annex XVII to Regulation (EU) 2021/1060 (CPR)

Member State: LT

Question 1 (including any relevant facts and information):

Is the understanding that the data listed in field 23 of Annex XVII to Regulation (EU) 2021/1060 (hereinafter - the Regulation) does not require direct links and/or data collection in the information system established pursuant to Article 72(1)(e) of the Regulation, if the data is collected in national registers, correct?

The same question also arises regarding the compilation of data referred to in Article 22(2)(d) of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility.

It is to be noted that the necessary data collected in other national registers will always be available to the authorities for performing their functions and ensure the traceability.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

Annex XVII to the CPR sets out the data to be recorded pursuant to Article 72(1)(e) CPR without prescribing a specific structure for the electronic system.

With regard to the above, where a national register already provides all the data listed in field 23 of Annex XVII, there is no need to provide a link or duplicate those data in the electronic system established for the purpose of Article 72(1)(e), provided that the managing authority has direct and full access to that national register.

Regarding the compilation of data referred to in Article 22(2)(d) of the RRF Regulation (EU) Member States need to collect and ensure access to the certain standardized categories of data as defined in the provision. This data needs to be collected and stored by the Member States and kept available for audit and control purposes. This data should be made available to the Commission and investigative bodies upon request. There is however no obligation under article 22(2)(d) of the RRF Regulation that this data is shared on a pre-defined regular basis with the Commission. The Commission provided to Member States an integrated and interoperable information and monitoring system, including a single data-mining and risk-scoring tool that can be used to store, access and analyse the relevant data under Article 22(2)d. Member States are strongly encouraged to use this tool, to make their national data systems compatible with this tool, and to provide it with access to the underlying data to assist national and EU-level controls.

QA00168 - RELOCATION IN CONTEXT OF GBER

Relevant Article: Art. 66(1) of the CPR

Member State: CZ

Question 1 (including any relevant facts and information):

We would like to ask you to clarify the provisions of Article 66(1) of the CPR. Starting from Article 2(27), which defines "relocation" as the transfer of the same or similar activity or part thereof within the meaning of point 61a of Article 2 of Regulation (EU) No 651/2014 (GBER), we assume that the relocation as so defined is applicable to all projects i.e. also to those not covered by the GBER. Is this interpretation correct?

The other question relates to the paragraph 2 Article 66, does it apply to all cases of state aid regardless its type, or does it apply only to the regional investment aid provided in accordance with the Article 14 of GBER?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The provision of Article 66(1) CPR constitutes a rule applicable to all types of support from the Funds. The non-eligibility of expenditure supporting relocation is therefore not limited to operations covered by Commission Regulation (EU) No 651/2014 (GBER). The reference to the GBER in Article 2(27) CPR is used only for the purposes of defining 'relocation'. It is up to the Member State to put in place sufficient procedures and checks to avoid supporting relocation. In this vein, pursuant to Article 73(2) CPR, in selecting operations the managing authority has to ensure that operations do not include activities which were part of an operation subject to relocation.

On the other hand, Article 66(2) CPR is limited to the obligations stemming from regional aid. While under the GBER and the Guidelines on regional State aid for 2022-2027 (the RAG), the beneficiary has to confirm that it has not carried out a relocation to the establishment in which the initial investment for which aid is requested is to take place in the two years preceding the application for aid and give a commitment that it will not do so up to a period of two years after the initial investment for which aid is requested is completed, Article 73(2)(h) CPR puts an obligation on the managing authority to conduct satisfying checks that indeed the cohesion policy does not support relocation.

QA00169 - USE OF GRID ELECTRICITY IN THE PRODUCTION OF HYDROGEN UNDER ERDF AND JTF

Relevant Articles:

Article 7 ERDF regulation

Article 9 JTF Regulation

Member State: SE

Question 1 (including any relevant facts and information):

Sweden's national hydrogen strategy includes investments in fossil-free hydrogen, or electricity-based hydrogen, where the hydrogen is produced with fossil-free electricity from the grid. The fossil-free energy mix contains both nuclear and renewable energy.

- Are these investments eligible under the ERDF and under the JTF? And,
- Is there a legal basis justifying that only renewable hydrogen be eligible for support?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Background:

Under the ERDF, Sweden is planning these investments under the specific objective 2 (ii) Promoting renewable energy, in accordance with Directive (EU) 2018/2001, including the sustainability criteria set out therein.

Following the EC formal observations on the programme, Sweden specified that this is fossil-free hydrogen, and clarified how renewable energy sources will be produced (electricity from the grid, meaning a mix of energy sources including hydropower, *nuclear*, wind, heat, and sun).

Answer:

It is understood that the scope of planned investments includes the production of hydrogen through electrolysis of water and with the electricity stemming from a mix of renewable and non-renewable energy sources. In the absence of further details, the Commission cannot take a position on specific projects.

The legal basis of the 2021-2027 cohesion policy regulations (including Art. 7(1)(a) ERDF and Art. 9(a) JTF) does not rule out the use of electricity produced from nuclear sources. In contrast, the exclusion of fossil fuels limits the production of hydrogen based on fossil-fuel sources from ERDF support and excludes it from the JTF, in accordance with Art. 9(d) JTF and Art. 7(1)(h) ERDF/CF. In that context, the production of hydrogen produced from electricity containing 'heat' is excluded if the heat originates from fossil-fuel sources.

From a policy perspective, EU funds' support for the production of renewable hydrogen should be encouraged. Renewable hydrogen is defined as "hydrogen produced through the electrolysis of water (in an electrolyser, powered by electricity), and with the electricity stemming from renewable sources"[1], whereas renewable energy sources are defined in Directive (EU) 2018/2001 (Renewable Energy Directive) and do not include nuclear energy or heat[2]. The production of renewable hydrogen is therefore fully in line with Art. 3(1)(b)(ii) ERDF and with Art. 8(2)(e) JTF, which are about "*promoting renewable energy, in accordance with Directive (EU) 2018/2001, including the sustainability criteria set out therein*".

To the contrary, the production of electricity-based hydrogen based on electricity that includes non-renewable energy sources is not in line with these specific objectives, and should therefore not receive ERDF or JTF support.

In case it is demonstrated that the planned investments contribute to another specific objective, the Commission is ready to assess concrete proposals.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

---

[1] COM(2020) 301 final

[2] In this context, the draft Commission Delegated Regulation supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a Union methodology setting out detailed rules for the production of renewable liquid and gaseous transport fuels of non-biological origin states the following: "*If the installation producing renewable electricity and the installation producing hydrogen are not only directly connected but are also connected to the grid, evidence should be provided that the electricity used to produce hydrogen is supplied through the direct connection. The installation supplying electricity for hydrogen production through a direct connection should always supply renewable electricity. If it supplies non-renewable electricity, for instance obtained from the grid, the resulting hydrogen will not be considered renewable*".

QA00170 - VOLUNTARY INVOLVEMENT IN THE ESF+ IN COMBINATION WITH SCO

Relevant Articles:

Article 56 of the CPR

Article 67(1) of the CPR

Member State: DE

Question 1 (including any relevant facts and information):

In the next funding period, Lower Saxony wishes to include contributions in kind within the meaning of Article 67 (1) of the CPR in the form of work provided free of charge in order to support voluntary involvement in the ESF+ and ERDF. In all the guidelines, SCOs will be used in the ESF+, and this will also be more frequent in the ERDF than in the past. In the ESF+, the following SCO model will normally be expected:

1. SCOs for staff expenditure
2. Flat rate residual costs for staff costs within the scope of Article 56 CPR
3. Participants' salaries and allowances, if any

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In this situation, the inclusion of unpaid work services in the ESF+ support is possible only if the unpaid work can be included in the calculation of staff expenditure and thus also in the basis of calculation of the residual cost. In the other case, volunteering could not be taken into account in ESF+ funding, as it would be covered by the flat rate for residual costs. The extent to which this problem also arises in the ERDF is not yet foreseeable, as it is not yet clear whether there will be a situation with a possible flat rate for residual costs. With regard to the interpretation of Article 67 (1) in conjunction with Article 56 of the CPR, we are not sure whether the work provided free of charge can be included in the basis of assessment for the flat-rate residual costs?

Answer:

As the definition of direct staff costs, which is the responsibility of the managing authority, is not linked to the form of expenditure (in kind or not), in kind staff costs can indeed be used in the basis amount for calculation of the 40% flat rate.

This possibility is subject to the conditions that all national requirements regarding eligibility of expenditure as well as CPR requirements as regards audit trail are respected and provided that the value/amounts for the in kind staff costs are, as specified in Article 67(1)(e) CPR *"determined by taking into account the verified time spent and the rate of remuneration for equivalent work".*

QA00171 - ANNEX XXIII (PAYMENT APPLICATION) APPENDIX 2 – FLAT RATE TECHNICAL ASSISTANCE

Relevant Article: Article 15 of the CPR

Annex XXIII and Annex XXIV of the CPR

Member State: CZ

Question 1 (including any relevant facts and information):

We would like to follow up on question 'QA00117 - Clarification regarding Annex XXIII (payment application) and XXIV (accounts) of the CPR in 2021-2027 programming period'. From the replies we are not sure whether the amount of the technical assistance in accordance with point (b) of Article 91(3) (flat-rate) should or should not be reported in Appendix 2 (enabling conditions) of the Annex XXIII (payment application). Taking into account Article 15 (5) and (6) of the CPR, which provides for the option to include the expenditure related to operations linked to the non-fulfilling specific objective/enabling condition, the respective amount of technical assistance in accordance with point (b) of Article 91(3) should be added to the expenditure related

to operations linked to the non-fulfilling specific objective/enabling condition in the columns B and C of the Appendix 2. Is our understanding correct, meaning that the calculation of the N+3 rule will take into account not just amounts of pre-financing and payment applications but also amounts reported in columns B and C of the Appendix 2 of the Annex XXIII together with the respective amount of the technical assistance in accordance with point (b) of Article 91(3)?

Answer:

Technical assistance under Article 36(5) CPR is reimbursed by applying the percentages set out in points (i) to (vii) of paragraph 5 of that Article to the eligible expenditure included in each payment application pursuant to Article 91(3). The amount of the technical assistance under Article 36(5) in column D in table 'Expenditure broken down by priority' of Annex XXIII is to be calculated automatically in SFC2021 based on the data provided in the payment application.

As there are no technical assistance activities under Art.36(5) but only a reimbursement based on the expenditure declared in line with Art.91(3), Appendix 2 of Annex XXIII does not contain a column corresponding to column D in table 'Expenditure broken down by priority' of Annex XXIII. The amount of the flat rate technical assistance (technical assistance in accordance with point (b) of Article 91(3)) is not to be reported in Appendix 2.

The fulfilment of the N+3 rule will be assessed in accordance with the provisions of Articles 105 and 15(5) CPR taking into account amounts declared in Appendix 2 of payment application as well as corresponding amount of technical assistance in accordance with point (b) of Article 91(3) where relevant.

QA00172 - VISIBILITY REQUIREMENTS WHEN THE BENEFICIARY IS A PHYSICAL PERSON

Relevant Article: Article 50(1)(d) of the CPR

Member State: LV

Question 1 (including any relevant facts and information):

What kind of visibility requirements apply when the beneficiary is a physical person and the visibility item is within a private household, concretely in this case the EU support comes for the replacement of a boiler?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In accordance with the requirements of Article 50(1)(d) of CPR, it is permissible to provide publicity by electronic means. Given that individual beneficiaries have a very different electronic environment or not even at all (i.e. not using any online channels), it is rational that publicity can be provided by the intermediate body in one place, by publishing information on the website, for example with an appropriately designed photo-fixation on the implementation of the project.

We believe that it is not rational to make plaque in private properties or to require the beneficiary to create a specific social network only for publicity of the project, provided that it can be provided in a united manner in the electronic environment and, in any event, information on the projects carried out is also collected on the website of the EU funds.

In the light of the above, please supplement the clarification of the application of the criterion by: If the project is intended to be carried out in publicly undisclosed ownership and the project applicant is a natural person, publicity should be provided by the intermediate body, provided that it is specified in the rules on the implementation.

Answer:

Article 50 CPR requires beneficiaries to acknowledge support from the Funds to operations. In the case of ERDF-supported operations that do not meet the conditions specified in point (c)(i) of Article 50(1) CPR, beneficiaries who are natural persons should ensure, **to the extent possible**, that the appropriate information is available, highlighting the support from the Funds, at a location visible to the public or through an electronic display (point (d) of Article 50(1) CPR).

In this concrete case of replacing boilers in private housholds, where the beneficiaries are natural persons, displaying information about support from the Funds in private households (e.g. on the boilers) would not meet the condition of a location visible to the public. In addition, beneficiaries should not be required to provide such information on their official websites, where such sites do not exist. In order to acknowledge the support from the Funds, it is advisable that the relevant managing authority or intermediate body ensures promotion and visibility by publishing appropriate information on the project implementation on its website and/or other communication channels such as, for example, social media.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00174 - REPORTING REQUIREMENTS IN ANNEX VII – TABLE 1 REGARDING FNLC

Relevant Article: 42(2)(a) CPR, Annex VII CPR

Member State: AT

Question 1 (including any relevant facts and information):

Question:

Art. 42(2)(a) CPR on transmission of data to the EC requires data to be transmitted on "the number of operations selected, their total eligible costs, the contribution from the funds and total eligible expenditure declared by the beneficiaries to the managing authority broken down by type of intervention; (underline by AT).

The CPR provisions do not provide any indication how FNLTC is to be treated although it is obvious, that most of the reporting requirements cannot be provided in the way foreseen (at least for the reporting points underlined above). How to report in Annex VII in case of FNLC?

Answer:

In accordance with Article 95(1) CPR, the Commission may reimburse the Union contribution to all or parts of a priority of programmes based on financing not linked to costs in accordance with Article 51 CPR, either based on the amounts approved by the decision referred to in Article 95(2) CPR or set out in the delegated act referred to in Article 95(4) CPR.

In case of financing not linked costs to be defined in a programme, the Member States should submit a proposal to the Commission in accordance with Appendices 2 to the programme templates set out in Annexes V and VI to the CPR, as part of a programme or of a request for programme amendment. The information to be provided in such a proposal is exhaustively set out in Article 95(1) CPR. There is no requirement in that Article to provide information regarding the amounts corresponding to the costs of selected operations.

According to Article 91(4)(a) CPR, by way of derogation from Article 91(3)(a) CPR, where the Union contribution is made pursuant to point (a) of Article 51, the amounts included in a payment application are the amounts justified by the progress in the fulfilment of conditions, or achievement of results, in accordance with the decision referred to in Article 95(2) CPR or the delegated act referred to in Article 95(4) CPR.

In accordance with Article 42(2)(a) CPR, the Member State or the managing authority should electronically transmit to the Commission cumulative data for each programme on the number of selected operations, their total eligible cost, the contribution from

the Funds and the total eligible expenditure declared by the beneficiaries to the managing authority, all broken down by type of intervention.

Based on the above:

- The data to be included in columns 8,9 and 10 of Annex VII should include information relating to the operations covered by FNLC scheme based on the information provided in the document setting out the conditions of support delivered to beneficiaries.
- The data to be included in columns 11 and 12 of Annex VII CPR should refer to the expenditure declared in payment claims to the MA by the beneficiary based on the mode of reimbursement set out in the document setting out the conditions of support. It means that if the reimbursement to beneficiaries is based on costs actually incurred and paid, the data provided should include the costs incurred and paid by the beneficiary. If the reimbursement to the beneficiary is based on SCOs or FNLC the data provided should be the amount calculated on the applicable basis.
- The reporting of such data is to be done at priority level, so at aggregated level even if the priority supports also operations not covered by a FNLC scheme.
- It is noted that the information included in Annex VII CPR is for the purpose of providing information on the financial and physical progress of operations necessary for monitoring, evaluation, financial management, verifications and audits as well as the elements kept to ensure appropriate audit trail as referred to in Article 69(6) CPR and Annex XIII of the CPR. Management verifications and audits of the FNLC scheme are subject to the limitation expressed in Article 95(3) CPR.

QA00175 - PROGRAMME AUTHORITIES/MEMBER STATE ACCOUNTING FUNCTION

Relevant Article: Article 71 of 2021-2027 CPR Regulation

Member State: ES

Question:

The question is on the management structure of the new programme.

In accordance with Article 71.1 of the CPR, the Member State may entrust the accounting function (Article 76) to a body other than the managing authority, in such cases this body shall be identified as a programme authority (CPR, Art. 72.1).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 71.3 of the CPR also states that the managing authority may designate IBs to carry out certain tasks under its responsibility. Arrangements between the managing authority and IBs shall be recorded in writing.

In accordance with the above, the accounting function is entrusted by the Member State, and this is not a delegation from the Managing Authority.

According to the above, the question arises as to whether the body entrusted with the accounting function can appoint Intermediate Bodies, as its task is received directly from the Member State and not delegated by the MA.

Answer:

Art. 2(8) 'intermediate body' means a public or private body which acts under the responsibility of a managing authority, or which carries out functions or tasks on behalf of such an authority.

The CPR does not regulate the internal arrangements of the programme authority responsible for the accounting function. It is the responsibility of the Member State to organize its functioning.

Only the Managing authority can identify intermediate bodies to carry out tasks under its responsibility.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA00176 - VAT ELIGIBILITY AND PROJECT TOTAL COSTS

Relevant Article: Art. 64(1)(c) of the CPR

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State: CZ

Question 1 (including any relevant facts and information):

We would like to follow up on our Polish colleagues' question "QA00002 - Eligibility of VAT under cohesion policy rules in the 2021-2027 programming period" and the EC's answer published in the Q&A on the General Regulation and Fund-specific Regulations and consult with you the approach set up in the eligibility rules in the Czech Republic.

Taking into account the wording of Article 64 of the CPR, but also the effort to avoid double financing and ensure sound financial management, we have approached the VAT eligibility assessment as follows:

- For all projects where the beneficiary is entitled to deduct VAT under national rules, VAT is an ineligible expenditure, regardless of the amount of the total project expenditure. This approach has proven successful in previous programming periods and allows more projects to be supported.
- We take into account the threshold limit of total project expenditure (EUR 5 million) when assessing VAT eligibility only in cases where the project output is operated by a subject different from the beneficiary (non-taxable person) and the operator, having the status of taxable person, charging VAT on revenues stemming from the direct use of the project, i.e. in these cases we apply the principle of recoverability.

Therefore, in the context of this proposed approach, the total project expenditure threshold limit would only be relevant for a smaller number of projects. For this reason, and also in view of the possible complications caused by exchange rate fluctuations, we would like to ask for your opinion whether it is possible to assess the threshold limit only once at the time of issuing the grant agreement in these isolated cases. And therefore use the exchange rate for the conversion of total project expenditure in force at that moment.

As regards the exchange rate already mentioned, we would like to draw attention to the following situation. If there is an appreciation of the Czech currency during the implementation of the project which could cause the beneficiary to exceed the EUR 5 million threshold limit for total expenditure, VAT would become an ineligible expenditure for the beneficiary without any relevant reason caused by the beneficiary. In this case, we lack legal assurance for the beneficiary and also for this reason we find it problematic to monitor the total amount in EUR during the implementation of the project.

In this context, we would like to mention one more issue, namely the clear definition of the total project expenditure. The answer to the question "QA00136 - Questions on the list of operations and data transmission" states that the total "cost of the operation" referred to in Article 49(3)(h) of the CPR should be understood as the amount of the total eligible costs of the operation as agreed in the support conditionality document (listed in Annex XVII of the CPR). Depending on the operation,

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

it may include private financing. Can this approach be applied to other Articles of the CPR where the limit of the total project expenditure is assessed (e.g. the already mentioned VAT or SCO)? According to the current practice in the Czech Republic, only total eligible costs are specified in the grant agreement, would it be possible to follow the interpretation given in the answer to question QA00136, i.e. to use only total eligible costs, when assessing the threshold limit of total costs. This approach would simplify the procedure for meeting the obligations under the CPR.

Answer:

Article 64(1)(c) of Regulation (EU) 2021/1060 ('CPR') provides for a set of exceptions to the general rule according to which the VAT is ineligible to a contribution from the EU funds under shared management. One of those exceptions applies to operations, having a total cost below EUR 5,000,000, and is not conditioned to the recoverability of the VAT under the VAT legislation. In other words, under 2021-2027 rules, for operations with total cost below EUR 5,000,000 (including VAT), the VAT is always eligible under Article 64(1)(c) CPR.

"QA00136 - Questions on the list of operations and data transmission" provides exclusively interpretation to the total 'cost of an operation' referred to in Article 49(3)(h) CPR in the context of monitoring responsibilities of managing authorities. The interpretation took into account the requirements related to data collection set out in Annex XVII CPR.

In the context of thresholds affecting rights or obligations of beneficiaries (such as in Article 50, 53, 64, 118 CPR) the co-legislators intended to ensure the same treatment of all operations below or above the threshold, regardless of whether the support is public or private. Therefore, in the context of the Article 64(1)(c) CPR, the 'total cost of the operation' covers all costs needed to implement the operation. It could include, as the case may be, expenditure not eligible for support under the programme, including costs covered by private ressources (as replied to PL).

With regard to the EUR 5 000 000 threshold, it should be assessed on the basis of the total cost of the operation as set out at the time of signing the document setting out the conditions for support or at the time of its last amendment (reflecting all possible cost overruns incurred and paid during the implementation of the operation).The conversion into euro should be made using the monthly accounting exchange rate of the Commission in the month during which the document setting out the conditions for support was signed or last amended.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00177 - ELIGIBILITY OF A JTF INVESTMENT IN A NEW ETS INSTALLATION ("SUSTAINABLE GREEN-FIELD GLASS FACTORY")

Relevant Article: Art.11(2(i)) of the JTF regulation

Member State: SI

Question 1 (including any relevant facts and information):

The draft territorial just transition plan for the Slovenian territory of Zasavje includes an investment to build a new glass factory. According to the information given by the Slovenian authorities, the factory, once built, would be a new ETS installation that falls within the scope of application of Directive 2003/87/EC.

Should an investment that leads to a new ETS installation be considered as an "investment to reduce GHG emissions from ETS activities" described in Art. 11(2)(i) of the JTF Regulation?

Answer:

The JTF Regulation provides a possibility to support investments to reduce greenhouse gas (GHG) emissions from activities listed in Annex I to Directive 2008/87/EC. Recital 16 of the Regulation clarifies that the possibility of such investments should be allowed, under certain conditions, "in existing industrial facilities".

The Staff Working Document on the territorial just transition plans (SWD(2021) 275 final) clarifies that the JTF can grant such support to address duly justified transition challenges in a given territory. In this context, it is recalled that support to such investments is excluded from the scope of support of the ERDF and CF, in order to avoid duplication of available financing, which already exists as part of Directive 2008/87/EC.

Based on the provisions of the Regulation, investments that lead to a new ETS installation should not be considered as investments to reduce GHG emissions from ETS activities as described in Art. 11(2)(i) of the JTF Regulation.

QA00178 - PUBLISHING THE NAMES OF MEMBERS OF MONITORING COMMITTEES

Relevant Articles: Art. 39(1) CPR and Article 5(1)(c) GDPR

Member State: DE

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

Article 39(1), subparagraph 5 CPR calls for the list of members of the monitoring committees (MCs) to be published on the website referred to in Article 49(1).

Some German Managing Authorities (MAs) take the view that not the names of the natural persons are to be published.

Firstly, in these cases the rules of procedure for the MCs list only authorities and bodies as members, therefore from the wording of the provision of Article 39(1) CPR it should be sufficient to publish the names of these (member) authorities/bodies but not their respective representatives. At the same time, MAs also argue that it would be sufficient to keep a list of representatives with themselves so as to be able to provide the member bodies' representatives if needed.

Secondly, as another line of argumentation the MAs claim that the publication of the data of the member bodies/authorities creates the practical concordance between the GDPR and the CPR. The GDPR requires the economical use of personal data (Article 5(1)(c) GDPR). The CPR's request for transparency while respecting data protection is thus met by publishing the authorities'/bodies' names that are officially members of the MCs while keeping a record of the respective meeting representatives in the MAs.

The need for data protection has been called upon by many nominated MC members as there have been many cases of data misuse in the past, whereby personal data published on the internet by public authorities have been repeatedly misused by the so-called 'Reichsbürger' (https://en.wikipedia.org/wiki/Reichsb%C3%BCrger_movement).

In order to exclude this for the members of the MCs, according to the MAs in question the publication of the member authorities/bodies only should be maintained.

Answer:

Article 39 CPR establishes rules with regard to the composition of the monitoring committee (MC). It states that "each Member State shall determine the composition of the monitoring committee and shall ensure a balanced representation of the relevant Member State authorities and intermediate bodies and of representatives of the partners referred to in Article 8(1) through a transparent process.

These representatives are thus the members of the MC once this body is set up. Therefore, the obligation to publish the list of members of the MC requires the publication of the names of the representatives, i.e. of the persons representing the authorities, intermediate bodies and partners. The requirement to publish the list of the members of the monitoring committee on the "programme" website is provided in Article 39(1) CPR and serves the ultimate aim of ensuring transparency and avoiding conflicts of interest. Whenever a member changes, (e.g. a different person representing the same organisation) the list has to be updated and published (again).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

As for the compliance with the GDPR, any processing of personal data should be lawful, fair and transparent. In order for processing to be lawful, personal data should be processed on certain legitimate basis, laid down by law, either in this Regulation or in other Union or Member State law as referred to in this Regulation. It follows in particular from Article 6(1)(c) GDPR (EU) 2016/679 that "processing is lawful if it is necessary for compliance with a legal obligation to which the controller is subject"; in this specific case, Article 39(1) of the CPR.

In order to abide by the GDPR, and in particular the principles of fair and transparent processing, during the nomination process, the managing authority has to provide potential candidates for membership with information referred to in Articles 13 and 14 of the GDPR and inform them in advance that their names will be made public in accordance with Article 39(1) CPR, so they are fully aware of this legal obligation, when accepting the membership.

The potential misuse of personal data is not a valid reason not to comply with the legal obligation to which the Member State is subject. The GDPR has put mechanisms in place to be used in the case of misuse of personal data (Articles 77 to 84 GDPR).

QA00179 - ANNEX XVII OF CPR REGULATION (FIELDS 20, 102, 103 AND 130)

Relevant Article: Annex XVII

Member State: DE

Question 1 (including any relevant facts and information):

(a) Regarding Box 20: "Indicate whether the public support for the project constitutes State aid".

Is it correct to indicate "no" here if it is a grant under the EMFAF Regulation which falls under Art. 42 of the TFEU?

Would "yes" only be indicated here if the grant was awarded on the basis of a de minimis or exemption regulation, as it is then state aid within the meaning of Art. 10 of the EMFAF Regulation?

(b) Regarding Box 102: "Date and reason for each deduction made under Article 98(6) and indicate the nature of the deduction."

What is meant by "type/nature of deduction"? What are the types?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

(c) Regarding Box 103: "Amounts of total eligible expenditure affected by each deduction (of which amount corrected as a result of an audit)." and Box 130: "Total expenditure of the operation deducted from the accounts under Article 98(6)(a), (b) and (c) during the financial year covered by the accounts (of which amounts corrected as a result of audits)."

What is the difference between box 103 and 130? Can this be explained with an example?

Answer:

- Regarding Box 20

Box 20 should be completed as follows:

'No' for aid granted under EMFAF, and for any public support that does not fulfil the conditions of Article 107(1) TFEU.

'Yes' for support granted in accordance with the FIBER (fisheries exemption regulation), and decision approved based on the Fisheries Guidelines.

De minimis aid should not be reported, as it does not constitute State aid within the meaning of Article 107(1) TFEU, nor is it considered State aid within the meaning of the 2021-2027 CPR.

- Regarding Box 102

The main types of deduction referred to in Box 102 are listed in Article 98(6) CPR (submission of the accounts), which distinguishes the deductions from the accounts between "financial corrections" (= irregularities corrected); "expenditure under ongoing assessment" (= expenditure that might be re-introduced into a payment application in subsequent accounting years once its legality and regularity is confirmed); and "amounts necessary to reduce the residual error rate to 2%" (such as extrapolated or flat rate financial corrections). Any other types of deductions should also be indicated.

- Regarding Boxes 103 and 130

Box 103 relates to <u>each deduction</u> for the given operations (plus which part of that amount was deducted as a result of an audit).

Box 130 relates to the <u>total amount of deductions per operations</u>.

The amounts in Boxes 103 and 130 would be the same if there is only one deduction per operation. However, the same operation could be the subject of several deductions, e.g. if the Managing Authority found an error in an operation previously certified to the COM which should be deducted from the accounts, and then the Audit Authority finds another error for the same operation. In this example, both deductions would need to be encoded separately (the first one as a correction not resulting from audits and the second one as a correction resulting from an audit).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00180 - DURABILITY AND TRANSFER OUT OF NUTS2 REGION

Relevant Article: **:** Article 65(1)(a) of the CPR

Member State: DK

Question 1 (including any relevant facts and information):

According to Article 65(1)(a) of the CPR the Member State shall repay the contribution from the Funds to an operation comprising investment in infrastructure or productive investment, if within 5 years of the final payment to the beneficiary or within the period of time set out in State aid rules, where applicable, that operation is subject to a cessation or transfer of a productive activity outside the NUTS level 2 region in which it received support.

Denmark is currently working on a scheme for coastal fisheries, which will include investments on small scale coastal vessels.

Could you provide us with guidance on how the term "productive activity" in article 65 will work in this relation. Is the condition linked to the place of registration of the vessel, the place of registration of the company/legal person owning the vessel, or the fishing activities of the vessel?

Answer:

Article 65(1)(a) CPR refers to a region, at NUTs 2 level, "in which an operation received support". In principle, an assessment of transfer outside that NUTs 2 region should therefore depend on the location of an operation as selected by the MA to contribute to the achievement of the objectives of the programme.

Where, due to the specificities of an operation, establishment of its location is not straightforward, other justified parameters may be applied by the MA and under its responsibility to set the location of the operation, for example by taking into account the purpose of durability provisions. In accordance with recital 47 CPR, durability provisions are to 'guarantee that investments in infrastructure or productive investment are long-lasting and prevent the Funds from being used to undue advantage' as well as 'ensure the effectiveness, fairness and sustainable impact of the Funds'.

For the coastal fisheries scheme, the condition would be linked to the vessel's fishing activities.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00181 - E-COHESION - WAYS OF COMMUNICATION BETWEEN BENEFICIARIES AND PROGRAMME AUTHORITIES

Relevant Articles:

Article 69.8 of the CPR

Article 72.1(e) of the CPR

Annex XIV of the CPR

Member State: DE

Question 1 (including any relevant facts and information):

In short: The MS authorities are asking if they can keep email exchanges with beneficiaries on non-formal aspects (technical or clarification correspondence, etc) while ensuring traceability by properly record and store the correspondence **OR** they are obliged for such type of communication to create a separate messaging system (or a separate e-mail system) within the e-Cohesion system?

The original question:

Does Art. 69 (8) mean that "normal" e-mail traffic, e.g. via Outlook, between the processor and the beneficiary is excluded?

1. Does Article 69(8) mean that only e-mail traffic via communication platforms specially integrated into the data exchange system is "permissible"?

Answer:

The CPR does not differentiate between formal and informal means of the communication. According to the first sub-paragraph of Article 69(8) CPR, Member States must ensure that all exchanges of information between the beneficiaries and the programme authorities are carried out through the electronic data exchange systems. Email exchanges, ensuring security, integrity and confidentiality, can be seen as fulfilling the requirement of the electronic data exchange system, as long as an appropriate audit trail is ensured within their e-cohesion systems (i.e. by means of a proper filing system), in line with the requirements of Annex XIV CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00182 - RESOURCES TO BE INDICATED IN THE DESCRIPTION OF THE MANAGEMENT AND CONTROL SYSTEM

Relevant Articles:

Articles 69, 72 and 76 of CPR

Annex XVI of CPR

Member State: DE

Question 1 (including any relevant facts and information):

Annex XVI of the CPR sets out the template of the description of the management and control system in accordance with Article 69(11) of the CPR. In its point 2.1.7. it asks for the indication of planned resources to be allocated in relation to the different functions of the managing authority (including information on any planned outsourcing and its scope, where appropriate). Similarly, in point 3.1.4 an indication should be provided of planned resources to be allocated in relation to the different accounting tasks.

Does "planned resources" refer to technical assistance? If not, would you kindly indicate what kind of resources are meant?

Answer:

In point 2.1.7 of Annex XVI, the Managing Authority should describe how it will be able to carry out the management functions as described in Article 72 of the CPR. The resources referred to are to ensure the capacity of the MA for its functions therefore they entail any type of resources (eg. human, financial etc), including any planned outsourcing of tasks.

Similarly, point 3.1.4 of Annex XVI ("Indication of planned resources to be allocated in relation to the different accounting tasks") refers to the capacity of the body that carries out the accounting functions in accordance with Article 76 of the CPR. Therefore, also under this point all resources, whether human, financial or other, should be included.

Therefore, in the above points it is not sufficient to refer to only the financial resources allocated to the MA and the body carrying out the accounting function in the context of technical assistance.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00183 - PURCHASE OF LAND – PROPERTY RIGHTS

Relevant Article: Article 64(1)(b) of the CPR

Member State: HU

Question 1 (including any relevant facts and information):

According to Article 64(1)(b) of the 2021-2027 CPR, the purchase of land for an amount exceeding 10 % of the total eligible expenditure for the operation concerned is not eligible for a contribution from the Funds; for derelict sites and for those formerly in industrial use which comprise buildings, that limit shall be increased to 15 %.

The question is whether property rights related to the land should be included in the cost of purchasing land (e.g.: cost of purchase of land use, usufruct, use, rental rights, rights of way)?

Typically, these amounts are not paid to the seller, but to the holder of the property right.

Answer:

In accordance with Article 63(1) CPR, the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in, or on the basis of, the CPR or the Fund-specific Regulations. As there are no specific rules restricting eligibility of costs other than those of the purchase of land at the EU level, if such costs exist under national law and are linked to the operation being supported, they could be eligible provided national rules make it possible (on top of the ceiling linked to the purchase of land laid down in Art. 64 CPR).

QA00184 - OBLIGATORY USE OF SCOS - SUSTAINABLE URBAN DEVELOPMENT

Relevant Article: Article 53 (2) of the CPR

Member State: DE

Question 1 (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The authorities of Saxony have a question concerning the obligatory use of simplified cost options in the framework of sustainable urban development under specific objective 5.1. of the 2021-2027 programme. Under an integrated urban development strategy, municipalities will provide support to small enterprises. The support is implemented in a two-step procedure:

1. The intermediate body awards a grant to the municipality for the operation „Einrichtung eines KU-Fonds" (title in English: "Establishment of a small enterprises fund". The municipality is the beneficiary of the operation. The grant agreement sets out the municipality's framework for the implementation of the individual business support projects. The intermediate body pays the grant amount to the municipality.
1. The municipality passes the grants on to the small enterprises following a grant award procedure. The small enterprises receive the support on the basis of a decision taken by the municipality. The individual grants to the small enterprises are in general below 200,000 EUR total cost. The support is considered as *de minimis* aid according to the Saxon authorities.

The question is if, in this case, the use of the simplified cost options is obligatory at the level between intermediate body and municipality or at the level between municipality and small enterprises.

Answer:

The two-step procedure of granting support to enterprises decribed in the question is a case of cascade funding. The cases where a beneficiary may further cascade support without being appointed an intermediate body were defined in QA00132 - Cascade funding - RegioWiki Extranet - RegioWiki (europa.eu). Cascade funding schems should be in line with the conditons set out therein.

In accordance with Article 53(2)CPR where the total cost of an operation does not exceed EUR 200 000, the contribution provided to the beneficiary from the ERDF, the ESF+, the JTF, the AMIF, the ISF and the BMVI shall take the form of unit costs, lump sums or flat rates, except for operations for which the support constitutes State aid.

Based on this provision, the mandatory use of the SCOs is linked to the total cost of the operation. In addition, the provision concerns the contribution (the support) from the MA to the beneficiary which must take the form of a SCO. This means that the elements relevant for the application of the mandatory use of SCOs are the definition of the operation and the beneficiary. There is no provision regarding the mandatory application of SCOs for situations where the beneficiary receives a higher contribution and further cascades the support to other entities which would be considered as final recipients of such support and thus would not be concerned by the CPR provisions.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Therefore, the reply depends on the definition of the operation and beneficiary in each case. Based on the information provided, it seems that in the specific case the municipality signs a grant agreement with the intermediate body to implement business support to small enterprises (the operation) and that the total cost of the operation is above EUR 200,000. Therefore it seems that the beneficiary of the operation is the municipality. This means that it is not mandatory for the support to be provided to the municipality in the form of SCOs. The use of simplified cost options is also not mandatory at the level between the municipality and the small enterprises as they are not beneficiaries but final recipients and, thus, the support provided to them by the beneficiary is not obliged to take the form of SCOs.

QA00185 - OPERATIONS OF STRATEGIC IMPORTANCE – WHICH INFORMATION, AT WHICH LEVEL

Relevant Articles: Articles 2, 49(3), 50(1)(e) and 73(5) of the CPR

Member State: IT

Question 1 (including any relevant facts and information):

- **Information to be communicated to the Commission**:

Article 73(5) CPR provides that when the managing authority selects an operation of strategic importance (OSI), it shall inform the Commission within 1 month and shall provide all relevant information to the Commission about that operation.

With regard to the information to be communicated, DG Regio's toolbox indicates that "no prescribed format is envisaged, but it is suggested to indicate elements which need to be provided in any case under Article 49(3) CPR in the list of operations selected for support by the Funds".

1a) Is there any other information/data that the MA should transmit to the EC with regard to the selected OSIs?

a) How should these information be transmitted? Is there a specific module in SFC?

- **Requirements for OSIs – at which level:**

The MA has selected as OSI a measure to support the offer of non-academic tertiary education. Under these measure, a call has been launched for the selection of the "Istituti Tecnici Superiori" – higher technical institutes that will receive support. The call will therefore select different projects (and beneficiaries), all of which are part of the overall measure.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

2a) With regard to the requirements linked to operations of strategic importance (monitoring and communication), do they apply to the measure/call as a whole or do they apply to each single selected project?

2b) For example, with regard to the communication requirements, do they apply to the overall call or the single project, implying therefore that each single beneficiary receiving support under the call (in this case each higher technical institute) need to comply with the communication requirements set out in art. 50(e)?

Answer:

1.a) As explained in the toolbox, no prescribed format is envisaged in the CPR, but it is suggested to indicate elements which need to be provided in any case under Article 49(3) CPR in the list of operations selected for support by the Funds.

1.b) "Visibility, transparency and communication" module in SFC2021 could be used for this purpose. Technical requirements necessary to submit such information are currently being discussed.

2.a) An OSI, in accordance with its definition in Article 2(5) CPR, is always an operation in the meaning of the definition of Article 2(4) CPR. Therefore, obligations of beneficiaries or of the Member State/Managing Authority are also linked to the operation (and not to other level of intervention).

2.b) See the reply in 2.a. Please, take note that the correct reference is Article 50(1)(e) CPR related to responsibilities of beneficiaries.

QA00186 - USE OF TECHNICAL ASSISTANCE FOR VISIBILITY OF PROJECTS OF STRATEGIC IMPORTANCE

Relevant Articles: Articles 36(5), 46, 49, 50, 51(e) of the CPR

Member State: BE

Question 1 (including any relevant facts and information):

1. *If considerable extra expenses would need to be incurred in order to give sufficient visibility attention (CPR Art 46) about EMFAF co-financed projects, e.g. in the case of operations of strategic importance, could these be included into the overall expenditure of the concerned project ?*
2. *If not, would this publicity need to fall entirely under the responsibility of the MA (still with possibility to outsource) and within the 6% limitation of TA under Art 36 5 as related to point (e) of Art 51?*

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

3. *And, would it be possible for the MA to outsource this publicity to the project promotor executing the operation of strategic importance, by granting financial means originating from TA?*

Answers:

1. Costs for giving visibility to co-financed operations, including those of strategic importance, can be covered by the overall expenditure of the concerned operations.
2. Not applicable in view of the reply to question 1.
3. Aiming to support organizing impactful events or activities that reach out to broader audiences, it would be possible for the MA to grant TA means to the project beneficiary for publicity related to an operation of strategic importance. Please note that the responsibility of Article 50(1,e) CPR remains with the beneficiary. However, it is easier from an administrative point of view if the costs are covered by the overall expenditure of the operation.

General comment: The national authorities are invited to consult the toolbox "Communicating Operations of Strategic Importance in 2021-2027" (in particular pages 10-13 inclusive), which can be found at the link below. communicating_operations_2021-2027_en.pdf (europa.eu)

QA00187 - ELIGIBILITY OF ELECTRIC CARS AND SOLAR PANELS

Relevant Articles: Articles 36 and 63 of the CPR

Member State: RO

Question 1 (including any relevant facts and information):

The regional authorities in Romania intend to finance electric cars, electric charging stations and solar panels at the headquarter of the managing authority from the technical assistance priority of the programme.

Please give us a point of view regarding the eligibility of the following categories of expenses, within the technical assistance priority of the Regional Program:

- Purchase of electric vehicles

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- Purchase and installation of photovoltaic panel systems that use renewable, non-polluting energy sources, in order to produce electricity and use it at the headquarters of the MA;

- Purchase of recharging stations for electric vehicles;

- Construction, installation and assembly work related to recharging stations;

- Expenses related to the works for the provision of electricity necessary for the operation of the investment objective, as well as expenses related to the connection to the electricity network;

- Expenses for the purchase and installation of the photovoltaic panel system as an alternative solution for supplying electricity to recharging stations;

- Expenses for supporting documentation and obtaining approvals, agreements and authorizations;

- Design services, site management, project verifier.

Answer:

Technical assistance (TA) under Article 36 CPR supports actions necessary for the effective administration and use of the Funds. As regards investments linked to the headquarters of the MA presented in the question, only expenditure which is necessary for the managing authority to carry out its functions as regards the effective administration and use of the funds can consequently be covered.

The purchase of electric cars from technical assistance is not explicitly excluded in the CPR, however it should be limited to vehicles that are necessary for the performance of the tasks of the managing authority referred to in Article 36(1) of the CPR (such as on-the spot verifications).

In general, technical assistance should not be used to build or renovate public administration buildings unless there is a clear added value. In case investments are well justified in the sense that they are proven to contribute to achieve the objectives of TA, purchase and installation of photovoltaic panel systems or charging infrastructure for electric cars at the premises hosting the MA can be considered eligible.

If granted, any support from TA to such investments should be proportional to the use of the deliverables by MA (only the share of expenditure that can be attributed to MA can be covered by TA) and duration of the programming period against the life-time of investment (only the share of life-time of investment that is within the programing period can be covered by TA). An appropriate pro-rata approach needs to be developed.

Alternatively, also taking into account that the life-time of these investments is usually longer than the programming period we would recommend to consider the option of covering from TA the relevant share of the depreciation costs of the above investments. Eligibility of depreciation is set out in Article 67(2) CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State is responsible for the effective use of technical assistance in accordance with Article 36 CPR.

QA00188 - FINANCIAL FIELDS 81 AND 82 IN ANNEX XVII

Relevant Article: Art. 72 of the CPR and Annex XVII

Member State: IE

Question 1 (including any relevant facts and information):

The normal practice when reporting on the value of threshold contracts, e.g., in the Official Journal or in ARACHNE, is to give the contract amount excluding VAT. Therefore, our expectation is that the beneficiary will populate Field 81 with the ex VAT contract amount.

However, when a beneficiary reports on the Eligible expenditure incurred and paid on such a contract, in some instances the VAT will be eligible and in other instance the VAT will be ineligible. Therefore, the values reported under Field 82 might be a mixture of VAT inclusive and VAT exclusive amounts.

Could you please confirm if the following interpretation is correct?

Field 81: contract amount excluding VAT

Field 82: Amount incurred and paid, including VAT if eligible.

Answer:

Annex XVII to the CPR sets out the data to be recorded pursuant to Article 72(1)(e) CPR without prescribing a specific structure for the electronic system.

Based on 2014-20 experience related to Annex III of CDR 480/2014, the formulation 'contract amount if the contract award is subject to the provisions of Directives 2014/23/EU, 2014/24/EU or 2014/25/EU' in field 81 of annex XVII CPR means the contract amounts that exceed the applicable thresholds under the public procurement Directives. As the Directives apply to concessions or procurements with a value net of value-added tax (VAT), the contract amount recorded in filed 81 should be the contract amount net of VAT.

Consistently, the data relating to public contracts not subject to the provisions of the relevant Directives, including the contracts below the thresholds for their application, are not to be recorded under this field.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Field 82 in Annex XVII CPR does not refer to the 'contract amount', but to 'eligible expenditure incurred and paid based on a contract' awarded subject to provisions of the Directives mentioned above. Only VAT expenditure that is eligible according to Article 64(1)(c) CPR should be included in field 82.

QA00189 - OPTIMISATION OF EXISTING HEATING SYSTEMS WHILE MAINTAINING THE USE OF GAS

Relevant Article: Article 7(1)(h)(i) of the ERDF/CF Regulation

Member State: DE

Background

- Example 1

Energy renovation chilcare facility Buschgraben

The purpose of the support is to renovate the building envelope for energy purposes and to optimise heating and water supply systems using renewable energy sources. To this end, the outer walls, roof and cellar ceiling are insulated, the windows are replaced and the floor is supplied with space heating in sub-areas. The heating and hot water system is optimised. The existing gas heating system will be operated in combination with an air-to-water heat pump. In addition, a solar layer for the provision of hot water in the kitchen will be installed on the roof. As the heating demand is reduced, the distribution system is also adapted. The network will be rescaled. The use of a decentralised ventilation system with heat recovery (85%) is also part of the action. The renovation meets the standard „EnEV 2014 minus 44%". The requirements of funding level III are met.

- Example 2

Optimisation of the energy supply of the church municipality of Rixdorf

The purpose of the aid is to produce a central heating supply for the building complex existing on the above-mentioned site of the Evangelische Kirche Rixdorf (Magdalenenkirche, municipal house with two building parts and crèche). In order to switch to low-temperature operation, it is foreseen that the old boiler will be replaced by two gas absorption heat pumps, as well as the replacement of heat distribution and heating surfaces. An existing gas condensing boiler shall be integrated into the system for peak load supply.

- Example 3

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Energy renovation of Kita (crip) Baseler Str. 69

The purpose of the support is to renovate the building envelope for energy purposes and to renew the heating and hot water supply systems. The existing gas heating system will be replaced by a gas condensing boiler (25 kW) in combination with an air-to-water heat pump (21 kW). In addition, a solar installation for the provision of hot water will be installed on the roof. The existing gas heating system is from 1993 and is therefore not subject to a renewal obligation under §10 EnEV. The use of a decentralised ventilation system with heat recovery (85%) is also part of the action. This renovation meets the standard "EnEV 2014 minus 41%". The requirements of funding level III are met.

Question 1 (including any relevant facts and information):

In the 2014-2020 period, the ERDF programme has supported a number of renovation projects in which energy from renewable sources was integrated into the heating system of the building. However, in order to ensure the supply of heat even in peak load situations, the combustion of gas could not be completely abandoned in these cases. In many of these cases, an existing gas heating system was combined with a gas-fired heat pump supported by the project. This funding possibility is also provided for in the German Federal Funding Programme for Efficient Buildings (BEG). These plants are technically mature and have a low price, ans are efficient and low-maintenance in their operation. In order to illustrate the specific content of the funding, please find attached three brief descriptions of such projects.

Since it is intended to support similar operations with ERDF funding also in the new funding period 2021-2027, we are consulting you in order to ensure that the provisions of Article 7(1)(h)(i) of Regulation (EU) 2021/1058 (Regulation (EU) 2021/1058) are applied with legal certainty. Can projects that concern the above-mentioned form of optimisation of existing heating systems while maintaining the use of gas, still be supported with ERDF funding in the 2021-2027 funding period? Or - in the opposite case - in the cases described, could only electricity- or hydrogen-powered heating systems still be supported?

Answer:

The provisions of Article 7(1)(h)(i) of Regulation (EU) 2021/1058 (Regulation (EU) 2021/1058) do not allow for the support of investments linked, amongst others, to the combustion of fossil fuels, except for a limited number of specific cases as listed in the Regulation. Investment related to fossil fuels may be considered eligible only if it falls under these exceptions. In particular, support to natural gas condensing boilers could only be eligible in cases where they replace in housing coal-, peat-, lignite- or oil shale-based installations.

Taking into account recital 41 of the ERDF/CF Regulation investments in heating systems combining gas and renewable energy source for the optimisation of these

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

systems are possible on the pro-rata basis. In such cases, support should correspond pro-rata to the share of renewable energy input to such heating systems.

On the other hand as set out under PO2, the support to energy efficiency measures in buildings (such as insulation operations, replacement of windows/doors, upgrade of the ventilisation system), renewable energy integration in buildings and smart energy management measures are eligible.

Please note the answer does not endorse the eligibility of the schemes presented in the examples.

QA00190 - MANAGING AUTHORITY AN ELIGIBLE BENEFICIARY OF ACTIVITIES OTHER THAN TA

Relevant Article: Art. 2 of the CPR

Member State: CZ

Question 1 (including any relevant facts and information):

We would like to know whether the Managing Authority can be an applicant/beneficiary of activities other than Technical Assistance (TA), for example activity promotional campaigns under the Specific Objective 2.2, contrary to the EMFF period when this was allowed only for TA.

Answer:

Based on the definition of "beneficiary" in Article 2(9) CPR, and without any further exclusions in the CPR and Fund-specific Regulations, managing authorities can be beneficiaries of operations under actions other than technical assistance provided that such operations contribute to a specific objective, fall within the scope of support of the relevant CPR fund and are in line with the programme. In accordance with Article 74(3) CPR, where the managing authority is also a beneficiary under the programme, separation of functions needs to be ensured.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00191 - FINAL ALLOCATION OF THE FLEXIBILITY AMOUNT

Relevant Article: Art. 18 of the CPR

Member State: LT

Question 1 (including any relevant facts and information):

Can the MA allocate to the operation the whole amount of the programme dedicated to material deprivation (one priority only) except the flexibility amount? The latter would be allocated after a mid-term review.

Answer:

In accordance with Article 86 CPR, for programmes under the Investment for jobs and growth goal, an amount corresponding to 50 % of the contribution for the years 2026 and 2027 ('flexibility amount') per programme in each Member State should be retained and definitively allocated to the programme only after the adoption of the Commission decision following the mid-term review in accordance with Article 18 CPR. Furthermore, in accordance with Article 18(5), until the adoption of the Commission decision confirming the definitive allocation of the flexibility amount, this amount should not be available for selection of operations.

To conclude, the MA may commit to operations selected before the mid-term review in accordance with Article 73 CPR, the whole amount of the priority under the programme with the exception of flexibility amount.

More information about the flexibility amount, see also QA00048.

QA00192 - HOW TO MODIFY THE LIST OF SUPPORT TO PRODUCTIVE INVESTMENTS IN ENTERPRISES OTHER THAN SMES?

Relevant Articles:

- 24(6) of the CPR
- Article 73 of the CPR
- Article 8 of the JTF regulation
- Article 11 of the JTF Regulation
- Paragraph 14 of the Regional State Aid Guidelines

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- Paragraph 45 of the Regional State Aid Guidelines
- Article 107 of the TFEU
- Article 108 of the TFEU

Member State: EE

Question 1 (including any relevant facts and information):

As stated in the answer to the question QA00101: In principle, the list of productive investments and enterprises remains indicative even once approved by the Commission within the TJTP as part of the programme. The identification of new productive investments in large enterprises after the approval of the TJTP will require neither a modification of the relevant list in the TJTP nor an amendment of the programme. However, the list of Article 11(2)(h) of the JTF Regulation loses de facto its "indicative" character as regards support to large enterprises for productive investments located in 'c' areas, covered by paragraph 14 of Regional State aid Guidelines (the RAG).

As Ida-Viru is a "c" area, the list is not indicative, as stated in above answer. This means that if and when Estonia wants to support investments that are not yet in the list, the list needs to be changed.

Therefore Estonia has asked the following:

Is the modification of the list of support to productive investments in enterprises other than SMEs considered to be clerical or editorial change or does it require an amendment of the programme?

Answer:

In principle, the list of productive investments in enterprises other than SMEs, required by Article 11(2)(h) of the JTF Regulation, remains indicative even once approved by the Commission within the TJTP as part of the programme. This implies that the identification, and support of new productive investments in enterprises other than SMEs after the approval of the TJTP requires neither a modification of the relevant list in the TJTP nor an amendment of the programme. However, if the Member State intends to present the new investments as formally part of the programme, a programme amendment, approved by the Commission, is required to reflect the formal update of that list. This is without prejudice of the need for those productive investments to undergo the selection procedure in line with Article 73 CPR.

However, in the specific case, as the one in Ida Viru referred in your question, when a Member State intends to support enterprises other than SMEs for productive investments in 'c' areas, unless granted for initial investments to create new economic activities, all potential beneficiaries and investments should appear in that list, as announced in paragraph 14, 2nd condition of the Guidelines on regional State aid. Therefore, a programme amendment is required to reflect any such new

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

investment/beneficiary to ensure that the aid is compatible with the internal market (through notification).

QA00193 - VISIBILITY REQUIREMENTS FOR PHASED OPERATIONS

Relevant Articles:

Articles 50(c), 118 and 118a and Annex IX of Regulation (EU) 2021/1060(CPR 2021-2027)

Article 115(3) and Annex XII, 2.2 of Regulation (EU) No 1303/2013 (CPR 2014-2020)

Member State: CZ

Question 1 (including any relevant facts and information):

What is the guidance for beneficiaries who finish the first phase of their project with financing from 14-20 period and second phase from 21-27 programming period. Each phase of the project should follow and fulfill visibility requirements according to the period from which the finances are paid.

Nevertheless, mounting two different plaques with two different logos and statements seems ineffective both from the cost perspective and communication aim. Moreover, putting two logos on one plaque would challenge a new rule, that there should not be any sign of EU support, other than the „EU emblem and co-financed by EU statement", while the 14-20 rules insist strictly on putting the fund and programme name.

We would welcome an exception for phased projects that they can put a plaque by CPR 21-27 that would fulfill the publicity rules also for the first phase financed by 14-20 programme. This would lead to fulfilling strategic goals in the cohesion policy communication at the project level.

Answer:

Beneficiaries of operations subject to phased implementation which fall under Articles 118 or 118a of the CPR 2021-2027 can fulfil their visibility obligations by using only one plaque or billboard, however the information on this plaque/billboard should respect the requirements provided by the respective regulatory framework. Concretely, the phase of the operation co-financed from 2014-2020 Funds should follow the rules from the CPR 2014-2020 (Article 115(3) and Annex XII, 2.2), and the phase of the operation co-financed from 2021-2027 Funds should follow the rules from the CPR 2021-2027 (Article 50(c) and Annex IX).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00194 - DATA TO BE TRANSMITTED BY THE MEMBER STATES IN ACCORDANCE WITH ARTICLE 42(2)A OF THE CPR IN CASE OF FLAT-RATE TECHNICAL ASSISTANCE

Relevant Articles: Article 42 and 36(5) of the CPR, Annex VII of CPR

Member State: DE

Question 1 (including any relevant facts and information):

Annex VII of the CPR sets out the template for the transmission of data by the Member States or the managing authorities in accordance with Article 42 of the CPR.

Table 1 and Table 2 of Annex VII of the CPR provide for a break-down by priority of the cumulative data for each programme to be electronically transmitted by 31 January, 30 April, 31 July, 30 September and 30 November of each year in accordance with point (a) of paragraph 2 of Article 42 CPR.

Consequently, Member States or the managing authorities have no problems in identification of the data to be transmitted in relation to technical assistance in form of a priority in accordance with Article 36(4) of the CPR. The Article 36(4) technical assistance priority implementation reflects the reimbursement of support provided to beneficiaries.

The question is what should be reported in Table 1 and Table 2 of Annex VII in case that a Member State decided at the level of the Partnership Agreement for the use of flat-rate technical assistance in accordance with Article 36(5) of the CPR ?

Answer:

This answer was updated on 7 February 2024. The changes are struck through and the added text is in blue and underlined.

Given the purpose of reporting financial information by priority (and by specific objective) according to Article 42(1) CPR in Tables 1 and 2 of Annex VII and given the form of reimbursement of the TA pursuant to Article 36(5) CPR (i.e.: as a top-up of the expenditure allocated to each priority/specific objective) , the "total financial allocation" referred to in columns 6, 8, 9 and 11~~10 and 12~~ of Table 1 of Annex VII to the CPR should consist of the financial allocation to each of the priority without the technical assistance. In addition, column 13 (number of selected operations) should also include only those operations selected under the priority without the TA.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00196 - INFORMING THE COMMISSION ABOUT SELECTING AN OPERATION OF STRATEGIC IMPORTANCE

Relevant Article: 73(5) of the CPR

Member State: LV

Question 1 (including any relevant facts and information):

The Managing authority of Latvia has some practical questions about the procedure of informing the Commission about selecting an operation of strategic importance within 2021-2027 programme.

According to the Article 73 (5) of the CPR 2021/1060 of 24 June 2021: *When the managing authority selects an operation of strategic importance, it shall inform the Commission within 1 month and shall provide all relevant information to the Commission about that operation*.

Please provide more information about the procedure of informing the Commission as it is not clear from the CPR or the toolbox "Communicating operations of strategic importance in 2021-2027":

1. Will the Commission create a specific form/template for informing? Could the Commission provide a specific list of information which is considered *relevant* when informing the Commission?
2. How the *relevant information* should be reported to the Commission? For example, sending the information via SFC 2021 (as a standalone or referring document or using other SFC 2021 functionality) or will it be enough with informing by e-mail?
    a. If the information should be sent by e-mail, to which recipients should a member state send the information? Regional units?
3. In which cases should the member state notify the Commission about an update in previously reported *relevant information*? And in what timeframe?
4. If a specific objective/measure is included in the programme (Appendix 3) as an operation of strategic importance:

4.1.What options member state has:

- may the member state on a national level identify/define only one or some of projects within the specific objective/measure as contributing to the operation of strategic importance at a later stage OR?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- does it mean that by default each project under the specific objective/measure is considered a part of an operation of strategic importance?

4.2. If an operation of strategic importance consists of several individual projects with different selection dates, when should the member state inform the Commission? I.e., (1) report each project separately after it is selected for support OR (2) report the whole list of projects when the last one is selected?

Answer:

1. As explained in the toolbox, no prescribed format or content is envisaged in the CPR, but it is suggested to indicate as relevant information [at least] the elements which need to be made publicly available in any case under Article 49(3) CPR.
2. "Visibility, transparency and communication" module in SFC2021 could be used for this purpose. Technical requirements necessary to submit such information are currently being discussed.
3. The Member State should generally keep the Commission updated with regard to changes to previously reported relevant information. This should happen as soon as possible after such changes materialise, there is no fixed timeframe foreseen for communicating such changes.

4.1. An OSI, in accordance with its definition in Article 2(5) CPR, is always an operation in the meaning of the definition of Article 2(4) CPR (*'operation' means: a) a project, contract, action or group of projects selected under the programmes concerned (…)';*). Therefore, obligations of beneficiaries or of the Member State/Managing Authority are also linked to the operation as selected for support under a given priority (and not to other level of intervention).This reply refers only to the specific question asked on the information and timing of reporting of OSIs and does not prejudge the position of the services on any other aspects linked to the selection of such operations by the MA.

4.2. In line with the previous reply, the requirement to notify the Commission of selected operations of strategic importance applies to the level of an operation, regardless if it is selected as a group of projects or it is consists of a single project. The managing authority shall inform the Commission about selected operations of strategic importance within one month from their selection pursuant to Article 73 CPR, therefore it should be done before the outlined time limit. This reply refers only to the specific question asked on the information and timing of reporting of OSIs and does not prejudge the position of the services on any other aspects linked to the selection of such operations by the MA.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00197 - INTERPRETATION OF "MADE OR TO BE MADE" IN ART. 91(3)C OF THE CPR

Relevant Articles:

Art. 91(3)c of the CPR;

Art. 63(2) of the CPR;

Art. 74(1)(b)) of the CPR

Member State: SE

Question 1 (including any relevant facts and information):

According to art. 91(3)c, payment applications shall be submitted […] and include […] "the total amount of public contribution **made or to be made** linked to specific objectives […]".

What is the meaning of "made or to be made"?

Answer:

Payment applications can include expenditure incurred by a beneficiary or the private partner of a PPP operation and paid in implementing operations in accordance with Art. 63(2)CPR).

The reimbursement of the beneficiary must take place within 80 days from the date of submission of the payment claim by the beneficiary (Art. 74(1)(b)CPR), but not necessarily before submitting the payment application to the Commission and this is the purpose of the 'to be made', to allow that public contribution still to be made by the accounting function to a beneficiary may be included in a payment application even if not yet "made" (i.e. paid).

QA00198 - "BENEFICIARY" IN CASES OF STATE AID GRANTED UNDER ARTICLES 20 OR 20A GBER

Relevant Articles:

Article 2(9) of Regulation (EU) 2021/1060 (CPR)

Articles 20 and 20a of COM Regulation (EU) No 651/2014 (GBER)

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Articles 22(4)(d) and (6), 23, 26, 47 and 52 of Regulation (EU) 2021/1059 (ETC)

Member State: PL

Reference: QA00199 - De minimis in the context of State aid in CPR 2021-27

Question 1 (including any relevant facts and information):

The Polish Ministry dealing with IJG goal and ETC goal programmes asked the following:

The definition of "beneficiary" under Article 2(9)(c) CPR may be in contradiction with Articles 20 and 20a GBER and result in implementation difficulties:

"beneficiary means:

(a) a public or private body, an entity with or without legal personality, or a natural person, responsible for initiating or both initiating and implementing operations;

(b) (…);

(c) in the context of State aid schemes, the undertaking which receives the aid;

(…).

Interreg beneficiaries, who hand out aid to "undertakings" are actually "*responsible for initiating or both initiating and implementing operations*.

The SME's or other "undertakings" outside the formal project partners receive State aid as a result of activities carried out by project partners. Project partners receive the co-financing within the partnership in INTERREG project, they spend ERDF on project activities e.g. carrying out directly or outsourcing workshops, trainings, advisory service, working out innovative aides/solutions or setting up digital improvements.

All these project activities ultimately serve the final users which are often SMEs using or benefitting from these activities free of charge. The value of the training should be assessed by the project partners and the amount is assessed as "indirect aid" in accordance with the provisions specific to INTERREG programmes under Articles 20 and 20a GBER:

Article 20

Aid for costs incurred by undertakings participating in European Territorial Cooperation project

1. *Aid for costs incurred by undertakings participating in European Territorial Cooperation projects covered by Regulation (EU) No 1299/2013 or Regulation (EU) 2021/1059 shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.*
2. *[Eligible expenditure]*

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 20a

Limited amounts of aid to undertakings for participation in European Territorial Cooperation projects

1. *Aid to undertakings for their participation in European Territorial Cooperation projects covered by Regulation (EU) No 1299/2013 or by Regulation (EU) 2021/1059 shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.*
2. *The total amount of aid under this Article granted to an undertaking per project shall not exceed EUR 20 000.*

Definitions for the purposes of cohesion policy and the notions under State aid - for the purposes of competition policy - may be not completely compatible.

If we were to apply only Artt. 20 and 20a GBER, competition policy would only care about the direct or indirect public support provided to undertakings/companies and would disregard the role of the "beneficiary" granting to them. This could be in conflict with point (9)(c) CPR where only the undertaking receiving the aid is the beneficiary!

The application of point (c) instead of point (a) of Article 2(9) CPR would have huge implementation consequences:

- Project partnerships (Articles 23 ETC) and the role of the lead partner/beneficiary (Article 26 ETC);
- Granting under Interreg is between the managing authority and the lead beneficiary, not with "undertakings"/users of the activities under Interreg projects (Article 22(6) ETC);
- Financial flows are between the programme authorities and the lead beneficiary, not even with other project partners, let alone third parties (Article 47 ETC);
- Reporting, availability of documents, recoveries (Article 52 ETC) and other aspects of financial project implementation are obligations of the (lead) beneficiary, not of third parties.

Answer[1]**:**

We understand that the question is how the definition of 'beneficiary' in the context of a State aid scheme (under Article 2(9)(c) CPR) is applied in the context of Interreg projects implemented under Articles 20 and 20a GBER.

Articles 20 and 20a GBER apply to any kind of Interreg project. These provisions were amended (Article 20) or inserted (new Article 20a) to be the appropriate rule for any company/undertaking participating in an Interreg project (training, seminars etc) up to the maximum co-financing rate under Article 20(6) GBER or up to the maximum EUR 20 000 of public support under Article 20a GBER.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 2(9)(c) CPR states that *"in the context of State aid schemes"* beneficiary means *"the undertaking which receives the aid".* In the context of CPR, the undertaking which receives the aid is to be understood as the entity that receives financial support from the Funds to carry out an operation selected by the programme[1].

This means that, as regards the specific example stated in the facts, where project partners receive financial support to organise project activities, (eg carrying out directly or outsourcing workshops, training sessions, advisory services, innovative support/solutions or setting up digital improvements), even if for the benefit of SMEs (thereafter *"the recipients"*), then the beneficiaries of the operation and the aid are the project partners within the meaning of Article 2(9) CPR, both under points (a) and (c). There is no apparent contradiction between State aid rules and Article 2(9)(c) CPR in this instance, given that no financial support from the Funds reaches those SMEs as recipients.

Where financial support from the Funds reaches recipients (eg voucher schemes) in the context of Articles 20 or 20a GBER, then the *"undertaking receiving the aid"* is the recipient. On one hand, while this is considered justified when final recipients receive substantial amounts of financial support from the Funds, on the other hand for situations where the recipients receive very limited financial support (lower even than *de minimis* aid, which benefits from a derogation under Article 2(9)(d)CPR), it would not be justified nor in line with the intention of the derogation under Article 20a GBER.

In light of this, the simplification obtained under Article 20a GBER in the context of Interreg projects, should be ensured. In this specific case therefore, the combined reading of Articles 20a GBER, CPR and the ETC Regulation should be such as to allow the fulfilling of the purpose of the amendment as regards Interreg projects subject to Article 20a GBER by rendering point (c) of the definition non-applicable and allowing that beneficiaries are not the recipients of limited financial support, but the organisation initiating or initiating and implementing Interreg operations.

[1] The answer does not endorse any statement made in the question as submitted.

[2] To note the specificities of Interreg projects where the tasks of the lead partner (Article 26 ETC) correspond to the responsibilities of beneficiaries under the CPR for initiating or initiating and implementing an operation in accordance with point (a) of Article 2(9) CPR and, furthermore, Article 23 ETC makes it mandatory that operations involve *"partners", "at least one of which shall be a beneficiary from a Member State."*

QA00199 - DE MINIMIS IN THE CONTEXT OF STATE AID IN CPR 2021-27

Relevant Articles:

CPR 2021-27 Articles 2.9, 53.2, 58.2, 66.2, 65, 82.1, 91.5, 91.6

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Annexes III, XVII, XX, XXI, XXII, XXIII, XXIV;

TFEU Art. 107, 108;

GBER

Member State: IT

Reference: QA00130 - Implementation of umbrella projects under CLLD,

QA00132 - Cascade funding,

QA00198 - "Beneficiary" in cases of state aid granted under Articles 20 or 20a GBER

Question 1 – Relevance of de minimis aid in the context of State aid in the CPR

De minimis is not explicitly included in the definition of State aid in the 2021-2027 CPR, differently from the 1303/2013 CPR (Article 2.13).

In the 2021-2027 CPR, the definition of "State aid" no longer appears. However, the concept of State aid is referred to in different points, in particular:

- "State aid referred to in Articles 107 and 108 TFEU" (recital 6)
- "State aid" (Articles 2.9, 53.2, 58.2, 66.2, 65, 82.1, 91.5, Annexes III, XVII, XX, XXI, XXII, XXIII, XXIV)
- "Aid schemes under Article 107 TFEU" (Article 91.6 and corresponding field in Annex XVII)

In some cases, the reference is to specific regulations, for example to Regulation (EU) No 651/2014 and to de minimis regulations. (E.g., for GBER see Articles 2.27, 66; for de minimis see Articles 2.9 and Annexes XIII and XVII).

1. The main question is whether de minimis must be considered as included in the concept of "State aid" in all the references above (and in any other reference in the CPR) or not.

If not, it seems reasonable to assume that de minimis follows the rules of subsidies which are not of the nature of aid.

In particular, for example

A.1 As for payment claims, article 91.5 states that, by way of derogation from paragraph 3, in the case of "State aid", the payment application may include advances under certain conditions. In the case of de minimis, can advances be included in a payment application?

A.2 Also in the context of Article 91, paragraph 6 provides that "in the case of aid schemes under Article 107 TFEU, the public contribution corresponding to the expenditure included in a payment application shall have been paid to the beneficiaries by the body granting the aid", "by way of derogation from the general

provision of paragraph 3 letter c)" according to which payment applications contain "the total amount of the public contribution made or to be made".

Is de minimis outside the "aid schemes"? If so, it will not be necessary to pay the resources to the beneficiary before including them in a payment application. Even more so, if the MS/MA has established that the beneficiary is the subject that provides the aid.

A.3 As for financial instruments, Article 58.2 states that "such support complies with the applicable Union rules on State aid" and, in the corresponding Annex XIII, only "declarations made in relation to de minimis aid" are mentioned among the mandatory elements for the audit trail of financial instruments. No other control points on any other applicable aid are referred to.

Is therefore correct to assume that de minimis is for all intents and purposes included in the provisions of Article 58.2?

Answer to question 1:

The CPR for 2021-2027 programming period, no longer provides for a specific definition of State aid. Therefore, whenever the CPR provides for specific provisions for operations falling under State aid, **these provisions do not apply to support provided to beneficiaries under *de minimis* aid as *de minimis* aid is not considered State aid in accordance with Article 107 TFEU**.

This is notably the case of Articles 91(5) CPR and (6). These provisions do not apply to *de minimis* aid since *de minimis* aid is not considered as State aid.

With regard to Article 58(2) CPR, even though *de minimis* aid is not considered as State aid, all operations, including when supported in the form of a financial instrument, should comply with applicable law. By "applicable law" this also includes respect with *de minimis* aid Regulation (if applicable) and for example, where self-declarations are made in the context of de minimis, these shall be recorded in accordance with point 8 of Annex XIII.

For more information, see as well QA00144 - SCOs in operations subject to *de minimis aid* - QA 21-27 - RegioWiki (europa.eu).

Question 2 – Job training measures – beneficiary and State aid

The definition of beneficiary in Article 2.9 of the CPR, as far as it is relevant for State aid, is structured as follows:

- a general provision referred to in point (a) "a public or private body, an entity with or without legal personality, or a natural person, responsible for initiating or both initiating and implementing operations"
- a further definition for State aid referred to in point (c) "enterprise which receives the aid"

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- a specification for de minimis case referred to in point (d) "the Member State may decide that the beneficiary for the purposes of this Regulation is the body granting the aid, where it is responsible for initiating or both initiating and implementing the operation"

In addition, with reference to the "beneficiary", in note 2 of Annex XVII relating to the data to be recorded and stored electronically on each operation, it is detailed that "the beneficiary shall include, where appropriate, other bodies which, under the operation, incur expenditure treated as expenditure incurred by the beneficiary".

The definitions of beneficiary are also relevant for the design of training measures for enterprises, mainly financed by the ESF+. In this regard the Italian productive system is characterized by a very wide presence of medium, small, and micro enterprises (also family-run). The job training to enterprises, based on a public policy of training supply, is guaranteed, with a view to supporting their quality, by a system of accreditation of training bodies. These bodies also guarantee the knowledge and skills necessary to activate the funding.

In such a scheme, the training agencies are responsible for organising training which will benefit enterprises. The project obligations (advertising, monitoring, etc.) are under the responsibility of the training agency who is the leader and the only referent of the operation; the enterprises benefitting from the training can be covered either by De minimis or by the GBER.

In light of the above, we would like you to confirm whether in this type of schemes - training schemes for workers in enterprises - the training agencies can be appointed as beneficiaries, in line with the definition of art 2(9) (a) CPR, including in cases where the enterprises benefitting from the training are not covered by de minimis aid but rather by State aid rules (i.e GBER)?

Answer to question 2:

Article 2(9) CPR provides in point (a) the general rule for the definition of a beneficiary.

As a general rule, the beneficiary is "a public or private body, an entity with or without legal personality, or a natural person, responsible for initiating or both initiating and implementing operations"

In addition, it also provides for specific rules with regard to the definition of "beneficiary" for certain cases, for instance, in the case of State aid schemes (point (c)) and in the case of *de minimis* aid (point (d)).

In the case of State aid schemes, point (c) of Article 2(9) CPR determines that the beneficiary shall be the **undertaking which receives the aid**.

In the case of *de minimis* aid, in accordance with point (d) of Article 2(9), the Managing authority **may consider that the beneficiary is the body granting aid**, where this body is responsible for initiating or initiating and implementing the operation.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

We understand that the question is whether, in case of an operation, which consists in the organisation of trainings by training agencies/bodies to the benefit of enterprises' workers (i.e participants in the sense of Article 2(40) CPR), the beneficiary of the support provided by the Funds could be considered to be the training agency which is responsible for organising the trainings. Our understanding is also that in this scheme the Managing Authority is not granting directly support to the enterprises benefitting from the training.

Based on the understanding above stated, three scenarions may arise, depending on how the scheme is set up at the level of the Member State:

Outside State aid schemes, the training agency is considered as the 'beneficiary' in accordance with Article 2(9)(a) CPR as it is the body responsible for initiating and implementing the operation (i.e it is the body responsible for organising the trainings for workers).

In case the operation is set within the context of *de minimis* aid, the Member State may decide that the beneficiary for the purposes of this Regulation is the body granting the aid, where it is responsible for initiating or both initiating and implementing the operation in accordance with Article 2(9)(d) of the CPR, therefore in this case, we understand that it may be the training agencies.

In case the training agency is receiving support within a State aid scheme (e.g. GBER), in the context of CPR, the beneficiary is defined as *"the undertaking which receives the aid"*, which is to be understood as the entity that receives financial support from the Funds to carry out an operation selected by the programme. This means that as regards the specific example stated in the facts, where training agencies receive financial support to organise trainings for the benefit of enterprises or enterprises' workers, then the beneficiary in the meaning of Article 2(9) of the CPR (c) would also be the training agencies.

Therefore, in the first two scenarions, the training agency would always be considered as a beneficiary as it is the body responsible for initiating and implementing the operation, i.e organising the trainings. In addition, in the third scenario (in case the support provided to the training agency is considered as State aid), the training agency is also considered as a beneficiary as it is the undertaking which is receiving the aid. Therefore, in this type of schemes, the enterprises (undertakings) benefiting from the trainings would not be considered as "beneficiaries" because they are not receiving the financial support from the programme (it is the training agency that receives the financial support) and they are also not responsible for initiating and implementing the operation, i.e they are not organising the training.

The conclusion would be different in case financial support from the Funds reaches directly enterprises for them to provide or organise trainings for their workers: in such a case "*undertaking receiving the aid"* are the enterprises, who are beneficiaries in accordance with Article 2(9)(c) CPR and not potential training agencies involved. It is worthwhile to clarify that cascading (re-granting) mechanism referred to in QA 130 or QA 132 cannot be used in such a case (i.e. where financial support is regranted to undertakings under a state aid scheme).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Compliance with applicable State aid rules or *de minimis* aid Regulation still need to be ensured at each level (training agency, undertakings participating in the trainings) in the implementation of this operation by Member State.

Question 3- Possibility of considering who provides the grant as a beneficiary, in the case of call for proposals in de minimis and GBER, for amounts below 200,000 € per enterprise.

According to the contents of the EC Question and Answer Register for the 2021-2027 programming period, specifically number 72 about operations combining de minimis with other aid frameworks, "subject to the conditions laid down in the State aid rules, the most appropriate solution is not to require the use of simplified cost options (in the case of de minimis combined with other aid). This solution offers maximum simplicity and flexibility for the managing authority."

Likewise, in the case of a call for aid of less than 200,000 euros, to pursue simplicity and flexibility it would be useful to standardize the management methods by making it possible for the beneficiary to be the beneficiary for all the projects attributable to the operation both governed by the de minimis and by the exemption regulation.

Please clarify whether it is possible for operations financed by the ESF+ Programmes, referring to both Regulation 1407/2013 and Regulation 651/2014, to identify the body granting the aid as the beneficiary of the operation. Therefore, in the case of a call (considering it as an operation) combining GBER and de minimis, in which the choice of the applicable framework is left to the enterprise receiving the financing (in any case below 200,000 €), is it possible, as in the case of de minimis (Art.2.9 letter d), that the Member State/MA decides for all projects that the beneficiary is the body granting the aid?

Answer to question 3:

As explained above, irrespective of whether the beneficiary needs to comply with State aid rules or with *de minimis* rules or even both at the same time the operation is subject to Article 53(2) CPR unless its total cost exceeds EUR 200 000 or constitutes state aid (i.e unless the training agency is considered an undertaking within the meaning of Article 107 TFEU).

Question 4 - On the assumption that the training agency is the beneficiary , as it is also a body granting aid, do paragraphs 5 and 6 of Article 91 apply to the support granted by the agency that is subject to State aid rules? And to de minimis?

Answer to question 4:

Articles 91(5) and (6) CPR only apply **in case the support to the beneficiary constitutes State aid.** Therefore, unless the support to the training agency constitutes State aid, Article 91(5) and (6) CPR do not apply.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00200 - SCOs - ANNEX XVII DATA FIELDS 23 AND 24 AND A MAXIMUM WORKING TIME COMPLIANCE IN CASE OF UNIT COSTS

Relevant Articles:

Article 53 of the CPR

Article 72 of the CPR

Article 74 of the CPR

Annex XVII of the CPR

Member State: CZ

Question 1 (including any relevant facts and information):

We would like to get your assurance regarding our interpretation of the obligation of the managing authorities to record and electronically store the data on each operation necessary for monitoring, evaluation, financial management, verifications and audits in accordance with the annex XVII of CPR (see the article 72 (1) (e) CPR)) with special regard to the operations, which costs are financed through SCOs.

Our question concerns the obligation to record and store data set out in the rows 23 and 24 of the annex XVII, i.e. data on contractors, their beneficial owners, contracts and sub-contractors in case of public procurement procedures above the Union thresholds are concerned. Even if the SCOs mostly cover expenditures which are marginal in their volume, it may happen that they can be financed through the public procurements above the Union thresholds or be part of such public procurements even if they form the negligible part of it.

We understand that the SCOs are in place in order to simplify administration, i.e. to reduce both the administration burden for the beneficiaries and costs for the implementing bodies and are thus governed by special rules different from the rules governing the financing based on real costs.

After a detailed evaluation we came to the conclusion that data fields 23 and 24 should not apply to expenditures, which are procured and financed through the SCOs. The main reason which led us to this conclusion is following.

Even if the public procurement rules must be respected, the underlying financial or public procurement documents are not subject to verifications and the amounts (expenditure) incurred by the beneficiary and paid shall not be requested to check. Moreover according to the Commission decision of 14. 5. 2019 laying down the guidelines for determining financial corrections to be made to expenditure financed by the Union for non - compliance with the applicable rules on public procurement the guidelines do not apply to irregularities affecting expenditure under the rules on use of SCOs. Besides we have no idea what would be the purpose for gathering of such data

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

and how to possibly work with these data in case of expenditures financed through SCOs when taking into consideration the special rules governing the SCOs.

It is thus obvious that there is no necessity or reason to gather data on the public procurements in case of the expenditures, which are financed through the SCOs or we have not found any argument to support the opposite approach. That is why we came to the conclusion that the obligation set out in the article 72 (1) (e) CPR regarding the data filed 23 and 24 of the annex XVII is not relevant for the expenditures financed through SCOs.

Please could you confirm or comment our understanding?

Answer to question 1:

The answer to this question has been thoroughly changed reflecting the outcome of discussions in the REGIO TN on Simplification meeting.

Please consult the revised answer here:

QA00270 - Revised reply to question 1 of the QA00200 on SCOs - Annex XVII data fields 23 and 24 (maximum working time compliance in case of unit costs)

~~Operations covered by the reimbursement of the Union contribution by the Commission to a programme in the form of unit costs, lump sums or flat rates according to Article 51 and 94 CPR or operations in which support is provided by the Member State to beneficiaries in the form of unit costs, lump sums or flat rates according to Article 53 CPR are not excluded from the legal obligation of the managing authority to record and store electronically the data on each operation set out in Annex XVII to the CPR, including in fields 23 and 24 of this Annex.~~

~~The underlying costs of operations that use simplified cost options are not subject to management verifications and audits. However, the recording and storing electronically the data on contractors, beneficial owners of contractors and sub-contractors is not incompatible with this approach. This information is necessary to capture all natural or legal persons who receive support from the CPR funds.~~

~~The data on contractors, beneficial owners of contractors or sub-contractors is only needed in case the beneficiary or other entities implementing the operation (even if using simplified cost options) do it (or part of it) in accordance with Union procurement rules and in case of sub-contractors under field 24, only where information is recorded on a contractor under field 23, and only for sub-contracts above EUR 50 000 total value (and only first level of sub-contracting).~~

Question 2:

The unit costs will be used to cover wage costs in the new programming period under the Article 53(1)(b) of Regulation (EU) No 2021/1060.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

We would like to ask if it is necessary before paying the grant to verify compliance with maximum weekly working time which does not exceed 48 hours (respectively 1,2 fulltime equivalent), Article 6 and other Articles of the Directive 2003/88/EC concerning certain aspects of the organization of working time or other EU and national legislation?

Answer to question 2:

In accordance with Article 74(1)(a) and in addition, 74(1)(a)(ii) of the CPR, the managing authority when carrying out management verifications is to verify that the co-financed products and services have been delivered, that the operation complies with applicable law, the programme and the conditions for support of the operation, and where costs are to be reimbursed pursuant to points (b), (c) and (d) of Article 53(1) CPR, that the conditions for reimbursement of expenditure to the beneficiary have been met.

Where unit costs set out in accordance with Article 53(1)(b) CPR are applied for the reimbursement of staff costs in the operation as asked in the question, Article 74(1) CPR applies for such operation and accordingly, the management verifications must comprise compliance of the operation with the directive mentioned in the question.

The scope and timing of verifications is laid down in Article 74(2) CPR .

QA00201 - USING FI FOR CO-FINANCING PROJECTS IN 2021-2027 AND CLIMATE PROOFING

Relevant Articles: 58(4) and 73(2)(j) of the CPR

Member State: CZ

Question 1 (including any relevant facts and information):

We would like to get your assurance regarding the possibility of using financial instruments (FI) for co-financing of grant projects that are undergoing difficulties arising from high interest rates and rising costs of materials, energies etc.

We would set-up a FI funded with resources from the 2021-2027 Funds that would provide additional resources to projects that receive grants financed from 2021-2027 Funds.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The co-financing from a FI will not constitute double financing as in all cases the project expenditure financed from grants would be different than the expenditure co-financed from the FI. Is it possible to set-up such a FI that would be limited in investment strategy to providing co-financing to these grant projects?

Answer to question 1:

We understand that the question is about whether it is possible to set up a financial instrument (FI) intended specifically for beneficiaries that had received a grant for an operation. We also understand that the FI support is not intended to cover the same expenditure as that covered by the grant and that this would be done in two separate operations pursuant to Article 58(4) CPR (a grant operation selected by the managing authority and a separate support through FI). It should be clarified first that the FI is a form of support in itself and therefore is not used as co-financing to other forms of support.

Please consider the following example for information purposes. National co-financing rate is at 25% at the level of the grant operation. If the initial cost of the operation was 100 and it increases to 160, the additional 60 can be financed from the FI provided that the initial operation is not fully implemented. This means that the eligible expenditure to be declared to the EC would be: grant: 75 ERDF + 25 national co-financing (which cannot come from the FI) + FI: 45 ERDF + 15 national co-financing for the FI.

It also means that part of the investment supported by FI should be able to generate cost savings or revenue to pay back the borrowed resources. The support through FI should address the investment needs identified in the programme as well as the appropriate support from the Funds through FI should be based on an ex-ante assessment (Article 58(3) CPR). Support through FI should be provided only for the elements of the investments which are not physically completed or fully implemented at the date of the investment decision (Article 58(2) 2nd subparagraph).

Question 2:

We suppose that climate proofing according to the Article 73 paragraph 2 (j) CPR is not necessary for infrastructure projects at the level of final recipients receiving support from a financial instrument. If there is an infrastructure project of a final recipient, the climate proofing requirements will be only verified at the level of the body implementing the FI (the level of beneficiary) in line with the CPR.

The internal procedures of the body implementing the FI (typically commercial banks or other public and private institutions that are exposed to Taxonomy regulatory requirements anyway) should ensure that infrastructure projects of final recipients comply with the CPR and that there's no need to verify climate proofing compliance at the level of final recipient. If the requirement was shifted to the level of final recipient, it would be redundant, it would pose unnecessary burden on final recipients and it would make FIs less attractive.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

We intend to introduce the above mentioned approach in the upcoming national guidance on DNSH and climate proofing. Please let us know if the approach isn't in line with CPR.

Answer to question 2:

Article 73(2)(j) CPR states that in selecting the operations the managing authority must ensure the climate proofing of investments in infrastructure which have an expected lifespan of at least 5 years.

In the context of financial instruments, an operation means a programme contribution to a financial instrument and the subsequent financial support provided to final recipients by that financial instrument (Article 2(4)(b) CPR).

According to Article 2(42) CPR, 'climate proofing' means a process to prevent infrastructure from being vulnerable to potential long-term climate impacts whilst ensuring that the 'energy efficiency first' principle is respected and that the level of greenhouse gas emissions arising from the project is consistent with the climate neutrality objective in 2050.

The requirements resulting from climate proofing apply also to infrastructure projects supported from FI. In the context of FI, the managing authority may, for example, require bodies implementing financial instruments under the terms of the funding agreement (Article 59(5) CPR) to apply the requirements under climate proofing in their co-financed investments (e.g. by incorporating them in the selection criteria).

Subject to the terms of the funding agreement, such bodies should monitor the implementation of investments including the fulfilment of requirements under climate proofing.

The fact that the beneficiaries as bodies implementing the FI are subject to the Taxonomy regulation is not in itself a guarantee that their financed operations would be taxonomy-compliant.

Please refer to the technical guidance on climate proofing in infrastructure investments in 2022-27. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2021:373:TOC

See also Q&A: QA00093

QA00202 - ELIGIBILITY OF COMBINED SUPPORT BY PILLAR III OF JTM AND MODERNISATION FUND

Relevant Articles:

Article 9 of Regulation (EU) 2021/1229 (PSLF Regulation)

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 10d of the ETS Directive 2003/87/EC (Fit for 55)

Member State: CZ

Question 1 (including any relevant facts and information):

The Moravian-Silesian Region is one of the coal regions in Czechia actively working on efficient investments from Just Transition Fund (JTF). After starting the JTF implementation phase in Czechia we intend to focus more on and use the resources from the second and third pillars of the Just Transition Mechanism (JTM). In the context of the third pillar - Public Sector Loan Facility we would like to know more about its combination with other financial resources beyond the EU budget (i.e. beyond the traditional European Structural and Investment Funds). We see very interesting opportunity in combination with Modernisation Fund that we can use in the Czech Republic for renewable energy sources, energy savings and efficiency, open to public sector, among other beneficiaries.

Our question is whether support from the Public Sector Loan Facility can be combined with support from the Modernisation Fund, taking into account the exclusion of support from other Union programs stipulated in Article 9 of the PSLF Regulation.

Answer:

The Public Sector Loan Facility (further the Facility) constitutes the third pillar of the Just Transition Mechanism (JTM), which aims to support investments by public sector entities, given the key role of the public sector in delivering on JTM. Such investments should meet the development needs resulting from the transition challenges described in the territorial just transition plans that have been approved by the Commission. The activities envisaged for support under the Facility should be consistent with, and should complement, activities supported under the other two pillars of the Just Transition Mechanism. In order to optimise the impact of the Facility, individual projects supported under the Facility must not receive support from other Union programmes, except in relation to the preparation, development and implementation of projects[1]. However, operations composed of identifiable separate projects can be supported by different Union programmes, in accordance with the applicable eligibility rules.

The Modernisation Fund[2] supports investments consistent with the 2030 climate and energy objectives of the Union, as well as the Paris Agreement. It operates under the responsibility of the beneficiary Member States in close cooperation with the European Commission, and the European Investment Bank. The Modernisation Fund does not constitute part of the EU budget nor the NextGenerationEU. It is funded from revenues from the auctioning of 2% of the total allowances for 2021-30 under the EU Emissions Trading System (EU ETS)[3]. The Modernisation Fund is therefore not to be considered a Union programme within the meaning of the Article 9 of the PSLF Regulation and can be combined with the Facility.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

As regards the legal framework governing the Modernisation Fund, it allows the funding from the Modernisation Fund to be combined with the funding from other EU or national instruments, excluding double funding of the same costs. This possibility is explicitly mentioned in Article 6(7)(e) and Article 7(7)(g) of Implementing Regulation (EU) 2020/1001. Annex I Section 1.7 of that Regulation requires Member States to provide information on the other sources of funding in their applications under the Modernisation Fund.

Thus, beneficiaries may obtain financing for eligible projects from both of these funding sources, as long as the relevant legislation, including State aid rules, is respected and the same costs are not already funded by another Union or national instrument.

---

[1] See Article 9 of the Regulation (EU) 2021/1229 of the European Parliament and of the Council of 14 July 2021 on the public sector loan facility under the Just Transition Mechanism, OJ L 274/1.

[2] Commission Implementing Regulation (EU) 2020/1001 of 9 July 2020 laying down detailed rules for the application of Directive 2003/87/EC of the European Parliament and of the Council as regards the operation of the Modernisation Fund supporting investments to modernise the energy systems and to improve energy efficiency of certain Member States, OJ L L 221/107

[3]See Article 10d, Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, OJ L 275 25.10.2003

QA00203 - APPLICATION OF ARTICLE 118A AND CO-FINANCING OF THE SECOND PHASE ALSO FROM THE OTHER FUNDS (JTF, AMIF, ISF)

Relevant Article: Article 118a CPR

Member State: CZ

Question 1 (including any relevant facts and information):

We would like to ask you to clarify whether it is possible to co-finance the second phase of the operations also from other Funds under the 2021-2027 programming period (e.g. from JTF, AMIF, ISF, ...) in accordance with Article 118a. Contrary to Article 118, there are no Funds explicitly named in Article 118a, and it is only stated that

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

operation shall be deemed eligible for support under this Regulation and the corresponding Fund-specific Regulations in the 2021-2027 programming period. Please, could you specify this information in the Guidelines on the closure of operational programmes?

Answer:

Article 118a(1) CPR 2021-2027 provides that certain operations as per that Article that were selected for support under CPR 2014-2020 and Fund-specific Regulations listed in that Article, i.e. ERDF, ESF, CF, ETC and EMFF, shall be deemed eligible for support under CPR 2021-2027 and the Fund-specific Regulations in the 2021-2027 programming period corresponding to those listed above. Therefore, the Funds that can support the second phase of the operations phased pursuant to Article 118a CPR 2021-2027 are ERDF, CF, ESF+ and EMFAF.

QA00204 - SELECTION OF PHASED OPERATIONS

Relevant Articles:

Article 118a CPR,

Article 73 CPR

Member State: n/a

Question 1 (including any relevant facts and information):

Rules of which period apply to the second phase of the phased operation selected pursuant to Article 118 or 118a CPR?

Answer:

The rules which apply to the second phase of phased operations selected pursuant to Articles 118 and 118a CPR 2021-2027 are those of the programming period 2021-2027, except for operations selected pursuant to Article 118a CPR 2021-2027 with regard to the scope of eligibility being the one of the CPR 2014-2020 and relevant 2014-2020 Fund-specific Regulations and with regard to Article 73(1) and (2) CPR 2021-2027 which are derogated from.

Question 2 (including any relevant facts and information):

In relation to phased operations selected on the basis of Article 118a CPR:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

When a phased operation falls within the scope of specific objective under 2021-27, but a given programme does not envisage particular actions for types of phased operations eligible under 2014-20 rules, does a programme need to be amended? If yes, what is the starting eligibility date (does Article 63(7) apply?)

Answer:

This answer was updated on 28 March 2023. The added text is underlined.

In accordance with Article 118a(1)(b) CPR, the phased operation needs to fall within 'actions programmed under a relevant specific objective'. If this is not the case, a programme needs to be amended to set out the types of actions to be supported by that programme within which the phased operation would fall.

If in addition, the related amendment of a programme results in adding a new type of intervention in the programme (<u>for the ERDF, the Cohesion Fund and the JTF</u> referred to in Table 1 of Annex I CPR or, for the EMFAF, the AMIF, the ISF and the BMVI, in the Fund-specific Regulations), Article 63(7) CPR applies and the starting eligibility date is the date of the submission of a request for an amendment.

Phased operations selected pursuant to Article 118a that fall under the codes of intervention set out in Article 2(5) of the Regulation 2022/2039 (FAST-CARE)[1] amending the 21-27 CPR to this effect, will in any case require adding such new type of intervention to the programme.

Question 3 (including any relevant facts and information):

Which rules for selection of operations apply? What does it mean that 'the managing authority may decide to grant support to such an operation under this Regulation directly'?

Answer:

Article 118a(1) CPR 2021-2027 allows to select the second phases of operations in the programming period 2021-2027, under conditions provided therein, that have been selected for support and started before 29 June 2022 under CPR 2014-2020 and Fund-specific Regulations for the 2014-2020 programming period. Such operations, according to the same Article 118a(1) CPR, shall be deemed eligible for support under the CPR 2021-2027 and the corresponding Fund-specific Regulations in the 2021-2027 programming period.

As explained in recital 10 of the FAST CARE Regulation, *"[…] additional flexibility should also be provided to enable the direct granting of support and completion of operations for which implementation had started in accordance with the 2014–2020 legislative framework before the date of the legislative proposal for this Regulation, even where such operations would not fall within the scope of the Fund concerned under the 2021–2027 programming period, with the exception of cases where the Funds were used under Article 98(4), first and second subparagraph, of Regulation (EU) No 1303/2013"*.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

On the basis of the above, the phased operations falling under Article 118a CPR 2021-2027[2] should have been selected in accordance with applicable law under CPR 2014-2020[3] and Fund-specific Regulations for the 2014-2020 programming period[4].

Article 118a(1), second subparagraph of CPR 2021-2027 derogates from Article 73(1) and (2) of the same CPR, so the managing authority may grant the support to such operations directly provided that the operations comply with all conditions set out in Article 118a CPR 2021-2027. In other words, for the operations that have been selected under the rules of the 2014-2020 programming period and are to be phased pursuant to Article 118a CPR 2021-2027, the managing authority does not need to set selection criteria and apply selection procedures according to Article 73(1) and (2) CPR 2021-2027 and should make a formal selection based only on the conditions set out in Article 118a CPR 2021-2027.

Question 4 (including any relevant facts and information):

4. What are the consequences of selection rules for application of provisions on:

a. climate proofing,

b. DNSH,

c. revenue generation?

Answers:

Ad. question 4a (climate proofing):

Taking into account that the obligation to ensure the climate proofing of investments in infrastructure which have an expected lifespan of at least 5 years is based on Article 73(2)(j) CPR 2021-2027 and considering that Article 118a(1), second subparagraph CPR 2021-2027 derogates from Article 73(1) and (2) of the same CPR, this obligation does not apply to operations phased pursuant to Article 118a CPR 2021-2027.

Ad. question 4b (DNSH principle):

The DNSH principle is a horizontal principle, which, pursuant to Article 9 CPR 2021-2027, has to be taken into account when pursuing the objectives of the Funds. Therefore, the DNSH principle shall be taken into account also in programmes with operations phased pursuant to Article 118a CPR 2021-2027.

As set out in the Commission explanatory note on the application of the 'do not significant harm' principle under cohesion policy, the ex-ante compatibility with the DNSH principle under cohesion policy is to be ensured at the level of the definition of the types of actions in the programmes. Where necessary, which is likely to be the case for operations phased pursuant to Article 118a CPR that fall within the types of intervention set out in Article 2(5) FAST-CARE due to specific eligibility rules set out therein, appropriate mitigating measures at the level of the programme should be envisaged (mitigation measures identified in the DNSH assessment of the programmes'

actions that will prevent, reduce and as fully as possible offset any significant adverse effects on the environment).

Ad. question 4c (revenue generation):

This answer was updated on 27 September 2023. The changed text is in blue.

The CPR 2021-2027, which is applicable to the second phase of the operations phased into 2021-2027 (with exceptions mentioned in Article 118a CPR 2021-2027 in relation to operations phased pursuant to Article 118a CPR 2021-2027), does not contain provisions on revenue generating operations.[5]

However, although implemented in two programming periods (2014-2020 and 2021-2027), a phased operation is one operation consisting of two phases. This operation was selected for support and started under the CPR 2014-2020.

Article 61(2) CPR 2014-2020 provides that the eligible expenditure of the operation to be co-financed from the ESI Funds shall be reduced in advance taking into account the potential of the operation to generate net revenue over a specific reference period that covers both the implementation of the operation and the period after its completion.

Therefore, following the above regulatory requirements, the potential of the operation to generate net revenue is to be taken into account for both phases of the operation and the eligible expenditure to be co-financed must be reduced accordingly in advance.

If it is objectively not possible to determine the potential net revenue in advance using any of the methods set out in Article 61(3) and (5) CPR 2014-2020, and considering that CPR 2021-2027 does not contain provisions on revenue generating operations, Member States shall implement such operations in accordance with State aid rules, as well as all other applicable EU law, national and programme rules.

Question 5 (including any relevant facts and information):

What does it mean that 'operations started'?

Answer:

One of the conditions linked to the phasing of the operations pursuant to Article 118a CPR 2021-2027 is that they must have been selected and started before 29 June 2022, see Article 118a(1). As explained in recital 10 of the FAST CARE Regulation, the implementation of such operations should have started in accordance with the 2014-2020 legislative framework, which in the absence of a definition should be the date when the operations start being implemented and which shall be indicated in the document setting out the conditions of support and recorded and stored in computerised form by the managing authority.

Question 6 (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

6. What does it mean 'operation selected'?

Answer:

The term 'selected' refers to the national procedure of selection of operations by the managing authority, compliant with the applicable EU, national and programme rules, during which the compliance of the operations with the criteria defined in the rules, selection criteria and relevant call is verified. In relation to phased operations falling under Article 118a CPR 2021-2027, such operations should have been selected under the rules of the 2014-2020 programming period following a selection process. The grant agreement (or equivalent document) is a subsequent step to the selection.

---

[1] REGULATION (EU) 2022/2039 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 October 2022 amending Regulations (EU) No 1303/2013 and (EU) 2021/1060 as regards additional flexibility to address the consequences of the military aggression of the Russian Federation FAST (Flexible Assistance for Territories) – CARE

[2] Regulation (EU) 2021/1060

[3] Regulation (EU) No 1303/2013

[4] Regulation (EU) No 1301/2013; Regulation (EU) No 1300/2013; Regulation (EU) No 1304/2013; Regulation (EU) No 1299/2013

[5] As also explained in the replies to questions 107 and 108 of the document 'Member State questions within the framework of the EGESIF discussion on the draft Closure Guidelines' (EGESIF_21-0012-05).

QA00205 - JTF NGEU DEADLINE AND CONSEQUENCES ON FIS

Relevant Article: Article 91, 92, 105-107 of the CPR

Member State: HU

Question 1 (including any relevant facts and information):

What are the applicable deadlines for payments for financial instruments implemented from NGEU funds under JTF? The NGEU funds have to be consumed by 2026. What is the consequence of this deadline on the FI?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

This answer was updated on 9 October 2025. The changes are struck through and the added text is in blue and underlined.

Payments from the NGEU funding source of the JTF should be made by the Commission to the programmes until 31 December 2026[1]. JTF payments to programmes will be made by the Commission from open commitments made from NGEU resources until they are exhausted. In accordance with the rules laid down in Articles 105-107 of the CPR, the Commission will decommit NGEU resources which have not been used for pre-financing or for which a payment application in accordance with Articles 91 and 92 has not been submitted by 31 December of the third calendar year following the year of the budget commitments for 2022 and 2023.

There is no effect of the deadlines for absorption of the NGEU resources on the implementation period of financial instruments operations supporting JTF actions and such operations can continue after 2026.

According to Articles 63(2) and 68(1) of the CPR, the final date for the eligibility of expenditure~~period for actions implemented~~ under the JTF (including in the form of financial instruments)~~lasts up to~~ is 31 December 2029 or 31 December 2030 where, in line with Article 7a(5) ERDF/CF Regulation, 3rd sub-paragraph of Article 10(5) JTF and 4th sub-paragraph of Article 10(6) JTF, programme amendments are reallocating at least 10 % of the financial resources of the programme to one or more of the mid-term review dedicated priorities . Therefore, payment applications for the years after~~2023~~ 2026 and until the end 2029 or the end 2030, whichever applies (including expenditure for financial instruments) will continue to be honoured by the Commission on account of the MFF resources supporting the JTF programme or priority and up to the limit of these resources (the resources laid down in Art. 3(2) JTF Regulation).

---

[1] Article 3(4) and (9) of Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis

QA00206 - CASCADE FUNDING - FOLLOW-UP TO THE QA00132

Relevant Article: Art. 2(9)and 63 of the CPR

Member State: PL

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

In the 2021-2027 perspective Poland is considering the implementation of operations consisting of group of projects, i.e. re-distributing financial support by the beneficiary to pre-defined types of bodies or natural persons (final recipients outside financial instruments), based on pre-defined and clearly defined parameters (without any discretion by the beneficiary). Such parameters would be defined before the selection of operations and reflected in documents setting the conditions for support. The beneficiary would be responsible for delivering products and results of the operation (comprising of small projects) and re-granting support to final recipients implementing these small projects.

In Polish authorities' view, in such a cascade funding mechanism, expenditures of final recipients (i.e. invoices paid by natural persons or other pre-defined bodies) are eligible and can be reimbursed by the Commission. However, the beneficiary is still the only relevant body to meet all the requirements imposed by the Regulation on beneficiaries. Polish authorities' seek the confirmation that in cascade funding mechanisms the expenditures incurred by final recipients (e.g. payments supported by invoices, or documents of equivalent probative value, made by natural persons or other pre-defined bodies) are eligible and the full amount of these expenditures can be included in payment applications submitted to the Commission.

Answer:

The Commission would first like to underline that the notions of "small project" and "small project funds" can only be employed in the context of Interreg Regulation (Regulation (EU) 2021/1059), Art. 24 and Art 25(2). "Final recipient" can be used in the context of financial instruments and small project funds (Article 2(18) CPR).

In accordance with Article 63(2) of the CPR, expenditure shall be eligible for a contribution from the Funds if it has been incurred by a beneficiary or the private partner of a PPP operation and paid in implementing operations.

We understand the question as a situation where all expenditure is incurred by the beneficiary and paid in an operation, regardless if some support is further cascaded to other recipients, in accordance with agreements between the beneficiary of the operation and recipients given that the beneficiary keeps the ultimate responsibility for the implementation of the operation.

In such context, expenditure of recipients (i.e. invoices paid by natural persons or other pre-defined bodies~~in implementing operation~~) that~~would~~ will actually be reimbursed by the beneficiary on the basis of the agreement with the recipient can be considered to be the expenditure on the basis of the agreement with the recipient can be considered to be the expenditure~~(thus~~ incurred by the beneficiary~~and paid in implementing the operation)~~ and therefore may be eligible for support. They could be reimbursed by the MA (IB) to the beneficiary and subsequently by the Commission to the Member State under condition that the managing authority's obligation in terms of management verifications is ensured and the audit trail of all expenditure incurred

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

and paid in implementing the operation is kept at the appropriate level, meaning (*the beneficiary)* (Article 82 CPR), irrespective of the fact that part of the support is further cascaded to other recipients.

Furthermore, the following should be duly considered:

- Appropriate audit trail of costs incurred by the beneficiary and paid in implementing the operation in cascading support from the funds should be maintained.
- Management verifications remain the responsibility of the MA or IB by delegation.
- An audit trail of such verifications shall be maintained at the level of the body performing the management verifications (MA or IB); sub-delegations from IB to beneficiaries are not possible.

Please refer to reply to QA00130, QA00132, QA00133 and QA00199 for completeness.

QA00207 - SELECTION OF COMMUNITY-LED LOCAL DEVELOPMENT STRATEGIES

Relevant Article: Article 32(3) CPR

Member State: NL

Question 1 (including any relevant facts and information):

According to Article 32(3) CPR a management authority shall complete the first round of selection of strategies and ensure the local action groups selected can fulfil their tasks set out in Article 33(3) CPR within 12 months of the date of the decision approving the programme.

When a managing authority has selected the first CLLD strategy within 12 months of the approval date of the programme, can it select other CLLD strategies later than one year after the programme approval?

Answer:

Article 32(3) CPR provides the timeframe for the first round of selection of strategies. This deadline is supposed to ensure a smooth launch of implementation of CLLD as

well as sufficient time for the implementation of strategies. However, it does not prevent Managing Authorities to select other CLLD strategies after this deadline.

QA00208 - INFORMING THE COMMISSION ON THE FULFILMENT OF ENABLING CONDITIONS THROUGHOUT THE PROGRAMMING PERIOD

Relevant Article: Article 15(6) of the CPR

Member State: n/a

In the Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, and more specifically in Article 15 "Enabling conditions", paragraph 6, it is stated that "***The Member State shall ensure that enabling conditions remain fulfilled and respected throughout the programming period. It shall inform the Commission of any modification impacting the fulfilment of enabling conditions.***"

Greece has already fulfilled 11 out of the 20 ECs, while the majority of the rest is in the process of completing the negotiations with GEO units for their fulfilment. In addition, it's been a few months that most of Greece's programmes have already been approved (excluding Technical Assistance and those of AMIF Fund, EMFAF which are expected to be adopted soon) and at the current stage, meetings of the Monitoring Committees are held, activating the new Programming Period 2021-2027.

Given that **the frequency and the type of the information needed by the European Commission** regarding the fulfilment of the ECs throughout the programming period **is not specified in the CPR (EU) 2021/1060** and taking into account several relevant references in the CPR articles 38, 40, 41, **we consider that presenting the progress of the ECs monitoring to the European Commission in the context and under the frequency of the Monitoring Committee or/and the Annual performance review meetings is compliant with the CPR provisions**.

Furthermore, it is understood that the method by which the MS will collect the required information is at its discretion and in accordance with the procedure applied already for ensuring the fulfilment of the ECs.

In this context, we ask you to confirm that we have properly understood our obligation towards CPR Art. 15, para 6 provisions.

In any other case we ask you to inform all MSs on how the European Commission interprets the application of the above mentioned provision and have a discussion on that in the context of CPR Expert Group, in order to ensure a common understanding between MSs and the Commission Services and avoid possible misunderstandings and non-uniform treatments.

Question:

What type of information and how frequently should the Member States report to the Commission with regard to the fulfilment of the enabling conditions during the programming period 21-27?

Answer:

In accordance with Article 15(6) CPR, "the Member State shall ensure that enabling conditions remain fulfilled and respected throughout the programming period". Moreover, it also determines that the Member State ''shall inform the Commission of any modification impacting the fulfilment of enabling conditions''.

Given the continued fulfilment required under Article 15(6) CPR, the Member State should inform the Commission of any modification impacting the fulfilment of enabling conditions by letter submitted through the official means of SFC2021, outside the submission of programme amendment sections. **'Any modification impacting the fulfilment of enabling conditions'** should be understood by the Member State **as any substantial change affecting the documents and/or arrangements demonstrating that the criteria of the relevant enabling conditions as set out in Annex III or Annex IV CPR are met, thus impacting the fulfilment of the enabling condition.**

The Member State should communicate the substantial change as set out Article 15(6) CPR immediately after its occurrence. Timing of the monitoring committee meetings or review meetings is not relevant in this respect.

Furthermore, the Commission may also launch the procedure envisaged in the second sub-paragraph of Article 15(6) CPR on its own initiative on the basis of information available.

Communication of substantial change in accordance with Article 15(6) CPR does not affect the regular monitoring obligations related to enabling conditions:

- In accordance with Article 40(1)(h) CPR, the monitoring committee examines the fulfilment of enabling conditions and their application throughout the programming period. It should therefore be a standard topic for examination at meetings of the monitoring committee, in particular in cases where one or more enabling conditions are not fulfilled at the time of approval of the programme, or where a new specific objective is introduced as a part of a programme amendment, or other circumstances arise that may affect the fulfilment of enabling conditions. In accordance with Article 75(a) CPR, the

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

managing authority shall provide the monitoring committee in a timely manner with all information necessary to carry out its tasks and representatives of the Commission participating will be equally informed at the same time.

- In addition, the managing authority must comply with the reporting arrangements to the monitoring committee that have been put in place by the Member State in order to meet the criteria for the fulfilment of the HECs related to the Charter and the UNCRPD.
- This issue should also be discussed at performance review meetings, in line with Article 41(3) CPR given that it is covered by the information the managing authority shall provide the Commission in accordance with Article 40(1)CPR.
- It is recalled that the Commission services and Member States are encouraged to have regular informal exchanges on the fulfilment of enabling conditions.

QA00210 - PUBLICATION OF DATA BY THE MEMBER STATE

Relevant Article: Article 42 of the CPR

Member State: DK

Question 1 (including any relevant facts and information):

Would the provision of a link to the Commission Open Data Platform be sufficient for the Member State to comply with the requirements of CPR Article 42(5)?

Answer:

le 42(1) CPR imposes the obligation on the Member State or on the managing authority to transmit cumulative data to the Commission for each programme. According to Article 42(5) CPR, the Member State or the managing authority must publish or provide a link to all the data transmitted to the Commission on the website portal referred to in point (b) of Article 46 CPR or on the website referred to in Article 49(1) CPR. Pursuant to Article 42(4) CPR the data submitted must be reliable and reflect the data stored electronically by the MA in accordance with point (e) of Article 72(1) CPR.

It follows from the above that the requirements of Article 42(5) CPR would not be fulfilled by providing a link to the Commission Open Data Platform (ODP). Publishing data on the ODP is an initiative by the Commission, but not a regulatory obligation. By contrast, under Article 42 CPR it is the responsibility of Member States to transmit

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

cumulative data to the Commission and publish or provide a link to *all the data* transmitted.

QA00211 - IMPLEMENTATION OF EUROPEAN PARTNERSHIPS FINANCED BY THE EUROPEAN HORIZON AND ERDF AND SELECTION OF OPERATIONS ATTRIBUTED A SEAL OF EXCELLENCE OR OPERATIONS CO-FUNDED BY HORIZON EUROPE

Relevant Articles:

Art. 71 (5) and Art.73 (4) of the CPR

Art. 15 (3) Regulation (EU) 2021/695 establishing Horizon Europe,

Art. 136 and 198, Financial Regulation (EU, Euratom) 2018/1046

Member State: LT

Question 1 (including any relevant facts and information):

I. Implementation of European Partnerships

Lithuania is currently a member of several European Partnerships (hereinafter - EP), part of which is financed by the European Horizon and part by the ERDF under RSO 1.1 of the Programme for the EU funds' investments 2021-2027 (hereinafter – the Programme).

Currently, LT MA facing a few issues related to preparation for the EP's implementation, for which there is no clear regulation in the European Commission's notice on "Synergies between Horizon Europe and ERDF programmes" (2022/C 421/03).

LT have understanding that in accordance with CPR Article 71(5), the National Funding Body involved in the implementation of the EP (as part of the European Horizon) must be the Intermediate Body of the Programme, and according to the Commission Notice on synergies between Horizon Europe and ERDF programmes, should perform the following functions:

1. Participating in the EP Consortium Board;
2. Informing the European Horizon authorities of the EP to which they wish to join and about the planned financial support;
3. Participating in the preparation of calls, proposals funded by the EP;

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

4. Publish these proposals in country which National Funding Body represents;
5. Consulting applicants at the time of submission of applications;
6. Nominate experts for evaluation of applications (not by their own Member States);
7. when assessing the applications submitted by the applicant Member State it represents, the Board shall defend these applications, justifying their added value and justifying why they should receive funding;
8. Sign project contracts with applicants selected by the Management Board;
9. Continues to manage the EP-funded project in line with the requirements set

out in Regulation (EU) 2021/1060.

Taking into account the abovementioned information, LT authorities would like to receive clarification on the following questions:

1. Should all the functions of the National Funding Body (from joining the Consortium to signing the funding agreement for a project funded by the EP) be performed by the Intermediate Body of the Programme, even though these functions do not correspond to the functions assigned to them by the requirement for the management and control system laid down in Regulation (EU) 2021/1060.
2. If the answer to the first question is affirmative, is the Programme Managing Authority responsible for the proper performance of these functions by the National Funding Body (which must be an Intermediate Body) and should the supervision of all these functions be carried out in accordance with Regulation (EU) 2021/1060?
3. Is it possible to delegate several National Funding Bodies to one EP which would share functions as follows:
    - National Funding Body No 1: sign a consortium contract, participate in the preparation of calls for proposals funded by the EP by the consortium's Governing Board, advise applicants in their country, represent their country in the Governing Board when assessing the applications received, and provide experts for evaluation of applications received by the Governing Board from other countries.
    - National Funding Body No 2: signing the EP-funded project funding agreement, managing the EP-funded project from the signature of the EP-funded project to the closure of the project (as laid down in Regulation (EU) 2021/1060).
4. If only one body, which must be Intermediate Body, can be designated to carry out all the functions of the National Funding Body, can it rely, in the exercise of its functions, on the advice, conclusions and/or involvement of other LT authorities in the Governing Board on matters falling within the competence of the Governing Board? Can other national institution or other National funding body be included in the Governing Board?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

II. Selection of operations attributed a Seal of Excellence or operations co-funded by Horizon Europe

In line with Article 73(4) of Regulation (EU) 2021/1060, Lithuanian national legislation governing the administration of EU funds states that for operations attributed a Seal of Excellence, or operations selected under a programme co-funded by Horizon Europe the managing authority may decide to grant support from the ERDF or the ESF+ directly, provided that such operations meet the requirements set out in points (a), (b) and (g) of paragraph 2.

In order to correctly implement the requirements of Article 73(4), LT authorities would like to receive clarification on the following questions:

1. If the operations referred to in Article 73(4) comply with the requirements of Article 73(2)(a), (b) and (g), can the other requirements laid down in the Regulation may be waived (e.g. Regulation (EU) 2021-1060 Article 73(1), (2)(c) to (f), (2)(h) and (2)(h to j))?
2. Do the operations referred to in Article 73(4) have to comply with the requirements laid down in other EU Regulations, for example:
    - In accordance with the requirements of Article 136 of Regulation (EU, Euratom) 2018/1046?
    - In accordance with the requirements of Article 198 of Regulation (EU, Euratom) 2018/1046?
3. Will the European Commission assess the compliance of actions with the provisions of Article 136 of Regulation (EU, Euratom) 2018/1046 before granting a Seal of Excellence, or selecting operations under a programme co-funded by Horizon Europe?
4. Will the European Commission assess the compliance with the provisions of Article 198 (2) and (3) of Regulation (EU, Euratom) 2018/1046 1046 before granting a Seal of Excellence, or selecting operations under a programme co-funded by Horizon Europe?
5. If the European Commission does not assess compliance with the requirements of Article 198 (2) and (3) of Regulation (EU, Euratom) 2018/1046 before granting a Seal of Excellence, or selecting operations under a programme co-funded by Horizon Europe, please clarify the scope to which we should evaluate compliance with these regulations in relation to the project's financial and operational capacity, given that Article 73(2)(d) of Regulation (EU) 2021/1060 may not be applicable to the operations in question.

Answer:

I. Implementation of European Partnerships

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Following Article 71(5) CPR, where a programme provides support from the ERDF to a programme co-funded by HE (such as EP), the body implementing the programme co-funded by Horizon Europe shall be identified as an intermediate body. The tasks of an intermediate body should be defined by the arrangements between the managing authority and intermediate bodies and be recorded in writing (Article 71(3) CPR). Intermediate bodies can perform certain tasks of the managing authorities such as selection of operations and programme management tasks as defined by Article 72 CPR. The responsibility of the managing authority as far as supervision of the intermediate body relates to the tasks it had entrusted to this intermediate body pursuant to Article 71(3).

The CPR does not regulate the set up or management model of European Partnerships; therefore the implementation of EP can be delegated to several National Funding Bodies. However, where the ERDF provides support to the EP, the CPR applies and the functions linked to selection of operations and programme management tasks under the ERDF programme can only be performed by the body that has been identified as an intermediate body.

The CPR also does not regulate the composition of EP Governing Bodies, therefore other national institution or several National Funding Bodies can be included into the Governing Board.

II. Selection of operations attributed a Seal of Excellence or operations co-funded by Horizon Europe

Following Art. 73(4) CPR, managing authority may grant support from the ERDF or the ESF+ directly, provided the operation in question complies with Art. 73(2) (a), (b), (g). As far as support from the funds is concerned these are the only elements that need to be checked. For operations attributed a Seal of Excellence or operations selected under a programme co-funded by Horizon Europe an assessment in compliance with the Regulation (EU, Euratom) 2018/1046 under another (directly managed) instrument should have already taken place and the label 'Seal of Excellence' granted.

QA00212 - CLARIFICATION ON ELIGIBLE EXPENDITURE UNDER ARTICLE 94 CPR

Relevant Articles:

Art. 94 and 95 CPR 2021-27

Member State: DE

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Background information:

According to Art. 14(1) Reg.(EU) No. 1304/2013 (ESF Regulation 2021-2020) MS were able to agree with EC on simplified cost options, which then were published in a Delegated Act. Regarding the corresponding amounts the following provision was applied: "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 1303/2013."

For the funding period 2021-2027 a very similar provision has been included in the CPR. According to Art. 94 CPR 2021-27, the MS may agree on simplified cost options with EC, which then become part of the program texts. Even though the substance of Art. 94 CPR 2021-27 reflects to a large extent the content of Art. 14(1) ESF-Regulation 2014-2020 the above quoted sentence regarding the public nature of the amounts calculated on this basis, has not been copied into Art. 94 CPR 2021-27.

Question:

Can the amounts calculated on basis of Art. 94 CPR 2021-27 in conjunction with the respective program texts be regarded as public support. If so, can this be applied to Art. 95 of the CPR as well?

Answer:

No. Under Article 14(1) ESF Regulation, the expenditure reimbursed by the COM based on SCOs was considered to be as expenditure paid to beneficiaries, and at the same time the eligible expenditure that should be declared to the COM under Article 131(1) of Regulation (EU) 1303/2013. This approach was used in the ESF Regulation to allow respecting the requirement of Article 131 CPR.

Article 51 of Regulation (EU) 1060/2021 provides for the possibility for the Commission to reimburse Member States based on SCOs under the conditions set out in Article 94 CPR. Article 94 (3) provides that the Member States must reimburse beneficiaries, but such reimbursement may take any form of support in accordance with Article 52 CPR. Therefore, Member States may be reimbursed by the COM based on SCOs, but may well choose to reimburse their beneficiaries based on eligible costs incurred by the beneficiary, the same SCOs as the ones they are reimbursed by the Commission or different SCOs. The two levels (EC-Member States and Managing Authority-beneficiary) are separate.

In 2021-2027 period the part of the provision of Article 14(1) ESF referring to Article 131 CPR is not needed as, in line with Article 91(4)(a) and (c) CPR the eligible expenditure to be declared to the Commission is, by derogation to the provision of Article 91(3)(a) CPR the amounts of SCOs approved in the Commission decision under Article 94(3) CPR, or justified by the progress in the fulfilment of conditions or

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

achievement of results, in accordance with the decision under Article 95(3) or the relevant amounts set out in Delegated Regulations pursuant to Articles 94(4) or 95(4)CPR.

QA00213 - VAT AND ACCOUNTING RECORDS

Relevant Articles:

Article 64(1)(c)(i) of the CPR

Article 74(1)(a)(i) of the CPR

Member State: SE

Question 1 (including any relevant facts and information):

Does the requirement to maintain separate accounting records or use appropriate accounting codes for all transactions relating to the operation also apply to VAT paid by the beneficiaries, for VAT to be an eligible cost?

In normal Swedish accounting systems recoverable VAT is never recorded in the cost side of the income statement, only in the balance sheet. The procedure is normally automated in the accounting systems, making it difficult or even impossible for the beneficiary to manually move the recoverable VAT part of an invoice to the income statement. Project accounting codes only applies to the costs and incomes in the income statement, not cash flows in the balance sheet. Given these automated accounting processes, is recoverable VAT in operations where the total cost is below EUR 5 000 000 excluded from the accounting requirement in article 74(1)(a)(i)? Is it enough that the VAT part of an invoice can be indirectly traced to the operation via the balance sheet?

Answer:

In accordance with Articles 69(6) and 74(1)(a)(i) and point I (12) of Annex XIII to the CPR, an adequate audit trail of all transactions related to the operation has to be maintained. It follows from Article 74(1)(a)(i) CPR that beneficiaries must maintain separate accounting records or use appropriate accounting codes for all transactions relating to the operation. Therefore, regardless of whether the VAT is recorded in the income statement or in the balance sheet, a national accounting system that ensures, via accounting codes and invoices, the traceability of input VAT to the transaction on which that VAT was charged and the traceability of the transaction to the operation, complies with the above rules of the CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00214 - FLAT RATE FINANCING OF INDIRECT COSTS

Relevant Article: Article 54 CPR

Member State: FI

Question 1 (including any relevant facts and information):

What is the recommended usage of flat rate combinations? In the working paper of FAME/SCO[1], there is an example from Interact-fund (table 9) where for example the 15 % flat rate or 7 % flat rate should not be combined with 40 % flat rate.

In the CPR it is clearly stated in Article 54 that "Where a flat rate is used to cover indirect costs of an operation, it may be based on one of the following…" but in Article 56 only the flat rate described in Article 55.1 is ruled out when using the 40 % flat rate. Using different flat rates might increase the risk of double compensation. For example, travel expenses can be both indirect and direct costs.

Answer:

The basic principle underlying the use of SCOs is that double financing should be avoided. This is the principle expressed in Article 53(1)(e) CPR. Where SCOs are combined in the same operation the Managing Authorities should pay attention that the same categories of costs are not financed more than once and that each category is clearly separated. It is the responsibility of the Member States to define the different categories of costs in a consistent, nonequivocal and non-discriminatory way and ensure that double financing is avoided.

The CPR explicitly forbids the combination of SCOs in Article 56 CPR by stating that the flat rate 40 % used to cover the remaining costs of an operation shall not be applied to staff costs calculated on the basis of a flat rate under Art. 55 (1)). Besides this specific restriction, the general principle of avoidance of double financing should always be applied when setting up SCOs. In the specific case for example, the use of flat rates in Article 54 CPR may not be combined with 40% flat rate in Article 56 CPR, as the same category of costs (ie the indirect costs) would be covered twice.

SCO methodologies under Articles 53-56 CPR are not subject to the assessment of the Audit Authority. However, the Commission strongly recommends to consult the audit authority in advance when setting up SCO methodologies.

For more detailed information, please see the Commission notice guidelines on the use of simplified cost options within the European Structural and Investment Funds (ESI) – revised version (OJ C, C/200, 27.05.2021, p. 43[2]).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

---

[1] fame-working-paper-emfaf-simplified-cost-options_en.pdf (europa.eu)

[2] Commission notice guidelines on the use of simplified cost options within the European Structural and Investment Funds (ESI) – revised version (europa.eu)

QA00215 - BUDGET TRANSFER ERDF - HORIZON

Relevant Article:

Member State: LT

Question 1 (including any relevant facts and information):

LT plans to withdraw 10 MEUR of funds from the IP: 5 MEUR amount in 2024 and 5 MEUR amount in 2025 (*Amounts are shown just for illustration).* This would be done as follows: 5 MEUR in 2024 (with N+1 rule applied to this amount and the unused fund will be automatically transferred by the EC to the next year of HE budget) and 5 MEUR for 2025 (with N+1 rule applied to this amount as well).

Would transfer-back to IP in order not to lose funding (where the Commission has not entered into a legal commitment under Horizon Europe) be necessary by 31 August of 2026?

Answer:

Lithuania can indicate the budget distribution over the years. The budget could for example be split and each part be allocated to every year till 2027 (including) or could be all attributed to just one year. Where the request for transfer concerns an amendment of a programme, only resources of future calendar years may be transferred. The amount to be transferred should be based on an estimate of the amount likely to be absorbed in the period in question, based on the MS/region's track record in the chosen Horizon Europe component(s), and agreed beforehand with the Commission.

As the transferred resources are implemented in accordance with rules under Horizon Europe, the N+1 rule will be applicable to the yearly allocation of the budget indicated in the programme amendment (principle of 'budget annuality').

This means that, in case of a programme amendment decided in 2023 transferring 5M€ to the Horizon Europe budget for 2024 ('future calendar year'), the Commission has time to enter into a legal commitment for the resources transferred from 1st January 2024 until 31 December 2025[1]. Uncommitted resources may be transferred

back to the Fund from which they have been transferred up to 4 months before the end of the year n+1 (i.e. by 31 August) by way of programme amendment. In case there is no transfer back of uncommitted resources, the amount will be subject to the general EU budget rules (i.e. they will be lost for the transferring programme). This means that - in case there was no request to transfer back in August 2025 – any transferred resources that on 31 December 2025 are not yet committed, will be lost and will NOT be able to be transferred to the following year (2026).

Horizon Europe will run during 2021-2027. Therefore, the last year to plan budget is 2027. So, if there is some budget planned for 2027, it should be used up till 31 December 2028 unless a request to transfer back has been entered in August 2028.

Question 2 (including any relevant facts and information):

You explained that "the **use of transferred resources**, the Horizon Europe and CPR legislation does not restrict the use of transferred resources to specific components and/or calls under Horizon Europe. The transferred resources could in principle be used for different calls (including sequential). However, to facilitate implementation, it will be helpful if the transfer request specifies the HE component (e.g. EIC Accelerator) targeted by the transfer"

Could you please advise us, how to make a request for transfer in order to maintain the maximum flexibility for the use of funds? Can one request for transfer address the different years of HE (e.g. 2025, 2026 and 2027)? I. e. is it possible to foresee in <u>one agreement</u> that the transferred resources are transferred in parts (e.g. 2 mil in 2025, 2 mil in 2026, etc)?

Answer:

The programme amendment for the transfer should indicate the desired allocation per future calendar year (if the transferred amount is to be spread over several years). The flexibility for the use of funds will be restrained by the N+1 rule due to budget annuality principle. The request for a transfer may set up a profile by year how the amounts are to be transferred out of a programme (and subsequently committed under the Horizon in line with the principle of annuality). Based on your example: in a request for programme amendment done in 2024, 2M EUR transferred out from programme allocation for 2025 would need to be committed under Horizon between 1 January 2025 and 31 December 2026. The following 2M EUR transferred out from programme allocation for 2026 would need to be committed under Horizon between 1 January 2026 and 31 December 2027. Generally, the more flexibility in terms of geographical scope (determined by the territory of the transferring programme), intended use under Horizon Europe (at the level of Horizon Europe component(s)) and allocation over time, the better the chances for absorption.

Question 3 (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

You explained that "for the **time period for the use of transferred resources** under Horizon Europe, HE rules apply to the transferred amounts. This includes that related **grant agreements need to be signed before end of year n+1** (see guidance note p.16) The Member State can ask to transfer uncommitted resources back to the ERDF up to 4 months before the end of year n+1 (i.e. by 31 August). It does so by requesting an amendment to the programme(s) in which these resources will be included. The request is subject to the Commission's approval. The decommitment rule will start to apply from the year in which the corresponding budgetary commitments are made."

We understand that all transferred funds must be contracted in the year n+1 (i.e. if transfer request is made in 2024, the calls in question take place in 2025, the unused resources have to be requested back in 2026) - correct?

However, if transferred resources are not use in one HE programme (e.g. MSCA ERC 2025 calls: StG, CoG, AdG), can they be transferred to another programme (e.g. MSCA IF or Cofund 2025 call). Could you please answer yes or no?

Answer:

For the first question, please see last paragraph of the reply to question 1.

Second question: yes, if such flexibility is indicated in the transfer request.

Question 4 (including any relevant facts and information):

Would the transferred funds be available to this - 2023 - year calls? Especially if the calls are later this year and the evaluations of applications and/or reserve lists of projects to be financed would jump into the next year?

Answer:

Projects are selected on the basis of evaluation lists that result from the Horizon Europe evaluation. Transferred funds can be used only to fund project proposals which have been evaluated positively under Horizon Europe rules but could not be accepted due to budgetary constraints and which have not yet been published on the reserve lists at the date of the transfer request.

Question 4 (including any relevant facts and information):

Commision's Notice says that *to facilitate implementation, the request for transfer could specify the HE component (e.g. EIC Accelerator) targeted by the transfer.*

With the aim to have as much flexibility to support LT reserve list's projects, **is LT allowed to indicate on the pillar level the division of transferred funds** with indicative programmes (*e. g. Pillar 1 "Excellence science", preliminary to Marie Sklodovska-Curie actions and IRC and Pillar 3 "A more competitive Europe..." preliminary "Accelerator")?*

The reasoning for this would be not to block the possibility of other HE programmes' projects to be funded by transfers which were not identified as "popular" by LT stakeholders.

LT would like to reserve the right to be involved in the decisions to which programmes the transferred funds would be used.

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

See reply to question 3 above.

In the request for programme amendment submitted together with a justification, it is recommended that Lithuania indicates the intended use of the transferred resources under Horizon Europe (at the level of component(s)). This cannot be decided by Lithuania based on the list of beneficiaries published on reserve lists after the date of the transfer request. We recommend to indicate the target of the transfer in way flexible enough to allow Horizon Europe maximum absorption of the transferred budget.

---

[1] The remaining amount of the transfer indicated in the programme amendment for 2025 (another 5M EUR as in the example presented in the question) would need to be committed under Horizon between 1 January 2025 and 31 December 2026.

QA00216 - GRANTS UNDER CONDITIONS AND DURABILITY REQUIREMENTS

Relevant Article: Article 57, 65 of the CPR

Member State: PL

Question 1 (including any relevant facts and information):

The project financed by grants under conditions is subject to the durability requirements referred to in Article 65 of the CPR. In the event of non-compliance with durability requirements, shall the beneficiary make an appropriate reimbursement of the grant, calculated from the amount of the grant received, in proportion to the period during which the lifetime of the operation has not been maintained?

In case of grants under conditions, can the amount of co-financing received be reduced by the repayments of the conditional grant made by the beneficiary, or should it relate to the whole amount of the funds received by the beneficiary, i.e. the amount of funds certified to the Commission (repayments of grants under conditions are subject to the requirements of Article 57 (3) of the CPR and do not require a reduction in the declaration of expenditure to the Commission)?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

It is correct that grants under conditions for an operation comprising investment in infrastructure or productive investment are subject to the durability requirements according to Article 65 CPR.

In case of non-compliance, Article 65(1) CPR provides that the Member State shall repay (back to the Union budget) the contribution from the Funds to the operation that failed to meet the durability requirements. The repayment by the Member State should be in proportion of the period of non-compliance.

Article 57(3) CPR provides that in case of support to an operation through a grant under conditions, the resources paid back should be reused in the form of grants under conditions or financial instruments or in another form of support. Therefore, resources paid back cannot be used for another purpose, e.g. to repay the contribution from the Funds where durability of operations according to Article 65(1) CPR is not respected.

According to Article 65(1) CPR third paragraph the Member State should repay the full amount of contribution from the Funds in proportion of the period of non-compliance. If the contribution from the Funds should be repaid according to Article 65(1) CPR during the eligibility period the contribution from the Funds should be deducted from the declared expenditure to the Commission.

During the closure of the final accounting year if the non-compliance with Article 65(1) is identified, the Member State should repay the amounts of the contribution from the Funds. Such amount recoverable from the Member State should be subject to a recovery order issued by the Commission according to Article 100 CPR.

QA00217 - 'ENVIRONMENTAL CONSERVATION' UNDER ARTICLE 64(1) OF THE CPR

Relevant Article: Art. 64 CPR

Member State: PL

Question 1 (including any relevant facts and information):

Article 64 enlists non eligible costs and in particular mentions under lit.b) costs of land purchase with financial limit of 10% of total eligible expenditure. This limit can be higher for derelict sites and post-industrial sites. The Article 64 also says that the limits do not apply to the operations concerning environmental conservation.

The MA would like to interpret this 'environmental conservation' in a broad manner i.e. all operations under Priority Objective 2 and other priority objectives that have

sustainable development as a goal. However, environmental conservation should be interpreted in the light of environmental policy and legislation whereby environmental conservation refers to protection and restoration of natural components of environment. Can it be confirmed that environmental conservation as referred to under Article 64(1) means protection and restoration of natural components of environment?

Answer:

Operations concerning environmental conservation as referred to under Art 64(1) CPR as an exception should be interpreted narrowly and is understood as referring to operations which directly aim at and directly contribute to the conservation or restoration of natural environment in the natural area concerned. Operations under SO 2.7 (enhancing protection and preservation of nature, biodiversity and green infrastructure, including in urban areas, and reducing all forms of pollution) and under SO 2.4 (promoting climate change adaptation and disaster risk prevention and resilience, taking into account ecosystem based approaches), that contribute to the restoration and conservation of habitats and species, including areas of high nature value, resulting in maintaining or improving their conservation condition, functioning of ecosystem services and biodiversity qualify as operations concerning environmental conservation. From a policy approach, restoration and conservation actions should prioritise important ecosystems such as wetlands (e.g. riparian zones) and grasslands. In particular, operations consisting of building or of maintenance of grey infrastructure such as roads, car parks, bike paths, buildings, horizontal, lateral and vertical barriers on rivers (e.g. dams), water storage reservoirs, etc., or of allotments, are not considered as environmental conservation operations.

QA00219 - MODALITIES OF PHASING OPERATIONS

Relevant Articles: Articles 42, 118 of the CPR and Annex VII CPR

Member State: RO

Question 1 (including any relevant facts and information):

1. In case of phased implementation, should the MA sign new or amend the existing contract with the beneficiaries or it is completely up to the Member State how they organize this?
2. With regards to the 2021-2027 programmes, should phasing of a project be requested would it require a programme amendment of the involved 2021-2027 programme?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

3. Connected to the previous question, how are the amounts for the second phase included in the 2021-2027 programmes and what is the deadline to reflect the revisions (if needed) in the new programmes?
4. Are YEI projects eligible for phased implementation?

Answer:

1. The managing authority is required to ensure that the beneficiary is provided with a document setting out the conditions for support for each operation including the specific requirements concerning the products or services to be delivered under the operation, the financing plan, the time limit for execution, etc.

The above requirement equally applies for the first phase of the operation implemented in the 2014-2020 programming period (see Article 125(3)(c) of the CPR 2014-2020) and for the second phase implemented in the 2021-2027 programming period (see Article 73(3) of the CPR 2021-2027).

It is up to the managing authority how to fulfil the above requirement, i.e. amending the existing document setting out the conditions for support of the operation or signing a new one for the second phase of that operation.

2. Concerning operations phased in accordance with Article 118a CPR 2021-2027, please see the reply to question 2 of QA00204.

The same principles apply to operations phased in accordance with Article 118 of the CPR 2021-2027. Pursuant to Article 73(2)(a) of the CPR 2021-2027, the selected operation must comply with the programme. Therefore, a programme amendment may be required in case the relevant 2021-2027 programme does not contain types of action under a relevant specific objective within which the selected second phase of the operation would fall.

If in addition, the related amendment of a programme results in adding a new type of intervention in the programme (for the ERDF, the Cohesion Fund and the JTF referred to in Table 1 of Annex I CPR or, for the EMFAF, the AMIF, the ISF and the BMVI, in the Fund-specific Regulations), Article 63(7) CPR applies and the starting eligibility date is the date of the submission of a request for an amendment. In case of the ESF+, whether the eligibility date of expenditures of new/amended elements of the programme should only start on the date of the submission of the request, it should be subject to a case-by-case analysis based on the substance of the amendment.

Where the second phase of the operation falls within types of action under a relevant specific objective set out under the relevant 2021-2027 programme, programme amendment is not needed.

3. After selection (or granting the support directly in case of phasing in accordance with Article 118a of the CPR 2021-2027), the data on the second phase of the operation is to be included into the template set out in Annex VII to the CPR 2021-2027 and transmitted by the Member State to the Commission in accordance with

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 42 of the CPR 2021-2027. The financial data on the second phase of the operation is to be included into tables 1 and 2 of the said template.

4. Yes, provided the conditions set out in Articles 118 or 118a of the CPR 2021-2027 are met. To note as well that actions which were supported under the YEI in the 2014-2020 programming period will continue to be eligible under the 2021-2027 programming period and can be programmed under different specific objectives depending on the intervention logic of the operation, but they would primarily be eligible under the specific objective 'access to employment'. Moreover, these actions would also contribute to the thematic concentration requirement on youth employment. For further details on programming youth related measures in 2021-2027 period, you may consult QA_ESF+_022.

QA00220 - ELIGIBILITY OF POSTED WORKERS UNDER JTF

Relevant Articles:

Recital (13) and Art. 8 of the CPR

Directive 96/71/EC on posted workers

Member State: FR

Question 1 (including any relevant facts and information):

Are posted workers in a sector in decline/transformation on which the territory covered by the territorial just transition plan (TJTP) depends, eligible to benefit from the JTF support?

Answer:

In line with Article 8(1) of the JTF regulation, "the JTF shall only support activities that are directly linked to its specific objective as set out in Article 2 and which contribute to the implementation of the territorial just transition plans established in accordance with Article 11".

As stipulated by Article 2 of the JTF regulation, the JTF shall contribute to the single specific objective of enabling regions and people to address the social, employment, economic and environmental impacts of the transition towards the Union's 2030

targets for energy and climate and a climate-neutral economy of the Union by 2050, based on the Paris Agreement.

Activities envisaged under Article 8(2) (k), (l), (m) and (o) of the JTF regulation aim to address in particular the social and employment impact of the transition. To be eligible, such activities should be justified in the relevant TJTPs and their link to addressing the impact of the transition to a climate-neutral economy should be established.

In particular, with regard to activity (k) under Article 8(2), the JTF should cover the upskilling and reskilling, including training. In addition, recital (13) of the JTF Regulation clarifies the rationale for this support. It can be concluded that such support targets those workers or jobseekers who are affected by the transition.

In light of the above, and considering the obligation of the Managing authority in accordance with Article 73(2)(a), posted workers may be eligible under the JTF provided it can be demonstrated that those workers are affected by the transition to a climate neutral economy and the other relevant conditions are met.

Therefore, the upskilling and reskilling activity of the posted workers can be supported if there is a duly justified link between the financed activity and the impact on the transition in the JTF territory.

QA00221 - ELIGIBILITY OF PRE-RETIREMENT ALLOWANCE AND SHORT TERM WORK SCHEME

Relevant Article: Art. 8 of the JTF regulation

Member State: n/a

Question 1 (including any relevant facts and information):

Based on preliminary estimations, in two JTF regions, there are approximately 3-400 persons working in affected sectors, who will reach retirement age in the next 5 years. Would some kind of pre-retirement allowance for this target group be eligible under JTF?

Would any scheme be eligible under JTF that addresses the people who are working in sectors affected by the green transition but who are not necessarily a good target group for active measures (i.e. miners, who are before retirement)? In particular, we think about some kind of short time work scheme.

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Financial allowances of any type are not among the activities that could be supported by the JTF and this approach is further clarified in the SWD on the territorial just transition plans (SWD (202) 275 final, p. 11): "The JTF cannot finance early retirement schemes or compensation schemes for workers who have been laid off." It is indeed unlikely that such a scheme would in anyway meet the objectives of the JTF. Therefore, the JTF could not support the pre-retirement scheme mentioned in the first question.

The same logic applies to the second question, regarding the possibility for the JTF to finance short time work schemes for these workers, in case these short time work schemes are not accompanied by active measures. Such schemes are not listed under eligible measures under points (l) to (m) of Article 8(2) of the JTF measure that aim at job seekers and not workers who are already employed in affected companies or industries.

QA00222 - AUDIT TRAIL/MANAGEMENT VERIFICATIONS FNLC

Relevant Article: Article 95 CPR

Member State: n/a

Question 1 (including any relevant facts and information):

In case of an FNLC scheme with reimbursements based on the eligibility of participants and the achievement of targets (results), will the MA have to carry out an exhaustive verification or it can apply a sampling method with extrapolation of the error rate?

[Dans le cadre du FNLC, le paiement se basant sur l'éligibilité des participants et l'atteinte des valeurs cibles, l'AG devra-t-elle réaliser un contrôle exhaustif ou peut-elle appliquer une méthode d'échantillonnage avec extrapolation du taux d'erreur ?]

Answer to question 1:

There is no obligation for the MA to carry out an exhaustive verification. For the 2021-2027 programming period, managing authorities are expected to implement risk based management verifications. This implies that the extent of the verifications should be driven by the level of risk associated to the achievement of the intermediary targets linked to the intermediary payments. In practice, if the MA identifies a certain number of ineligible participants through its verifications, it may decide to extend its verifications to gain assurance that a sufficient number of eligible participants was achieved.

Question 2 (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

What are the risks if an auditor detects errors? Is the error rate applied to part of the file or to its entirety?

[Quels sont les risques si un auditeur détecte des erreurs ? Le taux d'erreur est-il appliqué à une partie du dossier ou sur son intégralité ?]

Answer to question 2:

There is no difference in the treatment of errors. An error is extrapolated at stratum level first (could be the FNLC) and further on considered in the calculation of the total error rate. However, if, for example, a number of participants were found ineligible by the AA but other (additional) participants were supported (and were eligible), this would not need a revision of the contribution to the milestones/conditions/results. See the example below at the end of this reply.

Question 3 (including any relevant facts and information):

If the audit authority carries out an audit on an intermediary payment claim and it identifies a certain number of participants ineligible, is it necessary, like in the case of financial instruments, to wait for the end of programming period to estimate the impact of this ineligibility?

[Si l'autorité d'audit procède à un contrôle sur l'une des remontées de dépenses intermédiaires et qu'elle constate qu'un certain nombre de participants sont inéligibles, est-ce que, comme pour les instruments financiers, il faut attendre la fin de programmation pour estimer l'impact de cette inéligibilité ?]

Answer to question 3:

The audit authority should assess if the intermediary target (milestone) is achieved (if the related amounts were included in the accounts). If the target is not achieved, the intermediary payment is undue. If at the date of the audit the number of eligible participants has been achieved, it could be assessed that there is no error on the intermediary payment. If the number of eligible participants is not sufficient, the intermediary payment would be assessed as ineligible. See the example below at the end of this reply.

Example for Q 2&3:

Milestone		**Target Date**
1	**50**	**01/01/2023**
2	**100**	**01/01/2024**
3	**300**	**01/01/2025**

Premises:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

1. MA declares the milestone 1 achieved. AA finds no ineligible. No issues.
2. MA declares milestone 2 achieved.

Option 1. When performing its audit, AA is informed that 120 participants are eligible, AA audits eligibility of these 120 participants

a) AA finds 10 ineligible => no impact

b) AA finds 25 ineligible => Payment is irregular and counts as an error, please see points b, c and d below.

Option 2: AA audits the situation when MA has declared i.e 100 participants, AA finds 10 ineligible

a) MA can prove that additional 10 units were achieved (eg. during contradictory procedure, AA agrees) => milestone not affected

b) MA cannot prove at that moment that the target is achieved => milestone affected => EC has already paid, payment is irregular and counted in the error rate=> correction is to be made in a next payment

c) MA proves 1 months later that the extra 10 are available => milestone 2 reached => expenditure can be reintroduced

d) MA proves when submitting milestone 3 that 310 units are available => milestones 2+3 reached

QA00223 - ELIGIBILITY OF TA TO MANAGEMENT STRUCTURES FOR NATURA 2000

Relevant Article: Article 3 ERDF

Member State: BG

Programme Environment 2014-2020 envisaged measures to support the establishement of new (currently non-existing) management structures for Natura 2000 in Bulgaria. These measures were described in a paper outlining the strategy for the relevant priority axis as "*development of rules, procedures and guidance for the management of Natura 2000 protected areas; increasing the planning and programming capacity for Natura 2000 network management by conducting/ participating in specialized trainings; organizing and conducting a national competition for best projects contributing to Natura 2000; purchase of equipment; organizing and holding meetings of the Monitoring Committee of NPAF and NICS; organizing and holding campaigns for promoting funding opportunities for NATURA 2000 projects*".

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

For a number of reasons, the measures were then reduced to focus very much on the set up of structures, including recruitment and salary costs.

Following some delays in the legal process at national level, the management structures are still not established and it is therefore envisaged that their support will take place in the new programming period 2021-2027.

The authorities would like reassurances that in the period 2021-2027, the legal framework allows for such measures to be supported under a priority dedicated to SO 2.7 and would not have to be implemented through a separate technical assistance priority or programme.

Question 1 (including any relevant facts and information):

Article 3(4)(b) offers the possibility to use ERDF/CF to "*improve the capacity of sectoral or territorial actors responsible for carrying out activities relevant to the implementation of the ERDF and the Cohesion Fund, provided that it contributes to the objectives of the programme*", and that "***within the specific objectives***" set under paragraph 1 of Article 3 ERDF/CF.

As such, does the envisaged financing of "implementation of the management approach in Natura 2000 protected sites – ensuring support for the management bodies of Natura 2000 protected sites" under Priority 3 "Biodiversity" of draft Programme Environment 2021-2027 (supporting SO 2.7 – Article 3(1)(b)(vii)) fall within the scope of this Article?

The authorities state that:

- According to the OPE MA's understanding, the Natura 2000 management bodies are both territorial and sectoral actors responsible for carrying out activities relevant to the implementation of the ERDF or the Cohesion Fund (namely the measures related to enhancing biodiversity, part of the National Priority Action Framework for Natura 2000), given these measures contribute to the objectives of Programme Environment 2021-2027.
- The Natura 2000 management bodies will also be responsible for carrying out activities relevant to the implementation of the ERDF and the Cohesion Fund, which correspondent to the measures included in the NPAF.

Answer:

Administrative capacity building actions under Article 3(4)(a and b) of the ERDF and CF Regulation, would be part of a specific objective and target the efficiency and effectiveness of the investments within the same specific objective.

Given that the Natura 2000 management bodies will be responsible for the implementation of measures from the National Priority Action Framework for Natura 2000 supported from the ERDF or the CF, capacity building actions linked to those

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

bodies can be envisaged under a priority addressing specific objective 2.7 (set out in Article 3(1)(b)(vii) of ERDF and CF Regulation) provided that such support contributes to the objectives of the programme. Article 3(4)(b) of ERDF and CF Regulation does not include an exhaustive list of what can be supported, however it is important to demonstrate new capacity created or improved capacity compared to the starting situation.

As for the recruitment and salary costs linked to the set up of the new structures, these would be eligible under SO 2.7 if they are linked to the implementation of the project in question or if they are part of the project management costs. Permanent (operational) cost of personnel not linked to the implementation or management of this or other ERDF/CF projects are not eligible under SO 2.7.

Capacity building, e.g. of beneficiaries and partners, can also be funded under technical assistance. However, operational/management expenditure (e.g. salaries and costs for recruitment) can be covered from technical assistance only for programme authorities, which is not the case of the Bulgarian Natura 2000 management bodies.

QA00224 - PUBLICITY REQUIREMENTS ACCORDING TO ARTICLE 50(1)(C) CPR IN THE CONTEXT OF FINANCIAL INSTRUMENTS

Relevant Articles: Article 50

Member State: DE

Question 1 (including any relevant facts and information):

This is a follow-up question to the QA in relation to the equity investment and the application of Article 50(1)(c) and the second paragraph of Article 50(2) CPR.

- In case of equity investments, at the time of an investment, it may not be possible to determine what proportion of the capital provided will be used for working capital and physical investment/purchase of equipment. Is there a rule to estimate the proportion of support for physical investments that would trigger putting up the billboard or durable plaques to respect the requirements of Article 50(1)(c) and the second paragraph of Article 50(2) CPR?
- Is it possible that the managing authority (MA) provides the durable plaques or billboards to the final recipients if the total cost of their investment exceeds the EUR 500 000 threshold?
- How can the respect of the conditions of application of Article 50 CPR at the level of the final recipients be controlled?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The questions were discussed in the fi-clinic and it was decided to consult the replies through the QA process because of the relevance to all programme authorities.

Answer:

1) The obligations under the Article 50(1)(c)(i)) to display a durable plaque or a billboard clearly visible to the public (CPR) apply where, the total cost of an investment exceeds EUR 500 000 and it involves physical investment or installation of purchased equipment. The proportion of the amount of the physical investment and equipment within the investment is not relevant where the total cost of an investments exceeds EUR 500 000.

2) Under the second subparagraph of Article 50(2) CPR, the body implementing the FI must ensure compliance with the obligation set out in Article 50(1)(c) CPR by way of contractual terms between the body implementing the FI and the final recipient.

According to the contractual terms, the final recipients are to put up the durable plaque or the billboard. The actual implementation of those terms depends on the final recipient.

If justified by providing effective communication and visibility measures, it would be possible for the MA to provide durable plaques or billboards for publicity related to the operation. A separate grant provided in combination with the FI support could be considered in accordance with Article 58(4) CPR.

3) The CPR does not prescribe how the controls of whether the contractual terms are respected or not by the final recipient have to be put in place by the beneficiaries or the bodies implementing financial instruments.

However, according to point (1)(n) of Annex X to the CPR, the funding agreement between the managing authority and the bodies implementing FIs must include the 'terms and conditions to ensure that through contractual arrangements final recipients comply with the requirements of displaying of durable plaques or billboards in accordance with point (c) of Article 50(1), and other arrangements to ensure compliance with Article 50 and Annex IX for the acknowledgement of support from the Funds'. The bodies implementing FIs would carry out the monitoring of those terms and conditions accordingly.

QA00226 - OPERATIONS CONTRIBUTING TO THE FULFILMENT OF THE ENABLING CONDITION

Relevant Article: Art. 15 CPR

Member State: BE and EL

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

According to Article 15(5), second subparagraph, of the CPR, reimbursement limitations related to unfulfilled enabling conditions shall not apply to operations that contribute to the fulfilment of the corresponding enabling condition.

Article 15(5) CPR:

'Without prejudice to Article 105, expenditure related to operations linked to the specific objective may be included in payment applications but shall not be reimbursed by the Commission until the Commission has informed the Member State of the fulfilment of the enabling condition pursuant to the first subparagraph of paragraph 4 of this Article.

The first subparagraph shall not apply to operations that contribute to the fulfilment of the corresponding enabling condition.'

What is meant by operations that contribute to the fulfilment of the corresponding enabling conditions?

Answer:

In accordance with Article 15(5) CPR, expenditure related to operations linked to specific objectives for which enabling conditions are not fulfilled cannot be reimbursed by the Commission, with the exception of operations that contribute to the fulfilment of corresponding enabling conditions.

"Operations that contribute to the fulfilment of corresponding enabling conditions" are operations which contribute to the fulfilment of the criteria of the enabling conditions corresponding to the SO to which these operations are related (such as the preparation of plans or strategies required in the criteria of some enabling conditions as set out in Annex III or IV CPR).

Such operations need to fall within the scope of the Funds, be eligible for funding under the CPR, Fund-specific rules, the relevant programme, the relevant specific objective or technical assistance. The inclusion of investment/physical operations under 'operations that contribute to the fulfilment of the corresponding enabling conditions' would circumvent the prohibition on the reimbursement by the Commission of expenditure related to operations linked to specific objectives for which enabling conditions are not fulfilled, resulting from Articles 15(5) and 91(3) CPR in conjunction with the template for payment applications set out in Annex XXIII to the CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00227 - ELIGIBILITY OF OPERATIONS SUBMITTED TO CALLS PUBLISHED BEFORE THE ADOPTION OF 2021-27 PROGRAMMES AND WHICH WERE COMPLETED IN THE PERIOD BETWEEN THE APPLICATION AND THE ADOPTION OF PROGRAMME

Relevant Articles: Art. 63 CPR, Art. 73 CPR

Member State: n/a

Due to the delay in the adoption of the CPR and subsequent delayed submission of the cohesion policy programmes to the Commission, some Member States, as in the previous programming period, decided to launch calls before the actual approval of the relevant programmes by the Commission, after the approval of selection criteria by so-called "shadow" monitoring committees.

During programme negotiations, the Commission services explained to managing authorities that if needed before the approval of the programme, the MS can decide to set up a MC informally. Such a MC would be working as a "shadow" MC and may start to carry out its functions in accordance with Article 40 CPR/Articles 22 and 30 of the Interreg Regulation, in particular discussing and approving the methodology and criteria to be used for the selection of operations. However, any decision taken by such MC should be formally reconfirmed by the regular MC, once it is formally set up following the approval of the programme.

Certain operations selected based on such calls might have been completed before relevant programmes were approved and relevant selection criteria were reconfirmed by the regular monitoring committee.

Questions (including any relevant facts and information):

1. **What are the relevant factors for the interpretation of Article 63(6) CPR under the circumstances described in the background?**
2. **Is there a need to reassess the operations selected before the programme approval in case of a difference between criteria approved by a shadow and formal monitoring committee and/or between a draft and approved programme?**

Answer:

First, we should recall that based on the CPR, before the approval of the programme, it is not possible to set up a formal monitoring committee (Article 38(1) CPR), thus it is not possible to formally approve the methodology and criteria for selection of operations (Article 73(1) in combination with Article 40(2)(a) CPR), or to formally select operations (Article 73(2)(a) CPR). The establishment and functioning of a "shadow" monitoring committee can be considered as a technical solution to overcome the time

gap between the start of the programming period and the establishment of a formal monitoring committee, following the approval of the programme by the Commission, in order to avoid delays in starting programme implementation.

It is opportune to confirm, that the CPR does not exclude the possibility to launch a call for proposals prior to the approval of the programme by the Commission based on the selection criteria approved by a 'shadow' monitoring committee, as well as the subsequent assessment of submitted applications and the selection and implementation of successful operations provided that the requirements referred to in the CPR are met. Member States may begin to implement the programme before it is approved by the Commission decision at their own risk. However, after the approval of the programme by the Commission, any decision taken by the 'shadow' monitoring committee should be formally approved by the monitoring committee set up to monitor the implementation of the programme concerned. Such a formal approval, if it does not imply the revision of the decisions taken by the `shadow` monitoring committee, does not require re-launching or re-opening the call or re-submitting applications for support.

Ad question 1:

In accordance with Article 63(6) CPR, operations shall not be selected for support by the Funds where they have been physically completed or fully implemented **before the application for funding under the programme is submitted**, irrespective of whether all related payments have been made. Thus, the only fact relevant for the interpretation of Article 63(6) CPR is if the operation was completed or fully implemented before submitting the application for funding by the beneficiary in response to the launched call for proposals.

Ad question 2:

It should firstly be recalled that the managing authority must establish and apply criteria and procedures for the selection of operations which are non-discriminatory, inclusive and transparent, and ensure that the operations selected comply with the programme as well as provide an effective contribution of Union funding towards the achievement of the objectives of the programme and are in line with the horizontal principles defined in the CPR.

Changes between selection criteria approved by a 'shadow' and regular monitoring committee and/or changes between a draft and approved programme affecting the conditions under the call of proposals launched before the approval of the programme (such as changes affecting the eligibility or scope of operations) or affecting the appraisal of submitted operations (such as changes in the formulation of the criterion or its weighing) should lead to reassessment of selected operations and submitted applications.

It should be the task and responsibility of the Managing Authority to assess whether any such changes in the selection criteria as above have the potential to discriminate

potential applicants to the call. Should this be the case, the MA is to take remedial actions.

QA00228 - CALCULATION OF ESTIMATED LEVERAGE EFFECT FOR FINANCIAL INSTRUMENTS COMBINED WITH GRANTS

Relevant Articles: 2(23), 58(3)(a) CPR Regulation

Member State: HR

Question 1 (including any relevant facts and information):

The ESF+ Managing Authority is setting-up and implementing financial instruments through the Programme Efficient Human Resources 2021-2027.

In the period 2021-2027 is planning to use the combination of financial instruments and grants for technical support and for capital rebate. During our preparation of the ex-ante assessment, we have encountered an issue regarding the calculation of the leverage effect. According to the 2021-2027 CPR combination of FI/grant is regarded as a single operation, however the CPR also defines leverage effect as „the amount of reimbursable financing provided to final recipients divided by the amount of the contribution from the Funds." Both in technical support and capital rebate combination, we can say that the grant part is not "reimbursable", even though it reaches the final recipients.

Therefore, when calculating the leverage effect, according to formula:

(Total expected amount of finance to eligible final recipients (excluding MCF)) / (ESI Funds amount committed to the financial instrument (including MCF)) we have concluded that the grant part should be excluded from the Total expected amount of finance to eligible final recipients.

Example:

We would like to offer micro loans in combination fi/grant (capital rebate option with up to 50% of loan write-off) and we have programmed 30 million EUR of ESF+ resources (of which EUR 25.5 million is EU co-financing and EUR 4.5 million is national co-financing). Also, portion of the management cost and fees will be applied (7% of the total amount of programme contributions disbursed to final recipients in loans, in this particular case EUR 2.1 million)

Expected leverage effect = ((EUR 30 million-EUR 2.1 million)*50%)/(EUR 25.5 million) = 0.55

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Given that the combination of financial instruments and grants is new in 2021-2027 programming period, we would appreciate your feedback whether our calculation is correct or not. Does the calculation differ depending on what type of combination we are using (technical support, capital rebate and possibly capital grant)?

Answer:

According to Article 2(23) CPR leverage effect means the amount of reimbursable financing provided to eligible final recipients divided by the amount of the contribution from the Funds.

The estimated leverage should take into account the 'total expected amount of finance to eligible final recipients' (excluding management costs and fees and the grant component) divided by 'the amount of expected contribution from the Funds' (excluding the Funds share of management costs and fees and the grant component). The calculation will not take into account the grant component combined with the financial instrument.

Based on the amounts provided in the question and taking into account:

- the assumption that leveraged resources will be provided only from the national co-financing (i.e. no leveraged resources will be provided from the microfinance institutions),
- the assumption that capital rebate of 50% will be provided for all loans, and
- the capital rebate has zero national co-financing,

the estimated leverage effect for the envisaged instrument would be as follows:

Explanation of the amounts used in the calculation:

EUR 30 million	Programme contribution
EUR 25.5 million	ESF
EUR 4.5 million	National co-financing
85%	ESF co-financing
EUR 2.1 million	Programme contribution for management costs and fees
EUR 1.785 million	ESF share in management costs and fees (EUR 2.1 million *85% = EUR 1.785 million)
EUR 27.9 million	Programme contribution excluding MCF (EUR 30 million – EUR 2.1 million = 27.9 million)
EUR 23.715 million	ESF excluding MCF (EUR 25.5 million – EUR 1.785 million = EUR 23.715 million
EUR 4.185 million	National co-financing excluding MCF (EUR 4.5 million – EUR 0.315 million = EUR 4.185 million
50%	Capital rebate
EUR 13.95 million	Amount of capital rebate, i.e. grant component ((EUR 30 million – EUR 2.1 million) * 50%) = EUR 13.95 million (fully supported by ESF)
EUR 9.765	ESF invested in eligible final recipients excluding ESF share of MCF and excluding grant

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

million	component (EUR 25.5 million – EUR 1.785 million - EUR 13.95 million = EUR 9.765 million)

QA00230 - MONITORING OF CROSS-FINANCING WHEN USING THE FLAT RATE FOR INDIRECT COSTS

Relevant Articles: Article 25, 50 and 54 CPR

Member State: PL

Question 1 (including any relevant facts and information):

In the EC Guidelines on the use of simplified cost options within the European Structural and Investment Funds (ESI) – revised version (2021/C200/01) (link: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021XC0527(02)&from=PL) there is a chapter 2.7.1 which describes how SCO relates with the cross-financing actions. What drew our attention is the example on relation of cross-financing with flat rate financing. It is mentioned below:

2.7.1. Declaring the actions falling under Article 25(2) CPR in relation to the simplified cost options

Example of ESF-ERDF cross-financing with flat rate financing

In the case of a flat rate for indirect costs, the cross-financed amount will be the amount of 'cross-financed direct costs', added to indirect costs calculated by the flat rate applicable to these 'cross-financed direct costs'.

For example, within a EUR 15 000 operation funded by an ERDF programme, the 'ESF type' direct costs represent EUR 3 000 and indirect costs are calculated as 10 % of direct costs (EUR 300). The cross-financed amount would thus be EUR 3 300. If at the end of the operation the direct costs were reduced, the cross-financed amount (including for indirect costs) would be reduced according to the same formula.

Our doubts arise as regards this above-mentioned example in case of flat rate for indirect costs in ESF+ operations.

We would assume that in ESF+ project we should first calculate the direct cross-financing (ERDF-type) expenditure, e.g. the 15% for this specific operation, and then apply the flat rate for indirect costs on the total (ESF+ + ERDF-type) direct eligible costs. So, for example EUR 1,150 (ERDF + ESF+ expenditure) * 25% = EUR 287,50 for overheads (indirect cost flat rate). The total eligible amount of the project would then read as follows:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- ESF+ direct expenditure 1.000,00 EUR
- ERDF-type direct expenditure (15% limit) 150,00 EUR
- Flat rate for indirect costs (at 25%) 287,50 EUR
- **TOTAL Eligible Amount 1.437,50 EUR**

Of course, according to CPR Art. 25.2, the capping on the cross-financing expenditure is imposed at Priority level, not at operation level. Therefore, we might have individual operations under the same Priority which will exceed this limit while other operations which will not have cross-financing expenditure at all. However, at Priority level the cross-financing expenditure shall not exceed the 15% limit.

Therefore, not to exceed this limit, we would add all expenditures from all operations within the specific Priority, calculated according to the above-mentioned example (as ERDF-type direct expenditure (15% limit), i.e. EUR 150).

Answer:

In our understanding, the question of Poland is twofold:

1. Whether it is compliant with the rules if the Managing Authority applies the maximum rate of cross-financing at the level of operations in order to meet the 15% criteria set out by Article 25(2) CPR

Article 25(2) sets out that "*The ERDF and the ESF+ may finance, in a complementary manner and subject to a limit of 15 % of support from those Funds for each priority of a programme, all or part of an operation for which the costs are eligible for support from the other Fund on the basis of eligibility rules applied to that Fund, provided that such costs are necessary for the implementation.*"

The 15% ceiling is set at the level of the priority. It is the task and responsibility of the Managing Authority how it organizes the monitoring of compliance with this ceiling. It may be one way to apply the ceiling to each and every operation provided that the overall ceiling at the level of priority is respected.

2. In case of an ESF+ operation that is partially cross-financed and also uses the flat rate as provided by Article 54(c) CPR for calculating indirect costs, how to determine the total amount of that operation that is considered as cross-financing (for the purposes of calculating the cross-financing threshold)?

Article 54(c) CPR allows Member States to calculate indirect costs for an operation on the basis of a flat rate of up to 25% of the eligible direct costs of the operation, provided that the rate is calculated based on a fair, equitable and verifiable calculation method.

The flat rate applies to all eligible direct costs of the operation, irrespective of whether cross-financing is being used or not. In this case, these would be eligible direct cost under ESF+ and eligible direct cost under the ERDF (cross-financed part of an operation).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Please note that the notions of 'necessary for implementation' and 'cost eligible for support from the other Fund' in the context of cross-financing were explained in QA00026 and QA00084.

According to Article 25(2) CPR, the cross-financing is subject to a limit of 15% of support from ERDF or ESF+ for each priority of a programme. The cross-financed amount of an operation should be taken into account in monitoring against this limit.

If, as in the example presented in the question, the ceiling was imposed at the level of an operation, the all cross-financed expenditure would need to fall within 15% limit of support from the Funds for that operation. In the case of a flat rate for indirect costs calculated according to Article 54(c) CPR, the cross-financed amount will be the amount of 'cross-financed direct costs' (eligible under the ERDF), and indirect costs calculated based on the flat rate applicable to these 'cross-financed direct costs'.

QA00231 - JTF SUPPORT FOR AN INNOVATIVE HEAT BATTERY

Relevant Articles: Article 8 and 9 JTF regulation

Member State: NL

Question 1 (including any relevant facts and information):

The project pipeline for the JTF in the Netherlands includes an innovative heat battery.

It concerns a pilot of a flexible heating network in which heat is transported loss-free and mobile (in salt modules) from a low-temperature source location to consumption points for clusters of households. The heat battery will be tested and validated (including for safety) and the economic and social feasibility will be demonstrated. The project comprises various work packages aimed at the design, construction and testing of production processes, loading units and storage containers, on the basis of which a strategy for roll-out is ultimately determined, including a business case model. The heat source is residual heat from processes that run on fossil fuel. In the longer time, the residual heat will be green.

In the meantime, the use of the residual heat avoids the use of additional fossil fuel. No investment is foreseen in the heat production.

Would projects in an innovative heat battery, as described above, fall under the fossil fuel exclusion of the JTF (Article 9(d)) or not?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The project is not about providing support for the production of the heat itself but rather about the capture, storage and transport of heat which has already been generated (by processes running on fossil fuels). The investment in innovative heat batteries does not fall within the fossil fuel exclusion of JTF Article 9(d) i.e. investment related to the production, processing, transport, distribution, storage or combustion of fossil fuels.

However, such an investment should not in any way lead to a delay in the transition to a climate-neutral economy. In that regard, the innovative heat battery needs to fall within the scope of a type of action described in the programme which compliance with the DNSH principle has been assessed by the Member State when defining the types of action of that programme.

QA00233 - Does the amendment of the programme based on Article 118a CPR need to be in line with the Partnership Agreement?

Relevant Articles: 13, 24(2) and 118a of the CPR

Member State: PL

Question 1 (including any relevant facts and information):

On the basis of Regulation 2022/2039 of the European Parliament and of the Council of 19 October 2022 amending Regulations (EU) No 1303/2013 and (EU) 2021/1060, as regards additional flexibility to address the impact of the armed aggression of the Russian Federation FAST CARE, according to Article 118a(1)(b), an operation phased must fall within the scope of the actions programmed under the relevant specific objective. If this is not the case, the programme should be amended to specify the types of actions to be supported under the programme to which the phased operation relates. This is also supported by the existing interpretation QA00204 - Selection of phased operations (Question 2) on RegioWiki.[1]

In case of the programme amendment consisting in adding a new action under a relevant specific objective to fulfil the condition of Article 118a(1)(b) will such an amendment have to ensure consistency with the Partnership Agreement pursuant to Article 23(1) of Regulation 2021/1060 or Article 118a exempts from that requirement?

Answer:

Pursuant to the first paragraph of Article 118a(1) CPR, an operation with a total cost exceeding EUR 1 000 000 that was selected for support and started before 29 June

2022 under the 2014-2020 CPR and Fund-specific Regulations shall be deemed eligible for support under this Regulation and the corresponding Fund-specific Regulations in the 2021–2027 programming period. Article 118a(1) CPR in its second paragraph grants further derogations from Article 73(1) and (2) CPR.

In accordance with Article 118a(1)(b) CPR, the phased operation needs to fall within 'actions programmed under a relevant specific objective'. If this is not the case, a programme needs to be amended to set out the types of actions to be supported by that programme within which the phased operation would fall.

Pursuant to Article 24(2) CPR, the Commission will assess the programme amendment and its compliance with the CPR and with the Fund-specific Regulations, including requirements at national level.

As provided in recital 18 CPR, the Partnership agreement is a concise and strategic document guiding the negotiations between the Commission and the Member State concerned on the design of programmes under the ERDF, the ESF+, the Cohesion Fund, the JTF and the EMFAF. In order to reduce the administrative burden, it is not necessary to amend the Partnership Agreement during the programming period. However, if the Member State so wishes, it may submit (by 31 March 2025, as per Article 13(1) CPR) to the Commission one amendment to its Partnership Agreement to take into account the outcome of the mid-term review. Therefore, there is no need to amend the Partnership Agreement following the programme amendments if they are necessary to comply with Article 118a(1)(b) CPR.

_____

[1] https://webgate.ec.europa.eu/regiokm/display/XNETCPR2021/QA00204+-+Selection+of+phased+operations

QA00234 - USE OF COMMUNICATION MATERIAL WITH OLD LOGO

Relevant Article: Article 50 CPR

Member State: BE

Question 1 (including any relevant facts and information):

Beneficiaries usually produce goodies and communication tools. Some of them still have a lot of material from 2014-2020 (= EU flag with mention of the fund). Are they allowed to use this material until they run out of stock or do they have to adapt it via a sticker for example or do they have to throw everything away and produce new material that respects the communication rules 21-27 (EU flag with mention « cofinanced by European Union) ?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

All beneficiaries of operations selected under the 2021-2027 period should comply during the entire lifecycle of the operation with the provisions set out in Article 50 and Annex IX.

There might be cases when the beneficiary has the same or very similar operations in both periods, in particular when the Managing Authority is the beneficiary of an operation financed from technical assistance. Having in mind the overall objective of the EU towards less waste, it is advisable that the beneficiaries do not throw the remaining items away but strive to either distribute them at appropriate events, which are still linked to the implementation of the 2014-2020 period, or have them adapted when the purpose is to use them for the promotion of the 2021-2027 funding (indeed with a sticker or similar solution). Alternatively, if the materials can no longer be used for communication purposes, the beneficiaries may repurpose them or may use them for internal purposes of programme authorities, eg. stationery, office supply. The surplus of materials can also be donated to for example NGOs or schools (the MA may also donate materials from a number of projects in a joint effort). Lessons learnt from 2014-2020 are to be taken into account for planning and guiding beneficiaries in regard to communication and promotion materials produced in the current period.

QA00235 - COUNTER GUARANTEE CONTRACTS

Relevant Articles: Article 2(17), Article 58(2), Article 68(1) CPR

Member State: PL

Question 1 (including any relevant facts and information):

Whether guarantees, as one of the financial instruments provided for in the CPR General Regulation and in the Financial Regulation, can be used in Cohesion Policy programmes not only to secure debt financing, such as investment or revolving loans, but also to securing other types of operations, such as contract guarantees, factoring guarantees and other operations.

In particular, what are the possibilities of financing counter-guarantees for the construction sector under Cohesion Policy for 2021-2027? The definition of guarantee in the Financial Regulation seems to refer to a wider category of operations and allows the guarantee instrument to be used also to secure different types of liabilities other than just debt.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

Article 2(17) CPR identifies the financial products that can be provided from the Funds programme resources, including guarantees as defined in the Financial Regulation (FR).

Article 2(34) FR states that 'guarantee' means a written commitment to assume responsibility for all or part of a third party's debt or obligation or for the successful performance by that third party of its obligations if an event occurs which triggers such guarantee, such as a loan default.

According to the second subparagraph of 62(2) FR, for the purposes of shared management, the instruments for budget implementation are 'the ones provided for in sector-specific rules'. Pursuant to 63(1) FR, complementary provisions are laid down in sector-specific rules.

The eligible expenditure for guarantees is specified in Article 68(1)(b) CPR which refers to 'guarantee contracts' for 'loans, equity or quasi-equity investments in final recipients'. That provision excludes from eligible expenditure resources set aside for guarantees that do not cover loans or such investments, e.g. contract guarantees or factoring guarantees.

The nature of the products offered by financial institutions, such as contract guarantees/performance guarantee, factoring guarantees and other similar guarantees do not provide support for investments in both tangible and intangible assets as well as working capital (first paragraph of Article 58(2) CPR).

Unlike guarantees to cover loans, equity and quasi equity where the final recipient (e.g. SME) receives support from the commercial bank or equity provider; factor guarantees, contract or performance guarantees neither raise such financing for final recipients nor stimulate additional private investments.

Therefore, products and the guarantee on the products identified in the question are not eligible for support under the CPR.

QA00236 - DIGITALISATION OF SMES THROUGH THE EUROPEAN DIGITAL INNOVATION HUBS (EDIHS) AND STATE AID RELATED ISSUES

Relevant Article: Art. 2 CPR

Member State: RO

Question 1 (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Romania is going to finance several European Digital Innovation Hubs (EDIHs) to provide services to SMEs and local public authorities to address digital challenges. 50% of the costs will directly be supported by the Digital Europe Programme (DEP). The other 50% will be co-financed by the ERDF, under the Romania's Programme on Smart Growth, Digitalisation and Financial Instruments (PCIDIF). Romanian authorities are planning to use a state aid scheme under GBER whereby EDIH will pass on the state-aid to SMEs, the EDIHs' users. The value of the services provided is calculated for each SME at a maximum of EUR 200 000, in line with Article 28(4) GBER.

This is compliant with Annex 2 on State Aid to the *Commission Implementing Decision on the financing of the Digital Europe programme and adoption of the multiannual work programme — European Digital Innovation Hubs for 2021-2023* that indicates that "*the support provided by Member States for EDIHs is subject to State aid control*". In this respect, "*where State aid is provided for a full pass on to the EDIHs' users, it does not need to be notified to the Commission when it is granted to EDIHs in line with the General block exemption Regulation (GBER) Regulation (for example under Article 28 GBER: Aid for Innovation Advisory Services) or the de minimis Regulation. In this regard, it is understood that EDIHs will fully pass on all the State aid to their users and any State aid left at the level of EDIHs will have to be recovered or MSs must make sure that any aid left at the level of the EDIH fulfills the compatibility conditions set out in Article 27 (in conjunction with Article 8) of the GBER on support for innovation clusters*".

Annex 2 also refers to the fact that "*under Article 28 of the GBER, SME users accessing EDIHs services can benefit from State aid passed on by the EDIHs in the form of charges below market prices. In particular, Article 28(4) of the GBER states that "in the particular case of aid for innovation advisory and support services the aid intensity can be increased up to 100% of the eligible costs provided that the total amount of aid for innovation advisory and support services does not exceed EUR 200.000 per undertaking within any three-year period." On this basis, any SME would be allowed to use the EDIH services/functions for free or at reduced price up to a maximum value/aid element of EUR 200 000".*

The advantage of using Article 28 GBER as the legal basis for granting State aid to SMEs, compared to following *de minimis* rules, is that such a support is independent of the amount granted for other purposes under State aid. Romanian authorities argue that if de minimis was to be used, many SMEs would receive smaller support, or might not be able to apply, due to already exhausted amounts under the *de minimis* threshold of EUR 200 000. In addition, this is also likely to limit the support to SMEs coming from some Romanian programmes where complementarity between digital investments in SMEs – supported by the *de minimis* – and support under the EDIHs is encouraged in terms of additional points awarded in the evaluation process.

The question concerns the definition of beneficiary provided by Article 2(9)(c) CPR which indicates that "*in the context of state aid, beneficiary means the undertaking that receives the aid*". In this case, the Romanian authorities intend to treat EDIHs as the sole beneficiary, despite the fact that the SMEs would be undertakings receiving the aid. Is such an approach consistent with applicable legal framework?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Other Member States co-financing the investments of the EDIHs under Cohesion policy programmes might face similar issues.

Answer:

Article 2(9)(c) of the CPR indicates that *in the context of State aid schemes, the beneficiary means the undertaking which receives the aid*.

Article 2(9)(d) of the CPR indicates that "*in the context of de minimis aid provided in accordance with Commission Regulations (EU) No 1407/2013(37) or (EU) No 717/2014(38), the Member State may decide that the beneficiary for the purposes of this Regulation is the body granting the aid, where it is responsible for initiating or both initiating and implementing the operation*".

We understand that the Romanian authorities want to support the financing of several European Digital Innovation Hubs (EDIHs) and that 50% would be co-financed by the ERDF, under the Romania's Programme on Smart Growth, Digitalisation and Financial Instruments (PCIDIF). This support could constitute State aid and the Romanian authorities plan to provide support to the EDIHs within a State aid scheme under Article 28(4) GBER whereby the EDIHs would pass on the aid to undertakings (the EDIHs' users). The value of the services provided would not exceed EUR 200 000 per undertaking, in line with Article 28(4) GBER.

Should the support be granted under a GBER scheme (i.e. a State aid scheme), the beneficiary within the meaning of the CPR would be *"the undertaking which receives the aid"*, as required by Article 2(9)(c) CPR. In this context, *"the undertaking which receives the aid"* is to be understood as the entity that receives financial support from the Funds to carry out an operation selected by the programme.

Therefore, in case the EDIHs use the financial support to provide services to other recipients without re-granting the financial support, the EDIHs remain the beneficiary in the meaning of Article 2(9)(c) CPR. This is without prejudice to the notion of aid and the definition of beneficiary under State aid, meaning that all undertakings receiving an advantage would be considered an aid beneficiary and the respect of the State aid rules (i.e. in this case GBER) must be ensured.

However, in case the EDIH passes on the financial support to other recipients then these undertakings receiving financial support from the Funds would be considered the beneficiaries under the CPR. Article 2(9)(d) would not apply in this context, as that provision only applies in the context of *de minimis* schemes.

Alternatively, the Member State could implement the operation under a *de minimis* aid scheme. In such a case, Article 2(9)(d) would apply and the Member State may decide that the beneficiary for the purpose of the CPR is the body granting the aid, where it is responsible for initiating or both initiating and implementing the operation. In such case, the EDIHs could be the beneficiaries for the purpose of the CPR but the *de minimis* rules, including the ceilings, would fully apply to aid recipients.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00238 - INTERVENTION FIELD 040 – 30 % REDUCTION OF GREENHOUSE GAS EMISSIONS OR PRIMARY ENERGY CONSUMPTION

Relevant Article: 22 (5) CPR, Annex 1 CPR

Member State: CZ

Question (including any relevant facts and information):

The Table 1 in the Annex 1 of the CPR defines the codes of intervention to be used for all measures supported by ERDF, ESF+, CF and JTF. The footnote 1 specifies that the intervention field 040 *Energy efficiency and demonstration projects in SMEs or large enterprises and supporting measures compliant with energy efficiency criteria* shall be used only "If the objective of the measure is (a) to achieve, on average, at least a medium-depth level renovation as defined in Commission Recommendation (EU) 2019/786 of 8 May 2019 on building renovation (OJ L 127, 16.5.2019, p. 34) or (b) to achieve, on average, at least a 30 % reduction of direct and indirect greenhouse gas emissions compared to the ex-ante emissions". We would like to ask you for clarification regarding the assessment of at least a 30 % reduction of greenhouse gas emissions/primary energy consumption.

Is it necessary to always assess the reduction as a difference between the energy consumption of a whole building in the moment when the project application is submitted and the estimated future consumption after implementing the measure? The CZ programme assess the minimum required reduction on a whole building, but it is facing the absorption capacity issue, as it turned out that the majority of potential beneficiaries is not able to reach the 30 % reduction as they already implemented some energy efficiency improvements before (majority of which was supported by ESI funds in previous programming periods).

In a case the building was already partially renovated and therefore already reduced the primary energy consumption, would it be possible to assess the minimum 30 % reduction not for a whole building but only for the specific measure that is supported? For example in case that in previous programming period the envelope of the building was renovated (shell, windows etc.) and now the project proposal aims to replace a heating source, ventilation system etc. is it possible to assess the 30 % reduction of energy consumption only for the heating source and exclude from the calculation the renovated envelope?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In line with the description of intervention field 040 *"Energy efficiency and demonstration projects in SMEs or large enterprises and supporting measures compliant with energy efficiency criteria*", the 30 % reduction should be dealt with at the level of the measure that is precisely supported. Under this intervention code it is however necessary to safeguard the ambition of the measure in order to prevent investments with limited impact from being counted under this code.

Intervention code 040 is intended for medium and deep renovation as defined in Recommendation (EU) 2019/786 of 8 May 2019 on building renovation (option A) and for supporting measures in companies (option B). In the event that the fulfillment of the above conditions poses an absorption issue for the managing authority, it is alternatively possible to use intervention field 041, which is intended for all other building renovations.

1. The main aim of the support is, as provided for in footnote 1 in Annex I to the CPR, to achieve, on average, at least a medium-deep level renovation (reduction of energy consumption) of a building in accordance with Commission Recommendation (EU) 2019/786, or to achieve, on average, at least a 30 % reduction of direct and indirect greenhouse gas emissions compared to the ex-ante emissions (compared to the status immediately before the 2021-27 measure took place). The baseline for caculating such reductions depends on national legislation, which should be applied to this case. In any case, the use of Energy Performance Certificates as foreseen in Directive 2010/31/EU is advisable to simplify calculations. .

If the supported measure is for instance a production line, or a specific single unit of machinery, the required reduction of 30% applies to this production line or machinery and not to the entire building. This however applies only to energy efficiency measures done for production lines/machinery and not in building renovation.

QA00240 - VERIFICATION OF THE FINANCIAL STATUS OF BENEFICIARIES

Relevant Article: Art 7 ERDF/CF

Member State: PL

Question 1 (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The issue concerns the approach towards financing of potential beneficiaries that perform both economic and non-economic activities and the accompanying need of verifying if the given beneficiary fulfils the criteria of an undertaking in difficulty.

We understand, that in the situation when the beneficiary performs both economic and non-economic activity, and the public financing is going to be granted to the non-economic activity only, then the beneficiary is not considered as undertaking at all, and thus his financial condition does not need to be examined to check to if he falls under the category of an "undertaking in difficulty". This approach seems to be confirmed by the provisions from point 10 of the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, that indicates that "the classification of an entity as an undertaking is always relative to a specific activity. An entity that carries out both economic and non-economic activities is to be regarded as an undertaking only with regard to the former". Following this understanding, if the potential beneficiary applies for the public financing for the non-economic activity only, since he is considered as an entity and not as an undertaking, it seems that he shouldn't be subject to the exclusion from the scope of support under ERDF financing, as pointed out in Article 7(1)(d) of the Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund, as it clearly refers to the notion of an „undertaking in difficulty" („The ERDF […] shall not support […] an undertaking in difficulty, as defined in point (18) of Article 2 of Regulation (EU) No 651/2014, unless authorised under de minimis aid or temporary State aid rules established to address exceptional circumstances").

In case the potential beneficiary performs both economic and non-economic activity and the economic activity constitutes less than 20%, according to our understanding the provisions presented in point 207 and in the footnote (305) to point 207 of the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union would apply: if the infrastructure is used almost exclusively for a non-economic activity, then public funding may fall outside the State aid rules in its entirety. Therefore in this scenario, the beneficiary is not subject to the regulations of the state aid law in any respect, and thus it is not needed to examine the financial condition of the beneficiary to verify, if he does not fall under the definition of an undertaking in difficulty based on criteria listed in point (18) of Article 2 of Regulation (EU) No 651/2014.

Answer:

An entity is an undertaking to the extent it carries out economic activities. Therefore, when an entity carries out both economic and non-economic activities, only its economic activities are relevant for its qualification as an undertaking.

If an undertaking carries both economic and non-economic activities, it is to be regarded as an undertaking only with regards to the former with the consequence that public funding to such non-economic activities is not subject to State aid control, provided that cross-subsidisation of the economic activities is effectively prevented.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

It follows that, as a general rule, if funding is directed towards the economic activity, the granting authority should verify that the fund recipient is not an undertaking in difficulty within the meaning of Article 7(1)(d) ERDF Regulation. Conversely, funding of non-economic activities should not trigger the application of Article 7(1)(d) ERDF Regulation, because the entity performing those would not qualify as an undertaking in their respect.

However, if the economic activity, which also benefits from funding primarily intended for the beneficiary's non-economic activities, is limited in scope and directly related to and necessary for carrying out the primary non-economic activity, or intrinsically linked to the latter, support for such an activity would not amount to aid given to an undertaking and therefore the definition in point (18) of Article 2 of Regulation (EU) No 651/2014 would not apply. This circumstance shall be assessed by the granting authority on a case-by-case basis.

QA00241 - APPLICATION OF MANDATORY USE OF SCOS (ART. 53(2) CPR) IN TA OPERATIONS

Relevant Articles: Article 53(2) CPR

Article 36(3) and 36(4) CPR

Member State: IT

Question 1 (including any relevant facts and information):

We are looking into the issue whether technical assistance operations are subject, in cases of a financial size of less than EUR 200.000,00, to the obligation to use SCOs laid down in Article 53 (2) of Regulation (EC) No 1060/2021.

A reading of the Regulation would appear to reveal a number of factors which might lead to a negative interpretation, since technical assistance is regulated in a different chapter from the one where grants to beneficiaries are regulated, in which the obligation referred to in Article 53 (2) is laid down.

Moreover, technical assistance has its own specificity as it has by its nature a different purpose in relation to the objectives of the Programme than the classical grant to beneficiaries.

Finally, recital 33 of Regulation (EC) No 1060/2021 seems to open up the possibility of continuing to reimburse technical assistance operations at real costs, in continuity with the 2014-2020 programming period, while the obligation to use SCOs for smaller operations is referred to in recital 42.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

In accordance with the first paragraph of Article 53(2) CPR, where the total cost of an operation does not exceed EUR 200 000, the contribution provided to the beneficiary from the ERDF, the ESF+, the JTF, the AMIF, the ISF and the BMVI has to take the form of unit costs, lump sums or flat rates, except for operations for which the support constitutes State aid. Where flat-rate financing is used, the categories of costs to which the flat rate applies may be reimbursed on the basis of the eligible costs actually incurred by a beneficiary and paid in implementing operations.

The second paragraph of Article 53(2) CPR provides for the possibility, under certain conditions indicated therein, to exempt from this requirement some operations in the area of research and innovation. In addition, as per the same provision, allowances and salaries paid to participants may be reimbursed on the basis of the eligible costs actually incurred by a beneficiary and paid in implementing operations.

On the basis of the above, as there is no exemption provided for the technical assistance operations, the use of simplified cost options is mandatory for the grants provided by the Member State to the beneficiary in the technical assistance operations where the total cost of such operations does not exceed EUR 200 000.

It must be noted that the recital 33 CPR refers to the forms of Union contribution to programmes for the technical assistance (and not to the forms of grants provided by the Member State to the beneficiary) hence it concerns a different level of reimbursement and is not relevant for the question asked.

Answer:

QA00242 - USE OF A FLAT RATE FROM THE GENERAL BLOCK EXEMPTION REGULATION

Relevant Articles:

- Article 53(3)(c) of Regulation (EU) 2021/1060
- Article 54 of Regulation (EU) 2021/1060
- Articles 7(1) and 25(3) of Regulation (EU) 651/2014

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State: PT

Context:

Commission Regulation (EU) 2023/1315 introduced the following flat rate into Regulation (EU) 651/2014 (GBER):

(23) Article 25 is amended as follows: (a) in paragraph 3, point (e) is replaced by the following:

"(e) additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project; without prejudice to Article 7(1), third sentence, such R&D project costs may alternatively be calculated on the basis of a simplified cost approach in the form of a flat-rate of up to 20 %, applied to total eligible R&D project costs referred to in point (a) to (d). In this case, the R&D project costs used for the calculation of the indirect costs shall be established on the basis of normal accounting practices and shall include only eligible R&D project costs referred to in points (a) to (d).";

We need your help in clarifying the implications of this amendment concerning the use of SCOs on ERDF support for R&D projects.

Question 1 (including any relevant facts and information):

More precisely, based on which point of paragraph 3, Article 53 of the CPR can we apply this 20% flat rate for indirect costs in R&D operations financed by the ERDF?

Answer:

Article 7(1) of Regulation (EU) No 651/2014 ('GBER'), as last amended by Regulation (EU) 2023/1315, allows to calculate the amount of eligible costs by using the simplified cost options that are set out in the relevant rules governing the Union fund, provided that:

- an operation is at least partly financed through a Union fund that allows the use of simplified cost options;
- the category of costs is eligible according to the relevant exemption provision.

Article 25(3)(e) GBER introduces a flat rate up to 20 % that can alternatively be applied in research and development projects for calculating additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project, without prejudice to the above-mentioned Article 7(1) GBER. The flat rate is to be applied to total eligible research and development project costs referred to in Article 25(3)(a) to (d) GBER.

It should be noted that Article 54 CPR does not exhaustively list all the available alternatives how indirect costs of an operation can be reimbursed using a flat rate.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Thus, the Member State can use the flat rate introduced by GBER for operations co-financed by the Cohesion Policy Funds in accordance with Article 53(3)(c) of Regulation (EU) 2021/1060 ('CPR') as a corresponding flat rate applicable in Union policies for a similar type of operation.

When applying the methods used in other Union policies, the Member State has to ensure that the method is used in its entirety and that the method is applied to similar types of operations.

QA00243 - LOCATION OF OPERATIONS

Relevant Articles:

- Article 49(3) (l) and (m) CPR
- Article 50(1) CPR

Member State: SI

Question 1 (including any relevant facts and information):

According to Article 49(3) CPR, the managing authority shall make the list of operations selected for support by the Funds publicly available on the website. The same article continues to list data to be provided for each operation. Among these data fields, two are requesting location:

(l) location indicator or geolocation for the operation and country concerned.

(m) for mobile operations or operations covering several locations the location of the beneficiary where the beneficiary is a legal entity; or the NUTS 2 level region where the beneficiary is a natural person;

1) What should be considered an operation's location, i.e. which criteria are used to define a location – achievements of the project, location where expenditure is incurred, beneficiary's address...?

2) What kind of operation should be considered as a mobile operation or operation covering several locations?

Answer:

Article 49(3) CPR sets out data fields that ensure transparency and visibility of funded operations, including the location where projects are being implemented and should be read together with recital 39 of the 2021-2027 CPR, which stresses that importance

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

of raising awareness of the achievements of Union funding and of true, accurate and updated information.

Therefore, the above provisions may be interpreted as aiming to inform the public about projects and their achievements on the ground. The obligation to acknowledge support from the Funds (Article 50(1)) CPR can be taken into account when determining the location requested by Article 49(3) CPR.

The location of an operation as referred to in subparagraph (l) of Article 49(3) CPR is the location where the physical investment has been made, the purchased equipment installed, or the most significant or the majority of project activities implemented. It is the place where durable plaques, billboards or posters clearly visible to the public should be displayed. Managing authorities should provide either a location indicator or a geolocation, where the latter brings more accuracy.

Mobile operations or operations covering several locations as referred to in subparagraph (m) of Article 49(3) CPR refer to operations such as training projects (with multiple venues or with participants from multiple regions/locations), projects setting up digital services, virtual universities or similar types. These projects should provide the location of the beneficiary (beneficiaries).

QA00244 - INVESTMENTS IN WASTE HEAT CAPTURE FROM PRE-EXISTING HEAT SOURCES AND ITS USE FOR DISTRICT HEATING

Relevant Articles:

- Articles 8(2) and 9(d) of the JTF Regulation
- Article 2(9) of the Renewable Energy Directive II (Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources)

Member State: DE

This Q&A was updated on 14 November 2025. The changes are struck through and the added text is in blue and underlined.

Question 1 (including any relevant facts and information):

In case of investments in the capture and use of waste heat stemming from non-renewable but also non fossil heat sources to be fed into district heating networks, which of the following norms is applicable in the below described concrete cases: Article 8(2)(e) 2nd alternative (energy efficiency measure), Article 8(2)(g) 1st alternative (rehabilitation and upgrade of district heating networks with a view to improving energy efficiency of district heating systems) or Article 8(2)(g) 2nd alternative of the JTF-Regulation (heat production)? This differentiation is important, because if it were

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

to be considered an investment according to Article 8(2)(g) 2nd alternative of the JTF Regulation (heat production), it would not be eligible for JTF-funding.

Case 1: Investment in the use of waste heat by a data centre

In a *data centre, a cooling system of mainframe components generates central waste heat* at the megawatt scale. The waste heat has so far been delivered to the surrounding area via wet cooling cells (mainly via evaporating water). With the aided investment in a heat transferer, including infrastructure and related technical equipment, the waste heat will no longer be delivered to the surrounding area through the wet cooling cells, but *will be used directly to heat surrounding buildings*.

Case 2: Investment in waste heat use of wastewater

The wastewater from a neighbourhood is collected and centrally discharged into a wastewater system. The purpose of the aided investment is to procure a *large heat pump, including infrastructure and the necessary technical equipment to heat the neighbourhood, as a heat source from the wastewater to the heat pump via a heat transferer* (as an input; operation with 100 % electricity from RES) should use energy delivered.

Answer:

We understand the question concerns investments in district heating and therefore we reply in the context of Art. 8(2)(g) of the JTF Regulation. Indeed, , point (g) of Art. 8(2) JTF entails a *lex specialis* for investments in district heating networks when it comes to energy efficiency: such investment/activities will only be eligible under the JTF where they do improve "energy efficiency", subject to further conditions (see below). Thus, energy efficiency for district heating networks has to be assessed exclusively within the scope of point (g) of Art. 8(2) JTF.

As to the conditions for the applicability of point (g) of Art. 8(2) JTF, ~~In accordance with Art. 8(2)(g)~~, investments in district heating are within the scope of support of the JTF, provided that such investments are not related to the production, processing, transport, distribution, storage or combustion of fossil fuels (Art. 9(d) of the JTF Regulation). Notably, rehabilitation and upgrade of district heating networks (for instance, which entail works on pipelines~~without changing the heat source~~) are possible if such investments lead to improvements in the energy efficiency of district heating systems. Investments in heat production are possible only if based exclusively on renewable energy sources and in line with the requirements of the Renewable Energy Directive.

If~~For~~ the first project ('Investment in the use of waste heat by a data centre'~~), the information provided is insufficient to allow the Commission to establish whether the planned investment is aimed at rehabilitation or upgrade of the network, or at changing the heat source of the district heating system~~[1]. ~~We are, therefore, not in a~~

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

~~position to provide a conclusive reply. If the project~~ concerns an upgrading of the district heating network, it could be eligible under Article 8(2)(g) JTF~~first alternative~~ (as rehabilitation and upgrade of district heating networks), provided that the investment increases the efficiency of~~does not change the heat source of~~ the current system that delivers heat to the surrounding buildings as referred to in the question. Such investments enabling the use of waste heat and cold [1] in district heating and cooling systems in view of increasing their efficiency are not considered as investments in heat production for the purposes of Art. 8(2)(g) JTF. The supported heating and cooling supply shall comply with the requirements of Directive (EU) 2023/1791, notably Art. 26.

[1] As defined in Art. 2(9) of the Directive (EU) 2018/2001.

~~If the investment changes the heat source of the existing system, then Article 8(2)(g) JTF second alternative (investments in heat production) would apply, and the investment would not be eligible, since waste heat is not a renewable energy source.~~

For the second project ('Investment in waste heat use of wastewater'),~~the lack of information mentioned above does not matter, as the project is eligible in any event. This is because~~ such heat generated from wastewater is considered ambient energy and therefore a renewable energy source under the Renewable Energy Directive. Thus, the project could be eligible under Article 8(2)(g) 2nd alternative (investments in heat production).

~~[1] It is also not clear whether the networks in question are covered by Annex I to Directive 2003/87/EC (ETS Directive).~~

QA00245 - CLLD – JOINT SELECTION, MANAGEMENT COSTS` CEILING

Relevant Articles: Articles 31(3) and 34(2) CPR

Member State: IT

The Managing Authority (MA) of the ESF+ Regional Programme Sardegna 2021-2027 (ESF+ RP Sardegna 2021-2027) is about to launch a call related to training and active policies in the green and blue economy sectors, involving the Sardinian Local Actions Groups (LAGs).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The ESF+ Community-led local development strategy (CLLD) foresees a close coordination between funds that invest in the same territories (i.e. EAFRD and ERDF), in order to ensure synergy and complementary throughout the implementation.

It is at this point crucial for the MA of ESF+ RP Sardegna 2021-2027 to dispel any doubt as to the interpretation of the following two articles.

Question 1 (including any relevant facts and information):

Article 31(3) of Regulation (EU) 2021/1060 sets out that

"Where support to strategies referred to in point (c) of paragraph 2 is available from more than one Fund, the relevant managing authorities shall organise a joint call for selection of those strategies and establish a joint committee for all the Funds concerned to monitor the implementation of those strategies".

Given the specific nature of the Funds (i.e. EFS+, EAFRD etc.), the management and control systems, and the procedures, is it possible to publish separate calls to select local development strategies for ESF+ and EAFRD if it is ensured that the support from the two funds is complementary?

Question 2:

In accordance with the second sub-paragraph of **Article 34(2) of Regulation (EU) 2021/1060** "*The support referred to under point (c) of paragraph 1 shall not exceed 25 % of the total public contribution to the strategy*".

However, in the 2014-2020 period, article 35 paragraph 2 of Regulation (EU) N. 1303/2013 clearly stated that "*Support for running costs and animation as referred to in points (d) and (e) of paragraph 1 shall not exceed 25 % of the total public expenditure incurred within the community-led local development strategy"*.

The LAGs will be Intermediate Bodies therefore, they need clear resources in order to strengthen the organisational structure, therefore, the activities in accordance with point (c) of Article 34(1) will focus rather on the management of the strategies that is not strictly linked to the expenditures incurring during the implementation of the strategy.

Therefore, and in view of the different wording of the 2014-2020 and the 2021-2027 CPRs, the MA wishes to publish a notice with 25% of the budget allocated for the strategy and not of the actual expenditure incurred. Is this a feasible interpretation of the provision?

Answer:

1. In accordance with Article 31(1), where the very same local development strategies are to be supported from more than one fund, the relevant managing authorities of

the programmes (and Funds) concerned shall organise a joint call for selection of those strategies. Therefore, the Article does not leave any room for consideration but sets out as an obligation to launch joint call for selection and to set up joint committee for monitoring those strategies. This requirement does not apply to strategies which are only supported by one Fund.

Therefore, taking into account that the specific strategies in question may receive support by more than one Fund, the approach proposed does not comply with the regulatory provision.

2. As already explained in QA00058, the 25% ceiling is linked to the total public contribution from (all) Funds. As defined in point 28 of Article 2 CPR, the term "public contribution" is linked to the sources of financing. Therefore, the 25% ceiling, as defined in Article 34(2) CPR, should be calculated on the basis of total public contribution to the strategy and is not linked to the amount of expenditure incurred within those strategies.

It should be noted that the total public contribution to the strategy can be equal to or lower than the total budget allocated to the strategy depending on the availability of non-public contribution.

QA00246 - QUESTION CONCERNING FLAT-RATE FINANCING AT THE LEVEL OF BENEFICIARIES

Relevant Articles: Articles 54-56 CPR

Member State: n/a

Introductory remark:

The Managing Authority of an Interreg programme has established the SCO model offering different budget options for the beneficiaries to be selected in a call. Each budget option includes different types of costs. Several of these options include a flat-rate financing "up to … %" as defined by the CPR (see summary below).

As part of the planning of the project budgets, the project partners select the most appropriate budget option in the grant application and define the exact percentage within the indicated range for flat rates. Once the funding agreement is concluded, the budget options, including types of costs, are fixed and unalterable.

It is not possible to change the budget options in the course of project implementation.

Project phase	Category of	Budget	Budget	Budget option 3	Budget option 4

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

	costs	**option 1**	**option 2**		
Preparation	-	Lump sum for preparatory costs: EUR 13.200 per project (only Lead Partner)*			
Implementation	KK 1 Staff costs	Real costs	Real costs	Flat rate of **up to** 10 % of real expenditure incurred by KK 4-6*	Flat rate of **up to** 20 % on real expenditure of KK 4 and KK5*
	KK 2 Office costs	-	Flat rate **up to** 10 % for staff costs (KK1)*		
	KK 3 Travel costs	-	Flat rate for staff costs (KK1)* DE partners **up to** 4% PL partners **up to** 6%		
	KK 4 Costs for external services	-	Real costs		
	KK 5 Equipment	-	Real costs		
	KK 6 Infrastructure	-	Real costs		-
	KK 7 Remaining costs	Flat rate of **up to** 40 % for staff costs (KK1)	-	-	-
Closure	-	Lump sum for closure costs: EUR 6.200 per project (only Lead Partner)*			

* Total waiver of the use of the flat rate or lump sum is possible

Question (including relevant facts and information):

Is it possible for a beneficiary to select the budget options with different SCOs as well as different percentages for flat rates within a budget option?

Is this procedure in line with the Articles 54-56 of Regulation (EU) No 2021/1060?

Answer:

The programme authorities may decide to offer several forms of grants for the same category of costs at the level of an Interreg operation as long as each form is used for different partner's budgets.

It is the responsibility of the programme authorities to set up SCOs in accordance with relevant legal provisions, in particular Articles 53 - 56 of Regulation (EU) 2021/1060 and Articles 39 - 44 of Regulation (EU) 2021/1059. The Commission does not approve ex ante SCOs defined at the lower level, i.e. managing authority – beneficiary, and does not express any opinion with regard to the different budget options included in the question.

Recital (42) of Regulation (EU) 2021/1059 provides: *"[…] Where a managing authority intends to propose the use of a simplified cost option in a call for proposals, it should be*

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

possible to consult the monitoring committee. Amounts and rates established by Member States need to be a reliable proxy to real costs. […]."

Thus, the SCOs should be a reliable proxy to real costs, defined in advance and the use of SCOs and the methods of establishing the SCOs should be mentioned in the calls for proposals addressed to the potential beneficiaries/project partners. This is also to ensure that the principles of transparency, equal treatment and non-discrimination of beneficiaries/project partners are respected.

In this context, the Commission strongly recommends that the programme authorities set the percentage of an "off-the-shelf" flat rate to be used for a certain category of costs, within the limits defined in the relevant legal provisions, and does not leave it up to the beneficiaries/project partners to set the rate.

In accordance with Article 22(6) of Regulation (EU) 2021/1059, the managing authority is required to set out clearly all the conditions for support for each operation in a document provided to the beneficiary/project partner, including the method to be applied for determining the costs of the operation and the conditions for payment of the support.

Based on the very limited information available on the scheme proposed in the question, and if the above scheme is used, adequate mitigating measures should be taken to address the risk of double funding when flat rates are used to cover different cost categories.

QA00247 - Possibility to define SCO approved in Appendix 1 as maximum amounts/flat rates

Relevant Articles: Articles 91(4)(b), 93 and 94 of the CPR

Member State: n/a

Question 1 (including any relevant facts and information):

Does Article 94 CPR allow for SCOs approved in Appendix 1 to be defined as maximum amounts/flat rates (maximum unit costs, flat rates or lump sums)? During implementation, the amount declared by the MA to the Commission for expenditure covered by SCOs under Article 94 might be lower than the maximum approved in Appendix 1 of the OP, depending on factors like a result of an auction or a public procurement.

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In line with Article 94 CPR, the Commission may reimburse the Union contribution to a programme on the basis of SCOs based on the amounts and rates approved by a Commission decision.

To this effect, a Member State must submit a proposal to the Commission in accordance with the template set out in Appendix 1 of Annex V CPR, as part of the programme submission or of a request for its amendment. When setting up the proposed SCOs, the Member State should use one of the methods listed in Article 94(2) CPR and ensure that the calculated SCOs represent a reliable proxy for the real costs.

In accordance with Article 94(3) CPR, the decision approving the programme (or its amendment) must set out the types of operations covered by the reimbursement based on SCOs, the definition and the amounts covered by those SCOs and the methods for adjustment of the amounts.

In addition, Article 91(4)(b) CPR specifies that where the Union contribution takes the form of SCOs, the amounts included in a payment application are the amounts determined in accordance with the decision approving the programme (or its amendment).

On the basis of the above, the SCO amounts approved by the Commission decision are binding and thus the Member State has to declare to the Commission the amounts as approved, i.e. it cannot include amounts in the payment applications to the Commission that would be different than those in the decision approving the programme (or its amendment).

Any modifications of SCOs which are not covered by the adjustment method in the decision approving the programme (or its amendment) would require an amendment of the decision.

Finally, it should be recalled that the CPR does not require an exact correspondence between the amount paid to the beneficiary for those operations and the amount declared by the Member State to the Commission (and paid to the Member State). In accordance with Article 94(3) CPR Member States may choose any form of support to beneficiaries. Member States should however ensure that at closure of the programme the Union contribution to the programme is not higher than the total amount paid to beneficiaries under the priority (Article 93(5) (b) CPR).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00248 - PARTIAL FULFILMENT OF INTERMEDIATE DELIVERABLES UNDER A MEMBER-STATE SPECIFIC FINANCING NOT LINKED TO COSTS SCHEME

Relevant Article: Article 95 of the CPR

Member State: n/a

Question 1 (including any relevant facts and information):

A FNLC scheme may include several outputs/conditions/results for each intermediate deliverable. If the intermediate deliverables are not completely fulfilled by the related date envisaged in appendix 2 of the programme, what would the financial consequences be?

Answer:

In accordance with Article 91(4)(a) of Regulation (EU) 2021/1060 ('CPR'), where the Union contribution to the programme takes the form of a financing not linked to costs as set out in Article 51(a) CPR, the amounts included in a payment application are the amounts justified by the progress in the fulfilment of conditions, or achievement of results, in accordance with the decision referred to in Article 95(2) CPR.

Therefore, it depends on the conditions set out in the decision approving the programme and, specifically, on what is set out in Appendix 2 of the programme for each type of operation, i.e a case-by-case assessment is required.

In general, if nothing is specifically established in Appendix 2 of the programme for determining the amounts to be reimbursed in case of a partial fulfilment of an intermediate deliverable, if an intermediate deliverable is only partially fulfilled at the envisaged date, the whole intermediate deliverable is considered as not achieved and the corresponding expenditure shall not be declared to the Commission. The corresponding expenditure may, however, be declared later on (i.e. after the envisaged date set out in Appendix 2 of the programme), oncethe intermediate deliverable has been fully achieved.

However, it may be the case that Appendix 2 of the programme establishes more specific elements in case an intermediate deliverable is not fully achieved at an envisaged date. For instance, it may establish a pro-rata reimbursement in case of a partial fulfilment of an intermediate deliverable. In such a case these elements apply and shall be taken into account by the Member State when declaring the corresponding expenditure to the Commission in accordance with Article 91(4)(a) CPR and by the Commission when reimbursing the Union contribution, in line with Article 95 CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00249 - ELIGIBILITY OF COSTS FOR TRANSPORT AND DISPOSAL OF ASBESTOS-CONTAINING WASTE UNDER PROGRAMMES FOR 2021-2027

Relevant Article: Art 7.1 (f) of the ERDF

Member State: PL

Question 1 (including any relevant facts and information):

Article 7.1 (f) of the Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund (hereinafter: ERDF and CF Regulation), says that '*the ERDF and the Cohesion Fund shall not support: (…) (f) investment in disposal of waste in landfill* (…). DG REGIO has interpreted this exclusion widely during the negotiations of 2021 – 2027 programmes and requested that Polish programmes do not support transport and landfilling of asbestos waste generated during implementation of projects related to removal of asbestos waste from public or private buildings. The Polish authorities do not agree with the interpretation based on the following arguments:

- Landfilling of waste generated in consequence of project implementation is not excluded in the light of Article 7.1 of the 2021/1058 Regulation. The Regulation refers to 'investments in disposal of waste in landfill' which should be understood as investments in construction, modernization or upgrade of a landfill;
- Asbestos is a hazardous waste that is being removed to protect health and environment. Due to characteristic and properties of asbestos (cannot be recycled, recovered, and poses serious hazard to health), there is no better economically or technically feasible disposal alternative than containing asbestos at landfills. Therefore landfilling of asbestos waste would not pose any risk to achieving the objectives of circular economy.
- Any kind of projects supported by the ERDF and CF can result in generation of waste. By the same token, landfilling of any waste should be ineligible for EU support, it is not the case however.

To sum up there are two questions;

1. Are costs related to landfilling of waste generated as a result of project implementation eligible for support from ERDF and CF?
2. In conjunction with the above, is transport and landfilling of asbestos waste eligible for support from ERDF and CF?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 7(1)(f) of the ERDF and Cohesion Fund Regulation excludes from the scope of the Funds investments in disposal of waste in landfill. Recital (41) clarifies which are the activities that fall outside the scope of the ERDF and the Cohesion Fund. It specifies that the ERDF and the Cohesion Fund should not support investment in **facilities** for landfilling. The intention of the co-legislators was to exclude investments in landfills in the sense of investments in landfill facilities, not in the sense of excluding specific cost items linked to the landfilling of materials (especially hazardous materials) within an operation.

The rationale for this limited scope of eligibility in the field of waste management is to prevent investments in the landfill facilities as such, which could lead to increased capacity of such landfills, and thereby to ensure that support from the EU budget under Cohesion policy properly contributes to attaining the objectives of the EU waste legislation[1].

On that basis the following answers can be provided to the questions raised:

1. Disposal of waste in landfill, generated a a result of project implementation (g. energy efficiency renovation of buildings), is eligible for support from the Funds. In line with the "do no significant harm principle" and in particular its circular economy objective[2], the ERDF and the Cohesion Fund should not support expenditure related to landfilling of waste that is suitable for recycling or other recovery.
2. The main objective of the investments in asbestos removal is to manage the exposure risk and the associated health risk. Materials resulting from demolitions of buildings which contain asbestos are considered waste if the intention or the obligation is to discard them. According to the list of hazardous waste (established in the Commission Decision 2000/532/EC in line with Article 7 of the Waste Framework Directive), asbestos qualifies as hazardous waste. Removed or demolished waste containing asbestos from buildings has to be managed and that requires transportation and appropriate disposal. The overall lack of installations and capacity of alternative treatments still makes landfilling the only currently viable approach to dealing with the asbestos-containing demolition waste generated in the EU. To prevent harmful health and **environmental effects**, the management of asbestos-containing waste is regulated in terms of its, transport, management, removal and reporting and traceability obligations. The disposal of asbestos waste in landfills (regulated by Council Decision 2003/33/EC**)** is strictly controlled under the EU Construction and Demolition Waste Management Protocol and Guidelines.

In order to fully contribute to the achievement of the specific objective of the ERDF and the Cohesion fund of "reducing all forms of pollution" (Article 3(1)(b)(vii) of the ERDF and Cohesion Fund Regulation), transport and disposal of waste containing asbestos in existing landfills is eligible for support from the Funds. In the meaning of recital (41) of the ERDF and Cohesion Fund Regulation, support for these actions does not fall under the exclusion provided by Article 7(1)(f) as these investments do not increase the capacity of landfill facilities.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

---

[1] In particular, the objective of the Landfill Directive (Directive 1999/31/EC) is to ensure a progressive reduction of landfilling of waste, in particular of waste that is suitable for recycling or other recovery. It requires that by 2035 the amount of municipal waste landfilled must be reduced to 10% or less of the total amount of municipal waste generated (by weight)

[2] An activity is considered to do significant harm to the circular economy, including waste prevention and recycling, if it leads to significant inefficiencies in the use of materials or in the direct or indirect use of natural resources, or if it significantly increases the generation, incineration or disposal of waste, or if the long-term disposal of waste may cause significant and long-term environmental harm.

QA00250 - APPLICABILITY OF (COMPLETED) OPERATION

Relevant Articles:

- Article 2(4)(a) Regulation (EU) 2021/1060
- Article 2(9)(d) Regulation (EU) 2021/1060
- Article 2(37) Regulation (EU) 2021/1060
- Article 63(6) Regulation (EU) 2021/1060

Member State: LV

Question 1 (including any relevant facts and information):

In Latvia, the Latvian Investment and Development Agency (LIDA) provides support for SME access to foreign markets and the programme is a continuation of the 2014-2020 analogue measure. So far for the period of 2021-2027 the SME support programme in question is being prepared for the restricted call for proposals, however an agreement hasn't yet been concluded with the beneficiary (Latvian Investment and Development Agency (LIDA)). After, when the agreement will be concluded, the final recipients will have to apply for support to LIDA. According to the SMEs support programme concept, final recipients can be also supported if they participated in international exhibitions prior to the conclusion of the agreement with LIDA.

LIDA selects final recipients in three different activities:

1. in the innovation motivation activity, LIDA provides non-financial support to merchants, self-employed and natural persons;

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

2. in the activity of business incubation, LIDA provides financial support to merchants and non-financial support to merchants and natural persons;
3. in the activity of export promotion, LIDA provides financial and non-financial support to merchants, associations and foundations.

Funding and national co-financing; 74,350,000 euros (including the amount of flexibility financing 11,726,878 euros), including financing from the European Regional Development Fund (hereinafter - ERDF) 63,197,500 euros (including the amount of flexibility financing 9,967,846 euros) and the state budget funding – 11,152,500 euros (including the amount of flexibility funding 1,759,032 euros).

Regarding question 1 we would like to clarify that LIDA schemes do not constitute a financial instrument. LIDA is a beneficiary, while the SMEs are 'final beneficiaries'.

Questions:

The Latvian authorities would like to have the Commission's opinion on the correct interpretation of "*completed operation*" within the meaning of Article 2(37)* of Regulation (EU) 2021/1060 (CPR) under an umbrella project, where an intermediary (beneficiary) provides support to final beneficiaries under the *de minimis* scheme**.

Question No. 1:

To what level the definition of the *operation* referred to in Article 2(4)(a) CPR**** is applicable – to the beneficiary, the final beneficiaries or both?

Question No. 2:

Is the term "Operation" of Article 63(6)*** CPR applicable to the final beneficiary or it is only applicable to the beneficiary?

Questions No. 3:

If Article 63(6)*** CPR is applicable to the final beneficiary as well, can the final beneficiary be supported, if one of its planned activities has been completed, but there are also other activities included in the project application?

**Article 2(37) CPR: "completed operation" means an operation that has been physically completed or fully implemented and in respect of which all related payments have been made by beneficiaries and the corresponding public contribution has been paid to the beneficiaries;*

***The aid will be provided under the de minimis framework, which allows aid to be pro vided for completed operations.*

****Article 63(6) CPR: Operations shall not be selected for support by the Funds where they have been physically completed or fully implemented before the application for*

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

funding under the programme is submitted, irrespective of whether all related payments have been made.

*****Article 2(4)(a) CPR: "operation" a project, contract, action or group of projects selected under the programmes concerned.*

Answer:

1. Following Article 2(9)(d) CPR, in the context of de minimis aid provided in accordance with Commission Regulations (EU) No 1407/2013 or (EU) No 717/2014, the Member State may decide that the beneficiary is the body granting the aid (for further information please consult: QA00132 - Cascade funding - RegioWiki Extranet - RegioWiki (europa.eu); QA00206 - Cascade funding - follow-up to the QA00132 - RegioWiki Extranet - RegioWiki (europa.eu)). Therefore, in the case of Latvia, support to the Latvian Investment and Development Agency (LIDA) may be considered as an operation where the agency is the beneficiary which further cascades the grant to other entities.
2. The scheme in which the beneficiary further cascades a grant to other entities in the context of *de minimis* aid would constitute a single operation. Article 63(6) CPR applies to the level of an operation (for further information please consult: QA00227 - Eligibility of operations submitted to calls published before the adoption of 2021-27 programmes and which were completed in the period between the application and the adoption of programme - QA 21-27 - RegioWiki (europa.eu). In accordance with Article 73(2)(f) CPR, in selecting operations the managing authority is responsible to verify that where the operations have started before the submission of an application for funding to the managing authority, applicable law has been complied with.
3. In line with Article 63(6) CPR, as long as the operation has not been physically completed or fully implemented before the application for funding under the programme is submitted, irrespective of whether all related payments have been made, the operation can be selected for support by the Funds.

QA00251 - Enabling conditions (Appendix 2 of the payment application)

Relevant Article: Art. 15(6) CPR and Appendix 2

Member State: SK

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

According to the title of the Appendix 2 of the payment application, the data for non-fulfilled and fulfilled enabling conditions are filled in on a cumulative basis from the beginning of the programming period. **We draw your attention to the discrepancy in footnote no. 2** that states that the amounts for fulfilled enabling conditions (or contributing to fulfilment) should be identical to the amounts listed in the first table of the payment application in column (E). However, this table is filled out on an annual basis.

Answer:

In SFC module for payment applications columns D and E of appendix 2 (appendix 3 for HOME funds) will be filled in automatically by the system on the basis of the first table of Annex XXIII CPR in all thus far submitted payment applications, so that cumulative amounts from the beginning of the programming period can be reconciled.

Question 2 (including any relevant facts and information):

In case the enabling condition will be fulfilled only during the programming period, the expenditures corresponding to the period when it was reported as unfulfilled will be moved from columns (B) and (C) to columns (D) and (E) of Appendix 2?

Answer:

Such expenditure is to be moved by MS from columns (B) and (C) of appendix 2 (appendix 3 for HOME funds) to the first table of Annex XXIII CPR and as explained above, it is then automatically taken into account for columns D and E of appendix 2 (appendix 3 for HOME funds).

Compare with QA117, reply to question 2: QA00117 - Clarification regarding Annex XXIII (payment application) and XXIV (accounts) of the CPR in 2021-2027 programming period - RegioWiki Extranet - RegioWiki (europa.eu)

Question 3 (including any relevant facts and information):

Could there be changes in Appendix 2 in the amounts that, at the time of reporting to the Commission, fall into the group fulfilling the conditions and were therefore in column D and E (i.e. related to the fulfilled enabling conditions), and subsequently some specific objective ceases to meet the conditions? Will the amounts that have already been paid before (when the specific objective met the enabling conditions) remain in Appendix 2 in columns D and E, or will these amounts be moved to columns B and C (related to unfulfilled enabling conditions)?

Answer:

Expenditure reported in columns D and E of appendix 2 (appendix 3 for HOME funds) related to fulfilled enabling conditions that were already reimbursed will not have to

be moved ex-post to columns B and C. The need for such a correction may only cover the expenditure declared in the first table or reported in Appendix 2 in a pending payment applications that have not yet been paid/reimbursed – that were pending at the time when the Commission adopted a decision pursuant to Article 15(6) CPR.

The enabling condition becomes unfulfilled (no longer fulfilled) on the date of entry into force of the Commission implementing decision pursuant to Article 15(6) CPR, which has the form of a letter. Expenditure linked to the enabling condition that becomes no longer fulfilled included in the first table and columns D and E of Appendix 2 of the pending payment applications, that were not reimbursed before that date, will have to be:

- removed from the first table of annex XXIII which will be then also automatically removed from columns D and E of appendix 2 (appendix 3 for HOME Funds)
- moved to columns B and C of appendix 2 (appendix 3 for HOME funds)

QA00252 - QUESTIONS CONCERNING ANNEXES XXIII AND XXIV OF THE CPR

Relevant Article:

- Art. 74 of the CPR
- Annex XXIII and Appendix 2 of the CPR
- Annex XXIV of the CPR

Member State: BG

Question 1 (including any relevant facts and information):

At the stage of the preparation of the Application for Payment (AP) to the EC, should checks on the existence of irregularities and the ongoing assessment of legality and regularity to expenditure included in Annex XXIII, Appendix 2 (information on expenditure relating to specific objectives for which the conditions for the grant have not been met) be carried out? In case of an irregularity or ongoing assessment, should the expenditure concerned be withdrawn or excluded from the Appendix 2 of the Application for Payment?

Question 2 (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

At the stage of the preparation of the Annual Accounts, should checks on the existence of irregularities and the ongoing assessment of legality and regularity to expenditure included in Annex XXIV, appendix 5 (information on expenditure linked to specific objectives for which enabling conditions are not fulfilled) be carried out? In case of an irregularity or ongoing assessment, should the expenditure concerned be withdrawn from appendix 5 of Annual Accounts?

Our understanding to questions 1 and 2 is that the checks for irregularities and ongoing assessment should be carried out only to expenditure, included in table "Expenditure broken down by priority and, where relevant, by category of region as entered into the accounts of the body carrying out the accounting function" from Annex XXIII and table "Amounts entered into the accounting systems of the accounting function – point (a) of Article 98(3)" from Annex XXIV. Is it correct?

Answer to question 1 and 2:

Management verifications are to be carried out before submission of the accounts (Art. 74(2), second subparagraph CPR) as the MS shall confirm that the expenditure entered into the accounts is legal and regular (Art. 74(1)(e) CPR).

According to Art. 98(6) CPR, the irregular expenditure or expenditure which is subject to an ongoing assessment of its legality and regularity shall be deducted from the accounts.

As long as the enabling conditions are not fulfilled, the expenditure under corresponding specific objectives:

- is not declared in the first table of payment application (Art 91(3) CPR); it is presented only in the Appendix 2 to Annex XXIII for the purpose of monitoring rules on decommitment;
- is not part of the assurance package, including the accounts (Art 98(4) CPR); it is presented only in the Appendix 5 to Annex XXIV for the purpose of monitoring rules on decommitment.

Thus, the legal obligation to carry out checks and to deduct such amounts does not apply as long as the expenditure has not been declared in the first table of payment applications and included in the accounts.

Pursuant to Art. 98(4) CPR "*The assurance package shall not concern the total amount of eligible expenditure incurred by beneficiaries and paid in implementing operations or the corresponding public contribution made or to be made linked to specific objectives for which enabling conditions are not fulfilled with the exception of operations that contribute to the fulfilment of enabling conditions*".

As such, amounts presented in appendix 5 of Annex XXIV CPR are not claimed to be legal and regular and they will not be audited by the Audit Authority (AA) in line with Sampling Regulation, Art. 3(3); consequently, the AA will also not issue an opinion on them. Such amounts will be reintroduced in a payment application (once the enabling conditions are fulfilled). When this happens (can be in a different accounting year), then these expenditures will be audited, and their legality and regularity will be

"claimed" by the MS (following also the results of the audit work). Only then they will be part of the assurance package.

Question 3 (including any relevant facts and information):

In the case of expenditure for financial instruments and State aid advances included in Annex XXIII, Appendix 2 of AP (information on expenditure relating to specific objectives for which the conditions for the grant have not been met), our understanding is that they both are not included in Annex XXIII, Appendixes 1 and 4 respectively. Only expenditure included in "Expenditure broken down by priority and, where relevant, by category of region as entered into the accounts of the body carrying out the accounting function" from Annex XXIII is included also in Appendixes 1 and 4. Is it correct?

Answer:

To note: '[…] conditions for the grant have not been met' used in the question are understood as referring to 'enabling conditions have not been fulfilled'.

Yes – your understanding is correct.

<u>In relation to financial instruments:</u>

- If an enabling condition **is not fulfilled** for the SO under which FIs are implemented – the amount up to 30% should be presented only in appendix 2 and should not be included in first table of the payment application and should not be presented in appendix 1.
- If an enabling condition **is fulfilled** for the SO under which FIs are implemented – the amount up to 30% should be included in first table of payment application and presented in appendix 1;

In more detail (when an enabling condition is fulfilled for the SO under which FIs are implemented):

1) the amount of up to 30% of the total amount of programme contributions committed to the financial instruments under the relevant funding agreement included in the first payment application (Article 92(2)(a) CPR) should be included in "Expenditure broken down by priority and, where relevant, by category of region as entered into the accounts of the body carrying out the accounting function" of Annex XXIII and also reported in Appendix 1.

2) as the eligible expenditure are incurred in accordance with Article 68(1) CPR, they are submitted in subsequent payment applications (Article 92(2)(b) CPR) until 70% (or more than 70% if advance is less than 30%) of the total amount of programme contributions committed to the financial instruments under the relevant funding agreement are incurred on eligible expenditure and included only in "Expenditure broken down by priority and, where relevant, by category of region as entered into the accounts of the body carrying out the accounting function" of Annex XXIII.

3) once the eligible expenditure has reached the 70% (or more than 70% if advance is less than 30%) of the amounts of programme resources committed in the relevant funding agreement, the amount of up to 30% declared in the first payment application

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

has to be cleared with the eligible expenditure no later than the final accounting year (Article 92(3) CPR). The eligible expenditure to clear the advance should be included only in Appendix 1 of Annex XXIII.

In relation to State aid advances:

- If an enabling condition is fulfilled for the SO under which State aid advances are granted – these advances should be included in first table of the payment application and in appendix 4.
- If an enabling condition is not fulfilled for the SO under which State aid advances are granted – these advances should be presented only in appendix 2 and should not be included in first table of payment application and should not be presented in appendix 4.

Question 4 (including any relevant facts and information):

If we have expenditure included in table "Expenditure broken down by priority and, where relevant, by category of region as entered into the accounts of the body carrying out the accounting function" from Annex XXIII and reimbursed by the Commission, and at a later stage the last is excluded from this table and included in Annex XXIII, Appendix 2 (information on expenditure relating to specific objectives for which the conditions for the grant have not been met), does it mean that the exclusion is treated as a type of withdrawal, and the excluded amount has to be reported as withdrawn in Annex XXIV, appendix 2 (Amounts withdrawn during the accounting year – point (b) of Article 98(3) and Article 98(7))?

Our understanding is that the deduction from table "Expenditure broken down by priority and, where relevant, by category of region as entered into the accounts of the body carrying out the accounting function" and moving the same amount in Annex XXIII, Appendix 2 is not withdrawal in the meaning of the information declared in Annual Accounts and the amount should not be included in Annex XXIV, appendix 2. Is that correct?

Answer:

To note: '[…] conditions for the grant have not been met' used in the question are understood as referring to 'enabling conditions have not been fulfilled'.

As stated in the reply to question 1, as long as the enabling conditions are not fulfilled, the expenditure under corresponding specific objectives:

- is not declared in the first table of payment application (Art 91(3) CPR); it is presented only in the Appendix 2 to Annex XXIII for the purpose of monitoring rules on decommitment;

When MS declared expenditure related to specific objectives for which enabling conditions were fulfilled and such expenditure was reimbursed by the Commission (which means that at the time of reimbursement the enabling condition was assessed as fulfilled) there is no need to revise the payment application or the accounts.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The need to revise the payment application by moving expenditure from first table of the payment application to appendix 2, may arise in case where during the 60 day period for processing the payment application the enabling condition related to specific objective(s) for which expenditure was declared, becomes unfulfilled on the basis of the decision taken pursuant to Article 15(6) CPR.

In such a case, the MS understanding is correct. This is not an irregularity. It should not be reported as a withdrawal in Appendix 2 of the accounts.

QA00253 - PROGRAMME AMENDMENTS – EDITORIAL CORRECTIONS

Relevant Article: 24(6) of the CPR

Member State: LT

Question 1 (including any relevant facts and information):

Could you please provide a broader explanation of Article 24(6) CPR specifically what is "corrections of a purely clerical or editorial nature".

Answer:

According to Article 24(6) CPR, corrections of a purely clerical or editorial nature are such corrections that do not affect the implementation of the programme. Hence, these are corrections of a "non-material" nature without any consequences for the implementation of the programme, including as regards its specific objectives, its targets, etc. For example, these could include the corrections of orthographic errors, obvious encoding errors of numerical values, provided that the error is clearly self-evident, formatting issues, etc. Such corrections do not require the Commission's approval, but merely the Member State's notification to the Commission.

QA00254 - DISCREPANCY BETWEEN ARTICLE 64(1) OF THE 2021-2027 CPR AND ARTICLE 7(1) OF REGULATION NO 651/20142023/1315 (GBER)

Relevant Articles:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- Article 64(1) of the 2021-2027 CPR;
- Article 7(1) Regulation No 651/2014 (GBER).

Member State: EE

Question 1 (including any relevant facts and information):

How is Article 64(1)(c) (i) of the CPR 2021 applied if, under the GBER with the amending Regulation No 2023/1315, recoverable VAT cannot be calculated as aid intensities and eligible for aid?

On 23 June 2023, the European Commission amended Article 7(1) of the General Block Exemption Regulation (GBER) 651/2014 by Regulation No 2023/1315.

"Article 7(1) shall be replaced by the following:

1. For the purposes of calculating aid intensity and eligible costs, all figures used shall be taken before any deduction of tax or other charge. However, VAT on eligible costs which is recoverable under the applicable national tax law shall not be taken into account for the purpose of calculating the aid intensity and the eligible costs. The eligible costs shall be supported by documentary evidence which shall be clear, specific and contemporary. The amount of eligible costs may be calculated in accordance with the simplified cost options, provided that the operation is financed at least partly by a Union instrument allowing the use of the simplified cost options and that the category of eligible costs is eligible under the exemption provision. In that case, the simplified cost options set out in the relevant rules governing the Union instrument shall apply. …"

According to Article 64(1)(c) of Regulation No 2021/1060 (CPR) of the European Parliament and of the Council, VAT is, as a general rule, an ineligible cost, except in the following cases:

- for operations the total cost of which is below EUR 5000000 (including VAT);
- activities the total cost of which is at least EUR 5000000 (including VAT) unless it is recoverable under national VAT legislation.

In this context, the question has arisen that while, under the GBER, recoverable VAT should in any event be excluded from the calculation of the aid intensity and eligible costs, the CPR provides for an exception to the opposite eligibility (Article 64(1)(c)(i)).

Answer:

While Article 64(1)(c) of Regulation No 2021/1060 (CPR) provides that VAT is an eligible cost for operations for which the total cost is below EUR 5 000 000 (including VAT), this simplification is not applicable for operations implemented under the General Block Exemption Regulation (GBER), which under its Article 7(1), as amended by Regulation (EC) 2023/1315, states that *"VAT on eligible costs which is recoverable*

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

under the applicable national tax law shall not be taken into account for the purpose of calculating the aid intensity and the eligible costs".

QA00255 - PUBLICATION BY MA OF ENTITIES SELECTED IN PUBLIC PROCUREMENT (ART. 49 CPR)

Relevant Article :Art. 49(3) of the CPR

Member State: RO

Question 1 (including any relevant facts and information):

Article 49(3)(a) CPR requires that the list of operations selected for support by the Funds contains, in the case of public procurement, the contractors' names.

As a reminder, the full Article 49(3)(a) CPR reads that: "*The managing authority shall make the list of operations selected for support by the Funds publicly available on the website in at least one of the official languages of the institutions of the Union and shall update that list at least every 4 months. Each operation shall have a unique code. The list shall contain the following data:*

(a) in the case of legal entities, the beneficiary's and, in the case of public procurement, the contractor's name;"

The managing authority's interpretation is that they have the responsibility to publish on the website referred to by Article 49(1) CPR documents related to public procurement that exceed the value threshold of the amount procured according to:

- Directive (EU) 2014/24/ on public procurement.
- Commission Delegated Regulation (EU) 2021/1952 of 10 November 2021 amending Directive 2014/24/EU of the European Parliament and of the Council in respect of the thresholds for public supply, service and works contracts, and design contests.

In this context:

Q1 – Does Article 49(3)(a) of the CPR refer to the contractors selected by the beneficiaries in the case of public procurement?

Q2 – Is the interpretation of the managing authority above correct?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

This answer was updated on 19 April 2024. The changes are struck through and the added text is in blue and underlined.

In earlier interpretations on Article 49 CPR (QA00136 and QA00176) we interpreted that information required in Art. 49(3) CPR should be based on Annex XVII. This means that no additional data except the ones provided in Annex XVII should be collected for the purpose of Art. 49 CPR. Furthermore, QA00136 provides exclusively interpretation to the total 'cost of an operation' referred to in Article 49(3)(h) CPR in the context of monitoring responsibilities of managing authorities.

Additionally, QA00270 explains that: '*Under field 23, information on contractors, their beneficial owners and contracts only has to be recorded where the operation is implemented in accordance with Union public procurement rules (i.e., public procurement above the thresholds set out in Directive 2014/24/EU or Directive 2014/25/EU). Information on sub-contractors under field 24 has to be recorded at the first level of sub-contracting, only where information is recorded on a contractor under field 23, and only for sub-contracts above EUR 50 000 total value.*'

~~Additionally, QA00200 explains that: '***The data on contractors, beneficial owners of contractors or sub-contractors is only needed in case the beneficiary or other entities implementing the operation*** *(even if using simplified cost options)* ***do it*** *(or part of it)* ***in accordance with Union procurement rules*** *and in case of sub-contractors under field 24, only where information is recorded on a contractor under field 23, and only for sub-contracts*~~

~~*above EUR 50 000 total value (and only first level of sub-contracting).'*~~

To conclude, only data related to Union procurement rules (in particular Directives 2014/23/EU[1], 2014/24/EU[2] and 2014/25/EU[3] as amended) shall be published under Article 49(3)(a) CPR.

---

[1] Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

[2] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

[3] Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00256 - NEED FOR EC DECISION FOR PROGRAMME AMENDEMENT IN CASE OF MODIFICATION OF THE NATIONAL CONTRIBUTION

Relevant Articles: Articles 22, 24 and 112 of the CPR

Member State: IT

Question 1 (including any relevant facts and information):

According to the CPR (Art. 24(5) and (6)) MS can amend some parts of the programmes without the need of a Commission decision in the following cases:

1. transfers between existing priorities, within specific thresholds (Art. 24(5)), and related changes;
2. changes of purely clerical or editorial nature that do not affect the implementation of the programme (Art. 24(6)).

Is a Commission decision necessary to amend a 21-27 programme as for:

- the amounts of the national contribution only for each priority indicated in table 11 of Annex V (Art. 22(3)g(ii), in case all the following conditions are met
    - the changes remain within the thresholds indicated in Art. 24(5);
    - they do not affect the total co-financing rate for the programme and category of region; the total national contribution or the overall budget for the programme. The changes would then only affect the co-financing rate at the level of each priority.

The aim of the amendment is to ensure the same rounded cofinancing rate (i.e. 40%) for all programme priorities.

Answer:

Article 24 CPR sets out the cases of programme amendments that do not require a Commission decision, notably non-substantial and related changes (Article 24(5)) and corrections of a purely clerical or editorial nature (Article 24(6)).

However, the presented case does not comply with the requirements laid down in any of these provisions.

Firstly, it does not fall within the scope of Article 24(5) CPR on non-substantial transfers and related changes, according to which the calculation of the transferred amount refers to the Union part of the allocation to a priority Therefore, it is not

possible to make use of this provision to a transfer only affecting the national contribution.

Secondly, if the changes in the national contribution affect the co-financing rate for each priority, which is fixed in the Commission decision approving the programme according to Article 112(1) CPR, such an amendment cannot either be considered as a correction of a purely clerical or editorial nature that does not affect the implementation of the programme (Article 24(6) CPR). It thus requires the Member State to submit formally a request for programme amendment in order to get Commission's approval in line with Article 24(1)-(4) CPR.

QA00257 - POSSIBILITY TO SUPPORT ENTERPRISES OTHER THAN SMES FOR THE UPSKILLING AND RESKILLING OF WORKERS AND JOB SEEKERS AND SUPPORT TO JOB-SEARCH ASSISTANCE TO JOBSEEKERS

Relevant Article:

JTF Regulation (EU) 2021/1056, Recital 16

JTF Regulation (EU) 2021/1056, Art. 8

Member State: FR

Question 1 (including any relevant facts and information):

The French national JTF programme (covering only the ESF+ types of actions", i.e. measures under Articles 8(2)(k) – (m, for all eligible territories) includes measures of upskilling and reskilling of workers impacted by the transition under point (k) of Article 8(2). Although the majority of the operations will be conducted through the Public Employment Service (PES), some operations could be directly implemented by enterprises, including large enterprises. Such measures would concern up/reskilling operations programmed under point (k) and targeting workers impacted by the transition, in the transforming sectors identified in the relevant TJTPs.

Similarly, under point (l) of Article 8(2), the operations programmed should aim at strengthening the support offered by the institutions of the PES, in their capacity to accompany and train jobseekers towards sectors of economic diversification. However, in practice, such operations are primarily promoted by enterprises, including large enterprises, rather than by the PES. Therefore, the French authorities consider avoiding limiting the support to job-search assistance to the PES, in the sectors identified as part of the diversification strategies of the eligible territories.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

We would like to ask whether such a possibility is in line with the JTF Regulation, notably taking into account the limitations set out in the JTF Regulation with regard to support to large enterprises. Are points k) and l) limited to support the PES or may operations implemented by enterprises, including large enterprises, also be supported under points k) and l)?

Answer:

In accordance with points (k) and (l) of Article 8(2) of the JTF regulation, the JTF may provide support respectively to upskilling and reskilling of workers and job seekers and job-search assistance to job seekers.

Nothing in the wording and the rationale of Art. 8(2) JTF prevents Member States to support measures under points (k) and (l) of the first subparagraph of Art. 8(2) when implemented by large enterprises. Indeed, firstly, the wording of Article 8 (2) (k- l) is not limited by any reference to, for instance, SMEs, as it is the case for "productive investments" under point (a) of Article 8(2) first subparagraph. Thus, large enterprises may carry out measures covered by points (k) and (l) and be supported by the JTF. Secondly, measures under points (k) and (l) such as those proposed by the French Authorities have a clear social nature (investments in people) and thus cannot be understood as falling within the notion of "productive investments" as defined in recital (16) of the JTF Regulation.

Therefore, the referred points (k) and (l) are not limited to support operations implemented by Public Employment Services but can also support such measures when implemented by enterprises, including large enterprises.

However, in order to be eligible under the JTF the above mentioned measures should still comply with all the other conditions under the JTF, in particular be directly linked to the JTF objective of enabling regions and people to address the social, employment, economic and environmental impacts of the transition towards the Union's 2030 targets for energy and climate and a climate-neutral economy of the Union by 2050 and contribute to the implementation of the relevant territorial just transition plans. Moreover, compliance with State aid rules should be ensured.

QA00258 - CONTRIBUTIONS IN KIND IN THE FORM OF LAND OR REAL ESTATE IN THE CONTEXT OF RULES ON ELIGIBILITY OF LAND

Relevant Articles:

Article 67(1) of the CPR

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 64(1) of the CPR

Member State: PL

Question 1 (including any relevant facts and information):

In accordance with Article 67(1) CPR, does the 10 % limit apply to the contributions in kind only in the form of 'land', or also in the form of 'real estate'? There seem to be an inconsistency between the Articles, because Article 67(1) refers to Article 64(1), according to which only the purchase of 'land' for an amount exceeding 10 % of the total eligible expenditure for the operation concerned is ineligible (i.e. the 10% limit in Article 64(1) does not apply to the purchase of 'real estate').

Answer:

The eligibility rules for 'contributions in kind in the form of land or real estate' (Article 67(1) of the CPR) should not be confused with the eligibility rules for 'purchase of land' (Article 64(1)(b) of the CPR).

According to Article 67(1), second subparagraph of the CPR, the value of land or real estate provided as a contribution in kind shall not exceed the limit laid down in Article 64(1)(b) of the same Regulation.

Article 64(1)(b) of the CPR states that the purchase of land for an amount exceeding 10 % of the total eligible expenditure for the operation concerned shall not be eligible for a contribution from the Funds.

According to the above provisions, the limit applicable to the contribution in kind of the land or real estate under Article 67(1) of the CPR is the limit pursuant to the second subparagraph of the same Article, referring to the limit laid down in Article 64(1)(b) of the same Regulation.

The limit of 10 % of the total eligible expenditure for the operation concerned applies to the value of the 'land or real estate' provided as a contribution in kind, with 'real estate' meaning land with existing buildings on it.

QA00259 - CLIMATE PROOFING

Relevant Article: 73(2)(j) of the CPR

Member State: DK

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

What kind of documents are the applicants expected to provide to confirm the climate proofing of their proposal? Is it sufficient to refer to the methods used and the outcome, or is something else required?

Answer:

The Managing Authority should ensure climate proofing of investments in infrastructure which have an expected lifespan of at least 5 years .However, the methodology to do so is not defined in EU legislation. Consequently, it is up to the Member States to put an adequate methodology in place. The managing authority is responsible for verifying compliance with this requirement. When designing the adequate methodology for climate proofing, Managing Authorities have at their disposal the *Technical Guidance on Climate Proofing of Infrastructure in the period 2021-2027*[1] which presents a common approach for climate proofing for EU investments. Annex B of the technical guidance describes a proposed approach to climate-proofing documentation and verification.

Question 2 (including any relevant facts and information):

The managing authority has to verify that the climate proofing criterium has been complied with, prior to the selection of the operation. We assume that this check consists only of verifying if the applicant has provided sufficient documentation that the assessment has been made. If so, we also assume that the content of the qualitative assessment made by the applicant will not be subject to an audit at a later stage.

Answer:

In selecting operations, the managing authority needs to ensure the climate proofing of investments in infrastructure which have an expected lifespan of at least 5 years. It is for the managing authority to establish and apply criteria and procedures for the selection of operations that ensure the achievement of this objective. In particular, the climate proofing documentation of the operation is to be verified.

Commission notice Technical guidance on the climate proofing of infrastructure in the period 2021-2027 (2021/C 373/01) is deemed a relevant reference for Article 73(2)(j) CPR. In the context of the question, it might be useful to remind that the climate-proofing documentation should provide a concise summary of the various steps in the climate proofing process and may require an independent expert verification to provide assurance that the climate proofing adheres to the applicable guidance and other requirements. Furthermore, such independent verification is not pre-empting the financier, as part of the project appraisal and preparation of the investment

decision, to request clarification from the project promoter or undertake their own assessment of the climate proofing.

In line with Annex XIII to the CPR (section I) documentation that allows verification of the application of the selection criteria by the managing authority, as well as documentation relating to the overall selection procedure and the approval of operations is an obligatory element of an audit trail.

Question 3 (including any relevant facts and information):

The technical guidance on climate proofing encompasses an assessment of carbon footprints. Let us say, as an illustrative example, that a harbour front needs a new pier. The construction most likely has an impact on the carbon footprint, particularly if the material is concrete, even though the construction is for the purpose of climate proofing the harbour. As managing authority, we can take note of the impact on the carbon footprint, but what are we going to do with the information? If the carbon footprint is significant in either direction, shall we then take it into account as something that affects the application positively/negatively when selecting the operations?

Answer:

In accordance with Article 73(2)(j), in selecting operations the managing authority needs to ensure the climate proofing of investments in infrastructures which have an expected lifespan of at least 5 years. The climate proofing is a regulatory requirement for the investment and should be ensured in addition to the "Do No Significant Harm" - assessment of the programmes and to the EIA of the project, if applicable. The technical guidance recommends to integrate the climate mitigation measures, together with the environmental mitigation measures, into the tender documents, if they have not been already addressed at strategic level (in a SEA, by for instance choosing alternative models of transport and energy or alternative location for a project). Regarding the impact of the carbon footprint, once quantified, the GHG emissions can be monetized using the approach provided in the technical guidance and included in the cost-benefit analysis.

Elements such as cost efficiency of the investment, secondary climate and/or environmental consequences relevant for the investment, or any other environmental, climate or socio-economic consequences related to investments, can be part of the selection criteria.

Question 4 (including any relevant facts and information):

We have a project proposal waiting for grant decision. Can we select the operation and enter into a grant agreement subject to the condition that the operation demonstrates, within a timeframe of six months, that they have carried out an

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

assessment of the climate impact and climate proofing, including the carbon footprint. If this was not fulfilled, the grant would be terminated.

Answer:

As stated in the reply to question 2 - it is for the managing authority to establish and apply criteria and procedures for the selection of operations to ensure the climate proofing of investments in infrastructure which have an expected lifespan of at least 5 years.

The selection and conclusion of a grant agreement, subject to the fulfilment of the condition(s), is not excluded. The managing authority needs to be aware of the risks of such a solution (delays in implementation due to the potential cancellation of the grant agreement).

Considering that operations may have started before the application for funding is submitted, the managing authority should, in line with the Commission notice mentioned above ensure that the climate proofing does not arrive at a moment where design modifications will be challenging and that coordination with other activities such as the EIA process will not be possible.

---

[1] Commission Notice — Technical guidance on the climate proofing of infrastructure in the period 2021-2027 (OJ C, C/373, 16.09.2021, p. 1, CELEX: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021XC0916(03))

QA00260 - CONTINUATION OF IMPLEMENTATION OF FI OVER TWO CONSECUTIVE PROGRAMMING PERIODS – CONTRIBUTION OF THE PROGRAMME RESOURCES 2021-2027 TO THE EXISTING HOLDING FUND

Relevant Articles:

Article 59(3) of the CPR

Article 68(2) of the CPR

Article 92(2)(a) of the CPR

Member State: LT

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Background:

Currently Lithuania has two funds of funds in the area of multi-apartment building modernization. One is managed by the EIB, the other by the Lithuanian National Promotional Institution. They plan to continue both contracts, supplementing them with EU funds for the period of 2021–2027. The amendments of contracts are currently being prepared and will be signed by the end of 2023. However, they plan to allocate to these funds of funds not the entire amount provided in the Operational Programme. They plan to allocate around 30 million euros in 2024 or 2025, depending on which of the funds will show better results.

Question 1 (including any relevant facts and information):

The Lithuanian authorities would like to crosscheck, whether it would be allowed if the contract of Fund of Funds was amended in 2023? Is it allowed to supplement the remaining amount of EU funds after 2023 to the Fund of Fund with already amended contract?

Answer:

We understand that the above structure involving financial instruments (FI) implemented by two holding funds (HF)[1] was set up under the 2014-2020 programming period. We also understand that the bodies implementing HFs (i. e. the EIB and the Lithuanian National Promotional Institution) were awarded financial services contracts directly according to applicable Public Procurement Directives.

We understand that the question is whether it is possible to continue the implementation of FIs in the 2021-2027 programme period and allocate some of the programme resources to the FIs only in 2024 or in 2025 on the basis of the results achieved by the FIs managed by the respective HFs.

It is possible to continue to implement FIs which started the implementation in the 2014-2020 programming period and to contribute to the FIs (also by committing amounts to the FI in tranches during the programming period) the programme resources 2021-2027, if provisions in Article 68(2) CPR are respected by the managing authority.

If programme authorities commit the programme resources to the FI in tranches, any additional commitments to the FI will require the amendment of the funding agreement. The programme authorities will be able to claim from the Commission the advance of up to 30% according to Article 92(2)(a) CPR only in relation to the amounts committed in the funding agreement at the time of the first payment application.

The related conditions and timing for contributions of the programme resources 2021-2027 to the FIs must be included in the amended funding agreements.

The necessary agreements for the FI implementation should be made under the programming period 2014-2020 to ensure that the implementation can continue in the subsequent 2021-2027 programming period and should be amended at the latest by

the end of the eligibility period, i.e. 31 December 2023 (for EAFRD FIs the eligibility period runs until the end of 2025).

Article 68(2) CPR does not create any derogation from the applicable public procurement rules. As a result managing authorities are encouraged to take advantage of the new flexibility under that provision in accordance with the European public procurement directives and national public procurement law.

Where the contract to implement the FI was directly awarded by the managing authority under Article 59(3), additional funds may be directly entrusted to the existing implementing bodies on the basis of updated agreements, as long as the conditions for this direct award are still fulfilled. If the entrusted entity is a holding fund, it may have to apply public procurement rules to further entrust the implementation of the additional funds to specific funds.

For practical considerations, please refer to fi-compass Knowledge Hub note related to the subject of implementation of FIs across consecutive programming periods:

https://www.ficompass.eu/sites/default/files/publications/ERDF_Knowledge_Hub_Report_Implementation_of_financial_instruments_across_consecutive_programming_periods.pdf

---

[1] Article 2(27) CPR 2014-2020

QA00261 - WAGE COSTS ELIGIBILITY UNDER JTF AND COST ELIGIBILITY CPR FUNDS V GBER

Relevant Articles:

Article 8 of the JTF

Article 63 of the CPR

Article 64 of the CPR

Article 73 of the CPR

Article 14 point 4(b) GBER

Member State: RO

Background:

Romanian authorities intend to grant JTF support for productive investments in SMEs under a regional aid scheme (Article 14 GBER). In this context, the Managing Authority (MA) is preparing the call(s) as well as guidelines for beneficiaries indicating the

method to establish the eligible costs. In these guidelines, the MA has reproduced the eligibility rules from Article 14 GBER (Regional investment aid) stating that:

"eligible costs shall be:

(a) investment costs in tangible and intangible assets; or

(b) the estimated wage costs arising from job creation as a result of an initial investment, calculated over a period of two years; or

(c) a combination of points (a) and (b) not exceeding the amount of (a) or (b), whichever is higher."

Based on the explanation provided by the managing authority, each productive investment in an SME, to be co-financed by the JTF, would cover both investments in tangible and intangible assets. Projects should also create and keep a number of new jobs related to the investment in assets, thus the project cost would include not only direct staff costs linked to an operation (investment phase) but also running costs of an SMEs related to staff (once investment is completed), e.g. if an operation consists in purchasing equipment, the wage cost relates to the salary of a person who installs the machine or also of employee(s) who will operate it in the future once the investment is in place.

Question 1 (including any relevant facts and information):

Could wage costs during the operational phase of a project be eligible under JTF rules?

Answer:

First, it should be noted that support provided to wage costs may be understood as the objective of the operation (e.g., salaries of the newly recruited workers in SMEs), but also as the cost of the staff carrying out tasks necessary for the implementation of the operation.

In any case, wage costs (similarly to other running costs) that occur during the operational phase of the project, and therefore once the JTF operation is completed, are not eligible under cohesion policy. Such costs may however be supported throughout the duration of the operation (i.e., when the operation is being implemented and before it is completed).

In line with Article 63(2) CPR, expenditure should be eligible for a contribution from CPR Funds if it has been incurred by a beneficiary and paid in implementing operations. Moreover, Article 8 JTF clearly states that only investment costs are eligible which may include costs of personnel needed for the investment (provided such costs are considered eligible according to national rules in accordance with Article 63(1) CPR). Furthermore, Article 63(3) CPR confirms that JTF expenditure should be related to operations.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

With regard to the above, it is important that the beneficiary precisely defines the objective and scope of an operation to determine to what extent wage costs are related to its implementation.

In this respect, it should be noted that support to direct employment measures (wages of the newly recruited workers) cannot be considered a productive investment and thus cannot constitute the objective of operations in SMEs under Art. 8(2)(a) JTF. As explained in QA00257, the same applies to measures linked to upskilling and reskilling of workers and active inclusion of jobs seekers. Productive investments, as per recital 16 JTF, are '*investments in fixed capital or immaterial assets of enterprises with a view of producing goods and services, contributing to gross-capital formation and employment.*'

However, recruitment subsidies, including salaries, may be provided as part of support to active inclusion of jobseekers under Article 8(2)(m) JTF as a measure to promote access to employment. Furthermore, salaries may also be covered by the JTF in the case of upskilling and reskilling measures under Article 8(2)(k), i.e., salaries of workers and trainers.

Eligible expenditure under CPR Funds should be compliant with all applicable provisions stemming from relevant EU law and/or regulations in Member States. For the JTF, it means that eligible expenditure should, among others, contribute to the implementation of the relevant territorial just transition plan, as per Article 63(3) JTF, and it needs to be related to an operation that is directly linked to the JTF specific objective as set out in Article 2, JTF.

Question 2:

In case of projects under Article 14 GBER: if under JTF rules eligible costs are defined as costs of tangible and intangible assets (including also possibly wage costs which are not running costs), would it be possible to verify compliance with State aid by comparing such eligible costs with the ceiling calculated based on method provided by Article 14(b) GBER (i.e. wage costs calculated over a period of 2 years, even if some of the costs are not eligible under JTF).

Answer:

Recital 22 of the GBER states that *"With a view to ensuring that aid is proportionate and limited to the amount necessary, maximum aid amounts should, whenever possible, be defined in terms of aid intensities in relation to a set of eligible costs."*

Under the GBER (regional aid), the eligible costs form the basis to which the aid intensity is applied in order to establish the maximum aid amount. Therefore, eligible costs defined in accordance with Article 14 GBER may be distinct from the expenditure that will be declared under cohesion policy as long as the overall amount of eligible public support under projects co-financed by CPR Funds do not exceed the maximum aid amounts and that all other applicable conditions under the GBER are respected.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In line with Article 73(3) CPR, the MA should ensure that the beneficiary is provided with a document setting out all the conditions for support for each operation including, where applicable, the method to be applied for determining the costs of the operation and the conditions for payment of the support.

QA00262 - VAT ELIGIBILITY

Relevant Article:

Article 63 of the CPR

Article 64 of the CPR

Member State: n/a

Question 1 (including any relevant facts and information):

The Managing Authority for the EMFAF programme is worried about the new Article 64(1)(c)(i) CPR on eligibility of VAT costs for operations below €5 million.

Given the answers provided in the DG REGIO wiki to Poland and the Czech Republic (QA00002 and QA00176) on the application of Art 64 CPR, the MS interprets it to mean that the Commission requires Member States to implement such simplification without regard to the issue of double-financing in what is considered small-scale operations (operations under €5 million total cost (incl. VAT).

The effects of this interpretation may be minor for other funds under the cohesion policy, but for EMFAF programmes few operations are likely to have a total cost in excess of €5 million.

Based on the answers provided to the above mentioned interpretation questions, MS has yet to implement national rules making recoverable VAT ineligible for funding for operations under the €5 million threshold. This because it has interpreted the replies to PL and CZ to mean that MS must make VAT costs eligible for operations of less than €5 million in total costs, even if the VAT costs are recoverable.

Unless MS puts in place national rules prohibiting funding of recoverable VAT, the MS EMFAF programme will have to be amended to adjust the goals set in the programme given the fact that up to 25 percent (level of VAT in MS) of support may be lost to double-financing as concerns public funds.

MS asks:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

1. Must MS make VAT an eligible cost for operations below a total cost of €5 million even if it is recoverable for the beneficiary? Or can it put in place national legislation making recoverable VAT ineligible to funding?
2. Whether double-financing is really acceptable, which would be the case if VAT is an eligible cost at the same time as the beneficiary recovers the VAT? This is especially difficult to accept by the MS under the EMFAF, where it would often lead to a public support rate above 100 percent of total costs.
3. How is 64(1)(c)(i) CPR compatible with Art 63(2) CPR stating that an expenditure shall be eligible if it has been incurred.

Answer:

1. According to Article 63 of Regulation (EU) 2021/1060 (CPR), 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 Regulations.

Article 64(1)(c) CPR provides for a set of exceptions to the general rule according to which VAT is ineligible to a contribution from the EU funds under shared management. One of those exceptions applies to operations having a total cost below EUR 5 000 000, and is not conditional upon the recoverability of the VAT under the national VAT legislation.

The wording of Article 64 CPR is that the listed expenditure shall not be eligible, with the exception of the cost items explicitly listed. However, Article 64 CPR does not state that the listed exceptions must be considered eligible.

As it is clear from Article 63 CPR that eligibility rules are a national competence, unless an expenditure is explicitly identified as non-eligible in the CPR or the Fund-specific Regulation, it is up to the MS to decide what type of expenditure is eligible. From this it follows that it is up to each individual MS to decide on whether they wish to make use of the exception provided in 64(1)(c)(i) CPR or not.

2. The exception of Article 64(1)(c)(i) CPR, introduced in the CPR as a simplification measure for national authorities and beneficiaries, does not seem to lead to a double financing from the budget of the EU because this would not lead to the same costs being financed twice from the EU budget. Rather, it enables MS to grant support from the EU Funds under shared management to cover also recoverable VAT for operations with a total cost of up to EUR 5 000 000 (including VAT) within the same operation.

As a result of this simplification measure, MS may allow beneficiaries of operations with a total cost of up to EUR 5 000 000 (including VAT) to both recover the VAT (at national level) and claim it as EU-eligible expenditure under the operation, should the MS choose to use the exception provided in 64(1)(c)(i) CPR

It should be noted that state aid rules must be complied with, where applicable (please see QA00254).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

3. In accordance with Article 63(2) CPR, expenditure shall be eligible if it has been incurred by the beneficiary and paid in implementing operations. If the beneficiary has paid the VAT (or accounted for the VAT), it is eligible as it has been incurred. Whether it is recovered is irrelevant for operations with the total cost up to EUR 5.000.000, in line with Article 64(1)(c)(i) CPR.

QA00263 - ELIGIBILITY OF RECYCLED CARBON FUEL UNDER JTF AND CLIMATE PROOFING OF INFRASTRUCTURE

Relevant Articles:

- Article 9(d) of the JTF Regulation
- Article 2(42) of the CPR
- Article 73 (2)(j) of the CPR
- Article 2 (35) of the (EU) 2018/2001 (RED II)

Member State: EE

Question 1:

Can the pyrolysis gas, which is produced as an unavoidable and unintentional by-product of pyrolysis of plastic waste and is used as an energy source of the pyrolysis process, be considered 'recycled carbon fuel' according to the definition provided by RED II Article 2 (35)?

Answer:

Pyrolysis gas can be considered as recycled carbon fuel, as defined in Article 2(35) REDII.

Question 2:

Fossil fuels are not defined in JTF Regulation and in previous replies, the Commission has referred to Article 2(62) of the Energy Union and Climate Action Governance Regulation (2018/1999 of 11.12.2018) and energy statistics[1], but we would like to clarify whether pyrolysis gas, which is produced unavoidably and unintentionally by chemical recycling of plastic waste, falls under the 'fossil fuel' exclusion. If pyrolysis gas is not 'recycled carbon fuel', is the pyrolysis gas considered to be a 'fossil fuel' in the meaning of Art 9(d) of the JTF Regulation?

This answer was updated on 31 May 2024. Please note the previous reply is struck through and replaced with the existing text.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

For projects to provide an effective contribution to the achievement of the specific objective of the JTF programme, and in particular to the transition to a sustainable, climate-neutral and circular economy, they should support measures in the upper stages of the waste hierarchy, including through waste prevention, reduction, resource efficiency, reuse, repair and recycling.

When it comes to recycling, mechanical recycling of plastic should remain the priority option, wherever technically and qualitatively feasible, because it is less energy intensive with less operational costs. Only as an alternative option, should plastic be recycled chemically and in this case it should be ensured that the output of pyrolysis is used to produce high-quality plastics in a circular way.

Recycled carbon fuels are considered fossil fuels, in line with the definition of Article 2(62) of the Regulation (EU) 2018/1999 on Energy Union and Climate Action Governance Regulation.**[2]** However, question 1 indicates that the 'unavoidable and unintentional by-product of pyrolysis of plastic waste is used as an energy source of the pyrolysis process'. If this is the case, and the recycled carbon fuel by-product is fully reused as an additional input to the process, then the project would have in practice no fossil fuel output.

Therefore, projects related to pyrolysis of plastic waste would not fall under the exclusion under Article 9(d) JTF and could be supported by the JTF if both following specific conditions are met:

- the pyrolysis oil output of a pyrolysis process of plastic waste is effectively used for the production of high-quality recycled plastic;
- the pyrolysis process of plastic waste fully reuses the recycled carbon fuel by-product as an additional input in the pyrolysis process.

An operation selected for funding must also fall under the scope of the types of actions which have been assessed as compliant with the "do no significant harm" principle in the adopted programme.

~~Recycled carbon fuels are always fossil fuels, in line with the definition of Article 2(62) of the Energy Union and Climate Action Governance Regulation (2018/1999 of 11.12.2018).**[2]** In addition, the question indicates that the process also results in solid coke, which is another fossil fuel. Because the project is related to the production of fossil fuels, it is covered by Art. 9(d) JTF and can therefore not be supported by the JTF.~~

[1] https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Fossil_fuel

[2] This is regardless of the fact that recycled carbon fuels may, under certain conditions, be taken into account in the calculation of the minimum share of renewable energy in the transport sector.

Question 3:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 2(42) CPR defines 'climate proofing' as a process of preventing infrastructure from being vulnerable to potential long-term climate impacts whilst ensuring that the 'energy efficiency first' principle is respected and that the level of GHG emissions resulting from the project is consistent with the climate neutrality objective in 2050.

Article 73 (Selection of operations by the managing authority) of the CPR states in paragraph 2(j) the following:

"2. In selecting operations, the managing authority shall:

…

(j) ensure the climate proofing of investments in infrastructure with an expected lifespan of at least five years."

Technical guidance on climate proofing clarifies that, with regard to EU funding for infrastructure in the programming period 2021-2027, the main instruments that may be employed include – under the Common Provisions Regulation (CPR) – the European Regional Development Fund (ERDF), the Cohesion Fund (CF) and the Just Transition Fund (JTF).

Taking into account JTF Regulation, climate proofing definition and selection criteria, is the chemical recycling of plastic waste considered to be eligible for funding when in short- and medium-term burning pyrolysis gas for the purpose of supplying heat to the process causes CO2 emissions which can only be captured by Carbon Capture (CC) unit in the long-term by 2050? Does climate proofing of the investment mean that the beneficiary needs to show that emissions will decrease by 2050 and climate neutrality will be ensured? Is CC considered to be a viable option to mitigate emissions from plastic waste chemical recycling process?

Answer:

This answer was updated on 31 May 2024. Please note the previous reply is struck through and replaced with the existing text.

According to the Commission's technical guidance on the climate proofing of infrastructure in the period 2021-2027[1], the project's compatibility with a credible pathway to achieve the overall 2030 and 2050 GHG emission reduction targets should be verified. Article 73(2)(j) CPR establishes that it is the responsibility of the Member States to ensure climate proofing of selected operations related to investments in infrastructure with an expected lifespan of at least five years. Aforementioned technical guidance illustrates how to verify the project's compatibility with a credible pathway to achieve the overall 2030 and 2050 GHG emission reduction targets as part of the climate proofing of infrastructure.

[1] COMMISSION NOTICE Technical guidance on the climate proofing of infrastructure in the period 2021-2027 (2021/C 373/01)

~~According to the Commission's guidance on climate proofing, the project's compatibility with a credible pathway to achieve the overall 2030 and 2050 GHG emission reduction targets should be verified. Allowing a considerable amount of CO2~~

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

~~emissions until 2050 does not seem to meet this criterion. However, since the project cannot receive support from the JTF, this third question becomes void.~~

QA00264 - PROGRAMME AMENDMENTS – NON-SUBSTANTIAL TRANSFERS AND RELATED CHANGES

Relevant Article: Article 24 CPR

Member State: LT

Question 1 (including any relevant facts and information):

We would like to clarify some aspects related to modifications of 2021-2027 EU Funds' Investments Programme.

1. What kind of changes could be considered as "related changes" (Article 24(5) of CPR) - changing indicators, changing activities - can they be treated as "related changes"?
2. Concerning the modifications of indicators - the closure guidance of the 2014-2020 financial period permits the amendment of indicators which a deviation is less than 20%, without an EC decision (in case the deviation is bigger than 20% Member States should explain achievement values in the final implementation report). Could the same approach be applied in the 2021-2027 financial period?

Answer:

This answer was updated on 3 June 2024. The change is struck through.

1. As explained in recital 28 CPR, to allow for flexibility in programme implementation and decrease administrative burden, it is possible for Member States to perform certain financial transfers within the existing structure of the programme, i.e., between priorities of the programme, of the same Fund and, where applicable, the same category of region. Such transfers should respect the limits fixed by Article 24(5) CPR.[1] Moreover, such transfers and the changes related to them do not require a decision of the Commission amending the programme. It is sufficient if the transfers are approved by the monitoring committee and notified to the Commission.

The CPR does not introduce a definition for the term of 'related changes', however, based on the rationale of Article 24(5) "related changes" should be understood as:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- **a change which is a direct consequence of the transfer** referred to in that Article ("related"), i.e., the programme amendment should be driven by the financial shifts and therefore the transfer cannot be used as an opportunity to introduce other changes that are not a direct consequence of the transfer.
- **compliant with the regulatory requirements,** g., thematic concentration, enabling conditions, exclusions from the scope of support etc.

Analysis of whether the amendment concerns a related change referred to in Article 24(5), fourth subparagraph, should therefore be carried out on a case-by-case basis with regard to the criteria listed above.

In general terms, related changes should also be proportional, i.e., the change should be proportionate to the level of transfer to which it is related and should not affect the overall objectives of the programme.

As an illustration of the above set of criteria, the following non-exhaustive list of changes that would affect the programme structure and the fulfilment of regulatory requirements would not fall within the scope of the fourth subparagraph Article 24(5): adding a new policy objective or a new specific objective that triggers an assessment of a new thematic enabling condition, or a territorial just transition plan, changes related to the status of existing enabling conditions (that need to be done via a special procedure based on Article 15(4) or 15(6) CPR), changes in milestones or target values of indicators that are disproportionate to the level of transfer, changes affecting the financial split in table 10 of the programme or changes in any of the elements of the programme that are covered by the Commission decision approving the programme or its amendments in relation to simplified cost options and financing not linked to costs and to the co-financing rate.

Furthermore, any changes that would trigger new eligibility for funds (e.g., by adding new types of intervention in tables 4~~-8~~ of the programme) are also not considered as related changes as they extend the scope of programme and thus cannot be considered a direct consequence of a purely financial transfer.

2. Our understanding is that the question relates to the possibility to modify indicators as a change to the programme related to a non-substantial transfer. CPR does not provide any limit regarding the modifications of values and targets of indicators following a non-substantial transfer. However, such a change should be related to the transfer, and should be proportionate to the transferred amount, and it should remain in line with the agreed methodology.

---

[1] Transfers between types of actions within the same priority in the case of AMIF, BMVI and ISF also fall within the scope of Article 24(5) CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00265 - FLAT RATE FINANCING FOR INDIRECT COSTS ARTICLES 54 AND 94 CPR

Relevant Articles:

Article 53 of the CPR

Article 54 of the CPR

Article 94 of the CPR

Member State: n/a

Question 1 (including any relevant facts and information):

Article 54 of the Common Provisions Regulation (CPR) states that, "where a flat rate is used to cover indirect costs of an operation, it may be based on […] (c) up to 25 % of eligible direct costs, provided that the rate is calculated in accordance with point (a) of Article 53(3)", i.e. on the basis of a fair, equitable and verifiable calculation method.

Article 94 of the CPR lays down provisions for the use of SCOs to calculate the reimbursement of the Union contribution, including the possibility to calculate the Union contribution on the basis of a flat rate.

Questions:

Q1. Article 54 does not include references to other provision, such as paragraph (d) of Article 53(3). Is it therefore correct to conclude that, where a managing authority wants to apply such a flat rate to the direct costs declared by a beneficiary, it can do so only up to a maximum of 25%?

Q2. Can the Union contribution be calculated on the basis of a flat rate on direct costs? What would be the trigger or indicator for the payment of the Union contribution?

Q3. If it is confirmed that it is possible to calculate the Union contribution on the basis of a flat rate on direct costs, is there a capping of the flat rate on direct costs to a maximum percentage, similar to the 25% maximum in Article 54(c)?

Q4. If the Commission should accept that the Union contribution is calculated on the basis of a flat rate on indirect costs, which is higher than the 25% laid down in Article 54(c): can the same flat rate, established on the basis of Article 94 also be applied by the managing authority to the direct costs declared by a beneficiary?

Answers:

Answer to question 1:

Article 54 CPR does not provide an exhaustive list of methods on how to establish flat rates for indirect costs of an operation and allows the Member States to use a flat rate for indirect costs established on the basis of other methods, i.e., those stated in points (b) to (e) of Article 53(3) CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

A flat rate covering indirect costs which is not established on the basis of a fair, equitable and verifiable method referred to in Article 53(3)(a) CPR (for which the ceiling of 25 % set out in Article 54, point (c) CPR applies), but rather on another method among those referred to in points (b) to (e) thereof, is not subject to a ceiling, however it must constitute a reliable proxy to real costs.

Answer to question 2:

In accordance with Article 94(1) CPR, the Commission may reimburse the Union contribution to a programme on the basis of unit costs, lump sums and flat rates in accordance with Article 51 CPR based on the amounts and rates approved by a decision in accordance with paragraph 3 of this Article. Article 94(2), first subparagraph CPR provides that to make use of this possibility, Member States should submit a proposal to the Commission in accordance with the template set out in Appendix 1 of Annexes V and VI, as part of the programme submission or of a request for its amendment.

Article 94(2), second subparagraph CPR sets out the methods to establish the amounts and rates proposed by the Member State. This provision does not contain any restrictions as to the amounts and rates that can be used by Member States when applying these methods, including the flat rates for indirect costs.

As a general rule, it is up to the Member State to set out the indicators triggering reimbursement which need to be examined and agreed by the Commission. Regarding the specific case, the indicator triggering reimbursement should be the expenditure declared for the basis costs, i.e. the direct costs of the SCO operation/scheme.

Answer to question 3:

Article 94 CPR does not provide for any ceilings as to the amounts and rates that are established by the Member State in accordance with one of the methods set out in Article 94(2), second subparagraph CPR.

Answer to question 4:

SCO methodologies approved by the Commission as part of the programme or its amendment in the context of Article 94 CPR can be used by the Member State for the reimbursement of beneficiaries as they fall under Article 53(3)(e) CPR, i.e. 'flat rates and specific methods established by or on the basis of this Regulation or the Fund-specific Regulations.'

As stated in the response to the first question, Article 54, point (c) CPR sets a ceiling of 25 % of eligible direct costs only if the flat rate is calculated on the basis of the fair, equitable and verifiable calculation method and it does not apply to flat rates established on the basis of the methods set out in Article 53(3)(b) to (e) CPR.

It is up to the Member State to make use of the option, as according to Article 94(3) CPR, the reimbursement by Member States to beneficiaries may take any form of support.

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00266 - DOES ARTICLE 36(4)(C) ETC APPLY TO THE SMALL PROJECT FUND (SPF) BENEFICIARY/SPF MANAGER

Relevant Articles:

Article 36(4) of Regulation (EU) 2021/1059 (ETC)

Article 23 and 25 of Regulation (EU) 2021/1059 (ETC)

Articles 2(18) and 50(2) of Regulation (EU) 2021/1060 (CPR)

Member State: n/a

Question 1 (including any relevant facts and information):

The SPF operations under the PL-SK Interreg CBC programme will have budgets exceeding the amount indicated in Article 36(4)(c) ETC. However, the SPF beneficiary (i.e. the SPF manager) will not implement infrastructure as part of management costs. Equipment purchased as part of the SPF operation's management in the "equipment" category is used solely for project management. This is typically office equipment (e.g. computers, printer, scanner).

In such a situation, can it be considered that the provision in point c) does not apply to the SPF beneficiary (only a, b, d and e)?

Answer:

Obligations of the beneficiary of the SPF in relation to communication and publicity were defined in the following provisions of the regulations:

- pursuant to Article 50(2) CPR for small project funds, the beneficiary shall comply with the obligations under Article 36(5) ETC;
- pursuant to Article 36(4) ETC each partner of an Interreg operation shall acknowledge support from an Interreg fund in accordance with points a to e of that provision;

In the present case, it is the beneficiary of the small project fund that has purchased and installed equipment for management purposes. The beneficiary must comply with the obligations imposed by Article 36(4) ETC. The aim of the provision is to ensure that each partner of an Interreg operation acknowledges support from an Interreg fund. In

accordance with Article 23 ETC, a partner is a beneficiary of an Interreg fund and it may be a sole partner for the implementation of a small project fund.

This means that point (c) of Article 36(4) ETC is applicable to the SPF beneficiary where the Interreg operation whose total cost exceeds EUR 100.000 includes physical investment or purchase of equipment.

QA00267 - WHAT IS COMMUNICATION MATERIAL?

Relevant Article: Article 50(1)(b) CPR

Member State: n/a

Questions (including any relevant facts and information):

1. Can a speech at an inauguration for EU funded project be considered as communication material?
2. As the beneficiary is organising the event, is it responsible for all communication 'material' including what is said?
3. Is the closing ceremony considered as part of the implementation of the operation where the support from the union would need to be displayed?

Answer:

Article 50(1) CPR reads that "Beneficiaries and bodies implementing financial instruments shall acknowledge support from the Funds, (…) (b) providing a statement highlighting the support from the Union in a visible manner on documents and communication material relating to the implementation of the operation, intended for the public or for participants."

1. The speech during the inauguration of the project should be considered as part of the 'communication material relating to the implementation of the operation'. Even if the beneficiary does not have the possibility to produce or influence the content of such a speech, it should strive to highlight during the inauguration the support to the project from the Union in accordance with Article 50(1)(b) CPR. If the beneficiary obtains the right to publish the content of the inauguration speech in written form or to publish a video/audio recording of such a speech, failure to highlight Union support in the live speech can be remedied by adding a funding statement below the transcript or recording.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

2. The beneficiary should assume responsibility for all communication material such as invitations to attend the event, potential leaflets or other documents distributed, press releases sent, social media posts on the profiles of the beneficiary etc. While the beneficiary may not be able to control what is said at the events, it is the beneficiary who can steer the selection of relevant speakers and discuss in advance which are the important messages (such as the Union support) which needs to be mentioned in the speech.
3. The closing ceremony can be considered as part of the implementation of the operation, depending on the grant agreement/document granting support to the beneficiary. However, Article 50(1)(b) CPR does not limit the responsibilities of the beneficiary only to the time during which the operation is implemented. In that respect, regardless of whether the closing ceremony is part of the implementation of the operation, the beneficiary should provide a statement highlighting the support from the Union in a visible manner on documents and communication material relating to the implementation of the operation, intended for the public or for participants, which it produces on the occasion of the closing ceremony.

QA00268 - PROGRAMME AMENDMENT IN CASE OF A TJTP IS ASSOCIATED TO SEVERAL PROGRAMMES

Relevant Articles:

Art. 22, 24, 63 of the CPR

Art. 10 of the JTF

Member State: FR

Question 1 (including any relevant facts and information):

In France, the JTF programming is split between the ESF+ and ERDF-like types of investments. In fact, JTF interventions are based on six Territorial Just Transition Plans with a support by JTF to 7 programmes:

1. 1 national JTF monofund programme supporting types of actions in line with Article 8 (2) (k)-(m)(n) (ESF + type of measures) of the JTF Regulation, including 6 Territorial Just Transition Plans, one for each of the six eligible regions (ie: ESF + - like type of measures);

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

2. 6 regional multi-fund ERDF-ESF+-JTF programmes where the JTF component only supports types of actions in line with Article Article 8 (2) (a)-(j) ("ERDF" type of measures), each of which includes the Territorial Just Transition Plan of the region concerned.

Therefore, each TJTP is covered by two programmes in each region.

In order to improve the implementation of the JTF, multiple managing authorities consider submitting a request for a programme amendment (related to the ESF+ or ERDF-like components of the JTF programming), notably amendments introducing new types of actions. Thus, the question relates to the scope of a programme amendment impacting a TJTP covered by two programmes, in case of a split between the ESF+ and ERDF-like types of investments.

In this context, the FR authorities aim at clarifying which programme(s) **should be concerned in case of a request for an amendment of a programme and the relative TJTP to include a new type of action, when this type of action only concerns one programme and the relative TJTP,** but the same TJTP is also part of another programme**.**

On the basis of these elements, which programme(s) (covering the TJTP of the affected region) should be concerned in case of a request for an amendment modifying one JTF priority ?

Answer:

In accordance with Article 22(8) CPR and Article 10(1) JTF, the territorial just transition plan ("the plan") is part of the programme (s) supported by the JTF. As such, the plan is covered by the Commission decision approving (or amending) the corresponding programme.

In consequence, the change (e.g., inclusion of new types of actions) in the plan that is linked to several programmes will trigger the need for a formal amendment of each of these programmes, based on the procedure set out in Article 24(1)-(4)[1] CPR. This is because where a plan covers several programmes, it remains a single and the same document for all the programmes regardless of the fact that each decision approving the respective programme has referred to the plan as being a part of it. Therefore, it is not relevant whether the proposed change in the plan has an impact on the scope of intervention of only one programme.

However, a programme amendment needs to be submitted as soon as possible as regards the programme for which the new type of action is introduced. The other programmes may be amended in relation with that change later, once there is a need for a programme amendment concerning other modifications.

Additionally, it may be useful to recall QA00057 - Start date of eligibility for the JTF - QA 21-27 - RegioWiki (europa.eu) and the provisions under Article 63 CPR in the JTF context.

---

[1] Note: the list of productive investments in large enterprises is indicative even once approved by the Commission within the TJTP as part of the programme, therefore the programme does not need to be amended in case of changes to the list. However, an amendment approved by the Commission decision is needed for support to large enterprises for productive investments located in 'c' areas, covered by paragraph 14 of Regional State aid Guidelines (the RAG).

QA00269 - ELIGIBILITY OF OVERHEADS UNDER ESF+ STATE AID SCHEMES

Relevant Article:

Art. 54 of the CPR

Article 7(1) of Regulation (EU) No 651/2014 ('GBER')

Member State: MT

Question 1 (including any relevant facts and information):

With respect to state aid schemes targeting the private sector, we have two schemes that will be co-funded under the European Social Fund Plus. The first is in the form of wage subsidies for disadvantaged workers and workers with disabilities, and the second provides training aid. We would appreciate your opinion on whether it is possible to apply the off-the-shelf flat rate listed under Article 54(a) of Regulation (EU) 2021/1060 (CPR) to operations eligible under these schemes on all eligible costs.

Under the state aid scheme which provides training aid to the private sector, eligible costs include the following:

- Trainers fee
- Employees wages

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- Any travel and subsistence costs necessary
- Indirect costs

We would like to ask in particular, whether the use of the flat rate for indirect costs under Article 54(a) CPR is compatible with 31(3)(d) GBER.

Answer:

As explained in QA00242, Article 7(1) of Regulation (EU) No 651/2014 ('GBER'), as last amended by Regulation (EU) 2023/1315, allows to calculate the amount of eligible costs by using the simplified cost options that are set out in the relevant rules governing the Union fund, provided that:

- an operation is at least partly financed through a Union fund that allows the use of simplified cost options;
- the category of costs is eligible according to the relevant exemption provision.

In the case at stake, it is necessary to check whether the CPR provides for the use of SCO for the categories of costs envisaged in the operation and, as State Aid rules apply, to check whether the categories of costs covered by the flat rate/off the shelf amount are eligible under the GBER.

- With regard to the CPR, Article 54 establishes provisions to use a flat rate to cover indirect costs of an operation. Eligible indirect costs are not identified per se, but defined as a percentage of eligible direct costs.
- With regard to the GBER ,Article 31 (3), on training aid establishes the eligible costs as the following:

(a) trainers' personnel costs, for the hours during which the trainers participate in the training;

(b) trainers' and trainees' operating costs directly relating to the training project such as travel expenses, materials and supplies directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the training project. Accommodation costs are excluded except for the minimum necessary accommodation costs for trainees' who are workers with disabilities;

(c) costs of advisory services linked to the training project;

(d) trainees' personnel costs and **general indirect costs (administrative costs, rent, overheads) for the hours during which the trainees participate in the training**.

Because indirect costs under Article 54 CPR are calculated as a percentage of direct costs, in order to be able to use SCOs under the GBER they should be computed based only on the categories of direct costs defined as eligible in Article 31 (3), taking into account the specific limitations for each of them provided in the same GBER provision.

On this basis it is possible to apply the off-the-shelf flat rate listed under Article 54(a) of Regulation (EU) 2021/1060 to the training aid scheme.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00270 - REVISED REPLY TO QUESTION 1 OF THE QA00200 ON SCOS - ANNEX XVII DATA FIELDS 23 AND 24 (MAXIMUM WORKING TIME COMPLIANCE IN CASE OF UNIT COSTS)

Relevant Articles:

Article 53 of the CPR

Article 72 of the CPR

Article 74 of the CPR

Annex XVII of the CPR

Member State: CZ

Question 1 (including any relevant facts and information):

We would like to get your assurance regarding our interpretation of the obligation of the managing authorities to record and electronically store the data on each operation necessary for monitoring, evaluation, financial management, verifications and audits in accordance with Annex XVII CPR (see Article 72(1)(e) CPR) with special regard to the operations, which costs are financed through SCOs.

Our question concerns the obligation to record and store data set out in the rows 23 and 24 of Annex XVII, i.e. data on contractors, their beneficial owners, contracts and sub-contractors in case of public procurement procedures above the Union thresholds are concerned. Even if the SCOs mostly cover expenditures which are marginal in their volume, it may happen that they can be financed through the public procurements above the Union thresholds or be part of such public procurements even if they form the negligible part of it.

We understand that the SCOs are in place in order to simplify administration, i.e. to reduce both the administration burden for the beneficiaries and costs for the implementing bodies and are thus governed by special rules different from the rules governing the financing based on real costs.

After a detailed evaluation we came to the conclusion that data fields 23 and 24 should not apply to expenditures, which are procured and financed through the SCOs. The main reason which led us to this conclusion is following.

Even if the public procurement rules must be respected, the underlying financial or public procurement documents are not subject to verifications and the amounts (expenditure) incurred by the beneficiary and paid shall not be requested to check. Moreover according to Commission Decision of 14. 5. 2019 laying down the guidelines for determining financial corrections to be made to expenditure financed by the Union

for non - compliance with the applicable rules on public procurement the guidelines do not apply to irregularities affecting expenditure under the rules on use of SCOs. Besides we have no idea what would be the purpose for gathering of such data and how to possibly work with these data in case of expenditures financed through SCOs when taking into consideration the special rules governing the SCOs.

It is thus obvious that there is no necessity or reason to gather data on the public procurements in case of the expenditures, which are financed through the SCOs or we have not found any argument to support the opposite approach. That is why we came to the conclusion that the obligation set out in Article 72(1)(e) CPR regarding the data filed 23 and 24 of Annex XVII is not relevant for the expenditures financed through SCOs.

Please could you confirm or comment our understanding?

Answer to question 1:

For Funds covered by the CPR, managing authorities do not have to record and store electronically data on contractors, their beneficial owners, contracts and sub-contractors in fields 23 and 24 of Annex XVII CPR for indirect costs covered by any type of SCOs, i.e., unit cost, lump sum, flat rate under the CPR. For all the other situations (direct costs covered by SCOs, costs reimbursement based on other forms of reimbursement as specified in Article 53(1)(a) CPR), the data mentioned above is to be collected, according to Annex XVII CPR. When a SCO covers both direct costs and indirect costs, the requirement to record and store data on contractors, their beneficial owners, contracts and sub-contractors applies only to the direct costs.

Under field 23, information on contractors, their beneficial owners and contracts only has to be recorded where the operation is implemented in accordance with Union public procurement rules (i.e., public procurement above the thresholds set out in Directive 2014/24/EU or Directive 2014/25/EU). Information on sub-contractors under field 24 has to be recorded at the first level of sub-contracting, only where information is recorded on a contractor under field 23, and only for sub-contracts above EUR 50 000 total value.

QA00271 - FAST-CARE UNIT COST

Relevant Articles:

Article 68c of Regulation (EU) No 1303/2013

Articles 53 and 94 of Regulation (EU) No 2021/1060

Member State: ES

Background:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The Regulation (EU) No 2022/613 of 12 April 2022 amended the Regulations (EU) No 1303/2013 ('2014 Common Provisions Regulations – 2014 CPR)) and the Regulation (EU) 223/2014 (concerning the Cohesion's Action for Refugees in Europe' – 'CARE') and provided *inter alia* for the establishment of a unit cost for operations addressing migratory challenges resulting from the military aggression by the Russian Federation.

In addition, the Regulation (EU) No 2022/2039 of 19 October 2022 amended further the 2014 CPR and Regulation (EU) No 2021/1060 ('2021 Common Provisions Regulation' – '2021 CPR') as regards additional flexibility to address the consequences of the military aggression of the Russian Federation FAST (Flexible Assistance for Territories) – CARE.

With the above amendments, based on the newly introduced Article 68c of the 2014 CPR, Member States may include in the expenditure declared in payment applications to the Commission a unit cost linked to the basic needs and support of persons granted temporary protection or other adequate protection under national law in accordance with Council Implementing Decision (EU) 2022/382[1] and Council Directive 2001/55/EC[2] (so called 'FAST-CARE unit cost).

The FAST-CARE unit cost is an option of which Member States may make use in order to provide assistance for the basic needs and support to persons fleeing Ukraine and to help ease the pressure on Member States' budgets. Article 68c of the 2014 CPR does not provide for a definition of basic needs and support. Nevertheless, basic needs and support means essentially the measures listed in section 1 of the indicative list of eligible actions (e.g. food, clothing, hygiene products, accommodation, transportation, etc.) provided by the Commission to the Member States (the list is available under: 1. Horizontal & cross-cutting questions including eligibility - EU budget support for addressing the Ukrainian refugee crisis - EC Extranet Wiki (europa.eu).

That unit cost shall be EUR 100 per week for each full week or partial week that the person is in the Member State concerned. The unit cost may be used for a maximum of 26 weeks in total, starting from the date of arrival of the person in the Union.

The requirements in terms of audit trail for the FAST-CARE unit cost are available under 1. Horizontal & cross-cutting questions including eligibility - EU budget support for addressing the Ukrainian refugee crisis - EC Extranet Wiki (europa.eu).

Question 1 (including any relevant facts and information):

1. Can Member States use the FAST-CARE unit cost in the context of the 2021-2027 programming for operations supported by the Funds under the Regulation (EU) 2020/1060 ('2021 Common Provisions Regulation' – '2021 CPR'?

Answer:

Pursuant to Article 53(3)(c) of Regulation (EU) 2021/1060 (the '2021-2027 CPR'), Member States can establish (in relation with beneficiaries) the amounts for the forms of grants referred to under points (b), (c) and (d) of paragraph (1) of the same Article

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

'in accordance with the rules for application of corresponding unit costs, lump sums and flat rates applicable in Union policies for a similar type of operation'.

Therefore, the Member States can use the FAST CARE unit cost as set out in Article 68c of Regulation (EC) No 1303/2013 (the '2014-2020 CPR) in accordance with Article 53(3)(c) of the 2021-2027 CPR, namely as a corresponding unit cost applicable in Union policies for a similar type of operation.

Member States must apply the method in its entirety, including in terms of eligible activities, and only to similar types of operations.

In order to make use of the Union contribution to a programme based on the FAST-CARE unit cost in line with Article 94(2)(c) of the 2021-2027 CPR, Member States must submit a proposal to the Commission in accordance with the templates set out in Appendices 1 of Annexes V and VI of the 2021-2027 CPR, as part of a request for a programme amendment pursuant to Article 94(2) of the 2021-2027 CPR.

---

[1] Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (OJ L 71, 4.3.2022, p. 1).

[2] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12).'

QA00272 - OBLIGATION TO MAKE THE NAME OF CONTRACTORS PUBLICLY AVAILABLE

Relevant Articles: Art. 49(3)(a) of the CPR

Member State: MT, EL

Question 1 (including any relevant facts and information):

In cases of a beneficiary using public procurement in the implementation of the project but the project or parts thereof are reimbursed in the form of SCOs, are they still obliged to present a list of contractors underlying the SCO expenditure in order to comply with Article 49(3)(a) CPR?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Context:

According to Article 49(3) of Regulation 2021/1060 (CPR), the managing authority shall make the list of operations selected for support by the Funds publicly available und update that list every 4 months. According to point (a) of Article 49(3) CPR, the list shall include '*in the case of legal entities, the beneficiary's and, in the case of public procurement, the contractor's name'* .

In the case of SCOs, managing authorities often do not have information on contractors and it would add a considerable administrative burden to publish the name of each contractor used by the beneficiary in the context of EU-funded operations. SCOs are not based on real costs and management verifications only cover whether the conditions for reimbursement of expenditure to the beneficiary have been met (Article 74(1)(a)(ii), Article 94(3) third sentence CPR). Therefore, management verifications and audits do not cover individual invoices and managing authorities may not even know whether the costs covered by the SCO includes public procurement or not.

Answer:

In earlier questions related to Article 49 CPR (QA00136, QA00176 and QA00255), it was interpreted that information required under Article 49(3) CPR should be based on Annex XVII CPR. This means that no additional data except the ones included in Annex XVII CPR should be collected for the purpose of Article 49 CPR.

Revised reply to question 1 in QA00200, published under QA00270 clarified that for the Funds covered by the CPR, managing authorities do not have to record and store electronically data on contractors in Annex XVII CPR for indirect costs covered by any type of SCOs, i.e, unit cost, lump sum, flat rate.

Based on the above, the obligation set out in point (a) of Article 49(3) CPR does not apply in relation to the contractor's name in the case of public procurement for indirect costs covered by a SCO. For all the other situations (direct costs covered by SCOs, costs reimbursement based on other forms of reimbursement as specified in Article 53(1)(a) CPR), the data on contractors should be collected according to Annex XVII CPR and the contractor's name has to be made publicly available in case of public procurement in accordance with Union public procurement rules. When an SCO covers both direct costs and indirect costs, the requirement to record and store data on contractors, their beneficial owners, contracts and sub-contractors applies only to the direct costs.

QA00273 - POSSIBILITY OF APPROVING A PROGRAMME BEFORE THE APPROVAL OF THE PARTNERSHIP AGREEMENT

Relevant Articles: Articles 10, 12, 21 and 23 of the CPR

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State: n/a

Question 1 (including any relevant facts and information):

Can a programme be approved before the approval of the Partnership Agreement of the Member State?

Answer:

Article 23(1) of the CPR sets out the obligation for the Commission, once the programme is formally submitted by the Member State, to assess the programme's consistency with the relevant Partnership Agreement.

Therefore, to comply with this provision, the Commission needs an approved Partnership Agreement that contains the strategic orientation for programming, as agreed between the Member State and the Commission. In consequence, the Commission may not approve any programme before the approval of the Partnership Agreement of the same Member State.

QA569_EMFAF_SHADOW MC

Relevant Article: Article 69; 39 of the CPR Regulation

Member State: NL

Question (including any relevant facts and information):

We (the NL) are preparing the implementation of EMFAF through a first subsidy regulation, which is scheduled to open for applications in November 2021. However, formal approval of the NL Programme is expected to take place in December 2021. In our correspondence with the EC we have been encouraged to start with all the necessary preparatory work with the beneficiaries prior this moment of final approval of the NL Programme. The subsidy will not be granted before the NL Programme is approved by the EC, but we do want to enable applications to be submitted before the approval of the NL Programme.

At this point we encounter the following problem. We are not sure whether it is possible to formally install a Managing Authority before the Programme is formally approved. In accordance with article 22(3)(k) of Regulation 2021/1139, the Programme has to set out the programme authorities and article 71 of Regulation 2021/1139 states that member states are held to install a Managing Authority to implement the

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

EMFAF, but does not state if this managing authority can be installed before the approval of the Programme. Could you please let us know whether it is possible to install a Managing Authority before the Programme is formally approved by the EC?

If not, would it be possible to install a 'shadow Managing Authority' for the time being, until the NL Programme has been approved? This is the procedure we were advised to follow with regard to the installment of the Monitoring Committee. And if so, will an application that is submitted to a "shadow Managing Authority" be considered as an application for funding that is submitted to the Managing Authority within the meaning of article 63(6) of the CPR?

Answer:

According to Art. 69 of the Common Provisions Regulation (EU) 2021/1060 each Member State shall have in place, at the latest by the time of submission of the final payment application for the first accounting year and no later than 30 June 2023, a description of the management and control system in accordance with the template set out in Annex XVI. It shall keep that description updated to reflect any subsequent modifications. This means that formal designation as in the CPR Regulation 2014-2020 is no longer required.

According to Art. 39 of the Common Provisions Regulation (EU) 2021/1060 the Monitoring Committee should be set up within 3 months of the adoption of the programme. Would a MS wish to set up the MC before the adoption of the programme in order to prevent delays in implementation by enabling the approval of selection criteria by the MC for instance, that is possible and highly encouraged. The approval of selection criteria can also be done by a "shadow" MC, set up as an interim solution until the adoption of the EMFAF programme. Please note that when the "regular" MC will be established, it needs to formally confirm the decisions of the shadow monitoring committee.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA573_EMFAF_ALTERNATIVE FISHING METHODS

Relevant Article: **Article 17 of the CFP and Recitals of the Regulation (EU) 2021/1139 (EMFAF)**

Member State: **DE**

Question (including any relevant facts and information):

Are alternative fishing methods already specifically promoted at federal or European level, and if so, which ones and how high are the corresponding funding amounts?

Answer:

The EMFAF can support innovation and investment in alternative fishing techniques which contribute to the achievement of the objectives of the CFP, in particular the objectives of restoring and maintaining populations of harvested species above levels which can produce MSY, of avoiding and reducing, as far as possible, unwanted catches and of minimising the negative impact of fishing activities on the marine ecosystem. The eligible techniques are not predefined in the Regulation but Recital 20 provides examples such as low-impact, selective, climate resilient and low-carbon practices and techniques.

However, the Regulation provides for restrictions as regards certain operations, in particular:

- Acquiring equipment that increases a fishing vessel's ability to find fish is not eligible;
- Support must not increase a vessels' fishing capacity, unless it directly results from an increase in gross tonnage that is necessary for improving safety, working conditions or energy efficiency;
- Support cannot be granted simply for complying with requirements that are obligatory under EU law, except for certain equipment used to control fishing activities;
- Investments on board cannot be granted for vessels that have been mostly inactive over the previous 2 years;

- Support given i) to young fishers to help them acquire, for the first time, a second-hand vessel and ii) to replace or modernise a vessel's engine are subject to conditions, e.g. the vessel must belong to a segment of the fishing fleet without structural overcapacity and the new or modernised engine must not have more power than the engine being replaced.

The aid intensity rate is set by the Member State in accordance with Article 41 and Annex III of the EMFAF Regulation. The standard maximum rate is 50% but some derogations are possible in the cases described in Annex III, e.g. operations related to small-scale coastal fishing (100%), operations related to the implementation of the landing obligation (75-100%), operations that combine innovative features, collective interest and collective beneficiaries (100%), operations related to protecting marine biodiversity (100%), etc**.**

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA578_EMFAF_CO-FINANCING RATE SO 3.1 AND COMPENSATION FOR ADDITIONAL COSTS IN THE ORS

Relevant Article: Articles 40 and 10.2 of the EMFAF Regulation

Member State: FR

Question 1:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Taux de cofinancement de l'OS 3.1 (DLAL)

Les régions qui gèrent le DLAL en France par délégation de l'AG, souhaitent avoir un taux de cofinancement non-unique sur cet OS (certaines souhaitent cofinancer à hauteur de 50% et d'autres de 70%). Or, ce taux est normalement le même pour tout le territoire et défini dans notre programme pour les autres OS. Afin de prendre en compte cette demande, serait-il possible d'indiquer deux lignes dans le plan de financement du programme ?

Question 2:

Compensation des surcoûts dans les RUP

Nous souhaiterions rendre éligible l'aide au montage des dossiers portant sur la compensation des surcoûts dans les RUP. Toutefois, cette dépense n'est pas incluse dans le calcul de ce type d'action qui se base sur le volume de production (la méthodologie de calcul est indiquée dans chaque PA RUP). Ainsi, comment serait-il possible de rendre éligible cette dépense : peut-on créer un type d'action supplémentaire dans l'OS 1.5 ou rendre éligible cette dépense dans l'OS 1.1 ?

Question 3:

Formation

Le financement pour répondre à des normes obligatoires est interdit par le FEAMPA. Toutefois, nous souhaiterions rendre éligibles certaines dépenses pour lesquelles des besoins ont été identifiés en France et qui ne sont pas expressément listées comme admissibles à une aide publique par l'article 31 du règlement n°651/2014 du 17 juin 2014. Ces dépenses sont essentielles à plusieurs titres :

- Elles sont rattachables à une dépense elle-même admissible à une aide publique ;
- Elles se rattachent à une formation non obligatoire ;
- Elles se rattachent à la fois à une formation non obligatoire et à une autre obligatoire.

Plus particulièrement, les dépenses que nous souhaiterions rendre éligibles sont les suivantes :

- Les dépenses de rénovation des référentiels pour permettre la formation par apprentissage ;
- Les dépenses de rénovation des référentiels pour permettre le e-learning ;
- Les dépenses de modernisation des centres de formation en contrepartie, par exemple, d'une diminution des tarifs de formation ou d'augmentation l'offre de formation ;
- Les dépenses d'acquisition ou de modernisation d'équipements indispensables à la tenue de la formation, par exemple des simulateurs.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer 1:

Conformément à l'article 40, le taux de co-financement doit être défini pour chaque objectif spécifique (OS) au niveau national. S'il peut varier entre OS, il ne peut varier pour un même OS. Nous rappelons toutefois que le taux de 70% est un maximum et que les autorités nationales sont libres de définir un taux inférieur (par exemple un taux médian entre 70% et 50%). Il est par ailleurs possible de jouer sur l'intensité de l'aide publique dans le respect de l'article 41.

Answer 2:

Il est possible de soutenir l'aide au montage des dossiers de compensation de surcoût dans les RUP au titre de l'assistance technique.

Answer 3:

Selon l'article 13(k), l'inéligibilité des dépenses relatives à des normes obligatoires en vertu du droit de l'Union porte uniquement sur les investissements à bord de navires de pêche. Les dépenses listées dans la question n'étant pas relatives à des investissements à bord, elles ne sont donc pas inéligibles en vertu de l'Article 13(k).

N.B.

Conformément à l'article 63, paragraphe 1, du règlement (UE) 2021/1060 (le règlement portant dispositions communes), l'éligibilité des dépenses est déterminée sur la base de règles nationales, sauf lorsque des règles spécifiques sont fixées dans le règlement portant dispositions communes ou dans les Règlements spécifiques au Fonds.

Conformément à l'article 12 du règlement (UE) 2021/1139 (le règlement FEAMPA), les opérations sélectionnées par les États membres doivent relever du champ d'application des priorités et des objectifs spécifiques énoncés à l'article 8, paragraphe 2, ne doivent pas être inéligibles en vertu de l'article 13 et doit être conforme au droit de l'Union applicable.

Conformément au considérant 7 du règlement FEAMPA, le soutien devrait avoir une valeur ajoutée européenne claire, notamment en remédiant aux défaillances du marché ou aux situations d'investissement sous-optimales de manière proportionnée, et ne devrait pas dupliquer ou évincer le financement privé ni fausser la concurrence sur le marché intérieur .

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA790_EMFAF_SUPPORT UNDER EMFAF TO INLAND FISHERIES

Relevant Article: Article 16, 17, 18 and 19 of EMFAF Regulation

Member State: Germany

Question:

The exceptions in Article 16 indicate an intention to provide extensive support for inland fisheries separate from coastal fisheries.

Nevertheless, there are unresolved issues or restrictive provisions in potentially conflicting provisions of Regulation (EU) 2021/1139 that are not exempted under Article 16. Specifically, these include:

* the general exclusion of funding for the construction, acquisition, or import of fishing vessels pursuant to Article 13(c),

* the possible derogation under this provision to provide support for the first acquisition of fishing vessels, which, in conjunction with Article 17(2)(a), may apply exclusively to persons under 40 years of age, and, in conjunction with Article 17(6)(d), may apply exclusively to the first acquisition of used vessels, and

* the exceptions for inland fisheries set forth in Article 16, which essentially concern the exemption from the requirement to list the vessels in question in the Union fleet register and the alternative reference to the date of entry into service in accordance with national law.

With regard to the necessary support for the modernization of fishing vessels in the inland fisheries sector, the problem may lie in the fact that the criteria for funding in marine fisheries are applied to inland fisheries in a largely undifferentiated manner. The conditions are characterized by the achievement of capacity limits in coastal and offshore fisheries, compliance with fleet segments, and the exclusion of overfishing.

Unfortunately, the exemptions granted for inland fisheries under Article 16 of the relevant EMFAF Regulation do not go far enough. Accordingly, paragraph 1 of that article grants inland fisheries an exemption from the requirement set forth in Article 17(6)(a), which allows funding only for vessels listed in the Union fleet register that belong to a fleet segment that is in balance with respect to the available fishing opportunities for that segment—that is, one that is not overfished. **However, inland fisheries are not exempt from the application of the provisions in Article 17(6)(d) of the Regulation. This specifically means that, even in inland fisheries, support is only available for vessels that have been in service for at least three years. Under the exemption provided for in Article 16(2), registration under national law is accepted as proof of entry into service.**

Overall, support for the modernization of inland fishing vessels remains limited to the initial purchase of used vessels, even when taking into account the provisions of Article 16 of the EMFAF Regulation. The initial purchase of new inland fishing vessels—

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

for example, to improve working and safety conditions—cannot be supported with funds from the EMFAF. Furthermore, it must be noted that the funding, which is limited to the initial purchase of used vessels, is reserved exclusively for younger fishermen and fisherwomen in the inland fisheries sector as well.

Applying the requirements applicable to marine fisheries to the inland fisheries and aquaculture sectors results in discrimination and unnecessary hardship, as neither quota regulations nor critical stock situations exist in these sectors. Furthermore, there is no significant market for used vehicles in the inland fisheries sector, and state budget law precludes funding for used capital goods.

The solution would be to extend the exemption set forth in Article 16—which excludes the application of the provisions in Article 17(2)(a) and Article 17(6)(d) and (e)—(if necessary at all). The extent to which this requires an amendment to the regulation or can be achieved through a Commission interpretation will be left open here.

Regardless of the efforts to implement measures during the current funding period, it is equally important that the necessary differentiation for structural support of fisheries in the marine and inland sectors be incorporated into the preparations for the 2028–2034 funding period.

The inland fisheries sector should be exempt from any restrictions on the purchase of fishing vessels and boat engines.

As a first step, it would be very helpful to receive written confirmation from the Commission that the purchase of new boats by young fishermen is eligible for funding.

Answer:

Under Article 13(c) of Regulation (EU) 2021/1139 (EMFAF Regulation), the construction, acquisition or importation of fishing vessels is, as a general rule, not eligible for EMFAF support, except where expressly provided otherwise, i.e. in Article 17 of the EMFAF Regulation. Article 17 of the EMFAF Regulation provides a derogation, under specific conditions, for the first acquisition of a used fishing vessel by a natural person who is no more than 40 years of age at the date of submission of the application for support and who has worked for at least five years as a fisher or has acquired adequate qualifications. Support for the first acquisition of a fishing vessel or the acquisition of partial ownership thereof can also be granted in the case of inland fisheries, by virtue of Article 14(2) of the EMFAF Regulation, subject to the specific conditions laid down in Article 16.

Article 16(1) of the EMFAF Regulation provides a derogation, for inland fisheries, from the condition in Article 17(6)(a) that the vessel in question should belong to a fleet segment in balance, it does not however create a derogation from Article 17(6)(d). That provision requires that the vessel to be acquired has a minimum period of prior registration in the Union fleet register of at least three calendar years at the time of the application for support in the case of a small-scale coastal fishing vessel, or a minimum period of five calendar years in the case of another type of vessel**.** For inland

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

fisheries, the start of the minimum period is set at the date of entry into service in accordance with national law, based on Article 16(2) of the EMFAF Regulation.

Consequently, Article 17 does not allow for EMFAF support for the acquisition of a new inland fishing vessel. It may only support, subject to all applicable conditions, the first acquisition by a young fisher of an existing inland fishing vessel.

NB

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner and should not duplicate or crowd out private financing or distort competition in the internal market.

QA587_EMFAF_SUPPORT FOR DATA COLLECTION

Relevant Article: Article 23 of the EMFAF Regulation

Member State: SE

Question (including any relevant facts and information):

SE has a question about support under EMFAF Article 23. Article 23 only refers to Article 6 of the Data collection Framework (DCF) Regulation EU 2017/1004 on the national work programmes.

However, DCF Regulation Article 9(10) states that regional plans shall be considered to complement or replace parts of national work programmes.

If a regional work plan is drawn up for part of the Swedish data collection work (e.g. for a fishery in the Baltic Sea), this could mean that the Swedish part of the DCF execution would be covered by the regional plan.

SE draws the Commission's attention to this fact and that the pursuit of greater regionalisation of data collection work must not mean that data collection work will lose EU funding through the EMFAF.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

SE find it difficult to see how the Commission could replace these activities through direct management, especially as the direct management work programme is financed through annual work programmes and the regional DCF plans can be multiannual and cover a large number of Member States.

SE's view is that regional plans should always be seen as complementary to the national work programmes that are covered by the regionalisation, and therefore can be financed as other data collection activities under Article 23 EMFAF.

SE would like this confirmed with reference to the wording of Article 23 of the draft EMFF Regulation which reads:

Article 23 Collection, management, use and processing of data in the fisheries sector, and research and innovation programmes

1. *The EMFAF may support the collection, management, use and processing of biological, environmental, technical and socio-economic data in the fisheries sector, as provided for in Article 25(1) and (2) of Regulation (EU) No 1380/2013 and further specified in Regulation (EU) 2017/1004, on the basis of the national work plans referred to in Article 6 of Regulation (EU) 2017/1004. The EMFAF may also support fisheries and aquaculture research and innovation programmes, as provided for in Article 27 of Regulation (EU) No 1380/2013.*
2. *The support referred to in paragraph 1 of this Article shall contribute to the specific objective referred to in point (d) of Article 14(1).*

Answer:

Article 23 of the EMFAF Regulation enables MS to provide support for the collection of data in the fisheries sector, as provided for in Article 25 (1) and (2) of the CFP Regulation and as specified in the DCF Regulation, on the basis of the national work plans referred to in Article 6. This means that data collection activities included in a MS's national work plans are eligible for EMFAF funding.

The EMFAF Regulation does not refer to regional plans established under Article 9 of the DCF Regulation The objective of the regional work plans is to supplement or replace certain parts of, the national work plans. The regional plans are fully in-line with the condition of EMFAF support for data collection as set out in Article 23, paragraph 2: The activities contribute to *"fostering efficient fisheries control and enforcement, including fighting against IUU fishing, as well as reliable data for knowledge-based decision making"*.

Furthermore, the regional work plans are approved by the Commission and replace or supplement relevant parts of the national work plans.

In conclusion, data collection activities undertaken under a regional work plan, approved by the Commission, are eligible for EMFAF support.

N.B.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added-value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA589_EMFAF_UTILISATION OF EMFAF ART. 32 FOR ACTIONS NOT DIRECTLY RELATED TO DATA COLLECTION AND MANAGEMENT

Relevant Article: Article 32 of the EMFAF Regulation

Member State: FI

Question (including any relevant facts and information):

Regarding the environment actions in the union priority 4, the article 32 states:

Support granted to achieve the specific objective referred to in Article 31 of this Regulation through the promotion of marine knowledge shall contribute to actions aiming to collect, manage, analyse, process and use data to improve the knowledge on the state of the marine environment, with a view to:

(a) fulfilling monitoring and site designation and management requirements under Directives 92/43/EEC and 2009/147/EC;

(b) supporting maritime spatial planning under Directive 2014/89/EU of the European Parliament and of the Council; or

(c) increasing data quality and sharing through the European marine observation and data network (EMODnet).

It seems that this article restricts financing possibilities only to these three identified themes (a to c) and furthermore only to actions aiming to collect, manage, analyse, process and use data to improve the knowledge on the state of the marine

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

environment. Can broader environmental projects in which the data is not only collected and analysed but also utilized in the concrete actions (such as protection of marine area, collecting marine litter etc) financed under this article? Or should concrete actions be financed from other sources like from article 25?

In informal comments regarding the Finnish OP draft, the Commission remarked (comment number 42) that normally broader environmental actions like marine litter and new harmful substance would be addressed in specific objective 1.6. Indeed, the article 25 (Protection and restoration of aquatic biodiversity and ecosystems) is more open to address various environmental challenges. However, the maritime policy is strategically important area in Finland and also the national decision making process of union priority 4 is structured in different manner than in the other union priorities. Therefore, it is important for us to understand how strictly the article 32 concerning the marine knowledge should be interpreted.

Answer:

Specific objective 4.1 is very specific. It concerns marine knowledge only under the scope described in points (a), (b) and (c) of Article 32 of the EMFAF Regulation. Other operations related to marine knowledge are potentially eligible under Articles 23 and 25 of that Regulation. The wider interpretation suggested by Finland could create issues regarding accounting and delineation between different actions and is therefore not appropriate.

Therefore, we consider that Finland should restrict the use of Article 34 to only those activities explicitly stated in the article, and use other articles for other activities. To facilitate the demarcation between the articles potentially concerned by marine knowledge, we suggest Finland to define the potential eligibility of the actions from the narrowest scope to the broadest: first check if the operation falls under Article 32, then Article 23, and finally Article 25 if neither 32 nor 23 is applicable.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA590_EMFAF_QUESTION FROM FINLAND REGARDING EMFAF USE OF ART 34 FOR COAST GUARD PROJECTS WITH OR WITHOUT INVOLVEMENT FROM THE EU AGENCIES

Relevant Article: Article 34 of the EMFAF Regulation

Member State: FI

Question (including any relevant facts and information):

The article 34 (Coast guard cooperation) restricts the financing possibilities to actions which national authorities carry out in the framework of the European cooperation on coast guard functions. These functions are defined in more detail in three regulation.

1. *Support granted to achieve the specific objective set out in Article 31 through the promotion of coast guard cooperation shall contribute to actions carried out by national authorities in the **framework** of the European cooperation on coast guard functions referred to in Article 69 of Regulation (EU) 2019/1896 of the European Parliament and of the Council, Article 2b of Regulation (EC) No 1406/2002 of the European Parliament and of the Council and Article 8 of Regulation (EU) 2019/473 of the European Parliament and of the Council.*

The article 69 in the regulation 2019/1896 (European Border and Coast Guard) specifies European cooperation on coast guard functions following manner:

1. *Without prejudice to EUROSUR, the Agency shall, in cooperation with EFCA and EMSA, support national authorities carrying out coast guard functions at national and Union level and, where appropriate, at international level by:*

(a) sharing, fusing and analysing information available in ship reporting systems and other information systems hosted by or accessible to those agencies, in accordance with their respective legal bases and without prejudice to the ownership of data by Member States;

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

(b) providing surveillance and communication services based on state-of-the-art technology, including space-based and ground infrastructure and sensors mounted on any kind of platform;

(c) building capacity by drawing up guidelines and recommendations and by establishing best practices as well as by providing training and exchange of staff;

(d) enhancing the exchange of information and cooperation on coast guard functions, including by analysing operational challenges and emerging risks in the maritime domain;

(e) sharing capacity by planning and implementing multipurpose operations and by sharing assets and other capabilities, to the extent that those activities are coordinated by those agencies and are agreed to by the competent authorities of the Member States concerned.

The regulations 2016/1625 (European Maritime Safety Agency) and 2019/473 (European Fisheries Control Agency) define the European cooperation in similar manner as it is in the Article 69 regarding the European Border and Coast Guard (see above). Based on these three regulations, it seems that European cooperation on coast guard functions is defined as actions, in which implementations are supported by one of the European agencies.

In the Finnish OP draft, the strengthening of cooperation between different national coast guard functions (e.g. maritime surveillance and protection of the marine environment) is identified one of the needs, which should be supported from the EMFAF programme. In order to address this topic rightly in the programme, it is important to understand possible restrictions of the article 34. Can we interpret this article broadly which would enable financing of actions carried out by national authorities without a support of the European agencies? Or, if there is a mandatory requirement that cooperation actions have to be always supported by one of the European agencies, does it mean that one of the agency has to participate in the implementation of the project? If this is case, how should this be documented?

Answer:

Article 34 covers actions carried out by national authorities. The reference to the "European cooperation on coast guard functions" describes the framework in which the national actions must be implemented, but not the actions themselves. Therefore, there is no requirement to involve the EU agencies directly in the implementation of the operation.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules,

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA591_EMFAF_CO-FINANCING RATE AND INTENSITY OF PUBLIC AID UNDER EMFAF - PUBLIC LAW BODIES

Relevant Article: Article 40 and 41 of the EMFAF Regulation

Member State: CZ

Question (including any relevant facts and information):

During the preparation of the new operational programme, a question arose concerning the financing of projects where the beneficiary is a public entity and the public support rate is less than 100% (i.e. investments, where the intensity of public aid is 50%).

In the case where the beneficiary is a public entity, all expenses are public (i.e. also the part paid by the beneficiary). In some REGIO operational programmes, a funding rule is applied so that public support (e.g. 50% of total eligible expenditure) is fully covered by EU resources and no other public national co-financing is used at all, i.e. the state budget (national co-financing in the remaining 50% of support consists of private co-financing by the beneficiary).

Thus, in the case of a project for CZK 1 million, when the support is CZK 0.5 million, the entire part is paid only from the EU fund (hypothetically from the EMFAF). This means a faster spending of the allocation.

This method is currently widely used in other CZ ESIF and has become a common practice. As part of the preparation for the implementation of the new programme, we were asked by the Ministry of Finance whether we will use this as well. We would like to point out that this procedure concerns a minority of beneficiaries and should not

have an impact on the overall level of EU co-financing at the level of priority or specific objective.

Therefore, please can you inform us whether this principle is also used by other MS implementing the EMFF and whether the introduction would pose a problem in new programming period (in particular with regard to EMFAF Articles 40 and 41). We will be grateful for any more detailed information concerning this topic.

At the moment, we can already imagine that this could be associated with certain complications. If we manipulate the co-financing rates and create them according to the submitted applications of public beneficiaries, we can not determine the exact allocation of the programme in the OP. If we are wrong please let us know. In the case of different co-financing rates, the MA would have to make sure at the level of SO that the given percentages are not exceeded, i.e. 70% of eligible public expenditure from ENRAF (Article 40 of the EMFAF).

Answer:

In accordance with Article 40 of the EMFAF Regulation, the maximum EMFAF co-financing rate per specific objective shall be 70 % of the eligible public expenditure. This means that the EU pays up to 70% of the public share of the eligible expenditure. The co-financing rate is set for each specific objective in the financing plan of the programme.

The co-financing rate is set independently from the intensity of public aid (i.e. the public share of the eligible expenditure), which is set by the Member State for each operation, in accordance with Article 41 and Annex III of the EMFAF Regulation. Row 8 of Annex III stipulates that the Member State may apply an intensity of public aid of 100% of the eligible expenditure of the operation for which the beneficiary is a public body.

In all cases, the respective EMFAF co-financing rates must be applied.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA593_EMFAF_ELIGIBILITY OF SUPPORT TO TRAININGS

Relevant Article: Article 13 of the EMFAF Regulation

Member State: FR

Question:

Nous avons une question relative aux modalités de mise en place d'une mesure compensatrice de l'envoi en formation selon les modalités suivantes :
- Mesure au profit de l'armateur (employeur) ;
- Venant compenser le départ en formation d'un/de plusieurs marins ;
- Par le financement d'un revenu de remplacement lui permettant d'employer, le temps de la formation, d'autres marins à bord pour une durée déterminée.

Une telle mesure peut-elle être compatible avec la règlementation FEAMPA et le RPDC et les prescriptions en matière d'aides d'État et plus généralement au regard des exigences du droit communautaire ?

Answer:

La contribution du FEAMPA au capital humain et notamment à la formation professionnelle est affirmée au considérant 25 du Règlement. Par ailleurs, l'article 13 qui contient une liste limitative des mesures inéligibles n'interdit pas le soutien aux formations.

Toutefois, l'Article 12 du Règlement FEAMPA spécifie que l'utilisation du fonds est limitée à la poursuite des priorités et objectifs de ce même fonds.

Il résulte des règles précitées que s'il est possible d'utiliser le FEAMPA pour aider un employeur à subvenir au coût d'une formation qu'il supporte pour lui-même ou ses employés, il n'est pas possible de l'aider financièrement, au titre du FEAMPA, pour compenser des pertes causées par l'absence de ses employés fussent-ils en formation. Ce dernier cas qui constitue une aide économique pour manque de personnel est en effet trop éloigné des objectifs du FEAMPA.

Pour toute question relative à l'interprétation des règles sur les Aides d'État, nous vous invitons à prendre l'attache de la DG Concurrence (M. Gereon Thiele, Chef d'unité H6).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

N.B.

Conformément à l'article 63, paragraphe 1, du règlement (UE) 2021/1060 (le règlement portant dispositions communes), l'éligibilité des dépenses est déterminée sur la base de règles nationales, sauf lorsque des règles spécifiques sont fixées dans le règlement portant dispositions communes ou dans les Règlements spécifiques au Fonds.

Conformément à l'article 12 du règlement (UE) 2021/1139 (le règlement FEAMPA), les opérations sélectionnées par les États membres doivent relever du champ d'application des priorités et des objectifs spécifiques énoncés à l'article 8, paragraphe 2, ne doivent pas être inéligibles en vertu de l'article 13 et doit être conforme au droit de l'Union applicable.

Conformément au considérant 7 du règlement FEAMPA, le soutien devrait avoir une valeur ajoutée européenne claire, notamment en remédiant aux défaillances du marché ou aux situations d'investissement sous-optimales de manière proportionnée, et ne devrait pas dupliquer ou évincer le financement privé ni fausser la concurrence sur le marché intérieur .

QA594_EMFAF_INVESTMENTS ON BOARD OF FISHING VESSELS

Relevant Article: Article 13 of the EMFAF Regulation

Member State: NL

Question:

The NL EMFF Managing Authority would like to know whether the restriction on investments on board fishing vessels that have carried out fishing activities for less than 60 days in the two calendar years preceding the year of submission of the application for support, is applicable to fishing vessels that have not carried out fishing activities, but have been used for no less than 60 days in aquaculture activities.

Answer:

Article 13(l) of the EMFAF Regulation refers specifically to the restriction on investments on board for fishing vessels that have carried out 'fishing activities' for less than 60 days in the two calendar years preceding the year of submission of the application for support.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 4(28) of Regulation 1380/2013 (the CFP Regulation) states that 'fishing activity' means '*searching for fish, shooting, setting, towing, hauling of a fishing gear, taking catch on board, transhipping, retaining on board, processing on board, transferring, caging, fattening and landing of fish and fishery products*'. That definition applies to the EMFAF pursuant to Article 2(1) of the EMFAF Regulation.

Unless the 'aquaculture activities' as referred to by the Dutch authorities do encompass activities included in the definition of "fishing activities" under Article 4 (28) of the CFP Regulation, having carried out 'aquaculture activities' for 60 days in the two calendar years preceding the year of submission of the application for support does not fulfil the requirement under Article 13 (l) of the EMFAF Regulation. Therefore, investments on board are not eligible to EMFAF support for the fishing vessels concerned.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added-value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA595_EMFAF_THE ELIGIBILITY OF SUPPORT OF AQUAPONICS SYSTEM UNDER EMFAF

Relevant Article: Article 27 of the EMFAF Regulation

Member State: CZ

Question:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

We have a question concerning the activity Investment in Intensive Aquaculture Systems, which is part of Priority 2 Fostering sustainable aquaculture activities, and processing and marketing of fishery and aquaculture products. It is contributing to food security in the Union, specific objective 2.1: Promoting sustainable aquaculture activities, especially strengthening the competitiveness of aquaculture production, while ensuring that the activities are environmentally sustainable in the long term.

Based on increased demand from potential beneficiaries, the MA intends to include in this activity the possibility of supporting the implementation of Aquaponics Systems, the products of which are about 1/3 fish and 2/3 vegetables.

The MA has the following questions on this issue:

1) Are the components including the "plant part" of the aquaponics system eligible from the OP 2021–2027 or is only the part of the system dealing with fish production eligible?

2) Would subsequent revenues from the sale of grown vegetables possibly be taken as a state aid?

Answer:

Article 27 of the EMFAF Regulation refers to the scope of Specific Objective 2.1 as described in Article 26(1)(a): " *promoting sustainable aquaculture activities, especially strengthening the competitiveness of aquaculture production, while ensuring that the activities are environmentally sustainable in the long term* ".

In this context, aquaculture means "*the rearing or cultivation of aquatic organisms using techniques designed to increase the production of the organisms in question beyond the natural capacity of the environment, where the organisms remain the property of a natural or legal person throughout the rearing and culture stage, up to and including harvesting*" (*Cf*. Article point 25 of Article 4 of Regulation 1380/2013). Aquaponics is a food production system that couples aquaculture and hydroponics. Hydroponics is not covered by the scope of aquaculture as defined above, thus is not eligible to support under Specific Objective 2.1.

Therefore, aquaponics falls under the scope of Specific Objective 2.1, but only the aquaculture-related expenditure of the supported operations is eligible.

If the features of the operations do not allow to clearly distinguish aquaculture-related expenditure from hydroponics-related expenditure, we invite the Member State to grant support under simplified cost options pursuant to points (b), (c) or (d) of Article 53(1) of the CPR. The methodology for calculating these simplified cost options should approximate the share of the aquaculture-related expenditure in the operation.

As regards the question on State aid, please note that the "subsequent revenues from the sale of grown vegetables" would not be considered as State aid because such revenues are the consequence of the operation, not its input (i.e. public money).

N.B.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA606_EMFAF_CLARIFICATION REGARDING CONTROL EXPENDITURE

Relevant Article: Article 22 of EMFAF Regulation

Member State: HR

Question:

We need a clarification related to actions under control and enforcement: could you please confirm if, in addition to the purchase of items/tools used for control in fisheries, such as vessels, maintenance of those items (i.e. vessels) is eligible for support in certain period after being purchased with support under the Programme?

Answer:

According to Article 12.1(a) of the EMFAF Regulation "Member States may select for support operations which fall under the scope of the priorities and specific objectives set out in Article 8(2)".

This provision means that support has to contribute to EMFAF specific objectives, and cannot go beyond their scope.

Thus, operational costs are eligible expenditure only if they are consistent with the types of actions under a specific objective and form part of an operation that contributes to a specific objective. Operational costs not linked to the achievement of the objective of the operation are not eligible expenditure.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Therefore, maintenance costs of control vessels may be eligible for support under the EMFAF if they are consistent with the types of actions under specific objective 1.4 "Fostering efficient fisheries control and enforcement, including fighting against IUU fishing" and form part of an operation which contributes to the specific objective 1.4.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added-value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA607_EMFAF_INTENSITY OF AID FOR CONSORTIUM PARTNERS IN R & D PROJECTS

Relevant Article: Article 41_EMFAF Regulation

Member State: HU

Under the EMFF OP we have the measure " Innovation", which is an R+D+I measure. Under the EMFAF OP we are planning this R+D+I measure as well.

It would be very good if the universities or research institutes could apply for the R+D+I measure together in consortium with farmers. Universities and research institutes are public law bodies so they can have 100% aid intensity. Farmers can apply for only 60% aid intensity.

The consortium project would be carried out by two consortium partners. It would be implemented by a public law body (university or research institute) entitled to apply 100% aid intensity, which would be the leader of the consortium, and by another partner (farmer) entitled to apply only 60% aid intensity (in case of sole application) under the EMFAF regulation.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1: Is 100% aid intensity applicable for the eligible expenses of all consortium partners within this project?

We asked the COM some time ago about a similar case under the EMFF, and we got the answer below. Based on the COM's answer we can get only 50% aid intensity for all members of the consortium (so for the public law bodies as well) and because of this reason we do not have project carried out by universities or research institutes and farmers together in consortium.

COM's answer before: *In line with Article 95 of the EMFF Regulation, the public aid intensity rate should be applied to the total eligible expenditures of an operation. In this meaning, there is no possibility to split the budget of an operation and to define different public aid intensity for the different parts. In line with the CPR, the beneficiary of an operation may be a public or private body or in case of the EMFF a natural person. If the beneficiary of an operation is a consortium, the rate of public aid intensity is to be defined on the basis of how the Managing Authority determines the legal status of the consortium and not its individual members.*

We cannot understand why we cannot get 100% aid intensity for all members of the consortium, or why we cannot examine the members separately, so support the public law bodies with 100% aid intensity and the other partners - which are not public law bodies - with 50% aid intensity.

Question 2: This will be a problem under the EMFAF OP as well. Or does it depend only on the national regulation?

Answer 1:

According to EMFF article 95.1, the maximum intensity of public aid is 50% of the total eligible expenditure unless there is a derogation.

It is worth noting the case where the beneficiary – in the meaning of Article 2(10) of the CPR – is solely the public research institution but the operation is implemented *in collaboration/partnership* with a small or a large enterprise (including an aquaculture farmer). In this case, the public aid intensity may be up to 100% in accordance with Article 95(2)(a). At this stage a number of landlocked countries already opt and implement projects under this form without any issues being raised.

However, in case an enterprise (including an aquaculture farmer) - in the meaning of Article 2(10) of the CPR – is solely the beneficiary in cooperation with a public research institution than the maximum intensity of public aid would be 50 % (or 30% for a large enterprise).

Admittedly a consortium may take different legal forms and may be acknowledge differently by the Member States national legislation. That is why the COM past answer pointe out that the aid intensity depends on the how the Managing Authority determines the legal status of the consortium and not its individual members.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer 2:

An interpretation similar to the one under EMFF may be applied for the EMFAF.

In case the public research institution is the main/sole beneficiary but the operation is implemented *in collaboration/partnership* with a small or a large enterprise (including an aquaculture farmer), then the public aid intensity may be up to 100% in accordance with Annex III of the EMFAF Regulation.

in case an enterprise (including an aquaculture farmer) is the main beneficiary in cooperation with a public research institution than the maximum intensity of public aid would be 75 % in line with point 18 of Annex III of the EMFAF Regulation.

Again, if the public research institute decides to create a consortium (i.e. as a new legal entity) with a private company (including an aquaculture farmer) than the MA should decide what is the legal status of this consortium under the national legislation. If it is a public entity than the public aid intensity s 100% in line with Annex III of EMFAF. If it is a private institution it will benefit from the 75% aid intensity.

N.B

Pursuant to Article 57(1) of [the political agreement on] the Common Provisions Regulation (CPR), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the CPR or in the Fund-specific Regulations.

Pursuant to Article [12a(1)(a)] of [the political agreement on] the EMFAF Regulation, the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article [9(2)], must not be ineligible pursuant to Article [13] and must be in accordance with applicable Union law.

In accordance with Recital 6 of [the political agreement on] the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA610_EMFAF_DEFINITION OF SMES IN THE CONTEXT OF EMFAF IMPLEMENTATION

Relevant Article: Article 28 of EMFAF Regulation

Member State: Slovenia

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question:

I am sending you a question that has recently arisen when re-discussing our latest draft OP with our partners, on the way of determining the size of the enterprise.

According to Article 28 of the Regulation (EU) 2021/1139 of the European parliament and of the Council of 7 July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004, support for achieving the specific objective in point (b) of Article 26(1) of this Regulation, can be given only to SMEs. Support to large enterprises can only be granted through the financial instruments.

Slovenian processing sector mainly consists of SMEs out of which a lot of them are looking forward for future investment possibilities. One of them is an enterprise (X).

This company (X) is engaged in activity *Processing and preserving of fish, crustaceans and molluscs* and activity *Other business and management consultancy activities* . The company 100% owns three distribution companies (A, B and C). Together, the companies generate (data for 2020) EUR 20,310,102 in net sales revenue, employ 105 workers and have an asset value of EUR 22,114,773.

According to European regulations, this company, together with its 100% owned companies, is one of the medium-sized companies, which are considered to be companies that employ less than 250 people and whose annual turnover does not exceed 50 million euros or annual balance sheet total does not exceed EUR 43 million.

However, the company (X) is 100% owned by another company (Z), which has activity *PRODUCTION OF POULTRY MEAT* and annually generates EUR 44,011,808 net sales revenue, employs 415 workers and has EUR 43,128,437 worth of assets. The company Z is 58% owned by the company Y, which is engaged in activity *PRODUCTION OF FEEDINGS* and annually generates 73,207,489 EUR of net sales revenue, employs 267 workers and has 86,599,415 EUR of asset value.

We are interested in how to determine the size of the company X taking into consideration the Commission Recommendation 2003/361/EC and especially given the fact that activities carried out by the owners of the company (i.e. companies Z and Y) are completely different from the activities of the company X.

Would the company (X) be defined as a large company due to the owners (Z and Y) mentioned above, although its owners do not perform the same activities?

I would like to ask you for your opinion on the size of this company acknowledging that if it is a large company, they already expressed their non-interest into financial instruments.

Answer:

Article 28 of the EMFAF Regulation reads:

"To achieve the specific objective referred to in point (b) of Article 26(1) of this Regulation as regards the processing of fishery and aquaculture products, support to

enterprises other than SMEs shall only be granted through the financial instruments provided for in Article 58 of Regulation (EU) 2021/1060 or through InvestEU, in accordance with Article 10 of Regulation (EU) 2021/523."

Article 2(1) of the Annex to Commission Recommendation 2003/361/EC concerning the definition of micro, small and medium-sized enterprises (SMEs) provides that the category of SMEs is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

Article 3(3) of the same Annex provides that 'linked enterprises' must be taken into consideration in calculating staff numbers and financial amounts concerned. In accordance with Article 3(3)(a) a linked enterprise is an enterprise which "has a majority of the shareholders' or members' voting rights in another enterprise".

Based on the facts that you have presented in your question, companies X, Z and Y seem to be linked companies as they form a group through the direct or indirect ownership of company X by companies Z and Y. The fact that operators do not work on the same market is irrelevant and does not influence the determination of the company as SME or large enterprise.

Therefore, it means that 100% of the associated enterprises Y and Z staff headcount, turnover and/or balance sheet should be added to company X figures.

As a conclusion, we consider that company X should be considered as large company and as such may only be granted support through financial instruments in accordance with Article 28 of the EMFAF.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added-value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA611_EMFAF_SUBMISSION OF PROGRAMMES

Relevant Article: Article 21 of EMFAF Regulation

Member State: Poland

Question regarding article 21 point 5 of Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7 July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004

Bearing in mind the doubts that arise and questions from Polish fisherman on the wording of Art. 21 point 5 – regarding eel - of EMFAF regulation, Poland kindly ask for an answers on the questions below.

Question 1:

Should any day with eel caught, even if eel is caught as bycatch with fishing gears used for directed fishery of other species, need to be considered as eel fishing day that cannot be taken into account as one of 120 days mentioned in art. 21 point 5 letters a-c ?

Question 2:

Does eel provision apply only to targeted eel fishery with eel fishing gears?

Question 3:

When carrying out a fishing operation on one day with fishing gears for eel and with fishing gears for other species, will the day with none eel catches, be counted as one of 120 days assuming that eel fishing gears will be picked up separately every other day?

In Poland's opinion, any catches where eel is present as a target species or as by-catch, cannot be counted as one of the 120 days required to benefit from temporary cessation. When eel is caught as by-catch and is released back into the water, that fishing day may count towards days required under Article 21 sec. 5 of the EMFAF Regulation. In the opinion of Poland, the purpose of eel provision is to reduce the fishing pressure on eels, thus, in the event of the release of the caught eel as by-catch, this goal will be achieved and it is possible to count the fishing day as of 120 days required.

Answers :

Article 21(5) of the EMFAF Regulation provides that a minimum number of days at sea is required in order to be eligible for temporary cessation under Article 21(1) EMFAF. This minimum does not apply to "eel fisheries". This derogation aims to provide flexibility to this fishery given its specific nature and the state of the species.

"Eel fisheries" should be understood as fisheries that conduct a "directed fishing" targeted at eel specifically, as defined in Article 6(3) of Regulation 2019/1241

(Technical Measures Regulation). Moreover, the landing obligation does not apply to eel because eel is not subject to catch limits (as laid down in Art 15(1) of Regulation 1380/2013 on the Common Fisheries Policy), and there are no delegated acts or specific provisions concerning eel in Regulation 2016/1139 (Baltic MAP). In the Baltic Sea there are restrictions on fishing for eel and it is not allowed to keep eel on board caught with any active gear. When accidentally caught, the eel must be released immediately (Annex VII, part C, point 6 of Technical Measures Regulation).

In light of the above:

Answer 1:

The derogation for eel fisheries under Article 21(5) of the EMFAF Regulation concerning the reference to the number of days at sea does not apply to the obligatory catch and release of eel caught accidently (by-catch).

Answer 2:

The derogation under Article 21(5) applies only to directed fishing of eel with fishing gear targeting eel.

Answer 3:

Only the fishing days of directed fishing of eel are subject to the derogation under Article 21(5), irrespective of the quantity of eel effectively caught.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA613_EMFAF_PROGRAMME AUTHORITIES / MEMBER STATE ACCOUNTING FUNCTION

Relevant Article: Article 71 of 2021-2027 CPR Regulation

Member State: Spain

Question:

The question is on the management structure of the new programme.

In accordance with Article 71.1 of the CPR, the Member State may entrust the accounting function (Article 76) to a body other than the managing authority, in such cases this body shall be identified as a programme authority (CPR, Art. 72.1).

Article 71.3 of the CPR also states that the managing authority may designate IBs to carry out certain tasks under its responsibility. Arrangements between the managing authority and IBs shall be recorded in writing.

In accordance with the above, the accounting function is entrusted by the Member State, and this is not a delegation from the Managing Authority.

According to the above, the question arises as to whether the body entrusted with the accounting function can appoint Intermediate Bodies, as its task is received directly from the Member State and not delegated by the MA.

Answer:

Art. 2(8) 'intermediate body' means a public or private body which acts under the responsibility of a managing authority, or which carries out functions or tasks on behalf of such an authority.

The CPR does not regulate the internal arrangements of the programme authority responsible for the accounting function. It is the responsibility of the Member State to organize its functioning.

Only the Managing authority can identify intermediate bodies to carry out tasks under its responsibility.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA614_EMFAF_PERMANENT CESSATION WITH RETROFITTING UNDER BALTIC MAP AND EMFAF

Relevant Article: Article 20 of the EMFAF Regulation

Member State: Denmark

Question 1:

Is it possible to grant permanent cessation with decommissioning and retrofitting under the EMFAF and Baltic MAP?

Question 2:

Can the retrofitted vessel be exported to a third country after it has been retrofitted?

Answer 1:

Pursuant to Article 20(2)(b) of the EMFAF Regulation, permanent cessation "*is achieved through the scrapping of the fishing vessel or through its decommissioning and retrofitting for activities other than commercial fishing, keeping in line with the objectives of the CFP and of the multiannual plans referred to in Regulation (EU) No 1380/2013*".

Pursuant to Article 20(2)(a) of the EMFAF Regulation, support for the permanent cessation of fishing activities is available only where "*the cessation is foreseen as a tool of an action plan referred to in Article 22(4) of Regulation (EU) No 1380/2013*". Therefore, all the fleet segments complying with this condition are eligible. There is no limitation of the scope to certain sea basins, as it was the case under the EMFF with respect to the Baltic MAP and the Western Mediterranean MEP. Article 8a of Regulation (EU) 2016/1139 (Baltic MAP) as amended in 2020 refers only to conditions for support under the EMFF, thus does not concern the eligibility conditions under the EMFAF.

Therefore, it is possible to grant support for permanent cessation with decommissioning and retrofitting in the context of the Baltic MAP, provided that the fleet segments concerned qualify pursuant to Article 20(2)(a) and that the retrofitting "*keeps in line*" with the objectives of that MAP. Recital 30 of the EMFAF Regulation provides guidance in this respect: "*where the retrofitting would lead to an increased pressure of recreational fishing on the marine ecosystem, support should only be granted if it is in line with the CFP and with the objectives of the relevant multiannual plans*".

Answer 2:

In accordance with Art 15 EMFAF regulation, where support under Chapter II (of which Art 20 is part) is granted in respect of a Union fishing vessel, that vessel shall not be transferred or reflagged outside the Union during at least five years from the final payment for the supported operation.

In conclusion, it is possible to export the retrofitted vessel 5 years after the final payment for the supported operation.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA615_EMFAF_ANNEX III EMFAF DEFINITIONS

Relevant Article: Annex III to the EMFAF Regulation

Member State: FR

Question (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Nous nous interrogeons sur l'existence de définitions européennes pour les termes "être d'intérêt collectif" et "présenter des caractéristiques innovantes ou garantir un accès public à leurs résultats" inscrits dans l'annexe III du règlement FEAMPA relative au taux maximum d'intensité. En effet, nous avons déjà la définition de bénéficiaire collectif. Cela faciliterait une interprétation commune.

Answer:

Collective interest refers to the interest of the members of the organisation, of a group of stakeholders or of the general public. The actions supported should thus encompass more than the sum of the individual interests of the members of the collective beneficiary. They have therefore a broader scope than those normally undertaken by private enterprises. Managing Authorities should ensure that collective actions are not used to unduly take advantage of the more favourable provisions for collective beneficiaries.

Innovative features refer to innovation activities.

According to the OSLO manual2[1] :

- A business innovation is a new or improved product or business process (or combination thereof) that differs significantly from the firm's previous products or business processes and that has been introduced on the market or brought into use by the firm.

- A product innovation is a new or improved good or service that differs significantly from the firm's previous goods or services and that has been introduced on the market.

- A business process innovation is a new or improved business process for one or more business functions that differs significantly from the firm's previous business processes and that has been brought into use by the firm.

In the EMFAF context this may include:

- identification or application of innovations that are useful in finding marketing solutions,

- identification or application of new ideas that are useful in finding solutions to issues of business processes (e.g. more sustainable fishing),

- identification or application of new ideas that result in new products and services (e.g. environmental and social services),

- support for changes or improvements in a series of linked tasks or activities to better help businesses reach their goals.

Mere studies, research and advice on potential innovations in the future are excluded.

[1] Oslo Manual 2018: Guidelines for Collecting, Reporting, and Using Data on Innovation.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

N.B.

Pursuant to Article[12a(1)(a) of the EMFAF Regulation, the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 9(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 6 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA616_EMFAF_STATE AID CLEARANCE NEEDED UNDER EMFAF

Relevant Article: Article 10 of the EMFAF Regulation

Member State: ES,EE

Question :

For what support granted under the EMFAF regulation will it be necessary to attain State aid clearance?

ES question:

Article 42 TFEU states: *The provisions of the Chapter relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by the European Parliament and the Council within the framework of Article 43(2) and in accordance with the procedure laid down therein, account being taken of the objectives set out in Article 39.*

Article 43 (2) TFEU states: *The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall establish the common organisation of agricultural markets provided for in Article 40(1) and the other provisions necessary for the pursuit of the objectives of the common agricultural policy and the common fisheries policy.*

Therefore, in order to apply those Articles, and thus to apply the exception from the application of the competition rules to products listed in Annex I to the TFEU, Parliament and the Council are required to determine how to do so.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

For this purpose, Article 10 (2) of the EMFAF reads as follows: *Articles 107, 108 and 109 TFEU shall not apply to payments made by Member States* ***pursuant to this*** *Regulation and falling within the scope of Article 42 TFEU* .

In the period 2014-2020, the same was included in the Regulation, however, when the specific measures were laid down, and the Regulation was adopted in co-decision, we understood that the Parliament and the Council established the aid in respect of which the exception for Annex I products is applicable. This, in our view, applied the EU TFEU.

However, for the period 2021-2027, this is not the case, and Regulation 1139/2021 does not include the measures, with the exception of specific cases of engines, temporary stops or scrapping. In this respect, most of the measures will be established by the Member States in our Operational Programmes and these OPs are approved by Commission Decision and not by the Council and Parliament. Therefore, we do not see the actual application of the EU TFEU as clearly, except for stops, scrapping, etc., which are expressly set out in Regulation 1139/2021.

The first doubt is therefore what happens to those types of activity included in the Operational Programme, which are not expressly mentioned in the text of Regulation 1139/2021, and which relate to the production, marketing and processing of fishery and aquaculture products listed in Annex I. For example, aid for productive aquaculture investments or investments on board to switch to more selective gear **.** When targeted at companies in the sector, **do these actions have to be organised by means of a state aid regulation or is it sufficient to describe them in the OP and state that they are organised under the EMFAF?**

The second question before us concerns the assessment of whether they should be subject to State aid on the basis of the product, activity or beneficiary. In this respect, Article 42 TFEU states: *The provisions of the Chapter relating to rules on competition shall apply to* ***production of and trade in agricultural products only to*** *the extent determined by the European Parliament and the Council within the framework of Article 43(2) and in accordance with the procedure laid down therein, account being taken of the objectives set out in Article 39.*

It is therefore indicated that there may be an exception to the application of the competition rules but only as regards **production and trade** . In this respect, our doubt is what happens to everything relating to training, innovation, protection and conservation of the marine environment, etc., which, although carried out by the fisheries and aquaculture sector, does not specifically concern production or trade. In such cases, should we always be governed by state aid rules? This is important because, as you know, the vast majority of actions in fisheries and many of the activities in aquaculture and processing are not productive: E.g. training, innovation, participation in research campaigns, waste collection, energy efficiency, water use, etc.

In addition, and if we have to be governed by state aid regulations, we find ourselves in a situation of insecurity that is clearer by one example. In our proposal for the Operational Programme, we have included more training activities than those set out in the proposal for a Regulation on exemptions, and therefore we do not know in what

situation these proposed actions would remain in our OP if they were ultimately not included in the Regulation on exemptions to be approved.

EE question:

EE plans to buy a research vessel with EMFAF funding (by a public body). In case no economic activity is involved, it seems no need for state aid approval. However, if it performs economic activity approval under GBER art 26 might be a possibility.

Answer to ES question:

Under Article 10(1) of the EMFAF, State aid rules apply in general to the fishery and aquaculture sectors. However, Article 10(2) of the EMFAF states that *Articles 107, 108 and 109 TFEU shall not apply to payments made by Member States pursuant to this Regulation* ***and*** *falling within the scope of Article 42 TFEU.*

By its decision to adopt the EMFAF Regulation, the European Parliament and the Council decided that when a Member State makes payments for operations implementing the Member State's national EMFAF programme, and those operations contribute to one of the Priorities of the EMFAF Regulation and one of the Thematic Objectives of the CPR and does not constitute an ineligible operation in accordance with Article 13 of the EMFAF, the first condition of in Article 10(2) is fulfilled.

The second condition of Article 10(2) requires that the payment falls within the scope of Article 42 TFEU.

Article 42 applies *"to* ***production of and trade in agricultural products only to*** *the extent determined by the European Parliament and the Council within the framework of Article 43(2) and in accordance with the procedure laid down therein, account being taken of the objectives set out in Article 39".* In accordance with Article 38(1) TFEU, the use of the term "agricultural", is to be understood as also referring to fisheries, having regard to the specific characteristics of this sector.

In accordance with Article 1(1) of Regulation 1380/2013, the Common Fisheries Policy (CFP) covers a) the conservation of marine biological resources and the management of fisheries and fleets exploiting such resources; and b) in relation to measures on markets and financial measures in support of the implementation of the CFP: fresh water biological resources, aquaculture, and the processing and marketing of fisheries and aquaculture products.

Consequently, Article 42 TFEU covers the production, processing and marketing of fishery and aquaculture products. This means that all payments for operations contributing to the production of and trading in fishery products under the national EMFAF programmes are exempted from the requirement to have a State aid clearance. Therefore, support paid to fishers, aquaculture producers and processers of fishery and aquaculture products that supports the recipient in his/her capacity as a fishery, aquaculture producer and processer of fishery and aquaculture products are considered as payments for the production of and trading in fishery products. Article

39 TFEU does not specify what activities should be undertaken to support the objectives of the common agricultural/fishery policy.

What is important is in what capacity the beneficiary receives the support and that the said support falls under the objectives of the common agricultural (fishery) policy.

This means that all payments for operations towards beneficiaries in their capacity as a fishery, aquaculture producer or processer of fishery and aquaculture products fall under Article 10(2) of the EMFAF Regulation.

As an example, if a fisher receives support for the EMFAF programme of a MS in the form of training in relation to his/her production of or trade in fishery products, such support falls within the Article 10(2) exception. It is important that the training concerns activities that contribute towards one of the EMFAF Priorities and one of the CPR Thematic Objectives.

Another example, if a fisher receives support from the EMFAF programme of a MS in the form of training which is not related to his capacity as a fisher, this support would need State aid clearance under one of the State aid instruments.

Answer to EE question:

The decision to classify an activity as an economic activity does not depend on whether the activity is carried out by a public or private actor, but on the activity itself. The purchase of a research vessel is considered as an economic activity in accordance with the TFEU.

As for the need for State aid clearance for the support of the purchase of a research vessel under the EMFAF the following should be considered.

Article 10(2) of the EMFAF states that *Articles 107, 108 and 109 TFEU shall not apply to payments made by Member States pursuant to this Regulation* ***and*** *falling within the scope of Article 42 TFEU.* If supported under the EMFAF, the purchase of a research vessel may be considered to fall under the exception of Article 10(2) of the EMFAF, if it is possible to demonstrate that the vessel is used to increase fishery productivity by promoting technical progress (Article39 TFEU) and therefore the end beneficiary is considered to be the fishers.

However, this would require the MS to demonstrate that the research vessel will only benefit fishers. If this cannot be demonstrated, State aid rules and procedures apply.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added-value, inter alia, by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA617_EMFAF_COLLECTIVE BENEFICIARY_ANNEX III, EMFAF REGULATION

Relevant Article: Annex III to the EMFAF Regulation

Member State: Hungary

Question (including any relevant facts and information):

There is a company which will be created by the Hungarian Aquaculture and Fisheries Inter-Branch Organisation and the National Federation of Hungarian Anglers. The company is not a public body, so it can not apply for the 100% intensity rate under the row 8 of the Annex III. of the EMFAF regulation.

We think maybe this company could continue our marketing campaign (Kapj rá!) in 2021-27.

We would like to ask, could this company fullfill the criterias of row 14 of the Annex III. of the EMFAF regulation)?

(i) they are of collective interest;

(ii) they have a collective beneficiary;

(iii) they have innovative features or ensure public access to their results.

In our opinion this company has a collective interest, this is a collective beneficiary and under point iii) it could be use new applications or new marketing tools (which were not used before during our campaign) as innovative features, and all of their results would be published.

Answer:

According to Annex III of the EMFAF Regulation there are 3 conditions to be fulfilled for a beneficiary to get 100% maximum aid-intensity rate:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

(i) they are of collective interest;

(ii) they have a collective beneficiary;

(iii) they have innovative features or ensure public access to their results.

- The term "*collective beneficiary*" should be understood as referring to an organisation recognised by the responsible authority as representing the interest of its members, of a group of stakeholders, or of the public at large. The beneficiary should be the collective organisation itself and not its members.
- To be eligible to the preferential treatment defined by this annex, the actions undertaken by this organisation also need to be in the "*collective interest"* of its members, of a group of stakeholders or of the general public. Such actions should thus encompass more than the sum of the individual interests of the members of this collective beneficiary. They have therefore a broader scope than those normally undertaken by private enterprises.
- The meaning of the "*public access"* to the results of a project funded under EMFF refers to the fact that the general public should not be restricted both to its physical access to the results of the operation as well as in their access to information about the results of the operation.
- "*Innovative features*" refer to innovation activities.

According to the OSLO manual[1] :

- A business innovation is a new or improved product or business process (or combination thereof) that differs significantly from the firm's previous products or business processes and that has been introduced on the market or brought into use by the firm.
- A product innovation is a new or improved good or service that differs significantly from the firm's previous goods or services and that has been introduced on the market.
- A business process innovation is a new or improved business process for one or more business functions that differs significantly from the firm's previous business processes and that has been brought into use by the firm.

In the EMFAF context this may include:

- identification or application of innovations that are useful in finding marketing solutions,
- identification or application of new ideas that are useful in finding solutions to issues of business processes (e.g. more sustainable fishing),
- identification or application of new ideas that result in new products and services (e.g. environmental and social services),

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- support for changes or improvements in a series of linked tasks or activities to better help businesses reach their goals.

Mere studies, research and advice on potential innovations in the future are excluded.

Considering the aspects above, it is the responsibility of the Managing Authority to assess the status of the company – as a collective beneficiary that acts in the 'collective interest' of its members. Close consideration should also be given to the national, commercial law and to whether there is a (profit-making) scope of this company.

Managing Authority should also ensure that collective actions are not used to unduly take advantage of the more favourable intensity rate in the Annex III of the EMFF regulation.

With reference to a Call of Proposals for a marketing campaign 2021-2027, the Member State will have to ensure equal access to all entities that may be eligible for the implementation of a national marketing campaign.

[1] Oslo Manual 2018: Guidelines for Collecting, Reporting, and Using Data on Innovation.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA618_EMFAF_USE OF EMFAF FOR CO-FINANCING AWARENESS-RAISING CAMPAIGNS ON MARINE LITTER

Relevant Article: Article 25 of the EMFAF Regulation

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State: BE

Question:

BE is preparing its draft EMFAF programme. One observation received by DG MARE on the first version of the programme, was that the programme failed to refer to awareness raising measures on the impact of litter on the marine environment, in line with the requirements under Directive 2019/904. In order to understand better what are opportunities under the EMFAF, the BE MA wants to obtain confirmation that awareness-raising measures on the impact of marine litter in line with Directive 2019/904 would be eligible under SO 1.6 (Article 25, EMFF).

Answer:

According to Article 25(1) of the EMFAF Regulation, the EMFAF may support actions that contribute to the protection and restoration of aquatic biodiversity and ecosystems, including in inland waters. The support shall contribute to the specific objective of contributing to the protection and restoration of aquatic biodiversity and ecosystems as referred in point (f) of Article 14(1) of the EMFAF Regulation.

As a result, awareness raising campaigns on reducing marine litter are eligible under Specific Objective 1.6 insofar as they contribute to the protection or restoration of aquatic biodiversity and ecosystems, including in inland waters. This includes campaigns related to the impact of marine litter in line with Directive 2019/904.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA619_EMFAF_TEMPORARY CESSATION UNDER EMFAF

Relevant Article: Article 21 of the EMFAF Regulation

Member State: DE

Question (including any relevant facts and information):

The Commission has repeatedly emphasised that recourse to EMFAF is possible on the part of the Member States even before official approval by the Commission, but that in such a case the Member State concerned bears the risk that the measure in question will be approved under the operational programme.

Germany would like to make use of this possibility for the temporary cessation in the Baltic Sea. The premiums are to be paid only after approval of the operational programme.

In the case of temporary cessation under the EMFF, support was provided not only under the Operational Programme but also taking into account the national Guidelines for the Promotion of Measures for the Adaptation of Fishing Activities and the Development of the Fishing Fleet of the Federal Ministry of Food and Agriculture (MAF-BMEL) (see Annex). On p. 93 of the German EMFF OP in its current version, reference is made to the these Guidelines: "Further details, in particular the period of cessation of fishing activities, the number of days for which compensation is granted and, where appropriate, other modalities, which may differentiate between regions, farm sectors, vessel sizes, vessel types and fishing gears, shall be regulated in the national provisions implementing the temporary cessation of fishing activities."

For EMFAF, such a national complementary support guideline is not yet available. Is this an obstacle to implementing the envisaged support for temporary cessation under EMFAF?

Answer:

Pursuant to Article 39 of the EMFAF Regulation, compensation for additional costs or income foregone and other compensation provided under this Regulation shall be granted under any of the forms referred to in points (b) to (e) of Article 53(1) of the Common Provisions Regulation. This means that compensation for the temporary cessation of fishing activities must take the form of a "simplified cost option".

The Member State must establish the methodology for calculation in accordance with Article 53(3) of the Common Provisions Regulation. The Common Provisions Regulation does not require the *ex ante* approval of this methodology by the Commission, thus it must not be described in the EMFAF programme.

Any other administrative tool, being a guideline or national/ministerial decree, to regulate the eligibility for support, to select the applications and pay the compensation to beneficiaries is the responsibility of the managing authority.

As regards implementation before the adoption of the programme, Article 63(2) of the Common Provisions Regulation, provides that expenditure for selected operations is eligible as of 1 January 2021. Concretely, this means that:

- Grant decisions signed before the approval of the programmes are not legally binding as regards the Common Provisions Regulation and the EMFAF. However, Member States can do all the necessary preparatory work with the beneficiaries before the approval of the programme by the Commission. This includes preparatory work within a 'shadow' monitoring committee to adopt selection criteria. Therefore, Member States can launch calls before the approval of the programme, but any selection of operations and signature of grant decisions is under the sole responsibility of the Member State, without prejudice to their legal validity as regards EU law.
- The applicants should be made aware in the calls for projects that the final confirmation of support is subject to the formal approval of the selection criteria by the monitoring committee and of selection of operations by the managing authority, once the programme is adopted. It means that any contractual arrangements done before programme adoption and project selection based on approved selection criteria is at Member States' risk and it needs to be re-contracted afterwards.

Pursuant to Article 63(6) of the Common Provisions Regulation, operations cannot be selected if they have been physically completed or fully implemented before the submission of the application for funding to the managing authority. Under this rule, what matters is the date of submission of the application, not the date of selection of the operation.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA620_EMFAF_AID INTENSITY FOR OPERATIONS RELATED TO SMALL-SCALE COASTAL FISHING

Relevant Article: Annex III to the EMFAF Regulation

Member State: Latvia

Question (including any relevant facts and information):

LV MA would like to know if the 100% aid intensity under shared management for operations related to small-scale coastal fishing as referred in Annex III of the EMFAF Regulation is applicable as in the EMFF programming period.

In 2016, for the expert group on the EMFF in reply to frequently asked questions COM has provided the following information on intensity of public aid for operations related to small-scale coastal fishing: *'' In order to benefit from increased percentage points, the operation must directly benefit the owner of a small-scale fishing vessel.''*

Do we correctly understand that it is essential for the aid applicant to be the owner of the small-scale fishing vessel, and then adding value to the catches, i.e. activities up to the first sale of fishery products and the offer of their products to consumers is eligible for 100 % support aid intensity?

Answer:

In line with Annex III of the EMFAF Regulation, operations related to small-scale coastal fishing (SSCF) may benefit from a maximum 100% aid intensity rate meaning that SSCF fishermen are the direct beneficiaries of the operations.

In order to identify the beneficiary as a member of the small-scale coastal fishing community, and thus provide a maximum 100% aid intensity, the Managing authority shall satisfy itself that the operation is directly benefitting the owner of a small-scale fishing vessel.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA621_EMFAF_MOVING FINANCIAL ALLOCATIONS BETWEEN 1.1.1 AND 1.1.2

Relevant Article: Annex II to the EMFAF Regulation

Member State: BE

Question (including any relevant facts and information):

BE is preparing its draft EMFAF programme. In order to have more clarity about the flexibility that exists when financial allocations are distributed in the adopted programme, the BE MA wants to know if it has understood the text of CPR Art. 24 correctly what concerns (sub) SO 1.1.1 and 1.1.2;

"According to Art. 24 CPR, the transfer of up to 8 % of the initial allocation to one SO to another SO is considered as "non-significant". Can we assume that the budget under 1.1.1. and 1.1.2. is considered as one SO (1.1.) according to the financing plan (Annex III, EMFAF)?"

Answer:

The second paragraph of Common Provisions Regulation (CPR) Article 24 (5) says

"For programmes supported by the EMFAF, the Member State may transfer during the programming period an amount of up to 8 % of the initial allocation of a specific objective to another specific objective, including technical assistance implemented pursuant to Article 36(4)".

While the Member State should strive to maintain the approved budgetary allocations as much as possible in order to reach the initial targets of the programme, the above mentioned paragraph of Article 24 of the CPR offers the opportunity for limited shifts.

Article 14(1) of the EMFF Regulation lists the 6 Specific Objectives (SO) for Priority 1, of which the SO described in point (a) is "strengthening economically, socially and environmentally sustainable fishing activities".

As set out in Annex II to the EMFAF Regulation, that SO is subdivided into two sub-categories: 1.1.1 and 1.1.2. The sub-category 1.1.2 covers operations supported under

Articles 17 and 19 (i.e. "first acquisition of a fishing vessel" and "increase in the gross tonnage of a fishing vessel to improve safety, working conditions or energy efficiency"). This subdivision is relevant only as regards Table 11A of Annex V to the CPR (i.e. the financing plan) in order to trace the amounts subject to the financial ceiling laid down in Article 5(5) of the EMFAF Regulation, which covers Articles 17 and 19. Therefore, it is necessary to trace support under those Articles individually in the financing plan.

However, sub-categories 1.1.1 and 1.1.2 are not SOs. Annex II to the EMFAF Regulation provides that this nomenclature is used only for the purpose of the financing plan. Therefore, 1.1.1 and 1.1.2 are the two components of the SO described in Article 14(1)(a) and in the third column of Annex II.

Conclusion: for the purpose of the transfer of up to 8 % of the initial allocation from one SO to another SO pursuant to Article 24 of the CPR, the financial allocation for the SO described in Article 14(1)(a) of the EMFAF Regulation is the sum of the allocations indicated for the sub-categories 1.1.1 and 1.1.2 in the financing plan. The Member State must ensure that any transfer that would increase the allocation of sub-category 1.1.2 complies with the financial ceiling established in Article 5(5) of the EMFAF Regulation.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA622_EMFAF_INTENSITY OF AID FOR R&D PROJECTS AND AQUACULTURE INVESTMENTS

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Relevant Article: Annex III; Art 41, EMFAF Regulation

Member State: Hungary

Questions :

Under the EMFF OP we have the measure "Innovation", which is an R+D+I measure. Under the EMFAF OP we are planning this R+D+I measure as well. We would like to clarify the various aid-intensities that should be applied in different cases as follows:

Question 1:

If the aim of the measure is R+D+I (like our EMFAF measure 2.1.2. or EMFF measure 2.1) and the beneficiaries **are not public bodies**, the public aid is 75% in line with point 18 of Annex III of the EMFAF Reg.

Question 2:

If the aim of the measure is R+D+I (like our EMFAF measure 2.1.2. or EMFF measure 2.1) and the beneficiaries **are public body and not public body in consortium**, the public aid is 75% in line with point 18 of Annex III of the EMFAF Reg.

Question 3:

If the beneficiaries are **only public bodies (alone or in consortium),** the public aid is always 100% under the whole EMFAF in line with point 8 of Annex III of the EMFAF Reg.?

Question 4:

Is the public aid under priority 1 of the EMFAF 50% **for enterprises** in line with Article 41(1) of the EMFAF Regulation?

Question 5:

If the aim of the measure is aquaculture investment and the **beneficiaries are enterprises**, the public aid is 60% in line with point 17 of Annex III of the EMFAF Regulation?

Question 6:

If the aim of the measure is processing (like our EMFAF measure 2.2.2. or EMFF measure 5.3.3) and the beneficiaries are enterprises, the public aid is 50% in line with Article 41(1) of the EMFAF Regulation?

Question 7 on aid-intensity for aquaculture investment:

Under the EMFF, according to the Article 48(3) it was possible to support aquaculture investments only for aquaculture enterprises, and the public aid was 50%. HU cannot read this kind of rule in the EMFAF Regulation.

Question 8 on aid-intensity for aquaculture investment:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

I would like to ask, if it will be possible for the public bodies as well (with 100% public aid) to apply for aquaculture investment (for our EMFAF measure 2.1.1)? Of course the public body has to deal with fish farming, it has to have registered fishing activity and fishery income.

Aquaculture investment is meant to generate profits and it is normally assumed to be done by private entities in all MS.

Answers:

General remarks:

- The aid intensity rates established in Article 41 and Annex III of the EMFAF Regulation are maximum Member States may apply a lower rate.
- Where one operation falls under several of the rows 2 to 19 of Annex III, the highest maximum aid intensity rate shall apply. Here again, the Annex refers to a maximum
- It is for the Member State to decide under which Annex III row the operation is categorised.

These answers are indicative only.

Answer 1:

Regarding RDI investments, one key aspect should be clear: Partnership and consortium are not one and the same thing. The latter (i.e. consortium) implies that a new entity is formed, which may be either public or private – depending on the national legislation in the various MS. The MA should decide on that. There are 3 possibilities for EMFAF RDI operations:

1. A public body may be in partnership/cooperation with a private company and still receive 100% aid-intensity (row 8 of EMFAF Annex III of the EMFAF Regulation – hereafter "Annex III"). The condition is that the public body should be the sole beneficiary. The partner will thus be a participant and not entitled to receive any monies.
2. A private company may be in partnership/cooperation with a public body. Whether it may receive 75% aid-intensity, if the private company is the sole beneficiary, will depend on the type of the operation. It should be noted that row 18 of Annex III is not about RDI investments as such. It is about "operations supporting innovative products, processes or equipment in fisheries, aquaculture and processing". The output (i.e. products, processes, equipment) must be innovative, not the input (i.e. the investment).
3. A public entity (i.e. research institute etc.) may create a ***consortium*** with a private entity. *A consortium leads to the creation of a new entity, which may be private or public – in line with the national legislation. It is understood that this is HU's intention; if so, the MA has to decide if the new entity created by the consortium is public* ***[1]*** *or private. Then the MA decides if row 8 (100% aid*

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

intensity) or row 18 (75% aid intensity) applies, assuming the relevant conditions are met. Row 14 could also be considered.

If the aim of the measure is R+D+I and the beneficiaries **are not public bodies** , then the public aid is 75% (if it meets the conditions of row 18 of Annex III). Again, row 14 may be considered. In this case it is assumed that the beneficiaries are private entities.

Answer 2:

The MA will need to decide if the entity resulting from the consortium is private or public [2] .

1. If it is **a public body**, the aid-intensity is 100% (row 8 of Annex III): „Operations for which the beneficiary is a public body or an undertaking entrusted with the operation of services of general economic interest as referred to in Article 106(2) TFEU, where support is granted for the operation of such services".
2. If it is a **private body**, the aid-intensity is 75% (if the conditions of row 18 of Annex III are met). Row 14 may also be considered.

The easiest route for RDI will be to have a public body as the sole beneficiary in cooperation/partnership with the private body. The intensity in this case will be 100% and it will not be a consortium where the MA will have to decide which form it took (i.e. public or private). But row 14 should also be considered.

Answer 3:

Not necessarily. If a public body is the only beneficiary, the aid-intensity is 100% (row 8 of Annex III). In cases where you have a consortium (even if created by public bodies) the MA will need to check if the new entity created via the consortium is a public or private in line with the national legislation and with the definition of "public body" in Article 2. *For example*: 2 research institutes decide to create a consortium and the new entity emerging from the consortium is a private entity that generates profit. This private entity will benefit from only 75% aid-intensity, not 100%.

Answer 4:

If the public aid is under priority 1 of the EMFAF, then the aid-intensity is 50% for enterprises, in line with Article 41(1) of the EMFAF Regulation (unless the operation falls under one of the rows in Annex III).

Answer 5:

Please note that this is referring to 'Operations supporting sustainable aquaculture implemented **by SMEs'** – row 17 of Annex III. Thus, only SMEs will receive a higher aid intensity due to their size, which must be checked by the MA when approving the operation. The other enterprises will receive maximum 50% according to Article 41(1) of the EMFAF Regulation.

Answer 6:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

For aid intensity rates, Article 41(1) EMFAF applies by default, except if the operation falls under one of the rows listed in Annex III. The relevant rate from the Annex would then apply.

Answer 7 on aid-intensity for aquaculture investment:

See answer to question 6.

Answer 8 on aid-intensity for aquaculture investment:

If a public body is making 'aquaculture investment', it goes beyond its non-profit scope and row 8 of Annex III: „ *Operations for which the beneficiary is a public body or an undertaking entrusted with the operation of services of general economic interest as referred to in Article 106(2) TFEU, where support is granted for the operation of such services* ". Thus, in this case the public body will not perform an operation or service of general economic interest and it will thus not benefit from 100% aid intensity.

[1] In accordance with the definition of "public body" in Article 2(2)(12): "*the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or by one or more of such bodies, governed by public law*".

[2] Idem footnote 1.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA624_EMFAF_INTENSITY OF AID FOR R&D PROJECTS AND AQUACULTURE INVESTMENTS

Relevant Article: Article 41 of the EMFAF Regulation

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State: Cyprus

Question (including any relevant facts and information):

According to the EMFAF Regulation 2021/1139, the maximum aid intensity rate should be 50 % of the total eligible expenditure, with the possibility, in certain cases, to set derogatory rates. According to annex III (specific maximum intensity rates under shared management) the max intensity rate for operations supporting sustainable aquaculture implemented by SMEs is 60%.

Taking into account the above:

a) We would like to ask whether the derogation of 60% applies to all related activities to sustainable aquaculture such as marketing and processing.

And if it does not apply to all related activities as in a):

b) Certain activities related to marketing of aquaculture products cannot be distinguished between production and marketing. Examples of this are grading of harvested fish and packing equipment. Therefore we would like to ask if operations that include such equipment that are considered as marketing operations but interlinked with production would benefit from the increase of co-financing of 60%.

Answer:

Article 41 ('Intensity of public aid') of the EMFAF Regulation provides that 'Member States shall apply a maximum aid intensity rate of 50% of the total eligible expenditure of the operation'. The 'total eligible expenditure of the operation' refers to the total of public and private expenditure. By way of derogation, specific maximum aid intensity rates are set out in Annex III of the mentioned Regulation. Where one operation falls under several of the rows 2 to 19 of Annex III, the highest maximum aid intensity rate shall apply. Under row 17 of the Annex III, it is specified that operations supporting sustainable aquaculture implemented by SMEs will benefit from 60% maximum aid intensity rate.

This derogation cannot be applied to all related activities under priority 2 "Fostering sustainable aquaculture activities and processing and marketing of fishery and aquaculture products" but only to operations supporting sustainable aquaculture implemented by SMEs as specified in the derogation.

Furthermore, Article 26 of the EMFAF Regulation clearly distinguishes processing and marketing (Art. 26(b)) from operations supporting sustainable aquaculture activities (Art. 26(a)). The latter refers to the definition of aquaculture in Article 4(25) of the CFP Regulation, involving operations related to "the rearing or cultivation of aquatic organisms using techniques designed to increase the production of the organisms in question beyond the natural capacity of the environment […] up to and including harvesting".

This helps distinguish production from marketing of fish products, which begins at the level of individual farmers. The farmer rears or harvests fish and processes them to a certain level before making it available to the market with a series of operations which usually include also storage, sorting, grading, and packaging. Grading and packaging, in particular, are considered some of the main features of fish marketing, as they allow for making fish products ready for storage or sale, by allocating prices and preparing them for delivery to marketers or consumers.

It follows that in case operations refer to processing and marketing, the maximum intensity of public aid would be 50 % in line with Article 41 of the EMFAF Regulation. This therefore applies also to operations related to the grading of harvested fish and packing equipment since those are considered as marketing operations.

N.B.

Pursuant to Article 57(1) of [the political agreement on] the Common Provisions Regulation (CPR), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the CPR or in the Fund-specific Regulations.

Pursuant to Article [12a(1)(a)] of [the political agreement on] the EMFAF Regulation, the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article [9(2)], must not be ineligible pursuant to Article [13] and must be in accordance with applicable Union law.

In accordance with Recital 6 of [the political agreement on] the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA626_EMFAF_STATE AID CLEARANCE NEEDED UNDER EMFAF

Relevant Article: Article 10 of the EMFAF Regulation

Member State: ES

Question (including any relevant facts and information):

For what support granted under the EMFAF regulation will it be necessary to attain State aid clearance?

ES question:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Following the previous question received by ES, and the answer sent to ES MA on 11 March (IQ 616) , ES is asking to which extend the support can be granted on measures included in the EMFAF programme.

On some measures support is very clear, for example productive investments for aquaculture. But in others doubts arise, for example, all investments made to improve working and safety conditions on board and on land, or all investments to improve energy efficiency such as solar panels, actions to involve fishermen in the surveillance and monitoring of protected marine areas, actions carried out in ports whose beneficiaries are port authorities and for the collection of marine waste.

ES would like to know if it could be generally understood that all of them to be eligible, as for their contributing to production and marketing or whether a more restrictive approach should be considered, and only consider those that are directly related to production and marketing such as productive investments, traceability, more selective gear or improved processing of products covered by the landing obligation, etc.

ES is raising the issue for example at OP PMP plans level, as they may have measures to improve energy efficiency, safety and health such as telemedicine and other measures, in the same PMP, to improve the marketing of species coming from the landing obligation, etc.

Answer:

Proposed reply to ES question:

As mentioned in the reply sent to ES on 11th March 2022, support paid to fishers, aquaculture producers and processers of fishery and aquaculture products that supports the recipient in his/her capacity as a fisher, aquaculture producer and processer of fishery and aquaculture products are considered as payments for the production of and trading in fishery products.

Article 39 TFEU does not specify what activities should be undertaken to support the objectives of the common agricultural/fishery policy.

This means that support for any activity undertaken, in any way, shape or form, by the fishers, aquaculture producers and processers of fishery and aquaculture products in their capacity as such does not require state aid approval when eligible under Article 12 of the EMFAF Regulation and included in the EMFAF programme.

This includes support for improving working, health and safety conditions on board and land, improving energy efficiency (within the limits of the Regulation), activities carried out by POs, etc.

This also includes diversification within any of the mentioned areas, such as a fisher starting to process their own catch, but it does not include diversification outside the mentioned areas, such as tourism, restaurant, etc.

It would also include payments to service providers of trainings/advisory services to fishers/aquaculture producers/processors for services that are related to their capacity as a fisher, aquaculture producer and processer of fishery and aquaculture products.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

When it comes to support to landing sites, ports, MPAs the situation is somewhat different. Therefore, the Managing Authority will have to evaluate the individual cases to determine whether the support would fall within Art 10(2) of the EMFAF Regulation or would require state aid clearance.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added-value, inter alia, by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA627_EMFAF_USE OF EMFAF FOR CO-FINANCING ON-LAND PROCESSING OF COLLECTED MARINE LITTER

Relevant Article: Article 25 of the EMFAF Regulation

Member State: BE

Question (including any relevant facts and information):

BE is preparing its draft EMFAF programme. In order to understand better what are opportunities under the EMFAF, the BE MA wants to obtain confirmation that expenses related to on-land processing of marine litter in line with Directive 2019/904 would be eligible under SO 1.6 (Article 25, EMFAF).

Answer:

According to Article 25(1) of the EMFAF Regulation, the EMFAF may support actions that contribute to the protection and restoration of aquatic biodiversity and

ecosystems, including in inland waters. The support shall contribute to the Specific Objective (hereinafter "SO") of contributing to the protection and restoration of aquatic biodiversity and ecosystems as referred in point (f) of Article 14(1) of the EMFAF Regulation (i.e. SO 1.6).

Moreover, Article 8(5)(j) of the EMFAF Regulation clarifies that the contribution to the reduction of marine litter in accordance with Directive (EU) 2019/904 of the European Parliament and of the Council, i.e. on the reduction of the impact of certain plastic products on the environment, is one of the elements that the Commission shall take into account in the assessment of the programme.

Under the EMFAF more flexible architecture, it follows that (on-land) processing of lost fishing gear and marine litter collected from the sea can be eligible for support under SO 1.6 as long as the related actions contribute to the protection or restoration of ecosystems and biodiversity, as prescribed under that SO.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA632_EMFAF_MAXIMUM AID INTENSITY FOR CLLD OPERATIONS

Relevant Article: Art 41 and Annex III of the EMFAF Regulation

Member State: Belgium

Question (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The Belgian Managing Authority is preparing its draft EMFAF programme in which CLLD will be included and is seeking clarity about the aid intensity for operational and other CLLD costs.

"- Point 12 of Annex III of the EMFAF states that operations related to the operational costs of local action groups have a maximum aid intensity rate of 100 %. Does this apply both to Article 34 (1) (a) and (c) of the CPR Regulation?

- In view of the previous question, does the implementation of the operations selected under the local strategy (in accordance with Article 34 (1) (b) of the CPR Regulation) imply these are subject to the other rates of support set out in Annex III to the EMFAF Regulation?"

Answer:

The operations referred to under point 12 of Annex III, i.e. those related to the running costs of local action groups, should be strictly limited to Article 34(1)(c) of the CPR Regulation, notably "the management, monitoring and evaluation of the strategy and its animation, including the facilitation of exchanges between stakeholders". Thus "capacity building and preparatory actions supporting the design and future implementation of the strategy", as defined in Article 34(1)(a) of the CPR Regulation, do not fall under *running* costs but under *preparatory* costs (including capacity building). These costs may fall under different maximum aid intensity rates.

This interpretation is supported by the classification of the Types of Actions in Annex IV of the EMFAF Regulation which identifies three CLLD-related types under codes 13, 14 and 15 ; of which only the last one refers to *running* costs (which could include animation).

Concerning the operations of various nature supported by EMFAF under Article 34(1)(b) of the CPR Regulation, which are the ones implementing the LAG strategy, the general provisions of Article 41 defining the maximum aid intensity are applicable.

Conclusion: to the operations resulting from the LAG strategy, as well as LAG preparatory and capacity building costs, the provisions of Article 41 EMFAF apply to define the maximum aid intensity. In the case of justified LAG running costs, the maximum 100% aid intensity rate of Point 12 of Annex III can apply.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA634_EMFAF_MAXIMUM INTENSITY OF AID FOR BENEFICIARIES WITHOUT LEGAL PERSONALITY

Relevant Article: Art 41 of the EMFAF Regulation

Member State: Romania

Question (including any relevant facts and information):

According to Art. 2(9)(a) of CPR, a beneficiary could be an entity without legal personality. Such an entity could be a partnership between a University/ research institute, which is a public body and an aquaculture company, which is a private body and they could have an aquaculture project. This entity would not fall under the definition of Art. 2(9)(b) of CPR (PPP).

According to Art. 41 of EMFAF, the maximum aid intensity rate is 50% or other, as set in Annex III. Where one operation falls under several of the rows 2 to 19 of Annex III, the highest maximum aid intensity rate shall apply.

In the case of the above mentioned entity, two rows from Annex III of EMFAF could apply:

a) Row 8 Operations for which the beneficiary is a public body... - 100%;

b) Row 17 Operations supporting sustainable aquaculture implemented by SMEs - 60%.

Please confirm whether in this case Art. 41(3) of EMFAF is applicable and the 100% maximum aid intensity rate should apply.

Answer:

Article 2(2)(12) of the EMFAF Regulation defines 'public body' as 'the State, regional or local authorities, bodies governed by public law or associations formed by one or more

such authorities or by one or more of such bodies, governed by public law'. In cases where a beneficiary is without legal personality, it is up to the Member State to decide on a *case-by-case basis* and in consideration of the type of operation to be implemented (profit making vs. public-use), if the beneficiary falls under that definition, and thus is eligible to the 100% aid intensity rate referred to in row 8 of Annex III to the EMFAF Regulation.

Managing Authorities should differentiate partnership and consortium.. A consortium implies that a new entity is formed, which may be either public or private – depending on the national legislation. In light of the above, Managing Authorities should consider the following possibilities

1. A public body may be in partnership/cooperation with a private company and still receive 100% aid-intensity (row 8 of EMFAF Annex III to the EMFAF Regulation). The condition is that the public body should be the sole beneficiary. The partner will thus be a participant and not entitled to receive any funds.
2. A public entity (i.e. research institute etc.) may create a consortium with a private entity. A consortium leads to the creation of a new entity, which may be private or public – in line with the national legislation. The Managing Authority has to decide if the new entity created by the consortium is public [1] or private.

Managing Authorities should ensure that beneficiaries do not unduly take advantage of the more favorable aid intensity rate granted to public bodies.

Row 17 of Annex III does not apply to beneficiaries without legal personality because it concerns operations implemented by SMEs, hence by companies with a legal personality.

[1] In accordance with the definition of "public body" in Article 2(2)(12): "*the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or by one or more of such bodies, governed by public law*".

N.B

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA635_EMFAF_INTERPRETATION OF THE RESULT INDICATOR 'NUMBER OF OPERATIONS'

Relevant Article: Annex 1 of the EMFAF Regulation and Article Art. 2(4)(a) of CPR Regulation

Member State: Romania

Question (including any relevant facts and information):

According to Regulation (EU) 1139/2021 (EMFAF), Annex 1 COMMON INDICATORS OF THE EMFAF, the output indicator is "CO 01 - Number of operations". An operation may have a different status, from "selected" to "finalised" or "completed", but the regulation is silent in this regard.

Since Regulation (EU) 1060/2021 (CPR) foresees in Art. 1 (6) that EMFAF may complement CPR and, in case of doubt, CPR prevails, in our opinion de definitions of CPR apply also to the output indicators of EMFAF.

Thus, if, according to Art. 2(4)(a) of CPR, "operation" means "a project, contract, action or group of projects selected under the programmes concerned", then the output indicator referred to in Annex 1 COMMON INDICATORS OF THE EMFAF should be understood as operations that have been selected (meaning that a contract for financing that operation has been signed both by the Managing Authority and the applicant).

Answer:

It is correctly stated that Annex I of the EMFAF Regulation mentions only one type of output indicator: "CO 01 - number of operations". Output indicators measure the specific deliverables of the intervention, according to article 2(13) of the CPR.

It is up to the Member State to define the target value for the number of operations for each specific objective in the EMFAF programme. That is the sum of all operations to be implemented for that specific objective. It has been correctly described that

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

'operation' refers to a project, contract, action or group of projects **selected** under the programmes concerned. Indeed by the term 'selected' a signed contract for financing the operation needs to exist between the Managing Authority and the applicant. With respect to the output indicator 'number of operations', the milestone must refer to the number of operations to be selected by the end of 2024, and the target to the number of operations to be selected by the end of 2029, irrespective of the level of implementation or completion of those operations.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA640_EMFAF_MODERNISATION OF FISHING VESSELS ABOVE 12 M UNDER EMFAF

Relevant Article: Article 13 of the EMFAF Regulation

Member State: Bulgaria

Please note that answer to question 3 is superseded by IQ 779.

Question (including any relevant facts and information):

We have several questions regarding fishing vessels above 12 meters (segment: 18-24 m and +24 m), namely concerning the opportunities for investment on board (renovation of ship/repair) during the EMFAF programming period.

1. The owners of vessels need to improve safety on board as regards the following specific investments; are they eligible under EMFAF ?

- renovation of ship hull and propeller shafting; renovation of ship frame; renovation of proper-rudder system; replacement of the deck (main and foredeck) - wooden floor and steel sheets under it; replacement of bulwark;

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

sanding and repainting of the hull; replacement of protectors for static electricity on the ship's hull (Vessel Antistatic Solutions); replacement of sterntube; docking, blasting and high pressure water jet.

2. Is it eligible to invest in replacement (modernisation) of equipment, which is obligatory under Union or national law?

3. Is it eligible to invest in radar, GPS and cartographer?

Answer:

1. Pursuant to Article 63(1) of the Common Provisions Regulation (EU) 2021/1060, 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 Regulations. Pursuant to Article 12 of the EMFAF Regulation (EU) 2021/1139, the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

The Recital 23 of the EMFAF Regulation gives examples of eligible actions (e.g. health, safety and working conditions, energy efficiency and the quality of catches) but is also clear on those that are not eligible (e.g. acquisition of equipment that increases the ability of a fishing vessel to find fish).

Eligibility is defined pursuant to Article 12 of the EMFAF Regulation, which itself refers to the list of ineligible operations in Article 13. Recital 23 of the EMFAF Regulation cannot be used to circumvent Article 13 EMFAF Regulation.

It is the responsibility of the Managing Authority to evaluate and establish which type of investments to improve safety on board fishing vessels listed under question 1 fulfils the eligibility requirements of Article 12 and do not fall under the ineligible operations set out under Article 13.

It is also important that the necessary type of action to support investments improving safety on board fishing vessels is included in the programme.

2. As stated in the Article 13(k) - investments on board fishing vessels, including replacement (modernisation) of equipment, necessary to comply with the requirements under Union law in force at the time of submission of the application for support, including requirements under the Union's obligations in the context of RFMOs, are not eligible, unless otherwise provided for in Article 22.

Investments required under national law are eligible, provided they go beyond the requirements under Union law.

3. Radar, GPS and cartographer on fishing vessels are not eligible pursuant to Article 13(b) because they are equipment that increase the ability to find fish.

N.B.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA644_EMFAF_INTERPRETATION OF CERTAIN EMFAF PROVISIONS IN VIEW OF CORRECT PROGRAMMING

Relevant Article: Articles 26(1)(b), Article 22(3) and Articles 33 and 34 of the EMFAF regulation.

Member State: Croatia

Question 1

We would like to know if introducing a healthy meal of fishery and aquaculture products in the diet of children and young people in educational institutions (schools/kinder gardens) in Croatia can be financed under Article 26(1)(b) of the EMFAF Regulation. More precisely, the following activities are foreseen:

- Distribution and/or delivery of fishery and aquaculture products. Within these activities, financing of fishery and aquaculture products is envisaged, beneficiaries of the support would be suppliers/educational institutions.
- Equipping schools/kindergartens with equipment for preparation/storage of fishery and aquaculture products.
- Accompanying educational activities.
- Promotional activities.

Question 2

Taking into account the direct link between the EU Maritime Security Strategy and its Action Plan, CISE, as well as coast guard functions with the control and enforcement system, and taking into account Article 22(3) of the EMFAF Regulation, could you clarify if actions for the achievement of objectives set in Article 31 of the EMFAF

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Regulation are eligible to be financed under Priority 1, specific objective 4, aimed at improving the control system?

Answer 1

In accordance with Article 26(1)(b) of the EMFAF Regulation, the EMFAF may support interventions aming at promoting marketing, quality and added value of fishery and aquaculture products, as well as processing of those products. Based on the description provided by the Croatian authorities, we do not have sufficient elements to evaluate and provide a decisive conclusion on the potential eligibility of the activities concerned (i.e. distribution and delivery, equipment for preparation/storage of meals) under SO 2.2.

In general, educational and promotional activities targeted at increasing the awareness of fisheries and aquaculture products in children's diet may be considered eligible under SO 2.2, as long as these activities contribute to the scope and objectives set out in Article 26(1)(b) of the EMFAF Regulation. The simple supply of fisheries and aquaculture products to schools does not fulfil the objectives of Article 26(1)(b) EMFAF Regulation and does not therefore constitute an eligible type of action under SO 2.2.

We would like to remind you that, pursuant to Article 63(1) of the CPR Regulation, the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the CPR or in the Fund-specific Regulations.

Answer 2

Article 22(3) of the EMFAF Regulation reads that *The support referred to in paragraph 1 of this Article may also contribute to maritime surveillance as referred to in Article 33 and to the cooperation on coast guard functions as referred to in Article 34.* Similar provisions are included in Articles 33 and 34 of the EMFAF Regulation.

These provisions clarify the situation of multipurpose activities, i.e., activities used both for fisheries control and maritime surveillance. Such types of activities should be supported under the article corresponding to their main mission, but they can be supported under the scope of the other respective articles, without a predefined demarcation.

However, this provision should not undermine the rule that at least 15 % of the Union financial support should be allocated to fisheries control and enforcement (Article 5(4) of the EMFAF Regulation).

Therefore, when you decide on the demarcation between Articles 22, 33 and 34 of the EMFAF it is recommended to evaluate which is the main purpose of the planned activity and to bear in mind that 15% of the programme allocation should be devoted to fisheries control and data collection activities exclusively.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA646_EMFAF_IQ ON POINT 14 AND 17, ANNEX III, REGULATION NO 2021/1139

Relevant Article: Point 14 and 17, Annex III, Regulation no 2021/1139

Member State: Poland

Question 1 (including any relevant facts and information):

1. Poland is working on the national provisions for Priority 2 of the EMFAF and is defining the rules for calculating the aid-intensity of an operation. Poland refers to the following provisions:

1) Regulation 2021/1139, Annex III, point 14.

In order to increase the aid intensity, the operation must meet all of the following criteria:

(I) are in the collective interest.

(II) they have a collective beneficiary.

(III) have innovative features, where appropriate, at local level, and ensure public access to their results.

Poland asks what is the definition of collective beneficiary.

2. Regulation 2021/1139, Annex III, point 17.

As a rule, Poland applies a support intensity of 50 % of the eligible costs. Poland wants to raise the level of support in aquaculture investments to 60 % for eco-certified farms and young fishermen up to the age of 40 who will apply for aid.

Poland asked if the intensity of support for these groups of applicants (60 %) be applied on the basis of the provision of Annex III, point 17, 'Operations to support sustainable aquaculture implemented by SMEs'?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

1. The term 'collective beneficiary' as referred to in Annex III of EMFAF, should be understood as referring to an organisation recognised by the responsible authority as representing the interest of its members, of a group of stakeholders, or of the public at large.

The beneficiary is always the collective organisation itself and not its members.

2. A farm practising sustainable aquaculture is eligible for EMFAF support if it contributes to the achievement of the objectives of the CFP as set out in Article 2 of Regulation (EU) No 1380/2013. That means that the aquaculture farm must be environmentally sustainable in the long-term and is being managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies. The Managing Authority has to determine whether the farm in question fulfills these criteria.

The designation of eco-certification is not a factor in setting the aid intensity. Only **SMEs** which implement sustainable aquaculture can receive a higher aid intensity due to their size, which must be checked by the Managing Authority when approving the operation.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner and should not duplicate or crowd out private financing or distort competition in the internal market.

QA647_EMFAF_ART. 18 ENGINE REPLACEMENT - VERIFICATION

Relevant Article: Art. 18 EMFAF

Member State: Germany

Questions (including any relevant facts and information):

Question 1: Regarding the exchange of machinery (boat engines) according to Art. 18 para. 2 d, a 20% saving in CO2 emissions is to be achieved. The implementing regulation No. 2022/46 is to be consulted for the subordination of the cases regulated in para. 5 subpara. 2 a). Is the exchange of a new/modern boat engine with combustion drive against a boat engine with the same but older drive technology also

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

permissible under application of this regulation? Is the criterion of the use of an energy-efficient technology according to Art. 1 No. 1c of the Regulation 2022/46 thus fulfilled?

Question 2: In addition, the question arises as to how the technical inspection of replaced machinery prescribed in Article 18(3) of Regulation 2021/1139 can be regarded as fulfilled in practice, since a physical measurement on site appears uneconomical?

Answers:

Answer 1:

Paragraph 5 of Article 18 of the EMFAF Regulation defines the methodology for measuring the 20% reduction of CO2 emissions required under point (d) of paragraph 2.

The Member State must first check if the first subparagraph of paragraph 5 is technically applicable. That subparagraph requires information certified by the manufacturer for both the old and the new engine as regards either their CO2 emissions (point a.) or their fuel consumption (point b.). Member States can choose whether to apply point (a) or point (b).

If (and only if) the first subparagraph of Article 5 is not technically applicable because the relevant information certified by the manufacturer does not allow a comparison of the CO2 emission or fuel consumption, the Member State must apply the second subparagraph as an alternative methodology. That second subparagraph offers three options, under which the 20% reduction of CO2 is considered to be met:

- The new engine uses an energy-efficient technology and the age difference between the new engine and the engine being replaced is at least seven years. Both conditions are cumulative. The list of energy-efficient technologies is established in Article 1 of Implementing Regulation 2022/46. "Internal combustion" is included in that list but is eligible only if there is at least seven years difference between the new engine and the engine being replaced.
- The new engine uses a type of fuel or a propulsion system which is considered to emit less CO2 than the engine being replaced.
- The Member State measures that the new engine emits 20% less CO2 or uses 20% less fuel than the engine being replaced under the normal fishing effort of the vessel concerned. Article 2 of Implementing Regulation 2022/46 defines on what the normal fishing effort is to be construed.

If several of those options are applicable, the Member State decides which one to use.

Answer 2:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

According to Article 18(3) of the EMFAF Regulation, a physical verification is a prerequisite for receiving support under the EMFAF for the replacement or modernization of engines.

The EMFAF Regulation is not prescriptive on the modalities of this physical verification, which is for Member States to decide. However, such a verification must always be physical and its purpose to ensure that the new or modernized engine fulfils all the conditions of:

- Article 18(2)(c): for small-scale coastal fishing vessels, the new or modernized engine does not have more power in kW than that of the current engine.
- Article18(2)(d): for other vessels up to 24 meters in overall length, the new or modernized engine does not have more power in kW than that of the current engine and emits at least 20 % less CO2 compared to the current engine.

By extension, the physical verification should also ensure that the new or modernized engine fulfils all the conditions of Article 18(5).

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA648_EMFAF_ART. 21 (3) OF THE EMFAF REGULATION

Relevant Article: Art. 21 (3) of the EMFAF Regulation

Member State: Germany

Question 1 (including any relevant facts and information):

According to Art. 21 (3) of the EMFAF Regulation, support under paragraph 1 may only be granted if the fishing activities of the vessel or fisherman concerned are interrupted for at least 30 days in a given calendar year. This regulation lacks a reference to a

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

single measure, probably also because the Commission may not have assumed that a fisherman could also participate in two different measures of this kind in the same calendar year, e.g. German fishermen in the Baltic Sea in one closure of cod and a second closure of herring/sprout.

In MV, the regulation is interpreted in such a way that the minimum laytime of 30 days is measure-related (if you participate in cod and herring/sprat, you have to lie still for 2x30=60 days).

On the part of the BMEL, we assume that this interpretation of Art. 21 para. 3 EMFAF Regulation is correct and that the minimum laytime is measure related. This also seems to be suggested by Art. 21 para. 6 of the EMFAF Regulation, which regulates the maximum support for decommissioning in the programme period per fishing vessel (12 months, during the term of the EMFAF).

This means that a fisherman can also participate in two decommissioning measures per year and receive the corresponding support, but he must also comply with the minimum decommissioning period of 30 days in each case.

It would also be possible, however, to interpret Art. 21 Para. 3 EMFAF Regulation not in terms of measures but in terms of vessels.

Accordingly, it would be sufficient for a vessel to interrupt its fishing activities for a total of 30 days per year. In this case, the fisherman could also apply for funding for a further, shorter interruption in the same calendar year (e.g. 20 days).

Answer:

Support under the EMFAF is conditioned upon the eligibility of the operation. Article 21 of the EMFAF Regulation (hereinafter "the Regulation") focuses on the eligibility of the temporary cessation scheme.

In the specific case raised by DE, the temporary cessation scheme may be granted under two conditions:

- the conservation measures fall within the scope of Article 21(2)(a) of the Regulation, read in conjunction with Article 21(4), and
- the fishing activities of the vessel or fisher concerned are stopped during at least 30 days in a given calendar year, as provided for in Article 21(3) of the Regulation; such interruption of fishing activities needs to relate to the said conservation measures.

The days of cessation of fishing activities do not need to be consecutive. They can be split in as many blocks as necessary. The total cessation duration in a calendar year must be minimum 30 days, which can only be verified ex post. Nevertheless, Member States are encouraged to establish a clear planning of the cessation period before selecting the operations. The days are counted per vessel and the minimum thresholds of 30 days should apply irrespectively of the different conservation measures.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA649_EMFAF_Interpretation of Article 13 and 14 of the EMFAF

Relevant Article: (Articles 13(1)i and 14(1) of the EMFAF)

Member State: Croatia

Question 1 (including any relevant facts and information):

We would be grateful if you could clarify to us whether the relocation of port complex, more precisely the relocation (moving from one place to another) of the existing fishing port which is an integral part of it, i.e., the investments required and related to the relocation of the port are considered eligible under Regulation (EU) 2021/1139.

Answer:

According to Article 25(2)(b) of the EMFAF Regulation, the EMFAF may support, inter alia, investments in ports or other infrastructure to provide adequate reception facilities for lost fishing gear and marine litter collected from the sea. In addition, the EMFAF may support operations contributing to the implementation of the landing obligation referred to in Article 15 of Regulation (EU) No 1380/2013, such as operations improving the infrastructure of fishing ports, auction halls, landing sites and shelters in order to facilitate the landing and storage of unwanted catches.

At the same time, Article 13(1)(i) of the EMFAF Regulation explicitly stipulates that support shall not cover the construction of new fishing ports or new auction halls, with the exception of new landing sites.

Therefore, we consider that the transfer of an existing fishing port to a new place may be eligible under the EMFAF under the following conditions:

- the effective closure of the previous site of the transferred fishing port.
- the evidence that the transferred fishing port clearly contributes to one or more of the objectives listed in Article 25(2)(b) of the EMFAF Regulation or the implementation of the landing obligation referred to in Article 15 of Regulation (EU) No 1380/2013.

It is the responsibility of the Managing Authority to ensure the fulfilment of the above conditions regarding the scope of the operations as well as the fulfilment of the eligibility conditions for projects.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA651_EMFAF_ELIGIBILITY OF SUPPORT FOR THE PLACEMENT OF A NITROGEN CATALYST ON FISHING VESSELS

Relevant Article: EMFAF Articles 13, 14 and 18

Member State: Netherlands

Question 1 (including any relevant facts and information):

The Netherlands intends to implement a measure to reduce nitrogen emissions from shrimp fishing vessels. The objective of the measure is to make the shrimp fleet more sustainable. By subsidising the purchase and installation of an SCR catalyst placed in the tailpipe, nitrogen emissions can be reduced. In view of the objective of the measure (i.e. sustainability of the fleet), we believe that the measure fits within EMFAF Specific objective (SO) 1.1; can the Commission confirm this?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The call for proposals will provide grant support for the purchase and installation of SCR catalysts. In addition, a grant may be requested for the costs of having a report drawn up by an approved or certified measuring company confirming the measurement results of the vessel's emissions after the installation of SCR catalytic converter.

Objective of the type of action: shrimp vessels fishing in nature protection areas (Natura 2000 sites) off the Dutch coast must have a new permit under the Nature Protection Act as of 1 January 2023. A novelty compared to the old permit is that shrimp vessels will now also have to comply with the new nitrogen requirements. In order to continue fishing near the nitrogen-sensitive Natura 2000 sites, where fishing activities of the shrimp fleet take place, measures are needed to reduce nitrogen emissions. Installing an SCR catalyst is an efficient way of reducing nitrogen emissions.

In technical terms, an SCR catalyst is placed in the exhaust and reduces nitrogen oxide emissions. Nitrogen dioxide in the exhaust gases of the engine passes through a NOx reduction catalyst. In the catalyst, a urea solution is mixed with the exhaust gases. The concentration of nitrogen dioxide is measured at both inflow and outflow. The associated control system controls that the urea solution is injected in the correct mixing ratio. The application of urea solution therefore varies depending on the amount of nitrogen dioxide produced by the engine at that moment. This creates the optimal conditions for generating a chemical reaction, including using the heat of the exhaust gases, in which the gases break down into carbon dioxide (CO2) and ammonia (NH3). The ammonia binds the nitrogen dioxide, which is thus converted into H2O and N2. In this way, the SCR catalyst can eliminate up to 100 % NOx. The actual rate of reduction is related to the performance of the engine at any time. For exhaust gases at a temperature of 250 °C at constant rpm, 100 % nitrogen dioxide reduction is not an exception.

The functioning and performance of the engine is not affected by the catalyst, but the engine produce less noise, as the catalyst also acts as an additional silencer. The catalyst can also be removed. The engine will not be affected by this.

Answer:

The objective of this type of action is to reduce the emission of nitrogen dioxide from the exhaust of fishing vessels, thereby reducing their negative impact on the environment, in particular for shrimp vessels fishing in marine Natura 2000 sites.

According to the technical specifications provided by the Netherlands, the SCR catalysts would be placed in the exhaust and not on the vessel engine. The SCR catalyst can be removed without affecting the functioning of the engine.

The proposed type of action does not appear to fall within any of the categories of ineligible types of operations or expenditure provided for under EMFAF Article 13.

Considering that the catalyst would not alter the main functionalities of the vessel engine, which can function without it, and given the objective of the investment

support, which is to make the shrimp fleet more sustainable by reducing its nitrogen emission (and in addition would result in reducing its noise pollution), the proposed type of action can be considered to contribute to more environmentally sustainable fisheries within the meaning of EMFAF Article 14 (1)(a), and could thus be supported under EMFAF Specific objective 1.1.

QA655_EMFAF_AID INTENSITY FOR GRANT SUPPORT TO STOCK INSURANCE POLICY FOR AQUACULTURERS

Relevant Article: EMFAF Regulation, Annex III

Member State: Poland

Question 1 (including any relevant facts and information):

1. In relation to the insurance of aquaculture resources, Poland would like to apply an aid intensity rate of 60% for the EMFAF support to the insurance policy premium to be paid by the aquaculture operators. Does the EMFAF allow this level of support?
2. Furthermore, would it be possible to increase the aid intensity rate to 75% in case of aquaculture operators that are member of a producer organization within the meaning of Regulation (EU) No 1379/2013 on the common organization of the markets in fishery and aquaculture products [1] ?

[1] Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organization **of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000**

Answer:

1.In accordance with Article 41 paragraph 1 of the EMFAF Regulation, Member States shall apply a maximum aid intensity rate of 50 % of the total eligible expenditure of any operation.

By way of derogation from paragraph 1, specific maximum aid intensity rates are set out in Annex III of the EMFAF Regulation.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Under point 17 of Annex III, Member States are allowed to raise the aid intensity rate to maximum 60% in the case of operations supporting sustainable aquaculture implemented by small and medium-sized enterprises (SME).

As a consequence, Member States can consider increasing the aid intensity rate for grants contributing to the cost of a stock insurance policy provided that the beneficiary is a SME and implements sustainable aquaculture.

A farm practicing sustainable aquaculture is eligible for EMFAF support if it contributes to the achievement of the objectives of the CFP as set out in Article 2 of Regulation (EU) No 1380/2013. That means that the aquaculture farm must be environmentally sustainable in the long-term and is being managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies. The Managing Authority has to determine whether the farm in question fulfills these criteria.

2.Under point 15 of Annex III of the EMFAF Regulation, Member States are allowed to raise the aid intensity rate to maximum 75% in case of operations implemented by producer organizations, associations of producer organizations or interbranch organizations.

Accordingly, in case the stock insurance policy would be taken out by the producer organization as legal entity and as beneficiary of the policy, an aid intensity rate of maximum 75% can be applied. However, the mere membership of a producer organization would not entitle its members to benefit individually from an aid intensity rate of 75%. If the stock insurance policy would be taken out by the individual members themselves as legal entity and direct beneficiary of the stock insurance policy, the rates referred to in the reply to question a) apply.

In accordance with Article 73(1) of Regulation (EU) 2021/1060 (Common Provisions Regulation), in selecting operations, the Managing Authority shall establish and apply criteria and procedures which are non-discriminatory and transparent. In addition, according to point (a) of Article 188 of Regulation (EU) 2018/1046 (Financial Regulation), grants shall be subject to the principle of equal treatment. Therefore, Member States are expected to select operations and establish grant allocation rules that ensure the respect of these principles. In particular, differentiation of aid intensity rates should not result in a different treatment for beneficiaries in a similar situation.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA656_EMFAF_TEMPORARY CESSATION

Relevant Article: Art. 33 EMFF and Art 21 EMFAF

Member State: Poland

Question 1 (including any relevant facts and information):

In accordance with Article 33(1)(d) of the Regulation (EU) of the European Parliament and of the Council No 508/2014 of 15 May 2014 on the European Maritime and Fisheries Fund and Fisheries Fund and repealing Council Regulations (EC) No. 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation of the European Parliament of the European Parliament and of the Council (EU) No 1255/2011 (hereinafter "the Regulation"),

The European Maritime and Fisheries Fund may contribute to the financing of measures for the temporary cessation of fishing activities where the temporary cessation fishing activities take place between 1 February and 31 December 2020 as a result of the COVID-19 outbreak, including for vessels operating under a sustainable fisheries partnership agreement.

Support under the action "Temporary cessation of fishing activities" shall be provided to the owner of a fishing vessel which is registered as active and which, in the last two calendar years preceding the date of application for support application for support has been engaged in fishing activities at sea for at least 120 days.

In 2020, in Poland, under the above measure, aid was paid out in connection with the COVID-19 outbreak. Some 70 fishing units in the Polish fleet did not meet the the 120 fishing days condition applicable to them in the two previous calendar years. This was due to factors beyond the control of the shipowners, including, among others: the ban on cod fishing, shipyard repairs, storms or fishermen's indisposition. indisposition of fishermen.

In view of the above, I ask whether it is possible to amend the Regulation by abolishing the condition of 120 fishing days in the previous two calendar years for the above-mentioned shipowners, which would enable them to apply for support under the measure "Temporary cessation of fishing activities".

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 2 (including any relevant facts and information):

In accordance with Article 21(1) and (2) of Regulation (EU) of the European Parliament and of the Council 2021/1139 of 7 July 2021 establishing a European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004 (hereinafter referred to as 2017/1004). and Aquaculture and amending Regulation (EU) 2017/1004 (hereinafter the "the Regulation"), in certain cases EMFAF may allocate support to compensate for temporary cessation of fishing activities.

However, in accordance with Article 21(5) of the Regulation, the above support under the measure "Temporary cessation of fishing activities" shall be granted, inter alia, to shipowners who have worked for at least 120 days during the two calendar years preceding the date of submission of the application for support, have worked at sea on board a Union fishing vessel concerned by the temporary cessation. In accordance with the Regulation, indicated reference to the number of days at sea does not, however, apply to eel fishing.

In view of the above, I would like to ask for an interpretation of Article 21 5 of the Regulation:

Where the owner of a fishing vessel has carried out fishing activity only for 120 days in the two calendar years preceding the date of submission of the the date of the application for support and during that period he caught, for example, on one fishing day, an eel, is that day not counted in the number of days determining eligibility for support and consequently 119 days are considered sufficient in his case to satisfy the condition relating to the number of fishing days?

However, does the reduction of the number of days to qualify for support by the days in which eels were caught, in the example above, has the effect of not meeting the condition of 120 fishing days in the previous two calendar years?

Hypothetically, where the owner of a fishing vessel has been fishing for eel only for 120 days, does this mean that no day would count towards his fulfilment of the condition of 120 fishing days in the two preceding calendar years under accordance with the aforementioned provision of Article 21(5) of Regulation 2021/1139?

Answer 1:

The Commission does not foresee any further amendment of the EMFF Regulation in connection to the mandatory 120 fishing days condition in order for beneficiaries to be eligible to receive temporary cessation support under Article 33 of the EMFF Regulation. This condition provides a sefaguard against the risk of supporting temporary cessation for inactive or dormant vessels.

Answer 2:

Article 21 of the EMFAF Regulation sets out rules governing the support for temporary cessation of fishing activities. Paragraph 5 of Article 21 states that "The reference to the number of days at sea in this paragraph shall not apply to eel fisheries." This derogation reflects the specific nature of eel fisheries. Such fisheries should be understood as fisheries specifically targeting eel. From the information provided, it is to be understood that the beneficiary incurred into a case of accidental capture of an

eel while out at sea targeting species other than eels. As a consequence, the beneficiary can still be considered as complying with the conditions of 120 days of fishing activities (targeting species other than eels) in order to be eligible for temporary cessation support. It is the responsibility of the Managing Authority to ensure compliance with this requirement by the beneficiary.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner and should not duplicate or crowd out private financing or distort competition in the internal market.

QA657_EMFAF_REPORTING - ANNEX I OF COMMISSION IMPLEMENTING REGULATION (EU) 2022/79

Relevant Article: Annex I of the EMFAF Regulation

Member State: Germany

Question (including any relevant facts and information):

Data according to Annex I, Table 1 of the Implementing Regulation 2022/79 (Infosys table)

Field 12: "Number of persons directly involved in the operation (excluding contractors and persons/employees not directly involved in the operation)".

What is meant here, which persons should be recorded here? Can this be explained by means of an example, e.g. for a construction project in the field of processing/marketing?"

Answer:

Regarding Infosys field 12, "Number of people directly involved in the operation".

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

As defined in the Infosys Implementing Regulation 2022/79, values for Infosys field 12 should include the total number of individuals directly involved in the operation. It should not include contractors or people/employees not directly participating in the operation. Thus, the values entered in field 12 should be the total number of employees of the business/entity that is receiving the funds, whose work activities will be directly affected by the operation.

For a construction project in the field of processing or marketing, i.e. the construction of a new aquaculture pond or the renovation of an existing pond, the number entered in field 12 should be the total number of employees active in processing at the facility where the construction project is taking place. It should not count the contractors and other individuals outside the company who worked on the construction/renovation of the ponds, nor the employees within the company whose work won't be affected by the construction of the new pond (e.g. employees dealing with sales, HR, marketing, etc.).

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner and should not duplicate or crowd out private financing or distort competition in the internal market.

QA00209 - AUDIT OF TRAVEL AND ACCOMMODATION COSTS REIMBURSED BASED ON A FLAT RATE

Relevant Article: Article 41(5) of the Interreg Regulation (EU) 2021/1059

Member State: n/a

Question 1 (including any relevant facts and information):

Original question from a MA: "Off the shelf" flat rate for travel and accommodation costs up to 15% of the direct costs of the operation (Article 41(5) of the Interreg Regulation) - to confirm the eligibility of expenditures it is sufficient for the authorized control body to verify whether:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- this category of costs was planned in the project budget, and if so, whether the flat rate does not exceed the planned budget and limits resulting from regulations and decisions made in the program,
- the expenses constituting the basis for calculating the flat rate were checked to verify that no ineligible expenses were included,
- the amount corresponding to the flat rate in the payment application has been mathematically correctly calculated."

In this context the following question arises: if the flat rate for travel and accommodation as defined in Article 41(5) of the Interreg regulation are adequately verified through the points above which are similar to the verification points followed for indirect costs.

For indirect costs, during an audit, the main risk lies with the verification of the basis to which the flat rate applies as it may happen that costs included in the basis are of indirect nature so the verification aims to address the possible risk of double funding, together with the correct calculation of the indirect costs are necessary. There is no specific verification to confirm that this category of costs exists for the beneficiary.

The risk for the off the shelf SCO related to travel and accommodation is linked **to non-occurrence of travelling or accommodation** despite them being planned in the budget of the project. We estimate this risk to be low given the nature of the projects, but there may be instances where meetings are held remotely and no travel to the meetings or related accommodation occurs.

Answer:

This answer was updated on 24 March 2025. The old reply is struck through, the new reply to the question is provided below.

~~***This answer was updated on 17 January 2024. The changes are struck through and the added text is in blue and underlined.***~~

~~By their nature, the Interreg projects aim at improving cooperation among Member States and their regions and, where relevant, partner countries and third countries. Therefore, travel and accommodation costs are often necessary in order to implement projects. If a project does not include any expenditure related to travel and accommodation, then this category of expenditures shall cannot be included in the budget and consequently the relevant flat rate cannot be used for that project. will not be reimbursed.~~

~~Management verifications and audits will be based on elements set out in Annex XIII CPR (in relation to simplified cost options, in particular its point 13). In relation to Article 41(5) of the Interreg Regulation, the following elements will be verified:~~

- ~~the categories of costs mentioned in Article 41(5) are envisaged in the grant agreement document setting out the conditions for support for the operation and are relevant for the respective type(s) of operation;~~

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- ~~progress reports contain details of (physical) meetings carried out held between the project partners or in the presence of project partners for project implementation;~~
- ~~there is no ineligible expenditure included in the "basis for the calculation";~~
- ~~there is no double declaration of the same cost item, i.e. the "basis for the calculation" or any other real costs do not include any cost item that normally falls under the flat rate;~~
- ~~the amount calculated by applying the flat rate is proportionally adjusted if the value of the basis cost(s) to which the flat rate is applied has been modified.~~

~~When using a flat rate, there is no need to justification (=verification) of the real costs of the categories of expenditure covered by the simplified cost options. as in the case of For support provided in the form of SCOs, eligible expenditure is determined purely on the basis of a predetermined rate, instead of by reference to real costs incurred by beneficiaries.~~

Interreg projects aim at improving cooperation among Member States and their regions and, where relevant, third countries. Therefore, travel and accommodation costs are often necessary in order to implement projects. If a project does not include any activities related to travel and accommodation, then this category of expenditures cannot be included in the budget and consequently the relevant flat rate cannot be used for that project.

Management verifications and audits will be based on elements set out in Annex XIII CPR (in relation to simplified cost options, in particular its point 13). In relation to Article 41(5) of the Interreg Regulation, the following elements will be verified:

- the categories of costs mentioned in Article 41(5) are envisaged in the document setting out the conditions for support for the operation.
- The cost categories covered by the flat rate are necessary for the implementation of the operation: this will be checked by the managing authorities at the selection stage, based on the activities needed for the implementation of the project, detailed in the application for funding and the document setting out the conditions for support.
- there is no ineligible expenditure included in the "basis for the calculation";
- there is no double declaration of the same type of expenditure, i.e. real costs do not include any cost item that is covered by the flat rate (travel and accommodation costs in this case);
- the amount calculated by applying the flat rate is proportionally adjusted if the value of the basis cost(s) to which the flat rate is applied has been modified.

When using a flat rate, there is no need verification of the real costs of the categories of expenditure covered by the simplified cost options. For support provided in the

form of SCOs, eligible expenditure is determined purely on the basis of a predetermined rate, instead of by reference to real costs incurred by beneficiaries.

Question 2 (including any relevant facts and information):

If the reply to the first question is that audits should check that the categories of costs existed, what should controllers/auditors get as sufficient evidence?

Answer:

This answer was updated on 24 March 2025. The old reply is struck through, the new reply to the question is provided below.

The audits do not have to check whether the categories of costs existed during the implementation of the operation.

~~***This answer was updated on 17 January 2024. The added text is in blue.***~~

~~Considering the reimbursement under an SCO scheme, management verifications and audits should limit themselves to get assurance that the category of costs exists. Therefore, the auditors may gather this information from either a mission order or report or a recording of a meeting or similar evidence.~~

~~With regard to reimbursement under an SCO scheme, management verifications and audits must limit themselves to obtaining assurance that the category of costs exists. Project reports submitted by project partners are sufficient evidence, where these refer to travel and accommodation taking place as part of the project's activities. Where there is no mention of the existence of travel and accommodation in the project reports, any similar evidence is to be considered sufficient evidence of the existence of these costs.~~

~~At the moment of a management verification or an audit, it is possible that no travel and accommodation may have occurred within a project. (There may only be a limited number of such activities within the project, or they may be concentrated at the end of the project, for example.) In such cases, their existence in the document setting out the conditions for support for the operation or in the application for funding can be checked at that time and the audit can be closed with a recommendation for the MA to ensure that it checks the existence of the category of costs at the end of the project.~~

~~A single item of travel and accommodation, during the entire lifetime of the project, is sufficient to consider that the existence of the category of costs has been proved.~~

Question 3 (including any relevant facts and information):

Is Article 41(4)[1] of the Interreg regulation only applicable in the case that reimbursement is made based on real costs or it should be also considered when the costs are to be reimbursed via the 15% flat rate mentioned in article 41(5)?

Answer:

Article 41(4) of the Interreg regulation applies only when costs are reimbursed based on real costs and not when reimbursement is done via the flat rate mentioned under Article 41(5) or any other SCO in relation to travel and accommodation.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

---

[1] "Direct payment of expenditure for cost elements listed in points (a) to (d) of paragraph 1 by an employee of the beneficiary shall be supported by a proof of reimbursement by the beneficiary to that employee."

QA658_EMFAF/STATE AID

Relevant Article: *Article 10 of the EMFAF Regulation*

Member State: FR

Question (including any relevant facts and information):

We are contacting you concerning article 10 of FEAMPA concerning the articulation between the FEAMPA regulations and the rules on State aid. In this sense, would it be possible for you to look at our attached framing note intended for the instructing services on this article to validate our interpretation? *[FR provided a 15 page note on State aid in the context of EMFAF]*

Moreover, after a first contact with them, several questions arise:

- can aid for the infrastructure of a fishing port come within the scope of Article 42 TFEU?

- within the framework of a scientific-economic operator partnership, can the national contribution be considered as State aid even if one of the partners is not a company exercising an economic activity?

Answer:

As regards your draft note, please note that, in principle, the relevant moment for the legal analysis is the moment when the State aid scheme is notified to the Commission. In this respect, the Commission assesses concrete aid measures, and it is not in a position to endorse or comment on general guidance documents.

Article 42 TFEU applies "*to **production of and trade in agricultural products only to** the extent determined by the European Parliament and the Council within the framework of Article 43(2) and in accordance with the procedure laid down therein, account being taken of the objectives set out in Article 39.*"

Therefore, support for any activity related to the production of or trade in agricultural (and fishery) products undertaken by fishers, aquaculture producers and processers of

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

fishery and aquaculture products does not require State aid approval when eligible under Article 12 of the EMFAF Regulation and included in the EMFAF programme.

It is for the Member State to satisfy itself on a case-by-case basis whether these conditions are fulfilled. Where this is not the case, the measure is subject to State aid control. In order to check the compatibility of a State aid measure with the internal market, Member States may verify whether the general *de minimis* regulation (i.e. 'Regulation (EU) No 1407/2013 [1]) or a block exemption regulation adopted pursuant to Article 108(4) TFEU (e.g. Regulation (EU) No 1388/2014 [2]) applies. If that is not the case, the measure must be notified to the Commission which, in principle, would assess it in light of the State aid Guidelines applicable to the fishery and aquaculture sector [3] .

[1] Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352, 24.12.2013, p. 1.

[2] Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union.

[3] Communication from the Commission — Guidelines for the examination of State aid to the fishery and aquaculture sector, (2015/C 217/01), as amended.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia, by addressing market failures or suboptimal investment situations in a proportionate manner and should not duplicate or crowd out private financing or distort competition in the internal market.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA659_EMFAF_INELIGIBLE OPERATIONS/INCREASE IN THE GROSS TONNAGE OF A FISHING VESSEL

Relevant Article: *Article 13 of the EMFAF Regulation*

Member State: FR

Please note that answer to question 1 on article 13 is superseded by IQ 779.

Question (including any relevant facts and information):

Article 13

The question relates to the interpretation of Article 13 point b) "the acquisition of equipment which increases the ability of a vessel to find fish". The origin of our question relates to the follow-up to an audit of the Court of Auditors of the EU, which took place in 2012. This audit had given rise to a recovery plan at the time to deviate from the right to help a certain number of investments on board (sounders, sonars in particular). The EFF text at the time prohibited equipment likely to increase the capture capacity of vessels. The EMFF, and then the EMFAF, no longer refer to the catch capacity but only to the capacity to find fish.

The increase in fishing capacity (defined precisely in the CFP) remains prohibited but the Commission in its communications has always made a clear distinction between capacity to catch fish and fishing capacity. Article 13 point a) refers to fishing capacity (measured by tonnage and power) and not to catching capacity which as such is no longer mentioned in the EMFAF. The regions wish to widen investment capacities as much as possible in equipment that improves safety but could be considered as improving the catching capacity, such as gear (net hauler, trap hauler, etc.), which were declared ineligible in 2012, but these investments do not improve the ability to find fish.

Thus, we would like to know whether certain equipment which will improve safety but which will objectively improve catching capacity (net hauler type) is still ineligible under the current framework.

Article 19

Regarding Article 19, could you provide us with the following clarifications:

1. Technical clarification on investments in "integrated bridge systems intended to improve navigation or engine control", clarification of the types of operation concerned.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

2. Is it possible to finance the creation of a bulbous bow? This is an increase in tonnage which increases the energy efficiency of the ship, the article only refers to "replacement or renovation of the bulbous bow".
3. Interpretation of an eligibility condition, capacity reassignment.

One of the eligibility conditions for this financing is "the entry into the fishing fleet of new fishing capacity as a result of the operation is compensated by the prior withdrawal, without public aid, of at least equivalent fishing capacity from the same fleet segment or an unbalanced segment".

This condition implies a specific procedure for the applicant which can be simplified as follows: ask the Regional Fleet Management Commission, prior to its application for financing, for the additional capacity necessary to increase its tonnage. The Commission, depending on its regional capacity reserve or any exits, will decide on the possibility of allocating additional capacity to the vessel requesting financing.

This procedure raises questions in particular on the conditions of use of the regional capacity reserve but also beyond the national one. Indeed, during an exchange within a meeting of the North Sea Advisory Council (NSAC) of July 11, 2022 on the decarbonization of fishing vessels, representatives of DG MARE, when questioned on the issue of the gauge lock to allow the modernization of ships and their energy efficiency, explained that the Member States already had resources to implement the modernization and in particular the capacity reserves.

Answer:

Article 13

Article 13(b) stipulates that the acquisition of equipment that increases the ability of a fishing vessel to find fish is ineligible. This refers to fish finding technologies and equipment, for example sonar or fish aggregating devices, other than those used for research purposes. Therefore, independently of whether the equipment in question increases the "catching capacity", if it increases the ability of the vessel to find fish, then it would be ineligible under Article 13(b).

Depending on the features of the equipment and independently of whether it increases the "catching capacity" of the vessel, it could also increase fishing capacity, e.g. because it increases its loading capacity, engine power, range capacity or skills of the crew. In this case, the equipment would be covered by Art. 13 (a) (increase of fishing capacity).

The CFP Regulation defines fishing capacity as a vessel's tonnage in GT (Gross Tonnage) and its power in kW. Depending on the features of the equipment, it might increase fishing capacity and as such would be ineligible under Article 13 (a), unless the conditions of Article 19 (1) are fulfilled. The conditions of Article 19 (1) are only fulfilled if the operation increases the gross tonnage parameter of fishing capacity, not the power parameter. The sole purpose of the increase must be the improvement of safety, working conditions or energy efficiency.

However, with the information available to the Commission regarding the equipment, it is not possible to clearly analyse if it would indeed lead to: increased ability of a fishing vessel to find fish (as set out in Article 13(b)); or to an increase in fishing capacity (as set out in Article 13(a)); or to the sole safety, energy efficiency or working conditions improvement purpose (as set out in Article 19(1)).

Article 19

1. Integrated bridge systems intended to improve navigation or engine control (Art. 19 (3) c)). The International Maritime Organization (IMO) defines an Integrated Bridge System as "a combination of systems that are interconnected to allow centralized access to sensor information or command/control from workstations, to 'increase the safety and efficiency of ship management'. Integrated bridge system (IBS) (imo.org)
2. Article 19 (3) e) does not allow support for the creation but only for the replacement or renovation of existing bulbs, even if the creation would have the effect of increasing the energy efficiency of the ship.
3. Article 19 (2) d) must be implemented according to a logic of segments and at the national level. This provision is based on the logic of the entry/exit regime of Article 23 of the CFP Regulation: any increase in the capacity of a vessel must be compensated by a corresponding reduction in another vessel of the same national fleet, in order to ensure that the overall capacity of the fleet does not increase.

However, this paragraph goes further than the entry/exit regime, since it provides that the withdrawal of capacity must come from the same segment of the fleet as the vessel benefiting from an increase, or from a segment of the fleet declared unbalanced in accordance with Article 22 of the CFP Regulation (in the entry/exit regime, it can come from any segment).

The withdrawal of fishing capacity must take place before the official registration in the Union fleet register indicating the additional gross tonnage of the vessel benefiting from the support.

Member States can use the unallocated fishing capacity they have in reserve from previous withdrawals (in accordance with the entry/exit regime). However, they must demonstrate that this reserve capacity has been taken from the same fleet segment as the supported vessel, or from an unbalanced fleet segment.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA661_EMFAF_IQ ON POINT 15, 14, 7 AND 4, ANNEX III, REGULATION NO 2021/1139

Relevant Article: Point 15, 14, 7 and 4, Annex III, Regulation no 2021/1139

Member State: Spain

Question 1 (including any relevant facts and information):

In Spain, some Intermediate Bodies are already planning the basis for future EMFAF calls. In this regard, the Spanish MA has doubts about the Production Plans.

At present, according to Annex III of EMFAF Regulation, the aid intensity of the Producers Organizations Production and Management Plans is established in line 15 (75 %) and, if it applies, line 14 (100 %).

However, Spain would like to know whether the aid intensity mentioned in line 7 (100 %) could be applied to these operations in respect of those actions within the OPEs' plans which relate exclusively to small-scale coastal fishing or whether they were Canary Islands' OPEs' plans, line 4 (85 %) by default would apply.

Answer:

In accordance with Article 41 paragraph 1 of the EMFAF Regulation, Member States shall apply a maximum aid intensity rate of 50 % of the total eligible expenditure of any operation. By way of derogation from paragraph 1, specific maximum aid intensity rates are set out in Annex III of the EMFAF Regulation.

Under point 15 of Annex III of the EMFAF Regulation, Member States are allowed to raise the aid intensity rate to maximum 75% in case of operations implemented by producer organizations, associations of producer organizations or interbranch organizations.

In addition, under point 7 of Annex III of the EMFAF Regulation the aid intensity rate can be raised to maximum 100% in case of operations related to small-scale coastal

fishing and under point 4 can be raised to maximum 85% in case of operations located in the outermost regions.

According to paragraph 3 of Article 41 of the EMFAF Regulation, where one operation falls under several of the rows 2 to 19 of Annex III, the highest maximum aid intensity rate shall apply.

Therefore, it can be concluded that operations implemented by producer organizations, associations of producer organizations or interbranch organizations can benefit of an aid intensity rate up to 85% or 100% in case they are located in the outermost regions or are related to small-scale coastal fishing respectively. In the case of operations implemented by producer organizations, associations of producer organizations or interbranch organizations located in the outermost regions and related to small-scale coastal fishing, the highest maximum aid intensity rate applies, hence 100%.

N.B

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner and should not duplicate or crowd out private financing or distort competition in the internal market.

QA662_EMFAF_ELIGIBILITY OF INVESTMENT ON VESSELS

Answer

Relevant Article: Article 13 EMFAF

Member State: Denmark

Questions:

Question 1: In Article 13.1(l), do the "60 days in the two calendar years…" mean that the fishing vessel must have carried out fishing activities for 60 days in total for the two calendar years or for 60 days in each of the two calendar years? In the Danish translation of the EMFAF, it specifically mentions 60 days a year in the two calendar

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

years, while the English version and other translations do not specify this. It seems there is a discrepancy in the Danish version of the Regulation.

Question 2: The PO's have highlighted that some fishers might be unable to fulfil the 60-days condition due to Covid-19 and issues relating to Baltic Sea, especially in 2020. We plan to open the aid scheme this year, which is why the two calendar years would be 2020 and 2021. Would it be possible to use other years for reference, for example exclude 2020 or include 2022?

Question 3: If a new vessel has been bought in 2020 or 2021 and is not able to achieve the 60-days condition, will it then be excluded for support under EMFAF, or will it be possible to use another reference period for such vessels?

Question 4: For the coastal fishers using passive fishing gear, the day at sea is often shorter, and the fishers therefore has lesser days at sea compared to fishers using active fishing gear. Likewise, fishers using trap nets usually use several vessels to tend to their trap nets, and they might not be able to meet the minimum requirement of 60 days at sea. Would it be possible to make an exception for this type of fishery using passive gear?

Answers:

Answer 1: Pending a corrigendum of the translation errors in the DK version of the EMFAF Regulation, we would advise you to refer to the EN version published in the EU Official Journal. According to it, the total number of days of fishing activities must be at least 60 days over the two-year period (in total), irrespective of how those days are spread over this period.

Answer 2: According to article 13(l) of the EMFAF Regulation, the reference period shall be the two calendar years preceding the submission of the application. If an application is submitted in 2022, then this means the years 2020 and 2021.

Answer 3: The same considerations to question 2 apply, notably, it must be the two calendar years preceding the submission of the application. If an application is submitted in 2022, then this means the years 2020 and 2021. No exception can be made to new vessels or second-hand vessels being bought in 2020 or 2021. (The EMFAF regulation ties the 60-day requirement to the vessel, not the owner, and does not specify fishing location).

Answer 4 : The 60 day requirement refers to the days the vessel was at sea, irrespective of the kind of gear carried on board

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner and should not duplicate or crowd out private financing or distort competition in the internal market.

QA665_EMFAF_STATE AID / EMFAF

Relevant Article: Art 10 EMFAF Regulation

Member State: France

Question 1 (including any relevant facts and information):

We are of the opinion that the definition of the fisheries sector including the activities of "processing and marketing", which include "all the operations in the chain of handling, processing, production and distribution occurring between the time of the capture or landing and the stage of the product.", - wholesalers (wholesalers who do not handle the product), - fishing ports - providing port services upstream and downstream from the marketing of fish (even if they never own the fish), - fish markets - involved in selling and handling the product (even if they never own the fish) are part of the industry (the "secteur").

However, your first answer only mentions "fishers, aquaculture and processing".

On the other hand, there is also the question of the inclusion in the fishing sector of professional and inter-professional organizations, not owners of the products, which represent the companies of the various links in the sector. We consider them part of the industry, just like every individual company in that industry.

These are in particular: - producer organizations and associations of producer organizations recognized under the common market organization 1379/2013, - interprofessional organizations recognized or not under Regulation 1379/2013, - representative organizations of fishermen recognized by national legislation (fishing committees, whose members are fishermen and other actors in the sector), - professional associations and trade unions for fishing, fish trading, aquaculture, processing, etc.

Could you please confirm that our analysis is correct, and your first answer is not exclusive? We enclose in the same way a note produced by the regions on this subject.

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

As indicated in our previous reply, support for any activity that is related to the production of or trade in agricultural (and fishery) products undertaken by fishers, aquaculture producers and processing of fishery and aquaculture products does not require State aid approval when eligible under Article 12 of the EMFAF Regulation and included in the EMFAF program.

This definition covers the cases mentioned in your question above. So, we confirm your analysis.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA670_EMFAF_ARTICLE 28, REGULATION NO 2021/1139

Relevant Article: Article 28 of the EMFAF Regulation

Member State: SPAIN

Question (including any relevant facts and information):

Article 28 of Regulation (EU) 2021/1139 expressly states: "To achieve the specific objective referred to in point (b) of Article 26(1) of this Regulation as regards the processing of fishery and aquaculture products, support to enterprises other than SMEs shall only be granted through the financial instruments provided for in Article 58 of Regulation (EU) 2021/1060 or through InvestEU, in accordance with Article 10 of Regulation (EU) 2021/523".

In this regard, it refers specifically to "as regards the processing of fishery and aquaculture products", i.e. support for large processing companies to improve their production lines or to include new lines of products should go through financial instruments. However, there is an important need in processing companies to carry

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

out actions aimed at energy efficiency, such as solar panels, appropriate insulation, etc., and all of these actions do not seem to us to be directly related to the processing of fishery products.

Therefore, we wanted to confirm with DG MARE if energy efficiency investments in the area of large companies can be supported by grants in addition to financial instruments under the EMFAF.

Now, there is an important need for all sectors to reduce energy consumption and energy costs, so it would be important for our interpretation to be correct and make it possible to subsidize this type of action to all companies regardless of their size.

Answer:

As set out in Article 28 of the EMFAF Regulation, support to enterprises other than SMEs shall only be granted through financial instruments, as provided for in Article 58 of Regulation (EU) 2021/1060, or through InvestEU, in accordance with Article 10 of Regulation (EU) 2021/523, and not through grants.

The requirement for non-SMEs to use financial instruments therefore extends not just to direct processing activities, but also to any necessary investments that allow the processing to take place. This would include the aforementioned energy efficient investments. All investments should contribute to the achievement of the specific objective referred to in point (b) of Article 26(1), i.e. '*promoting marketing, quality and added value of fishery and aquaculture products, as well as processing of those products*'.

It is worth noting that one of the windows of InvestEU is dedicated to sustainable infrastructure, and in particular renewable energy, energy efficiency and building renovation projects focused on energy savings and the integration of buildings into a connected energy source, storage, digital and transport system, improving energy infrastructure interconnection levels.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA677_EMFAF_INVESTMENTS ON BOARD FISHING VESSELS

Relevant Article: Article 13(point l) of Regulation (EU) 2021/1139

Member State: HR

Question (including any relevant facts and information):

We would appreciate clarification on the application of Article 13 point l) of Regulation 2021/1139 that states:

The following operations or expenditure shall not be eligible for support from the EMFAF:

l) Investments on board fishing vessels that have carried out fishing activities for less than 60 days in the two calendar years preceding the year of submission of the application for support.

As you are familiar, we have envisaged support for the purchase of fishing rights for certain types of fisheries under derogative regime (buy-off scheme). As defined in our Programme, this support is foreseen as a compensation for fishermen for their fishing rights with the intention to phase out the respective fisheries under derogative regime. Also, as you know, this scheme is rather specific and it is related to specific types of fisheries that are subject to restrictions in the context of fishing activity.

Therefore, in our understanding, provision of Article 13 point l) should not be applied in this case/this type of action taking into account that operations to be supported are not investments on board fishing vessels. However, to be on the safe side, we would appreciate if you could confirm our understanding on the applicability of Art. 13 point l) for this type of action.

Answer:

In accordance with Article 13, point l of Regulation (EU) 2021/1139, support for purchase of fishing rights is not an investment on board fishing vessels, therefore operators do not need to prove that they have carried out fishing activities for less than 60 days in the two calendar years preceding the year of submission of the application for support.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA679_EMFAF_PROGRESS STATUS OF OPERATIONS IN INFOSYS

Relevant Article: Commission implementing regulation (EU) 2022/79; *Article 46 of EMFAF Regulation*

Member State: FI

Question (including any relevant facts and information):

In the commission implementing regulation (EU) 2022/79; annex II; table 6, are listed the different states of progress. Number 3 of the states has raised some questions. A proposal as an interpretation would be:

Final payment granted but total costs end up being lower than expected or some costs are rejected during payment applications. Is this what is meant by state 3?

("03. Operation fully implemented (but for which all expenses have not necessarily been paid to the beneficiary")

Answer:

CIR (EU) 2022/79 lays down rules for recording of operation-level implementation data (Infosys). In field 16 MAs have to report state of progress of operation. There are five options possible (Table 6 of Annex II of CIR (EU) 2022/79).

Code 03 stands for "Operation fully implemented (but for which all expenses have not necessarily been paid to the beneficiary). Experience with EFF and EMFF showed that in some cases there are significant time lags between the physical completion of an operation and the final payment to the beneficiary. This challenge was addressed by introducing code 03. Code 03 allows to count as implemented also an operation which is physically completed, but all support has not yet been paid due to, for example, administrative procedures. The code 03 together with code 04 (operation completed) allows for a more precise:

- Aggregated Infosys EMFAF implementation data
- reporting value of output indicator "Implemented operations" in Table 5 of Annex VII of CPR – both operations with Infosys code 03 and 04 shall be counted.

The choice of state of progress of operation is not linked to relation between total payments to the beneficiary and approved grant amount (committed funds). In other words, the purpose of code 03 is not to distinguish operations where total payment is

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

less than commitment (in your example, either because of lower than expected or some rejected costs).

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA680_EMFAF_EMFAF/STATE AID

Relevant Article: Article 10 of the EMFAF Regulation

Member State: FI

Question (including any relevant facts and information):

According to Article 10, paragraph 2 in the EMFAF regulation, state aid rules do not apply to payments of EMFAF national operational programmes if they fall within the scope of Article 42 TFEU. We have interpreted this so that products that are listed in Annex 1 (list referred to in Article 38 of the treaty on the functioning of the European Union) are exempted from the state aid rules.

Annex 1 recognizes the following aquatic products:

- Chapter 1: Live animals

- Chapter 3: Fish, crustaceans and molluscs

- 05.15: Animal products not elsewhere specified or included. Dead animals of chapter 1 or chapter 3 unfit for human consumption

- 15.04: Fats and oil of fish and marine mammals, whether or not refined

- Chapter 16: Preparations of meat, of fish, of crustaceans or molluscs

- Chapter 23: Residues and waste from the food industries; prepared animal fodder

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Annex 1 doesn't recognize algae directly. We, however, interpret that macro algae falls under chapter 6 ("Chapter 6: Live trees and other plants, bulbs, roots and the like; cut flowers and ornamental foliage") and can be supported from EMFAF. Or, should Member States follow the state aid rules if they would like to support farming of algae from EMFAF operational programmes?

In addition, an interpretation is needed regarding high-value products. One of the objectives in the Finnish EMFAF programme is to increase the degree of processing of fish and side streams. At the moment, pilot studies demonstrate that it may be possible and viable to utilize side streams from the fish processing industry and also underutilized or low-value fish and produce high value products (such as gelatin, minerals, enzymes, dietary supplements, medicinal products). These kinds of products are not listed in Annex 1. If state aid rules should be applied, should we follow fisheries state aid rules or general state aid rules regarding the processing of high-value products?

Answer:

Article 10, paragraph 2 interpretation is correct. Article 10(2) EMFAF states that State aid rules do not apply to payments made by Member States pursuant to the EMFAF Regulation and falling within the scope of Article 42 TFEU.

However, when aid is granted outside of the EMFAF Regulation (i.e. just national funding), State aid rules always apply. Consequently, aid concerning the products listed in Annex I TFEU are not exempted from the State aid rules if granted outside of the EMFAF Regulation.

On the other hand, State aid rules always apply to aid granted within or outside of the EMFAF Regulation, when the aid falls outside the scope of Article 42 TFEU.

As concerns algae, the FI interpretation is not correct. Algae do not fall under Chapter 6 but under Chapter 12 of the Brussels Nomenclatura as referred to in Annex I to the TFEU. Custom code tariff number (e.g., TARIC code) comes from Council Regulation (EEC) No 2658/87 of 23 July 1987, which established a nomenclature, known as the 'Combined Nomenclature', based on the International Convention on the Harmonised Commodity Description and Coding System, known as 'the Harmonised System' or abbreviated to the 'HS'. Algae have the code 1212 21 00 which is in the heading 1212, e.g., under the chapter 12 "oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruits; industrial or medicinal plants; straw and fodder" therefore are treated legally as "plants".

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

If Member States intend to support farming of algae within the EMFAF, State aid rules do not apply. If MS intend to support farming of algae outside of the EMFAF, the aid falls within the scope of Article 42 TFEU and the Fisheries State aid rules apply. The fishery CMO Regulation includes algae as part of the fishery and aquaculture products (Annex I of Regulation 1379/2013 which refers to CN code 1212 20 00 Seaweeds and other algae).

Regarding the question on classification of products such as gelatin, minerals, enzymes, dietary supplements, medicinal products, as the description is very general, it is difficult to assess where the products would be classified. Without detailed information on specific product we cannot provide a definite reply.

Nevertheless, we can inform you that:

- Gelatin is mostly classified in CN code 3503 00 10 (gelatin (including gelatin in rectangular (including square) sheets, whether or not surface-worked or coloured) and gelatin derivatives) or under CN code 9602 00 00 (worked, unhardened gelatin (except gelatin of heading 3503).
- Minerals are generally covered by Chapter 25 or Chapter 28.
- Enzymes are usually classified under heading 3507.
- Dietary supplements are to be classified in accordance with composition and production processes and may thus be classified, for example, under Chapters 12, 15, 16, 21 or 22. Regarding, for example, supplements based on fish oil capsules, they will most often be classified in either heading 2106 or 3004, depending on composition, dosage and the way they are put up.
- Medicinal products may be classifiable in Chapter 21, 22, 30 or 33 depending on composition, processing, the way they are put up when applicable, etc.

In general, it could therefore be concluded that product categories 1-3 are outside the scope of Annex I to the TFEU. However, as stated above, detailed information on specific products are required to provide a definite reply and the reply above is just a guidance.

Regarding product categories 4-5, classification under the Combined Nomenclature can only be assessed on a case-by-case basis taking into consideration all characteristics of a specific product (e.g., fish oil capsules with information on composition and the way they are put up).

N.B.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA687_EMFAF_COLLECTIVE BENEFICIARIES – AQUACULTURE ENTREPRENEURS

Relevant Article: Annex III EMFAF

Member State: DE

Questions (including any relevant facts and information):

1. Is a cooperative of aquaculture entrepreneurs a 'collective beneficiary' within the meaning of Annex III to the EMFAF Regulation?
2. Can a "share company", or company limited by shares, or joint-stock company (limited by share ownership) (die Aktiengesellschaft-AG) also be a 'collective beneficiary' within the meaning of Annex III to the EMFAF Regulation?
3. Is the cooperative or public limited company still a 'collective beneficiary' within the meaning of Annex III to the EMFAF Regulation even if one or more members or shareholders cease to be self-employed as aquaculture entrepreneurs?
4. Is the cooperative or public limited company still a 'collective beneficiary' within the meaning of Annex III to the EMFAF Regulation even if one or more members or shareholders do not cease their self-employed activity as aquaculture entrepreneurs?

Answers:

1. The term 'collective beneficiary', as used in Annex III of the EMFAF Regulation (hereafter "Annex III EMFAF"), should be understood as referring to an organisation recognised by the responsible authority as representing the interest of its members, of a group of stakeholders, or of the public at large. It is the responsibility of the Member States authorities to verify that a

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

cooperative of aquaculture entrepeneurs as referred to in the domestic legislation is in line with the above-mentioned definition in respect of Annex III EMFAF. The beneficiary is always the collective organisation itself and not its members.

2. The EMFAF Regulation does not specify the legal form of collective beneficiary. It is the responsibility of the Member State authorities to verify that the possible collective beneficiary is in compliance with the definition given under answer 1. Also, Member State authorities shall ensure that collective actions are not used to unduly take advantage of the more favourable provisions for collective beneficiaries.
3. The collective beneficiary as referred to in Annex III EMFAF is always the collective organisation itself and not its members. Therefore the members of the cooperative are not direct beneficiaries of the support. It is up to the body representing the collective beneficiary to decide about how to deal with the changed status of one or more of its members. However, if all but one of its members are no longer aquaculture entrepreneurs, the collective beneficiary would no longer meet the definition in respect of Annex III EMFAF, and could thus no longer benefit from the preferential conditions for collective beneficiaries.
4. The beneficiary is always the collective organisation itself and not its members, therefore members of the cooperative are not beneficiaries of the support. Their activities outside the cooperative should not have any influence on the cooperative they belong to. However, such external activities should not conflict with the collective interest of the cooperative they belong to.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA688_EMFAF_STATE AID

Relevant Article: Article 13 of the EMFAF Regulation

Member State: BE

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question (including any relevant facts and information):

Among the operations or expenditure identified as ineligible for support from the EMFAF, Article 13 of Regulation (EU) 2021/1139 is '(g) the transfer of ownership of an undertaking;' (in English: "(g) the transfer of ownership of a business;").

Since Article 13 concerns transactions OR expenditure, it must first be determined whether ineligibility relates

(a) To expenditure directly incurred as a result of a transfer of ownership of an undertaking, such as notarial fees and registration fees,

or

(b) To the business transfer transaction, and consequently of all expenses incurred in this context (the expenditure concerned may then also relate to aspects indirectly related to the transfer of ownership, such as various expert appraisals necessary for the purchaser).

We assume that the ineligibility relates to operation (b). We would be grateful if you could confirm this for us.

It is then necessary to identify the concrete cases which should be assimilated (or not) to a "transfer of ownership of a business". As this type of operation (ineligible) is neither defined nor explained in the regulations, we consider that this ineligibility relates to the transfer ownership of a trademark, or a company name, or its goodwill, or shares in a company.

On the other hand, we consider that Article 13 (g) does not render the transfer of ownership of a company's assets ineligible. Transfer of ownership of land or buildings (property), equipment, materials or movable property, could be eligible even if such elements belonged to a company.

The validity of our understanding of Article 13(g) is further supported by Article 17 § 7 of Regulation (EU) 2021/1139, which specifies that the purchase of a fishing vessel is not to be regarded as a transfer of ownership of an undertaking within the meaning of Article 13 (g).

We would be grateful if you could confirm that this interpretation of Article 13 (g) is correct. If your answer requires further clarifications or explanations, we would be grateful if you would send them to us in French.

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 13(g) of the EMFAF Regulation refers not only to transactions but also to all expenditure related to the transfer of ownership of an undertaking. This therefore also includes all expenses indirectly related to the transfer of ownership, such as various appraisals required by the purchaser. We hereby confirm that ineligibility applies to all costs related to the transfer of ownership described in point (b).

Article 13(g) of the EMFAF Regulation refers to ownership of a legal entity, not a ship or asset. The transfer of ownership of land or buildings (immovable property), equipment or movable property could be eligible even if these elements belonged to a company. It is a transfer of ownership of an asset, not a business (i.e. a legal entity).

If the operation includes the purchase of land, expenditure would only be eligible for support from the EMFAF for an amount not exceeding 10 % of the total eligible expenditure of the operation concerned, in accordance with point (b) of Article 64(1) of Regulation (EU) 2021/1060, only if the managing authority is able to demonstrate that it does not correspond to a transfer of ownership of an aquaculture undertaking, since support for such a transfer is excluded by Article 13(g) of the EMFAF.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA689_EMFAF_ELIGIBILITY OF INSTALLATION OF SOLAR PANELS IN AQUACULTURE PLANTS

Relevant Article: Article 26 of the EMFAF Regulation

Member State: HR

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question (including any relevant facts and information):

We have a question related to the financing of investments in renewable energy sources under the EMFAF, more precisely investments in renewable energy sources (solar plants) on aquaculture farms.

Namely, Article 12 of Regulation 2021/1139 stipulates that Member States may select for support the operations which fall under the scope of the priorities and specific objectives set out in Article 8(2), are not ineligible pursuant to Article 13 and are in accordance with applicable Union law.

Article 26(1)(a) defines that support shall cover interventions that contribute to the achievement of the objectives of the CFP as set out in Article 2 of Regulation (EU) No 1380/2013, through promoting sustainable aquaculture activities, especially strengthening the competitiveness of aquaculture production, while ensuring that the activities are environmentally sustainable in the long term.

According to our understanding, within the type of action intended for productive investments in aquaculture, investments in renewable energy sources on aquaculture farms can be eligible, if they contribute to the specific objective set in Article 26(1)(a) of Regulation 2021/1139 and if such investments do not lead to the issue of aquaculture itself, that is, if the production of aquaculture organisms and the basic purpose of the aquaculture farm are not endangered. If our understanding is correct, this would mean that renewable energy sources can be financed under the EMFAF, but for the needs of aquaculture, while investing in energy production that exceeds the needs of the farm does not comply with Article 12(1)(a) of Regulation 2021 /1139. For example, if investment is related to solar panels and the associated plant, and the planned energy production is greater than the production required for aquaculture (greater than necessary for aquaculture production and the operation of the farm which is planned to be supplied with the energy produced), the beneficiary can obtain support under the EMFAF for a proportional share of the amount of total eligible expenditure of the investment, which corresponds to the share of energy consumption on the farm in relation to the total energy produced in the plant that is the subject of the investment. In other words, our understanding is that it is possible to finance the part of the investment that falls under the scope of the special objective from Article 26(1)(a), while the part of the investment that would produce energy for other purposes and not for aquaculture, is not subject to support under the EMFAF.

We kindly ask for clarification on whether our understanding is correct, i.e. information on the eligibility of financing the investment from the example described above.

Answer:

In accordance with Article 26(1)(a) of the EMFAF Regulation, the EMFAF may support interventions aiming at promoting sustainable aquaculture activities, especially

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

strengthening the competitiveness of aquaculture production, while ensuring that the activities are environmentally sustainable in the long term.

We would like to remind you that, pursuant to Article 63(1) of the CPR Regulation, the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the CPR or in the Fund-specific Regulations.

In general, the financing of installation of solar panels may be considered eligible as long as it contributes to the scope and objectives set out in Article 26(1)(a) of the EMFAF Regulation, the Croatian EMFAF programme and the national strategic plan for aquaculture.

Nevertheless, national authorities should pay attention that the energy produced with the help of the newly installed solar panels does not lead to excess production which is sold to the grid or used for other purposes than the aquaculture activities.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA691_EMFAF_ENERGY EFFICIENCY

Relevant Article: Article 12,14,18 of the EMFAF Regulation

Member State: CY

Question 1 (including any relevant facts and information):

Questions regarding the eligibility of investments related to the promotion of energy efficiency, mitigation of climate change and reducing carbon emissions under the EMFAF Programme.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

As in the period 2014-2020 (EMFF) CY will implement a scheme for investment on fishing vessels including actions for investments in the improvement of the propulsion system of the vessel that will be financed through the EMFAF Programme. For the sake of clarity and assurance that the actions will be eligible CY has included in the new period 2021-2027 scheme the costs eligible under article 14 of Commission Delegated Regulation (EU) 2015/531 used during the period 2014-2020.

Article 14

Eligible costs related to the improvement of the propulsion system of the vessel

For operations that are aimed at improving the propulsion system of the vessel in accordance with Article 41(1)(a) of Regulation (EU) No 508/2014, costs related to the purchase and, if necessary, the installation of the following items are eligible for support:

(a) energy efficient propellers including drive shafts;

(b) catalysers;

(c) energy efficient generators such as those using hydrogen, or natural gas;

(d) renewable energy propulsion elements such as sails, kites, windmills, turbines, or solar panels;

(e) bow thrusters;

(f) conversion of engines to run on biofuels;

(g) econometers, fuel management systems and monitoring systems;

(h) investments in nozzles that improve the propulsion system.

Regarding point d) "(d) renewable energy propulsion elements such as sails, kites, windmills, turbines, or solar panels", we have been asked by a potential beneficiary regarding the eligibility of electric propellers and motors used when possible for propulsion instead of the diesel engine of the vessel. Relevant prospectus can be found in the links below.

<u>Question 1</u>. As to the renewable energy electric motors we want to know if such a case can be considered as being eligible without conflicting with the engine replacement provisions of the EMFAF regulation? N.B. This action is vessel modernization to improve energy efficiency and not to be confused with article 18-engine replacement of EMFAF.

Electric motors with renewable energy sources and batteries

https://iliofos.gr/en/hybrid-propulsion-marine

https://iliofos.gr/en/hybrid-modules/htm700

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 2. **As to the electric propellers with renewable resources we want to know if such a case can be considered as being eligible without conflicting with the engine replacement provisions of the EMFAF regulation. In this case it seems that these propellers could be considered as similar equipment to bow thrusters which under EMFF regulation they are eligible? N.B. This action is vessel modernization to improve energy efficiency and not to be confused with article 18-engine replacement of EMFAF**

Electric propellers with renewable energy resources and batteries

https://iliofos.gr/en/hybrid-modules/htm700

https://www.youtube.com/watch?v=Ir-8uKPJtn4

Answer 1:

For the EMFAF, the EMFAF Regulation does not specify the specific types of investments contributing to the energy efficiency of fishing However, Article 18 of the EMFAF Regulation defines clearly the eligibility conditions of replacement or modernisation of a main or ancillary engine.

For the EMFF , the specific type of investments contributing to the energy efficiency of fishing vessels were specifically defined under EMFF Article 41.1(a) "to improve the energy efficiency of fishing vessels, the EMFF may support investments in equipment or on board aimed at reducing the emission of pollutants of greenhouse gases and increasing the energy efficiency of fishing vessels […]". Article 14 of the Delegated Regulation (EU) 2015/531 further elaborated on the costs eligible in accordance with EMFF Article 41.1.(a). In this respect the "costs related to the purchase and, if necessary, the installation of the following items are eligible for support: d) renewable energy propulsion elements such as sails, kites, windmills, turbines, or solar panels."

In the same manner the specific type of investments contributing to the energy efficiency of fishing vessels as set out under the EMFF Regulation, may be considered eligible also under EMFAF Regulation with the following requirements:

The investments should not lead to an increase in the power of the engine as the scope of the investment is the increase in efficiency of the fishing vessels.

The investments should aim to reduce the engine's consumption.

The investments do not involve a replacement or modernization of the engine as set out under Article 18 of the EMFAF Regulation.

The EMFAF Programme has described under types of actions in Specific Objective 1.1 actions to contribute to the energy efficiency of fishing vessels not related to replacement of main or ancillary engine (which are governed by EMFAF Article 18 and set under the Specific Objective 1.2).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Investments on electric motors with renewable energy sources and batteries fall under replacement of main or ancillary engine and thus are governed by the provisions of EMFAF Article 18.

Answer 2:

As said under question 1, the EMFAF Regulation does not specify the specific types of investments contributing to the energy efficiency of fishing vessels including the legal form of investments related to electric propellers with renewable resources. However, Article 18 of the EMFAF Regulation defines the eligibility conditions of replacement or modernisation of a main or ancillary engine.

For the EMFF , the specific type of investments contributing to the energy efficiency of fishing vessels were specifically defined under EMFF Article 41.1(a) "to improve the energy efficiency of fishing vessels, the EMFF may support investments in equipment or on board aimed at reducing the emission of pollutants of greenhouse gases and increasing the energy efficiency of fishing vessels […]". Article 14 of the Delegated Regulation (EU) 2015/531 further elaborates on the costs eligible in accordance with Article 41.1.(a). In this respect the "costs related to the purchase and, if necessary, the installation of the following items are eligible for support: e) bow thrusters."

In line with the above, the electric propellers with renewable resources may be considered similar to bow thrusters hence may be eligible under Article 41.1(a) of the EMFF Regulation. However, they should not lead to an increase in the power of the engine as the scope of the investment is the increase in efficiency of the fishing vessels. Consequently, the investment should aim to reduce the engine's consumption.

In the same manner the specific type of investments related to electric propellers with renewable resources contributing to the energy efficiency of fishing vessels as set out under the EMFF Regulation, may be considered eligible also under EMFAF Regulation with the following requirements:

The investments should not lead to an increase in the power of the engine as the scope of the investment is the increase in efficiency of the fishing vessels.

The investment should aim to reduce the engine's consumption.

The EMFAF Programme has described under types of actions in Specific Objective 1.1 actions to contribute to the energy efficiency of fishing vessels not related to replacement of main or ancillary engine

The investments do not involve a replacement or modernization of the engine as set out under Article 18 of the EMFAF Regulation.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA693_EMFAF_INTERPRETATION OF ARTICLE 11

Relevant Article: Article 11 of the EMFAF

Member State: ES

Question (including any relevant facts and information):

Question from Spain on interpretation of Article 11 of the EMFAF.

Specifically, the question relates to shipowners who are owners of several vessels and concerns the interpretation of the wording of Article 8. 2. (a) of Regulation (EC) No 2022/2181 for the EMFAF, which is the same as the wording of Article 6.2 (a) of Regulation (EC) No 2015/288 for the EMFF.

In both cases it is stated as follows:

Article 6.2 (a) of Regulation (EC) No 2015/288

2. However, applications for EMFF support by that operator shall also be inadmissible:

(a) if applications in respect of more than half of the fishing vessels owned or controlled by that operator are inadmissible for support from the EMFF pursuant to Article 3 and Article 4; or

Article 8. 2. (a) Regulation 2022/2181

2. In addition, applications for support submitted by that operator shall also be inadmissible:

(a) **if applications** in respect of more than half of the fishing vessels owned or controlled by that operator are inadmissible for support under Article 3 or Article 4; or

Spain raised a question concerning Art.8.2(a) above during the Commission consultation on draft Regulation 2022/2181; the COM reply was shared with

EMFF/EMFAF MS experts (see annex). According to it, we understood that the criteria for accepting or rejecting an application for aid from a shipowner with several vessels, when he applies for aid for one of his vessels with which he did not commit an infringement, is that more than half of his vessels should not be subject to a serious infringement or that he does not have a number of serious infringements higher than the number of vessels he owns, irrespective of whether he made an application for all or only one for the vessels for which he has no infringements.

Cf. Commission reply received in October 2017

If an operator owns 2 vessels, and only 1 vessel is with infringements, the second can receive aid (50 % is not more than half), except if the average number of points per fishing vessel equals or exceeds seven points (for instance if the only vessel with points has more than 14 points)

In accordance with this and with the replies given to our enquiries during the period 2014-2020, our interpretation is that if a shipowner applies for aid for 1 of his 2 vessels for which he does not have any serious infringements, but the owner was previously sanctioned for another vessel that he has sold in the meantime, the shipowner would still have 1 serious infringement that is not transferred with the sale, even if he has no serious infringements in relation to his current 2 vessels.

Therefore, could the shipowner receive aid for both his current vessels (since he doesn't have infringements for more than half of his vessels), regardless of whether he submits 1 or 2 applications under the corresponding public call?

As a summary: the question is whether the criteria for granting the aid are linked to the situation of the shipowner with regard to the number of serious infringements and the number of vessels owned rather than to the number of applications for aid submitted by the shipowner.

Answer:

To ensure a fair treatment of operators who become new owners, the inadmissibility remains with the initial owner despite the sale or other type of transfer of ownership of a vessel with serious infringements, thus it is not transferred to the new vessel owner (see Article 9(1) of Commission Delegated Regulation 2022/2181). However, the points previously assigned to the operator holding the fishing license will be transferred to the new holder of the fishing license – the new owner - (see Article 92(2) of Regulation 1224/2009).

In accordance with Article 8 of the Commission Delegated Regulation 2022/2181, if an operator owns more than one fishing vessel, the inadmissibility period of an application for support submitted by that operator shall be determined separately for

each individual fishing vessel. However, Article 8(2) of such Regulation lays down that the operator shall also be inadmissible in the following situations:

1. **if applications in relation to more than half of the fishing vessels** owned or controlled by that operator **are inadmissible** for support pursuant to Article 3 or Article 4, or
2. where infringement points have been assigned for serious infringements pursuant to Article 42(1)(a) of Regulation (EC) No 1005/2008 or Article 90(1)(a) and (c) of Regulation (EC) No 1224/2009, **if the average number of infringement points assigned per fishing vessel owned or controlled by that operator equals or exceeds 7 points**.

This means that, for example:

If an operator owns 2 vessels and only 1 vessel is affected by the inadmissibility period, the operator could receive aid for the vessel that is not affected by the inadmissibility period (1/2 is not more than half, see Article 8(2)(a) of the Commission Delegated Regulation), as long as the average number of points per fishing vessel does not equal nor exceed seven points (for instance if the only vessel with points has less than 14 points ; or if between the two of them they do not exceed the 7 points average, for instance one has 7 points and another one 6).

If the operator owns 2 vessels in respect of which he/she is not affected by the inadmissibility period, but the operator was affected by an inadmissibility period on another vessel which he/she has sold in the meantime, the operator has to equally comply with the rule of 50% mentioned above taking into account also the vessel that was previously owned as long as the inadmissibility period concerning that vessel remains present.

In such case, both vessels would be admissible for support in respect of the 50% rule mentioned above (only 1/3 vessels are affected by inadmissibility period) as long as the average number of points per fishing vessel which is currently owned does not equal or exceed seven points.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA696_EMFAF_MAXIMUM AID INTENSITY FOR INLAND FISHING VESSELS

Relevant Article: *Article 2 of EMFAF Regulation*

Member State: RO

Question (including any relevant facts and information):

Please help us in clarifying the following provisions of the Regulation (EU) No 1139/2021:

1. According to Article 2(2) point (14), for the purpose of the EMFAF Regulation, "'*small-scale coastal fishing' means fishing activities carried out by: marine and inland fishing vessels of an overall length of less than 12 metres and not using towed gear as defined in point (1) of Article 2 of Council Regulation (EC) No 1967/2006(28); or fishers on foot, including shellfish gatherers;*"
2. According to point (6) of the same Article and paragraph, "*'inland fishing' means fishing activities carried out for commercial purposes in inland waters by vessels or other devices, including those used for ice fishing*".

The conclusion of these two definitions is that, for the purpose of the EMFAF Regulation, one of the types of small-scale coastal fishing is inland fishing carried out for commercial purposes in inland waters by vessels under 12 metres in length and not using towed gear as defined in point (1) of Article 2 of Council Regulation (EC) No 1967/2006(28).

3. According to row 7 of Annex III of the EMFAF regulation, "*Operations related to small-scale coastal fishing*" can have a maximum aid intensity rate of 100%.

Considering the definitions for the purpose of the EMFAF Regulation mentioned above, since one of the types of small-scale coastal fishing consists of inland fishing carried out for commercial purposes in inland waters by vessels under 12 metres in length and not using towed gear as defined in point (1) of Article 2 of Council Regulation (EC) No 1967/2006(28), the conclusion should be that the maximum aid intensity rate that is set for operations related to small-scale coastal fishing also can be

applied to operations related to inland fishing carried out for commercial purposes in inland waters by vessels under 12 metres in length and not using towed gear as defined in point (1) of Article 2 of Council Regulation (EC) No 1967/2006(28).

In other words, operations related to inland waters commercial fishing vessels, under 12 metres and without said towing gear, can benefit of a maximum aid intensity rate of 100%.

Please let us know whether this interpretation of the EMFAF provisions is correct or, if not, why this interpretation is wrong.

Answer:

For the purpose of the EMFAF, inland fishing vessels of an overall length of less than 12 metres and not using towed gears are considered small-scale coastal fishing vessels, thus are eligible to the 100% aid intensity reserved to operations related to small-scale coastal fishing pursuant to row 7 of annex III of the EMFAF Regulation.

According to Article 2(2) point (6) of the EMFAF Regulation, "'*inland fishing' means fishing activities carried out for commercial purposes in inland waters by vessels or other devices, including those used for ice fishing*".

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA_ESF+_001 - DEFINITION OF SOCIAL ENTERPRISE

Relevant Article: Article 2 ESF+

Member State:

Question 1 (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Does the definition in the ESF+ Regulation on social enterprise prevail over the national for support under ESF+ shared management?

Answer:

The terminology on 'social enterprise' was already defined and well established under the former EaSI Programme 2014-2020 by Regulation (EU) No 1296/2013 and now this terminology is further fine-tuned in the ESF+ Regulation under Article 2(1)(15). The definition applies to both strands of the ESF+ Programme, however, in practice, this definition is more relevant for the direct and indirect management strand as within the shared management strand this this term is only used in the context of Article 14 ("social innovative actions"). As stated in Recital 29 of the ESF+ Regulation, the definition of a 'social economy enterprise' should be in line with the definitions provided in national law and the Council Conclusions of 7 December 2015 on the promotion of the social economy as a key driver of economic and social development in Europe. Recital 36 further clarifies, that 'social economy enterprises', where they are defined under national law, should be regarded as social enterprises within the context of the EaSI strand, regardless of their legal status, insofar as those enterprises fall within the definition of a 'social enterprise' provided for in the ESF+ Regulation.

QA_ESF+_002 - RELATION BETWEEN SPECIFIC OBJECTIVES (H) AND (L)

Relevant Article: Article 4

Member State:

Question 1 (including any relevant facts and information):

What is the relation or difference between specific objectives (h) and (l)?

Answer:

SO h) requires a link to the labour market while this is not the case for SO l) so social activation measures can be programmed under SO h). SO l) should be focused on social integration measures, which are not linked to the labour market. This SO is based on the scope of support provided by the FEAD in 2014-2020 under OP II and can also be used for measures for supporting the social integration of the most deprived, but it is not limited to this target group. Therefore, Member States have flexibility on how to programme measures to promote social integration of people at risk of or in

poverty. It is possible to provide support to social integration measures under SO (l) which are independent from the support provided under (m). In addition, it is also possible to use SO (l) to complement the support to the most deprived under SO (m). The support to accompanying measures for the most deprived is compulsory but they can be supported either under SO m) or under SO l) (as social integration measures). SO h) should be used in the case social activation is part of an integration pathway to the labour market for persons at risk of poverty and social exclusion.

QA_ESF+_003 - TEMPORARY MEASURES FOR THE USE OF THE ESF+ TO RESPOND TO UNUSUAL AND EXCEPTIONAL CIRCUMSTANCES

Relevant Article: Article 4(3)

Member State:

Question 1 (including any relevant facts and information):

How does the temporary measures for the use of the ESF+ to respond to unusual and exceptional circumstances work in practice?

Answer:

To learn the lessons from the current crisis, it is imperative that the legal framework for the ESF+ provides for mechanisms that can be quickly invoked should exceptional circumstances arise in the next decade. It is linked to article 20 CPR.

Therefore, the ESF+ has an empowerment for the COM to take temporary measures for the use of the ESF+ in response to exceptional and unusual circumstances for certain MS to ensure that under limited and specific circumstances derogations to certain rules may be provided to facilitate response to such circumstances.

These include the possibility to extend the scope of support for the ESF+, in particular to allow for financing of short-time work schemes, which are not combined with active measures, and access to healthcare, including for people not in immediate socio-economic vulnerability. This has a time limit of 18 months.

The provision also states that if deemed necessary, the COM can propose amendments to the Regulation. This can include amendments to the thematic concentration

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

requirements except those related to youth and support to the most deprived, as these groups are often most affected by such crises and as a result a set amount of resources should be always be earmarked for these groups.

QA_ESF+_004 - SPECIFIC OBJECTIVES TO PROGRAMME SUPPORT FOR LABOUR MIGRANTS/MEMBERS OF MARGINALIZED COMMUNITIES

Relevant Article: Article 4

Member State:

Question 1 (including any relevant facts and information):

Which specific objectives should be used to programme support for labour migrants/ members of marginalized communities?

Answer:

Specific objective (h) aims to foster active inclusion for disadvantaged groups in general, whereas specific objectives (i) and (j) provide a targeted support to ensure that ESF+ interventions reach third country nationals including migrants (i) and marginalised communities including Roma people (j), that otherwise, may not benefit from mainstream support.

Nevertheless support to these targets groups, can be provided under other specific objectives provided they are eligible under the national legislation. Output indicators "third-country nationals", "participants with a foreign background" and "minorities (including marginalised communities, such as Roma people)" should be used.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA_ESF+_005 - LINK BETWEEN THE EU4HEATH PROGRAMME AND THE ESF+

Relevant Article: Article 7

Member State: Spain

Question 1 (including any relevant facts and information):

What is the link between the EU4Heath Programme and the ESF+?

Answer:

The EU4Health Programme will complement Member States' health policies in order to improve human health throughout the Union. It will notably contribute to addressing the needs and challenges identified in the COVID-19 crisis. It will thus aim to boost EU's preparedness for major cross-border health threats, strengthen health systems so that they can face epidemics as well as long-term challenges against communicable and non-communicable diseases and strive to make medicines and medical devices more available and affordable. ESF+ should ensure synergies and complementarities with the EU4Health Programme through actions aiming to facilitate access to healthcare for people in vulnerable situations.

QA_ESF+_006 - 3% FOR SUPPORT TO THE MOST DEPRIVED IN ADDITION TO THE 25% FOR SOCIAL INCLUSION

Relevant Article: Article 7

Member State: N/A

Question 1 (including any relevant facts and information):

Why is the the 3% for support to the most deprived in addition to the 25% for social inclusion?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The 25% + 3% was the most important point for the European Parliament, and due to the current crisis, the thematic concentration of 25% for social inclusion and 3% for the support to the most deprived is indeed fully justified and necessary. Recent studies show that the short and medium-term impacts of COVID-19 will be particularly severe for the most disadvantaged and risk compounding existing socio-economic divides. MS need to support the most vulnerable people by a broad and coordinated policy response that includes strengthened social protection, education, health care, and specific interventions to enhance personal security of women and children, as well as actions supporting vulnerable workers left behind.

In addition, the 90% co-financing rate for support to the most deprived also provides an incentive for Member States as it reduces their burden with regard to the national contribution for measures supporting the most deprived. Thus fulfilling these two requirements will be achievable for all Member States. Unlike in the current programming period, the co-financing rate is fixed, which means MS cannot chose a lower or a higher co-financing rate.

QA_ESF+_007 - APPROPRIATE AMOUNT FOR CHILD POVERTY AND YOUTH EMPLOYMENT

Relevant Article: Article 7

Member State: N/A

Question 1 (including any relevant facts and information):

How will an appropriate amount be determined for child poverty and youth employment

Answer:

The new requirement for all other Member States to programme "an appropriate amount" for addressing child poverty and supporting youth employment is similar to what we have for the programming of addressing the challenges identified in the European Semester.

The Commission will assess whether an amount is appropriate depending on each

Member State's particular national situation, thereby adhering to the principle of "one size does not fit all".

This assessment will be carried out on the basis of the challenges identified in the CSRs, Annex Ds and European Semester, as well as relevant data from Eurostat etc. The exact amount will be negotiated bilaterally between the Commission and the Member State concerned.

QA_ESF+_008 - CAN 0 BE AN APPROPRIATE AMOUNT?

Relevant Article: Article 7

Member State: N/A

Question 1 (including any relevant facts and information):

Can 0 be an appropriate amount?

Answer:

The Commission will assess this requirement on a case by case basis, and taking into account the particular national situation, as well as CSRs and Eurostat data etc. It is possible that on the basis of this assessment, the Commission concludes that 0 is an appropriate amount. This is the case where the Member State is performing well in an area and is already taking appropriate measures with their national budget to address the challenges.

QA_ESF+_009 - 2017-2019 AVERAGE BENCHMARK FOR CHILD POVERTY AND YOUTH EMPLOYMENT

Relevant Article: Article 7

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State: N/A

Question 1 (including any relevant facts and information):

Why the 2017-2019 average benchmark for child poverty and youth employment?

Answer:

The COM supports the benchmark of an average for 2017-19. This provides a solid base to identify those MS who have a consistent, systematic and clearly justifiable need to programme more support to these key policy concerns.

QA_ESF+_010 - APPLICABILITY OF THE THEMATIC CONCENTRATION OF 5% TO COMBAT CHILD POVERTY?

Relevant Article: Article 7

Member State: N/A

Question 1 (including any relevant facts and information):

Do regions have to comply with the thematic concentration of 5% of funding to combat child poverty?

Answer:

The thematic concentration is calculated against the national allocation of ESF+ resources under the shared management strand.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA_ESF+_012 - MECHANISM TO ANTICIPATE THE NEEDS OF SKILLS ON THE LABOUR MARKET

Relevant Article: Articles 7 and 11

Member State: N/A

Question 1 (including any relevant facts and information):

Can actions envisaged under the priority dedicated to youth employment cover the functioning of a mechanism to anticipate the needs of skills on the labour market, as a "structural reform" aiming to facilitate the youth employment and professional training?

Answer:

As in the 2014-2020 period, the ESF+ can support structural reforms aiming to support youth employment. This investment will count towards the 12.5% minimum thematic concentration requirements for youth employment as long as it is programmed under one of the three ESF+ specific objectives listed in Art 11 ESF+ Reg: (a), (e) and (l). There are no limitations with regard to applicable specific objectives if the Member State needs to allocate an appropriate amount to youth (Art 7(6) first subparagraph ESF+). An operation for anticipating skills needs could contribute to the youth thematic concentration requirement as long as the Member State can demonstrate a direct link to supporting youth employment. A general ESF+ operation for anticipating skills needs, however, would fall rather under specific objectives (b) or (g) and will therefore be broader than a youth employment operation. In this case, it may contribute to meeting the thematic concentration requirement only partially and only in the Member States which will allocate an appropriate amount.

QA_ESF+_013 - HOW TO TRACK THEMATIC CONCENTRATION REQUIREMENTS IF THERE IS NO DEDICATED PRIORITY?

Relevant Article: Article 7

Member State: N/A

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

How will thematic concentration requirements be tracked in case there is no dedicated priority?

Answer:

Firstly it is important to highlight that the level of the thematic concentration is different between the ESF+ and ERDF: for the ERDF it is at policy objective level, whereas for the ESF+ it is at specific objective level as we only have 1 policy objective that we support (i.e. PO 4). That is why we can follow thematic concentration via SOs.

For this reason, MS will indicate at the beginning of the programming in the Partnership Agreement how they intend to comply with thematic concentration requirements for ESF+ in its operational programmes.

For the social inclusion thematic concentration the reason we do not oblige Member States to programme social inclusion in a dedicated priority or programme is because it covers 4 different specific objectives, and is a very broad thematic topic therefore it makes more sense for this to be monitored on the basis of specific objectives. We would then count the financial allocations programmed under these SOs together to reach the thematic concentration of 25%.

In addition, for child poverty and addressing challenges identified in the European Semester, we have ESF+ secondary themes, given that these measures maybe be programmed under specific objectives and priorities which may cover other measures beyond this thematic concentration requirement. These secondary themes are to capture data on ESF+ expenditure contributing to cross cutting objectives, which could be linked to multiple specific objectives e.g. climate change and social innovation. We have added 2 new ESF+ secondary themes: tackling child poverty and addressing CSRs. We can use the ESF+ secondary theme to track expenditure on these areas as it is a broad topic, however, the amounts under secondary themes are only indicative, which means that Member States may not necessarily respect them when implementing the programmes.

ESF+ thematic concentration can be verified through the intervention codes (table 1 of annex 1). For each priority, MS have to categorise financial programming using one of the codes between 110 and 127. Each code mirrors exactly one part of the specific objective. Indicating the financing programming in these codes is indicative, however, in order to determine if MS are complying with thematic concentration they have to include the complete financial information on the relevant codes, so the Commission can assess if they are complying with thematic concentration or not at the level of the programme.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

However, as allocations to types of intervention are only indicative, it is important to carefully monitor the implementation of the programme by member States to ensure that thematic concentration requirements are respected also when implementing the programme.

QA_ESF+_014 - HOW WILL THEMATIC CONCENTRATION REQUIREMENTS WORK IN PRACTICE AND HOW DO THEY INTERLINK?

Relevant Article: Articles 7, 10, 11 and 12

Member State: N/A

Question 1 (including any relevant facts and information):

Answer:

Social Inclusion & Support to the most deprived

- **Social inclusion** is set at 25% and can be programmed under specific objectives (h) to (l)

- **Support to the most deprived** is set at 3% and can be programmed under specific objective (m) except in duly justified cases where it can also be under specific objective (l). This is in addition to the 25% for social inclusion.

Child Poverty

- The **5% for support to tackling child poverty will be part of the 25% for social inclusion** when programmed under specific objectives (h) – (l) **except** when the MS is using (l) to meet the 3% for support to the most deprived.

- In this case, the % allocated to (l) for support to the most deprived children should be in addition to the 25% for social inclusion.

- In practice, it will be easy to identify this % as MS need to programme the support to the most deprived in a dedicated priority axis.

- In addition, any % for child poverty contributing to specific objective (f) will not be counted towards the 25% social inclusion.

Youth employment

- The 12.5% for youth employment must be programmed under specific objective (a) and can in addition, also be programmed under specific objectives (f) and (l).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- Support to youth employment must be programmed under a dedicated priority.
- As the support to the most deprived and youth employment are to be programmed under dedicated priorities, then MS cannot programme actions under specific objective (l) to count to both youth employment and support to the most deprived.
- It would also not be possible to have an overlap between actions programmed under specific objective (l) to count towards both child poverty and youth employment (again due to the use of the dedicated priority for youth).
- **NB** when MS are obliged to programme 'an appropriate amount' for support to youth employment – the obligation to programme under a dedicated priority or programme, and under SO (a), (f) and (l) does not apply.

QA_ESF+_015 - IS SPECIFIC OBJECTIVE (I) OBLIGATORY ?

Relevant Article: Article 4

Member State: N/A

Question 1 (including any relevant facts and information):

Is specific objective (i) "promoting socio-economic integration of third-country nationals, including migrants" of ESF+ is obligatory for inclusion in the programmes financed under ESF+?

Answer:

It is not compulsory to programme ESF+ support under specific objective (SO) (). This mention aims merely to highlight the fact that support provided under this SO counts towards the 25% social inclusion thematic concentration requirement. Support to third-country nationals can be programmed under other SOs. Member States with challenges identified for this target group are expected to programme support, either under this SO or other SOs.

QA_ESF+_016 - ARTICLE 8 RESPECT FOR THE CHARTER

Relevant Article: Article 8

Member State: N/A

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

What does Article 8 on the Charter mean in practice?

Answer:

In its report, the European Parliament had proposed that if ESF+ operations do not comply with the European Charter of Fundamental Rights, the expenditure of the operation would be deemed ineligible. The Commission and the Council both argued that the proposal would create a disproportionate administrative burden, and would diverge too far from the Common Provisions Regulation (CPR).

The co-legislators agreed to introduce a new article on the link between the Charter of Fundamental Rights of the European Union and the ESF+. It is important to note that this article only reinforces already existing CPR obligations, and does not create any new obligations for ESF+ operations.
This article includes cross references to the relevant provisions in the Common Provisions Regulation in order to enhance the visibility of the Charter.
It emphasizes that all operations should be selected and implemented in respect of the Charter.

It also includes a cross reference to article 63(6) of the CPR on complaints, and refers to the fact that infringements of the Charter should be taken into account when determining corrective measures in line with the CPR.

These obligations already exist in the CPR however the EP were very determined to include this in order to enhance the visibility of the Charter, which is of course of crucial importance and applicable law.

QA_ESF+_017 - 0.25% FOR CAPACITY BUILDING FOR SOCIAL PARTNERS AND CIVIL SOCIETY ORGANISATIONS

Relevant Article: Article 9

Member State: N/A

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

What can be covered under the 0.25% for capacity building for social partners and civil society organisations?

Answer:

It is first important to note that Article 9(2) on capacity building is not just restricted to the capacity of stakeholders to implement the funds. It is wider than this, and is about capacity building for all stakeholders delivering education, lifelong learning, training and employment and social policies, including through sectoral and territorial pacts to mobilise for reform at the national, regional and local levels. It already exists in the 2014-2020 ESF Regulation under TO 11, and as is stated in the text is very wide ranging and can include actions such as in the form of training, networking measures, and strengthening of the social dialogue, and to activities jointly undertaken by the social partners and organisations of civil society, such as NGO's.

QA_ESF+_018 - PROGRAMMING OF THE CAPACITY BUILDING OF SOCIAL PARTNERS AND CIVIL SOCIETY ORGANIZATIONS

Relevant Article: Article 9

Member State: N/A

Question 1 (including any relevant facts and information):

Is it possible to support general capacity of social partners and civil society organizations, which is not directly linked with any specific ESF+ objective?

Answer:

Only activities related to the capacity of social partners and CSOs in the thematic areas of employment, education and social inclusion and which fall within the areas covered by the ESF+ specific objectives can be supported.

Therefore these measures have to contribute to one of the specific objectives of the ESF+. For instance, the measure aimed at increasing the level of membership in organisations for entrepreneurs and employers, could be programmed under SO (d)

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

promoting the adaptation of workers, enterprises and entrepreneurs to change, active and healthy ageing and a healthy and well-adapted working environment that addresses health risks; in case it contributes to this specific objective.

QA_ESF+_019 - HOW TO IMPLEMENT "AN APPROPRIATE AMOUNT OF ESF + RESOURCES UNDER SHARED MANAGEMENT IN EACH PROGRAMME TO CAPACITY BUILDING OF THE SOCIAL PARTNERS AND CIVIL SOCIETY ORGANISATIONS"?

Relevant Article: Article 9

Member State: N/A

Question 1 (including any relevant facts and information):

How should we implement Article 9 (2) ESF + "an appropriate amount of ESF + resources under shared management in each programme to capacity building of the social partners and civil society organisations"?

Answer:

The Commission will assess whether an amount is appropriate depending on each Member State's particular national situation, thereby adhering to the principle of "one size does not fit all". This assessment will be carried out on the basis of the challenges identified in the CSRs, Annex Ds and European Semester, as well as relevant data from Eurostat etc. The exact amount will be negotiated bilaterally between the Commission and the Member State concerned. It is possible that on the basis of this assessment, the Commission concludes that 0 is an appropriate amount. This is the case where the Member State is performing well in an area and is already taking appropriate measures with their national budget to address the challenges.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA_ESF+_020 - 90% CO-FINANCING RATE

Relevant Article: Articles 4 and 10

Member State: N/A

Question 1 (including any relevant facts and information):

Can the co-financing rate for the ex-FEAD be higher or lower than 90%?

Answer:

The co-financing rate for the priority or programme under specific objectives set out in art. 4(1), points (l) and (m) is a fixed 90% and thus it is not possible for MS to use a lower (or higher) co-financing rate. Member States can add further resources and mention this in the OP, but this remains outside the scope of the ESF+ in terms of audit, monitoring and evaluation.

QA_ESF+_021 - HOW TO PROGRAMME THE 3% FOR SUPPORT TO THE MOST DEPRIVED UNDER BOTH SPECIFIC OBJECTIVES (L) AND (M)?

Relevant Article: Articles 10 and 22

Member State: N/A

Question 1 (including any relevant facts and information):

How to programme the 3% for support to the most deprived if you wish to use both specific objectives (l) and (m)?

Answer:

In case MS wish to provide support to the most deprived under both specific objectives (l) and (m) in order to meet the 3% minimum requirement, this support should be programmed under two separate dedicated priorities.

The reason for this is because SO (l) and (m) are subject to different rules on programming, as article 22 ESF+ provides for specific rules for priorities providing

support to specific objective (m). it is up to the MS to decide on the most appropriate programme arrangements and on whether to programme these measures at national or regional level. Therefore, it is possible indeed for a MS to programme specific objective (m) at national level and (l) at regional level.

QA_ESF+_022 - PROGRAMMING ACTIONS FOR NEETS

Relevant Article: Article 7 and 11

Member State: N/A

Question 1 (including any relevant facts and information):

Can we foresee a dedicated priority for young people (NEETS) while programming actions for NEETs in other priorities?

Answer:

Yes, you can. You can programme measures for young people in other priorities, besides the priority dedicated to youth. The investment to youth under other priorities can also be tracked by using the intervention field 134 Specific support for youth employment and socio-economic integration of young people in case those measures are specifically for youth.

QA_ESF+_023 - CLLD & SOCIAL INNOVATION

Relevant Article: Article 14

Member State: N/A

Question 1 (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Is implementation through CLLD and/or the ITI (which are bottom-up approaches based on partnerships on different local/regional levels) as "support actions of social innovation and social experimentation"?

If a priority in a programme is to be implemented using CLLD and/or ITI approaches, can we consider that social innovation is supported through the interventions under this priority and that the requirement of Art 14 (4) "Member States shall dedicate at least one priority to the implementation of paragraph 1 or 2, or both." is fulfilled?

Answer:

The answer is yes provided that the logic intervention underlying these initiatives demonstrates their socially innovative elements. More precisely:
- The requirement is that "Member States shall support actions of social innovation and social experimentation"
- The continuation of the text does not present an alternative to this requirement. It provides examples of what is included in the ways of implementing this.

QA_ESF+_024 - DEDICATED PRIORITY SOCIAL INNOVATION

Relevant Article: Article 14

Member State: N/A

Question 1 (including any relevant facts and information):

Is it mandatory to programme a separate priority for social innovations and social experimentations?

Answer:

Yes, it is compulsory to dedicate at least one priority to social innovation. Under such a dedicated priority/priorities the ESF+ co-financing can be increased up to 95%. However, the use of such increased co-financing is capped to max 5 % of the national ESF+ resources.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA_ESF+_025 - IN-KIND CONTRIBUTIONS

Relevant Article: Article 16

Member State: ES

Question 1 (including any relevant facts and information):

Is it possible to make in-kind contributions to participants in an operation either through salaries, allowances or cash cards?

Answer:

This provision already existed in 2014-2020 programming period (and before). It is set out in Article 13(5) of Regulation (EU) 1304/2013. This provision does not establish that passive measures are eligible or not for support. It is a provision which sets out specific rules on eligibility of costs with regard to contributions in kind, in addition to the cases set out in Article 67 CPR. This provision allows certain contributions in kind paid by third parties in benefit of participants to be eligible for support under the ESF+ i.e allowances or salaries for participants paid by third parties. This is possible provided that these contributions are made in accordance with national law and the eligible costs declared is not higher than the costs borne by the third party. To conclude, this provision determines that contributions in kind may be considered as eligible costs in an operation. These costs would have to be linked to the participation in an action which contributes to one of the specific objectives set out in Article 4(1) ESF+.

QA_ESF+_026 - ARE THE CONDITIONS SET OUT IN ARTICLE 16(1) FOR THE ELIGIBILITY OF COSTS FOR THE PURCHASE OF CERTAIN GOODS ALTERNATIVE OR CUMULATIVE?

Relevant Article: Article 16

Member State: N/A

Question 1 (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Are the conditions set out in Article 16(1) for the eligibility of costs for the purchase of certain goods alternative or cumulative?

Answer:

Yes, these conditions are alternative and not cumulative. therefore, if the purchase is the most economic option there is no need for the other two conditions to be met.

As an example of full depreciation, would be a training for the unemployed which would last 5 years and the beneficiary decides to purchase computers for the training. In addition, in accordance with accountancy rules in that MS, the value of a computer is considered to be fully depreciated after 5 years. In this case, the equipment is considered to be fully depreciated during the operation. This is just an indicative example as the time for depreciation is set out by national rules.

QA_ESF+_027 - RESPECTING THE DIGNITY AND PREVENTING STIGMATIZATION OF THE MOST DEPRIVED PERSONS

Relevant Article: Article 19

Member State: ES

Question 1 (including any relevant facts and information):

What does respecting the dignity and preventing stigmatization of the most deprived persons mean in practice?

Answer:

Art. 19(3) precisely requests that the provision of aid should respect the dignity and prevents stigmatisation of the most deprived persons. This should be intended both in relation to the selection of such aid and to the modalities of such aid.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA_ESF+_028 - FINANCING OF ACCOMPANYING MEASURES

Relevant Article: Article 21

Member State: N/A

Question 1 (including any relevant facts and information):

Is it necessary that compulsory accompanying measures should be financed by the ESF+?

Answer:

Article 17(4) ESF+ requires that accompanying measures, besides being compulsory, should be supported under the ESF+ - either under specific objective (m) or (l) as social integration measures. This is a change compared to the rules applicable in 2014-2020, where accompanying measures are compulsory but there is no obligation for Member States to support them under the FEAD.

Although this means that Member States have the obligation to use the ESF+ to support them, Member States still have flexibility to support them either under specific objective (m) or (l). In case Member states decide to support them under (l) they should ensure the most deprived are both targeted under (l) and (m).

QA_ESF+_29 - CAN THE VOUCHERS BE EXCHANGED FOR PAYMENT OF RENT OR HOUSEHOLD BILLS?

Relevant Article: Article 22

Member State: ES

Question 1 (including any relevant facts and information):

Can the vouchers to be exchanged for food or basic material assistance, include the payment of rent or household bills?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

No, basic material assistance is defined in article 2 as "goods which fulfil the basic needs of a person for a life with dignity, such as clothing, hygiene goods, including feminine hygiene products and school material". Rent and utilities are services and they go beyond the typology of basic consumer goods of limited values as presented in the list of examples.

QA_ESF+_029 - CAN THE VOUCHERS BE EXCHANGED FOR PAYMENT OF RENT OR HOUSEHOLD BILLS?

Relevant Article: Article 22

Member State: ES

Question 1 (including any relevant facts and information):

Can the vouchers to be exchanged for food or basic material assistance, include the payment of rent or household bills?

Answer:

No, basic material assistance is defined in article 2 as "goods which fulfil the basic needs of a person for a life with dignity, such as clothing, hygiene goods, including feminine hygiene products and school material". Rent and utilities are services and they go beyond the typology of basic consumer goods of limited values as presented in the list of examples.

QA_ESF+_030_CAN THE STRUCTURED SURVEY BE IMPLEMENTED EXTERNALLY THROUGH TECHNICAL ASSISTANCE?

Relevant Article: Article 23

Member State: ES

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

Can the structured survey be implemented externally through technical assistance?

Answer:

Yes, MS may use technical assistance to carry out the survey to end recipients.

QA_ESF+_031 - YOUTH INDICATORS

Relevant Article: Annexes I and II

Member State: N/A

Question 1 (including any relevant facts and information):

Taking into consideration the "Common output indicators related to operations targeting people: - number of children below 18 years of age*, - number of young people aged 18-29 years*, of the ESF+ Regulation (Annexes I and II), please clarify how to approach the output indicators at the level of the priority dedicated to youth employment, having in mind that under this priority the target group (including NEETs) covers the young people 15-29 years old.

Answer:

Indicators will be reported at the level of the specific objective, broken down by category of region (and gender for indicators on participants).

If the support will reach out to young people between 15-29 years, part of them will be reported to common output indicator EECO06 'children below 18 years of age' and the remaining part to common output indicator EECO07 'participants aged 18-29 years'.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA_ESF+_033 - 7% FLAT RATE ELIGIBILITY FOR THE PARTNERS INVOLVED IN THE DISTRIBUTION OF E-VOUCHERS

Relevant Article: ESF +, Art. 22

Member State: n/a

Question 1 (including any relevant facts and information):

Can the partners involved in the distribution of e-vouchers be paid applying the 7% flat rate under Article 22(1)(c)?

Answer:

In case the MS used partners for distributing vouchers and they are a beneficiary of an operation the corresponding expenditure for the administrative transport, storage and preparation costs for the distribution of food through voucher schemes, may be declared on the basis of the 7% flat rate set out in point c) of Article 22(1) ESF+ regulation. It should be noted, however, that operations can only have one beneficiary. Therefore, if there is only one single operation for the distribution of vouchers, only the ESF authority would be considered beneficiary of this operation, for the purposes of the CPR. Accordingly, the 7% would be used for reimbursing the costs incurred by this beneficiary (irrespective of the partners involved in the distribution, all costs would be considered to be incurred by a single beneficiary). It is up to the Member State (and beneficiary) to decide on how to reimburse partners involved in the distribution (e.g the MS/beneficiary may decide to further re-distribute the 7% reimbursement to the partners, but this re-distribution falls outside the scope of the ESF+ regulation).

QA_ESF +_032 - ELIGIBILITY OF THE BENEFICIARY STAFF COSTS UNDER THE PROGRAMME FOR ADDRESSING MATERIAL DEPRIVATION

Relevant Article: ESF +, Art. 22

Member State: n/a

Question 1 (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Can the ESF agency staff costs fulfilling the role of the beneficiary be paid from the Programme for addressing material deprivation for operations consisting of distribution of electronic vouchers? Is it possible to declare these costs under point (c) of Article 22(1) ESF+ Regulation, even though there is no related expenditure with transport, storage and preparation of the food / basic material assistance for the distribution that normally constitute the bulk of expenditure listed under this article?

Answer:

Our understanding is that the ESF+ Agency, which is also the Managing Authority, would also act as a beneficiary to implement (at least) one type of operations. This is indeed possible provided that the Managing Authority ensures due separation of tasks with regard to "management of the programme" and "implementation of this operation".

On the basis of the assumption above, if we understand well the question, Lithuania would like to know whether it would be possible to declare, as eligible expenditure, staff costs with regard to the distribution of electronic vouchers. The reply is yes.

Art.22(1) of Regulation (EU) 2021/1057 (ESF+ Regulation) sets out rules on eligibility of expenditure for operations supported under specific objective set out in point (m) of Article 4 ESF+ Regulation. In accordance with point (c), the administrative, transport, storage and preparation costs borne by the beneficiaries involved in the distribution of the food and/or basic material assistance to the most deprived persons are eligible for support at a flat-rate of 7 % of the costs referred to in point (a). This provision also applies to the case where the distribution of food or basic material assistance is made indirectly through vouchers, as set out in the second subparagraph of Article 19(2) ESF+ Regulation. It should be noted that for the MA to be able to declare expenditure on the basis of point (c) it is sufficient that it incurs expenditure with one of this category of costs, for instance, staff costs, which would fall within the category of administrative costs.

In addition, it should be also noted that the MA may also declare costs with the **preparation of voucher schemes and corresponding operating costs** under technical assistance, provided these costs were not declared under point (c), otherwise this would constitute double funding.

QA00280 - BENEFICIARY VISIBILITY RESPONSIBILITIES IN CASE OF TA OPERATIONS OF STRATEGIC IMPORTANCE

Relevant Article: Article 50(1)(e) of the CPR

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State: CZ

Question 1 (including any relevant facts and information):

Article 50 Responsibilities of beneficiaries 1 (e) says *'…and operations the total cost of which exceeds EUR 10 000 000, organising a communication event or activity, as appropriate, and involving the Commission and the responsible managing authority in a timely manner.'*

In 2021-2027 programming period many of MAs use simplified cost options (eg. lump sum payment) for a project covering salaries and supplies for employees. It is frequently one big project over EUR 10 000 000.

The purpose of the CPR is not to highlight this type of projects in this way and with the presence of EC representatives, so may such type of technical assistance projects be exempt from the responsibilities of beneficiaries according to Article 50 1 (e)?

Answer:

Article 50(1)(e) CPR does not provide for any exemptions from the obligations contained therein. Therefore, in types of projects described in the question beneficiaries must organise a communication event or activity and involve the Commission and the responsible managing authority. The event or the activities may however for example focus on presenting on what the civil servants do with the objective to raise transparency and present to the public how programmes are defined, how projects are selected, what is done for fraud prevention, what is financed with the rest of the programme etc. An example for such activity could be an 'Open Day' of the relevant beneficiary in the framework of Europe Day celebrations.

QA00281 - EMFAF ELIGIBILITY PERIOD

Relevant Article: Art. 63 and 105 CPR

Member State: LV

Question 1 (including any relevant facts and information):

We would like to know whether N+2 or N+3 applies for the EMFAF eligibility period.

Based on Article 63 of Regulation (EU) 2021/1060 (the Common Provisions Regulation) for the expenditure incurred between 1 January 2021 and 31 December 2029 the N+2

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

period applies. However, from CPR Article 105 we understand that expenditure is eligible until 31 December 2030 and N+3 would apply. Does it mean that expenditure by beneficiaries is eligible until 31 December 2029 and the Member State would have a year after that to submit all payment claims, spend the pre-financing and remaining EMFAF funding? Can expenditure be incurred by beneficiaries and the Member State pay until the end of N+3, meaning until 31 December 2030?

Answer:

The question mixes two distinct, separate processes:

Article 63 CPR specifies the eligibility period for expenditure linked to operations supported by the EMFAF. Pursuant to Article 63(2), second subparagraph, of the CPR, for the expenditure to be eligible, it must be incurred by a beneficiary **and paid** in implementing operations between the date of submission of the programme to the Commission or from 1 January 2021, whichever date is earlier, and 31 December 2029. These deadlines for the eligibility of expenditure incurred by beneficiaries are not affected by the N+2/N+3 rules which apply at the level of budgetary commitments made at the level of the programmes, see below for further detail.

Article 105 CPR sets out the arrangements for decommitment of budgetary commitments at programme level.

Pursuant to Article 105(1) CPR, the Commission will decommit any amount in a programme which has not been used for pre-financing or for which a payment application has not been submitted by 31 December of the third calendar year following the year of the budget commitments for the years 2021 to 2026 (the so called "N+3 rule").

In accordance with Article 105(2) CPR, "the part of commitments still open on 31 December 2029", i.e. commitments for the years 2026 and 2027, will be decommitted if the assurance package and the final performance report for programmes supported by the EMFAF have not been submitted to the Commission by 15 February 2031, i.e. in the context of the closure of the programme. For the 2027 budgetary commitment, this means indeed de facto an application of an "N+2" rule, as 31 December 2029 is the reference point for a potential decommitment.

The final accounting year will run from 1 July 2029 to 30 June 2030, as set out in Article 2 (29) CPR. Member States then have until 31 July to submit payment applications - the last payment application submitted by 31 July 2030 will then be deemed to be the final payment application for the final accounting year, see Article 91 (1) CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00282 - SUPPORT FOR LAGS IDENTIFIED AS INTERMEDIATE BODIES

Relevant Articles: Articles 33 and 34 of the CPR

Member State: PT

Question 1 (including any relevant facts and information):

According to CPR article 34 (2) the support referred to under point (c) of paragraph 1 - the management, monitoring and evaluation of the strategy and its animation, including the facilitation of exchanges between stakeholders - shall not exceed 25 % of the total public contribution to the strategy.

In this sense, as the total public contribution to each CLLD Strategy has been approved by the MA, we will now open a call for proposals to give a grant to support the management, monitoring and evaluation of the strategy and its animation, including the facilitation of exchanges between stakeholders , that may not exceed 25 % of the total public contribution approved for the strategy.

Nevertheless, according to CPR article 33 (4) "Where local action groups carry out tasks not covered by paragraph 3 that fall under the responsibility of the managing authority, (…)these local action groups shall be identified by the managing authority as intermediate bodies in accordance with the Fund-specific rules." .

Therefore, we would like to confirm that if a local action group shall be identified by the managing authority as intermediate body may the expenditure related with the delegated tasks be covered by technical assistance in total addition to the 25% support approved within SO 3 - as long as all the costs are clearly identified to avoid double financing?

Answer:

Article 33(4) of Regulation (EU) 2021/1060 (CPR) reads *'Where local action groups carry out tasks not covered by paragraph 3 that fall under the responsibility of the managing authority, or of the paying agency where the EAFRD is selected as a Lead Fund, these local action groups shall be identified by the managing authority as intermediate bodies in accordance with the Fund-specific rules.'*

Article 34(1) of the CPR lists types of support that funding for community-led local development should cover. Article 34 paragraph 2 sets the support for *the management, monitoring and evaluation of the strategy and its animation, including the facilitation of exchanges between stakeholders* to a maximum of 25 % of the total public contribution to the strategy.

Article 36(1) CPR sets out in relation to technical assistance at the initiative of the Member State that "*the Funds may support actions, .., necessary for the effective administration and use of those Funds, …*".

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 71(3) reads '*The managing authority may identify one or more intermediate bodies to carry out certain tasks under its responsibility. Arrangements between the managing authority and intermediate bodies shall be recorded in writing.'*

We understand that the Managing Authority (MA) wishes to delegate tasks to a Local action group (LAG) and finance it from technical assistance (TA) resources in line with Article 36 CPR. Therefore, a LAG may also receive funding from TA as long as it is necessary for the effective administration of the Funds. If this LAG is designated as an Intermediate body (IB), in this function it may receive TA support to cover the tasks delegated by the MA. The arrangements between the MA and IBs shall be recorded in writing taking into account the rules on management and control.

For the tasks exclusively carried out by the LAGs in accordance with Article 33(3), any support from the Funds, irrespective of whether it is under Article 34 or 36 CPR, should be counted towards the 25% ceiling as set out in Article 34(2).

QA00279 - TOTAL ELIGIBLE COST/EXPENDITURE IN DATA TRANSMITTED ACCORDING TO ARTICLE 42 CPR, INFOSYS REPORTING

Relevant Articles:

Articles 42 and 112 CPR;

Annex VII CPR;

Article 46(3) EMFAF Regulation;

Annex I Commission Implementing Regulation (CIR) 2022/79

Member State: n/a

Question 1 (including any relevant facts and information):

According to Article 42 CPR and Annex VII, for the total eligible costs of selected operations and the total expenditure declared by the beneficiaries (fields 8 and 11 in table 1 and the respective fields 4 and 5 in table 4), what should the Member State report – the totality of eligible costs/expenditure (public and private) or only public in case the basis for calculation of EU contribution is public?

How do the figures encoded in the field 8 of table 1 and in the field 4 of table 4 of Article 42 CPR reporting relate to the figures encoded in the fields 17 and 18 of the Infosys reporting, according to Article 46(3) EMFAF Regulation and Annex I of CIR 2022/79?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

How do the figures encoded in the field 11 of table 1 and in the field 5 of table 4 of Article 42 CPR reporting relate to the figures encoded in the fields 21 and 22 of the Infosys reporting?

Answer:

In the data transmitted to the Commission, the Member State should report (under "Total eligible cost of selected operations" and "Total eligible expenditure declared by beneficiaries" fields in the respective Tables of Annex VII CPR) the amounts of cost/expenditure covering the amounts of "Total financial allocation by Fund and national contribution" indicated in the financing plan set out in the programme (irrespective of the indicative proportion between the public and private parts of the national contribution established in this financing plan).

Depending on the Fund, the financing plan is set out in the following tables:

- Annex V CPR – table 11A (EMFAF);
- Annex V CPR - table 11 (ERDF, CF, ESF+, JTF) (and Annex to the Interreg Regulation – Table 8);
- Annex VI CPR – table 6 (ISF, BMVI, AMIF).

As far as the EMFAF is concerned, this means that, for fields 8 and 11 in table 1 and the respective fields 4 and 5 in table 4 of Annex VII CPR, only the public contribution should be reported.

<u>As regards the links between the Article 42 CPR and Infosys reporting:</u>

Table 1 of Annex I CIR 2022/79 and Annex 3.5 of the FAMENET working paper on the monitoring and evaluation framework (MEF) 2021-2027 provide for the links between the Infosys fields as per CIR 2022/79 and the values to be reported in CPR Annex VII tables 1, 4, 5 and 9.

Based on this, the Infosys field 17 refers to the amount of the total eligible cost of the operations approved (in the document setting out the conditions for support), comprising the EMFAF, national and private contribution.

Infosys field 18 refers to the amount of the total eligible costs constituting public expenditure only (EMFAF plus national contribution) and corresponds to the field 8 in table 1 and the field 4 in table 4 of Article 42 CPR reporting.

Infosys field 21 refers to the total eligible expenditure declared by the beneficiary, verified by the MA and on the basis of which the beneficiary will be paid. The total eligible expenditure has to include EMFAF, national and private contribution.

Infosys field 22 refers to the total eligible public expenditure declared by the beneficiary, verified by the MA and on the basis of which the beneficiary will be paid. The total eligible public expenditure includes the EMFAF and national contribution only. Infosys field 22 corresponds to the field 11 in table 1 and field 5 in table 4 of Article 42 CPR reporting.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00283 - COMPLIANCE OF NON-COMPETITIVE CALLS WITH ARTICLE 73 CPR

Relevant Articles:

Article 73(1) and (2)c of the CPR

Article 40(2) of the CPR

Member State: n/a

Question 1 (including any relevant facts and information):

Article 73(1) CPR 2021/1060 concerning the selection of operations by the managing authority stipulates that "The criteria and procedures [for selection of operations] shall ensure that the operations to be selected are prioritised with a view to maximising the contribution of Union funding towards the achievement of the objectives of the programme."

Moreover, Article 73(2)c lays down that "In selecting operations, the managing authority shall: […] c) ensure that selected operations present the best relationship between the amount of support, the activities undertaken and the achievement of objectives."

Similar provisions were not included in Article 125(3) CPR 1303/2013.

During an audit, we found that managing authorities have just launched or have planned to launch the following types of calls for projects:

- "competitive" calls by which the submitted projects will be selected in the decreasing order of the rating they will receive following their evaluation against a set of criteria.
- "non-competitive" calls by which the MA will select projects that belong to one or several pre-defined lists, once the projects are ready to be submitted and implemented. This was observed for instance in the area of road renovation (TEN-T connections); the Regional Development Council has previously approved a list of priority projects. The projects will be selected by the MA in the chronological order of their submission by the beneficiary counties.
- in practice "first-come/first-served" calls, by which the MA will select the projects in the chronological order of their submission provided that they comply with the requirements established in the call, until exhaustion of the total budget allocated to the call. This was observed in some of the above-mentioned "competitive" calls, which turned in practice into first-come/first-served ones, because all projects submitted and selected until budget

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

absorption exceeded a "threshold of excellence" (75% of max. points) above which they were immediately selected irrespective of the fact that the next projects (not selected for lack of budget) may have an even better rating.

Finally, we found that in all calls, the MA had established a lower and an upper threshold for the total eligible amount of each project (generally EUR 300 000 and EUR 2 500 000). The MA justified the setting-up of the lower threshold by the need to ensure proportionality between the grant and the related administrative cost/burden, and the existence of the upper threshold by the will to co-finance a minimum number of operations with the budget allocation of each call.

We wonder whether non-competitive calls and first-come/first-served calls as described above, as well as the application of the lower/upper thresholds, comply with Article 73(1) and Article 73(2)c, and in particular whether they fulfil the prioritisation in project selection and the best relationship between support and objectives mentioned under these articles.

Answer:

Article 73(1) CPR requires that "For the selection of operations, the managing authority shall establish and apply criteria and procedures which are non-discriminatory, transparent […]".

Recital 60 CPR underlines that procedures for the selection of operations can be competitive or non-competitive provided that criteria applied and procedures used are non-discriminatory, inclusive and transparent and the operations selected maximise the contribution of the Union funding and are in line with the horizontal principles defined in this Regulation.

Based on above, the non-competitive calls where the MA will select operations that belong to one or several pre-defined lists may be compliant with Article 73(1) and Article 73(2)(c) CPR provided that these pre-defined lists were established based on non-discriminatory, inclusive and transparent criteria approved by the monitoring committee and ensure that the selected operations maximise the contribution of Union funding towards the achievement of the objectives of the programme.

"First come/first served calls" may be considered as a method of selection. Therefore, calls where the operations are selected in the chronological order of their submission provided that they comply with the certain threshold, until exhaustion of the total budget allocated to the call, may be compliant with Article 73(1) and Article 73(2)(c) CPR provided that the MA ensures that operations selected this way contribute to maximising the contribution of Union funding towards the achievement of the objectives of the programme.

The MA has freedom to establish the lower and upper thresholds for the total eligible cost of a project, which should however remain reasonable in relation to the administrative burden and the intention to finance a minimum number of projects under each call.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA712_EMFAF_FIRST ACQUISITION OF A FISHING VESSEL

Relevant Article: Article 17 of the EMFAF Regulation

Member State: ES

Question:

In relation to Article 17 EMFAF, First acquisition of a fishing vessel, point 1, the following consultation is made:

According to the text of Art. 17. First point:

1. By way of derogation from Article 13(c), the EMFAF may support the first acquisition of a fishing vessel or the acquisition of its partial ownership.

Point 2 also specifies the conditions to be met by beneficiaries:

(a) are not more than 40 years of age at the date of submission of the application for support; and

(b) have worked for at least five years as a fisherman or have acquired an appropriate qualification

In accordance with the above, confirmation is requested that:

- The concept of first acquisition: this refers to the first purchase of a vessel. On that basis, if the potential beneficiary had a vessel which had not been purchased, could he also be the beneficiary since it meets the conditions laid down in Article 17?

[additional clarification on the context has been requested to ES MA, which informed that the question refers to the case, for example, of a beneficiary that purchased initially a non-fishing vessel, which has been transformed into a fishing vessel without public support and currently is operating as fishing vessel. He is/will purchase another fishing vessel. The question is, can this last purchased vessel be considered as a "first acquisition of a fishing vessel" and be eligible for support Art 17 EMFAF?]

Answer:

In accordance with Article 17 EMFAF, only a first acquisition is eligible : the scope of the support is to allow new operators to become established as vessel owners. The support therefore is considered as a start-up support for new fishermen (natural

persons) under 40 years that will become owners of fishing vessels, via first acquisition of a second-hand fishing vessel or the acquisition of partial ownership.

The explicit derogation to Article 13(c) makes clear that the acquisition of a fishing vessel is eligible only under the conditions set out in Article 17.

Where support for business start-up is granted for the acquisition of a fishing vessel, it should only contribute to the acquisition of the first fishing vessel or of a controlling share thereof (at least of 33 % of the vessel or of the shares in the vessel).

To ensure a fair treatment of operators who become new owners, it is to be understood that full or partial owners of fishing vessels that are already operational are not entitled to the support.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA713_EMFAF_FIRST ACQUISITION OF A FISHING VESSEL

Relevant Article: Article 17 of the EMFAF Regulation

Member State: IE

Question:

Could you also please clarify whether Article 17 is applicable to grant aid on the purchase of Irish fleet capacity (Gross tonnage & Kilowatts) in each of the scenarios below?

1. Young fisher purchases first vessel in Ireland – Is the beneficiary entitled to grant aid on the purchase price of the vessel alone or can the purchase include associated capacity (Gross tonneage & Kilowatts)?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

2. Vessel is purchased from EU country and has been registered in the Union fleet register for at least three calendar years preceding the year of submission of the application for support in the case of a small-scale coastal fishing vessel, and for at least five calendar years in the case of another type of vessel. When imported the beneficiary is required to purchase capacity to fill the vessel. Is the beneficiary entitled to grant aid on purchase of the vessel and the required capacity (Gross tonnes & Kilowatts) or only the vessel?
3. Vessel is purchased from non-EU country. The beneficiary is not entitled to grant aid on purchase of the vessel. Is the beneficiary entitled to grant aid on the purchase of Irish capacity (Gross tonnage & Kilowatts) to fill the vessel?

Answer:

Article 17 of Regulation (EU) 2021/1139 (EMFAF Regulation), by way of derogation from point (c) of Article 13, provides for support for the first acquisition of a fishing vessel or the acquisition of partial ownership thereof.

Regulation 1380/2013 defines a fishing vessel as 'any vessel equipped for commercial exploitation of marine biological resources.'

In accordance with Article 4(24) of Regulation 130/2013, 'fishing capacity' means a vessel's tonnage in GT (Gross Tonnage) and its power in kW (Kilowatt).

A fishing vessel has a given capacity: a tonnage expressed in GT and a power expressed in KW. In some Member States, a further authorisation to use the tonnage of the vessel in order to engage in fishing activities is required. This is considered a privately owned tradeable financial asset which must be held by owners / fishing licence holders and which may be sold or traded. It is considered as an (intangible) investment and as a condition to engage in fishing activity. In such cases, he additional authorisation to use the GT and KW can thus not be considered as an investment in fishing equipment, but constitutes an additional operating cost.

The requirement for a vessel to have a capacity and KW authorisation is a national management tool put in place by the Member State in the context of the obligation under Regulation 1380/2013 for Member States to take specific measures to align the number of Union fishing vessels with available resources, based on their assessments of the balance between the fishing capacity of their fleets and the fishing opportunities available to them.

When support under Article 17 of the EMFAF is granted, the respective capacity shall fit into a fleet segment for which the latest report on fishing capacity, referred to in Article 22(2) of Regulation (EU) No 1380/2013, has shown a balance with the fishing opportunities available to that segment (EMFAF Article 17(6)(a)).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Through the EMFAF Regulation it has been acknowledged that the creation and development of new economic activities in the fisheries sector by young fishers is financially challenging. Article 17 of the EMFAF Regulation aims to support generational renewal through helping young fishers to start up fishing activities. Article 17 does not refer to the associated capacity needed to be licenced to a fishing vessel to become operational, but only to support the first acquisition of a fishing vessel or the acquisition of partial ownership thereof.

Providing that all conditions under Article 17 of the EMFAF Regulation are fulfilled, Member States may decide to allow support for the acquisition of the the fishing vessel. This may facilitate generational renewal while strengthening the economically, socially and environmentally sustainable fishing activities.

When a fishing vessel is purchased from a non-EU country, no aid can be granted for the first acquisition (not even partially) of a fishing vessel under the conditions of Article 17 EMFAF. This is because the provisions set out in Article 17(6)(d) cannot be met. However, the acquisition of the related fishing capacity for the fishing vessel may be supported by designing an appropriate type of action under the scope of Article 14.1 (a) of the EMFAF Regulation.

On the basis of the above, it can be concluded that in respect of the questions from Ireland:

1. When the vessel is purchased within Ireland, the beneficiary is entitled to EMFAF aid on the purchase of the vessel under Article 17, if properly defined as a type of action in the programme.
2. When the vessel is purchased from another EU Member State, the beneficiary is entitled to EMFAF aid on the purchase of the vessel (Gross tonnage & Kilowatts) under Article 17, if properly defined as a type of action in the programme.
3. When the vessel is purchased from a non-EU country, the beneficiary is not entitled to EMFAF aid on the purchase of the vessel (Gross tonnage & Kilowatts) under Article 17. However, aid on the purchase of the associated capacity may be possible under Article 14, if properly defined as a type of action in the programme.

N.B:

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA00284 - RE-DISTRIBUTION OF SUPPORT USING A SCO METHOD

Relevant Articles:

Article 56 of the CPR

Article 69 of the CPR

Article 73 of the CPR

Member State: n/a

Question 1 (including any relevant facts and information):

The beneficiary intends to implement the operation through other local bodies via grant agreements. In practice, the beneficiary manages a call to grant support to third parties, which are local bodies. The local bodies are selected based on clearly defined parameters specified before the operation is selected and reflected in the documents setting the conditions for support between MA and the beneficiary The payment arrangement is that the beneficiary will pay the cost of the local bodies' staff that is directly involved to the operation +40% of this cost to cover all remaining costs of the local bodies. These local bodies are selected via non-competitive procedure as they each cover one specific geographic area. The relationship between the beneficiary and the local bodies is managed via grant agreements.

The beneficiary claims from the managing authority:

- the amount paid to the local bodies and
- own costs based on real incurred expenditure.

This implementation structure and payment arrangement between beneficiary-local bodies were detailed in the beneficiary's application for funding. The MA evaluated the application and approved the operation.

1. Is this operation in line with article 2(9) of the CPR, considering that it consists of re-distributing financial support by the beneficiary to pre-defined bodies?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The operation is neither a Small Project Fund within the meaning of article 25 of the Interreg Regulation nor granting support to companies.

2. The CPR does not apply at the level of beneficiary – third parties, therefore the off the shelf SCOs do not apply. In this context and given that the payments from the beneficiary to the local bodies are made based on an SCO (staff costs + 40%), is the beneficiary required to perform a calculation to prove how the applicable rate was determined?
3. For its own expenditure the beneficiary should keep a full audit trail. For the payments to the local bodies, what is the audit trail to be kept? What level of verifications can be expected by the beneficiary and the MA on these expenditure items?

Answer:

To question 1:

Re-granting may be in line with the CPR provided certain conditions are met. Please refer to replies to QA00130, QA00132, QA00133 and QA00199 as well as the follow up question QA00206 - follow-up to the QA00132 - QA 21-27 - RegioWiki (europa.eu) for completeness.

To questions 2 and 3:

The provisions of Articles 53-56 CPR concern forms of grants provided by the Member State to the beneficiary and set out the rules where grants, provided by the Member State to the beneficiary, take form of SCOs. These provisions do not concern the payment arrangements between the beneficiary and local bodies (third parties).

If this is in line with applicable national and EU law, the beneficiary can set out a methodology for the application of SCOs to the level beneficiary – local bodies, following the CPR provisions on SCOs.

In line with the reply provided in QA00206, appropriate audit trail of costs incurred by the beneficiary and paid in implementing the operation in cascading support from the funds should be maintained, including Annex XIII and in particular point 13 thereof.

Management verifications remain the responsibility of the MA or IB by delegation.

An audit trail of such verifications shall be maintained at the level of the body performing the management verifications (MA or IB); sub-delegations from IB to beneficiaries are not possible.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00285 - VAT ELIGIBILITY IN PROJECTS OVER EUR 5 MILLION ON SECOND LEVEL IN LIGHT OF ARTICLE 64(1) CPR

Relevant Article: Article 64 CPR

Member State: PL

Question 1 (including any relevant facts and information):

According to Article 64.1.c.ii CPR, VAT may be eligible for operations the total cost of which is at least EUR 5 000 000 (incl. VAT) where it is non-recoverable under national VAT legislation. In reference to the EC letter concerning 'Judgment of the General Court of 22 June 2022 in Case T-357/19 Italy v Commission' we consider as a general rule, that the assessment of VAT recoverability under the VAT legislation should be carried out specifically with respect to each individual beneficiary. Thus, we would like to ask you for the confirmation of the interpretation of Article 64.1.c.ii CPR in the following situations:

1) VAT is eligible in ERDF project, where beneficiary has no right to 'deduct' or to obtain a 'refund' of VAT although 'in-house company' of the beneficiary responsible for the project maintenance and the management of infrastructure can recover the VAT.

2) VAT is eligible in ERDF project, where beneficiary has no right to 'deduct' or to obtain a 'refund' of VAT although external company responsible for the project maintenance and management of project infrastructure can recover the VAT.

3) In project implemented by a beneficiary and partner (they both obtain grant directly from MA or IB):

- the VAT-related cost are borne by a beneficiary, which cannot recover the VAT – the VAT of beneficiary is eligible,

- the VAT-related cost are borne by a partner, which can recover the VAT –the VAT of partner is ineligible.

4) In umbrella project where beneficiary further cascades the grant to other entities (e.g. vouchers for energy efficiency) we assess the recoverability of VAT with respect to these entities obtaining grant from beneficiary, i.e. if the VAT-related cost are borne by an entity, which can recover the VAT, the amount of VAT is ineligible, but if the VAT-related cost are borne by an entity, which cannot recover the VAT, the amount of VAT is eligible.

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

According to Article 64(1)(c)(ii) of Regulation 2021/1060, for operations the total cost of which is at least EUR 5 000 000 (including VAT) VAT is not eligible except where it is non-recoverable under national VAT legislation.

In its judgment of 22 June 2022 in Case T-357/19 Italy v Commission (the 'judgment'), the General Court interpreted Article 69(3)(c) of Regulation 1303/2013 which provides that VAT is 'ineligible except where it is non-recoverable under national VAT legislation'. The impact of this judgement to cohesion policy was analysed and communicated to MS in a letter of 16/12/2022.

Although the present questions refer to the 2021-2027 period and the judgment concerns the 2014-2020 period, operations implemented under the 2021-2027 legal framework, with total cost of at least EUR 5 000 000 (including VAT) are subject to the same VAT eligibility rules as those applicable for the 2014-2020 period.

As regards question 1 and 2, we understand that implementation is at the level of the beneficiary only, as opposed to where a part of the grant is paid to a partner (in question 3) or where the funds are cascaded by the beneficiary to the recipient (in question 4).

In that respect, the General Court specified in paragraphs 66, 67, 69, 70 and 118 of the judgment, that in projects such as that concerned by the judgment, it must be assessed whether the beneficiary (regardless of whether the beneficiary has an in-house company or an external company) is a taxable person and whether it is able to recover the VAT under national VAT legislation (i.e. by way of deduction of VAT or by other means under national VAT legislation). In particular, the General Court established that the beneficiary in that case could not recover the VAT because it was not a taxable person for the purpose of operating the project (see paragraphs 107 and 108 of the judgment). Therefore, in a case where the beneficiary cannot recover the VAT, the VAT in an ERDF project, with total cost of at least EUR 5 000 000, would be eligible.

As regards question 3, where in an operation part of the grant is paid by the MA/IB to the partner (as seems to be the case according to the question) to implement the operation, the assessment of VAT recoverability will have to be made for both the beneficiary and the partner. If the partner can recover the VAT, the VAT borne by him would be ineligible.

As regards question 4, it should be noted first that the judgment referred to above was not about so-called 'umbrella projects'. 'Umbrella projects' inherently involve a beneficiary receiving a grant and cascading all the support to various entities that implement the project. Therefore, in 'umbrella projects' the assessment of VAT recoverability would have to be carried out at the level of the recipients as indicated by the Member State in question 4.

If in an "umbrella project" not all of the support is cascaded to other entities but part is implemented by the beneficiary, the assessment of VAT recoverability should also be made at the level of the beneficiary as well as at the level of the recipients.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The 5 MEUR threshold is to be applied to the total cost of the operation.

QA00286 - Applicability of Article 22 (1) second paragraph ETC in the case of participation in conferences outside the programme area

Relevant Articles:

Article 22 of Interreg Regulation

Article 37 of Interreg Regulation

Member State: n/a

Question 1 (including any relevant facts and information):

The monitoring committee of the Poland/Germany (Saxony) programme selected on 17 October 2023 a project with the objective to support better cooperation governance through exchange of best practices in the area of energy transition. One of the work packages includes participation in international and scientific conferences outside the programme area in order to present the results of the work to a wider audience. The share of the work package represents only approximately 5 % of the project budget and participation in conferences itself is a marginal expense.

The managing authority has approached the European Commission regarding the applicability of the provisions set out in Article 22 (1) second paragraph ETC Regulation to this case: *"When all or part of an operation is implemented outside the programme area inside or outside the Union, the selection of that operation shall require the explicit approval by the managing authority in the monitoring committee or, where applicable, the steering committee"*. According to the managing authority, the participation in conferences where the beneficiary is not the organiser and does not conduct training cannot be considered as 'all or part of an operation implemented outside the programme area'. In addition, the managing authority points out that a distinction should be made between on the one hand 'infrastructure and equipment' which could leave a 'permanent trace' outside the programme area and 'soft activities' such as conferences on the other hand which do not have such an effect.

1. Can we confirm the assessment of the managing authority that in the case of a project which envisages the participation of conferences outside the programme area but not organised by the project beneficiary, the explicit approval by the managing authority in the monitoring committee is not required.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

2. Should we make a distinction between 'hard' and 'soft' measures for the applicability of Article 22 (1) second paragraph ETC Regulation?

As a background note – the managing authority abstained during the vote at the monitoring committee probably due to some weaknesses highlighted in the assessment grid.

Answer:

Pursuant to Article 37(1) of the Interreg Regulation, *all or part of an Interreg operation may be implemented outside of a Member State, including outside the Union, provided that the Interreg operation contributes to the objectives of the respective Interreg programme*.

Pursuant to Article 22(1), third subparagraph of the Interreg Regulation, *when all or part of an operation is implemented outside the programme area inside or outside the Union, the selection of that operation shall require the explicit approval by the managing authority in the monitoring committee or, where applicable, the steering committee*. Based on the above, in case part of the operation is implemented outside the programme area in accordance with the objectives of the respective Interreg programme, explicit approval of the managing authority is needed for the monitoring committee (or steering committee) to select this operation. Article 22(1), third subparagraph of the Interreg Regulation does not make a distinction as to which part of the operation is implemented outside the programme area nor as to whether it is a 'hard' or 'soft' measure. Likewise, the provision applies regardless of the size of the expenditure related to that part of the project.

QA00287 - THE ELIGIBILITY FOR THE PURCHASE OF VEHICLES ACCORDING TO THE ERDF AND CF RULES

Relevant Article: Article 7 ERDF Regulation

Member State: CZ

Background:

CZ National Coordination Authority (NCA) is preparing financial instruments (preferential loans and guarantees mainly) for the Managing Authorities In the case of financial instruments, support for the purchase of passenger cars, light commercial vehicles, trucks and work machines (construction machinery, tractors, etc.) is considered.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In this way, the NCA would like to verify the approach to setting the financing conditions for the above-mentioned categories of vehicles and machines, so that everything is in accordance with the eligibility conditions for expenditure according to the Regulation on ERDF and CF and at the same time with the DNSH principle.

Question 1 (including any relevant facts and information):

In the case of financial instruments, are the conditions for the purchase of vehicles set out in Annex I, points 6.5 and 6.6 of the Technical Screening Criteria applicable to expenditures whose eligibility is assessed according to the ERDF and CF rules? Alternatively, is it possible to apply milder requirements to purchased vehicles, e.g. is it sufficient to require that purchased vehicles comply with applicable emission standards, and at the same time still be in accordance with the DNSH principle?

Is it possible to set a requirement for admissible emissions according to Regulation No. 2016/1628 for expenditure on the acquisition of non-road vehicles, while it can be stated that this will ensure compliance with the DNSH principle?

We would like to ask you for comment on how to correctly interpret the wording of Article 7 par. 1) h) EU Regulation No. 2021/1058 for the ERDF and CF, which states that *investments related to the production, processing, transport, distribution, storage or combustion of fossil fuels* are excluded from support from the ERDF and CF, with a few specifically stated exceptions. Does Article 7 par. 1) h) of the regulation referred to (i) stable sources of fossil fuel combustion and larger investments only, or (ii) does the exclusion from the support also apply to all vehicles and machines with combustion engines?

If the option (ii) applies, does this mean that all machines and vehicles (including passenger cars, commercial vehicles and trucks etc.) with combustion engines are excluded from ERDF and CF support?

Answer:

This answer was updated on 4 November 2024. The change is struck through and the new text is highlighted in blue.

The form of support does not impact conditions for the purchase of vehicles. For further details please see QA00235.

Exclusion from support of ERDF and CF is regulated in Article 7 of Regulation (EU) 2021/1058 on the ERDF and CF (ERDF/CF Regulation). Art 7(1)(h) ERDF/CF Regulation excludes support to investments "related to production, processing, transport, distribution, storage or combustion of fossil fuels". ~~Thus, support for investments in vehicles and machinery powered, even partially, by the combustion of fossil fuels is not eligible.~~

Support from the ERDF/CF/JTF for an investment in machinery/equipment powered by combustion of fossil fuels (construction machinery, etc.) can be considered as eligible

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

only if there is no viable alternative technology. Member States are responsible for ensuring that this condition is met.

The need to establish the absence of viable alternative technologies does not apply to investments following under derogations to the exclusion from support of ERDF and CF in accordance with Article 7(1)(h)(iii) ERDF/CF Regulation, i.e. investments in "clean vehicles" used for "public purposes" as well as for vehicles, aircraft and vessels adapted to be used by civil protection and fire services. ~~However, it stems from the wording of the question that the financial instruments seek to support the purchase of passenger cars, light commercial vehicles, trucks and work machines (construction machinery, tractors, etc.) which do not fall under the categories encompassed by the derogation under Article 7(1)(h)(iii) ERDF/CF Regulation.~~

Based on above, as these investments may be financed under conditions set out above, ~~for the financial instruments are excluded from support of ERDF and CF by Art 7(1)(h) ERDF/CF Regulation, there is no need to check~~ the compliance with the DNSH principle needs to be taken into account (for details please consult QA00331 - 'Do No Significant Harm' (DNSH) principle in the context of Financial Instruments - RegioWiki Extranet - RegioWiki (europa.eu). ~~criteria or with the Regulation (EU) 2016/1628.~~

QA00288 - DURABILITY OF EQUIPMENT

Relevant Article: Article 65 CPR

Member State: PL

Question 1 (including any relevant facts and information):

Does Article 65 apply to operations comprising neither investment in infrastructure nor productive investment? (we apply definition of infrastructure provided by the Commission in the framework of CRII Plus clarifications and the definition of production investment included in recital (38) of the Regulation (EU) 2021/1058).

Durability of COVID-19 related operations (e.g. PPE, medical equipment):

*As regards **investments in infrastructure**, it covers a tangible property of permanent nature that meets the following conditions:*

- *It has an immobile nature (it is either permanently attached to the ground or to a property that is permanently attached to the ground and, in this case, it loses its identity through the incorporation and becomes a part of the immobile property to which it is attached).*

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- *Under normal conditions of use, including reasonable care and maintenance, it has an unlimited life period.*
- *It retains its original shape and appearance with use.*

Notion of productive investments:

Recital (38) of ERDF/CF Regulation explains how ***productive investments*** *should be understood, using a formulation that has always been applied by the Commission in its interpretation and guidance, i.e.: "investment in fixed capital or immaterial assets with a view to producing goods and services and thereby contributing to gross capital formation and employment."*

Question 2:

Do the provisions on durability, pursuant to Article 65 CPR, apply in case of following operations?

1. an operation consisting in purchase of laptops for public schools
2. an operation consisting in purchase of computer equipment for public administration entities exercising public power or implementing public tasks
3. an operation aiming at adapting private households to persons in needs (e.g. elderly) not including any construction works (= not infrastructure), but only the purchase of some equipment and devices facilitating the functioning of elderly or disabled people

Question 3:

Does the examination of obtaining an undue advantage (art. 65.1.(b)) apply only to operations comprising investment in infrastructure or also to operations comprising productive investments?

Answers:

Answer 1: Article 65 CPR applies only to operations comprising investment in infrastructure or productive investment.

Answer 2: The examples given do not constitute investments in infrastructure or productive investments.

Answer 3: The obligation to examine possible undue advantage obtained in case of a change in ownership of an item of infrastructure applies to both operations comprising investment in infrastructure and productive investments which include items of infrastructure.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00290 - ACTIVITIES EXCLUDE UNDER ART.7 OF THE REGULATION (EU)2021/1058

Relevant Article: Art. 7 ERDF

Member State: IT

Question 1 (including any relevant facts and information):

The MA wants to publish a photovoltaic call, but it is not clear how to apply the provisions of Article 7(1) of Regulation (EU) 2021/1058, with reference to points (b), (c), (f) and (h).

The aim of the call is to promote renewable energy in accordance with Directive (EU) 2018/2001, including the sustainability criteria set out therein:

The question is whether companies as presented below may participate in such call:

1. Companies of which activities are listed in the Annex I to Directive 2003/87/EC: does the exclusion apply in general to all companies of which activities are listed under Annex I or does it apply to those that receive (or received) ETS allowances in order to reduce their emission?
2. Enterprises (or supermarkets) that among their various activities, also have the marketing of tobacco products but in fact they do not carry out such an activity as they are not authorized?
3. Enterprises that deal with waste disposal activities in landfills: the photovoltaic call does not incentivize investments in landfill installations but generate green energy for self-electricity.
4. Enterprises that deal with distribution, storage or combustion of fossil fuels (e.g. benzene distributors) should be excluded? The photovoltaic call does not concern a purchase or modernization of fossil fuel production/processing plants (such as expansion of fuel distributors) but production of green energy.

Answer:

According to article 63(1) CPR, 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 Regulations. In order to be eligible for ERDF support, the planned investment has to fall within the scope of the ERDF as set out in Article 5 of the ERDF/CF Regulation and contribute to one of the specific objectives set out in Article 3 of the ERDF/CF Regulation.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 7(1) ERDF/CF Regulation sets out that ERDF shall not support, among others:

(b) investment to achieve the reduction of greenhouse gas emissions from activities listed in Annex I to Directive 2003/87/EC;

(c) the manufacturing, processing and marketing of tobacco and tobacco products;

(f) investment in disposal of waste in landfill, except:

(i) for the outermost regions, in duly justified cases only; or

(ii) for investments for decommissioning, reconverting or making safe existing landfills provided that such investments do not increase their capacity;

(h) investment related to production, processing, transport, distribution, storage or combustion of fossil fuels, […].

Question 1

Recital 41 of the ERDF/CF Regulation clarifies that the exclusion under article 7(1)(b) ERDF/CF Regulation is justified in light of the need to avoid duplication of available financing, which already exists as part of Directive 2003/87/EC.

Article 7(1)(b) ERDF/CF Regulation expressly prohibits investments to achieve the reduction of greenhouse gas emissions from activities listed in Annex I to Directive 2003/87/EC, whether they have yet received free ETS allowances or not. This is in order to avoid diluting the incentives created by carbon pricing.

On the basis of the information provided, we understand that the planned investment (photovoltaic installation) would achieve a reduction of greenhouse gas emissions from the activities concerned, switching part of their electricity consumption to zero carbon emissions. Therefore, the investment is not eligible for ERDF support.

Question 2

Article 7(1)(c) ERDF/CF Regulation aims to ensure that support under the EU budget is coherent with the health objective of reducing tobacco consumption.

ERDF support to a bar, shop or supermarket that among their various activities, also have the marketing of tobacco products, in the form of a photovoltaic installation does not appear to constitute a support to the marketing of tobacco, as it does not promote or increase such activity.

Therefore, this kind of investment could be eligible for ERDF support subject to the national rules and based on a case by case assessment to ensure, inter-alia, that the support would not promote the marketing of tobacco products.

Question 3

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 7(1)(f) ERDF/CF Regulation aims to ensure that support under the EU budget is coherent with EU environmental objectives[1], which entail a progressive decline in the share of landfilling of waste in all Member States.

ERDF support to enterprises that deal with waste disposal activities in landfills in the form of a photovoltaic installation does not appear to constitute a support to disposal of waste in landfill, as it does not promote or increase such activity. Therefore, this kind of investment could be eligible for ERDF support subject to the national rules and based on a case by case assessment to ensure, inter-alia that the support would not support the disposal of waste in landfill.

Question 4

Article 7(1)(h) ERDF/ CF Regulation aims to ensure that support under the EU budget is coherent with EU climate objectives set in the EU Green Deal and does not lead to stranded assets.

ERDF support to enterprises that deal with distribution and storage of fossil fuels, such as gas stations, in the form of a photovoltaic installation does not appear to promote or increase the distribution and storage of fossil fuels. Therefore, this kind of investment could be eligible for ERDF support subject to the national rules and based on a case by case assessment to ensure, inter-alia that the support would not promote or increase the distribution and storage of fossil fuels.

---

[1] Directive (EU) 2018/850 of the European Parliament and of the Council of 30 May 2018 amending Directive 1999/31/EC on the landfill of waste

QA00291 - TERMS 'PRODUCTIVE ACTIVITY', 'INVESTMENT IN INFRASTRUCTURE AND PRODUCTIVE INVESTMENT' - (ART. 65 (1) CPR)

Relevant Articles:

Art. 65 (1) of CPR

Recital 38 of Regulation (EU) No 2021/1058 (ERDF Regulation)

Member State: CZ

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

Question 1 (Art. 65 (1) CPR - interpretation of the term 'productive activity', 'investment in infrastructure and productive investment'):

First, we would like to raise questions regarding the interpretation of the term 'productive activity' used in the Article 65(1)(a) of the CPR: „a cessation or transfer of a productive activity outside the NUTS level 2 region in which it received support".

Sub-question 1:

Can we interpret the term 'productive activity' used in the Article 65(1)(a) CPR in a same way as the term 'productive investment' used in the recital 38 of ERDF Regulation, i.e.as the investment in fixed capital or immaterial assets of enterprises, with a view to producing goods and services and thereby contributing to gross capital formation and employment?

Sub-question 2:

Having followed the interpretation set in Sub-Q1 is our understanding correct that the investment in R&D and educational activities or R&D and educational infrastructures should not be considered as 'productive activities' in the sense of the Article 65(1)(a) CPR but rather as activities preceding the production?

We would like to use the example of the project that aims at the aquisition of HW and SW in order to establish the data repository for data in R&D. Please, could you confirm that this activity does not fall under the 'productive activitity' in the sense of the Article 65(1)(a) and that transfer of the supported R&D infrastructure from one NUTS 2 region to another NUTS 2 region does not mean the violation of the obligation set out in the Article 65(1)(a)?

Sub-question 3:

If it cannot be generally concluded that all investment in R&D and educational activities or R&D and educational infrastructures fall outside the term 'productive activities' in the sense of the Article 65(1)(a) CPR can we interpret it in a way that investment in the R&D and educational activities or R&D infrastructures or educational infrastructures, which does not constitute the state aid (i.e. non-economic activities or infrastructure used mainly for non-economic activities or for economic activities only in an ancillary way in the means of Article 207 Notice on the notion of State aid (2016/C 262/01) is not considered as the 'productive activities' in the sense of the Article 65(1)(a) CPR and therefore the obligation set out in the Article 65(1)(a) is not relevant for these investments?

Next, we would like to raise one last question regarding the interpretation of the terms "investment in infrastructure or productive investment" used in the Article 65(1) of the CPR:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Sub-question 4:

Is our understanding correct that regardless the type of the beneficiary in case of activities the part of which are only non-investment costs such as e.g. patent attorney services, costs of contractual research and consultancy services, rental, travel, marketing costs, costs of setting up and running the stand for the participation of an undertaking in any particular fair or exhibition, personnel costs or costs in materials or equipment which are not fixed or immaterial assets such activities are not considered as ' investment in infrastructure or productive investment ' in the sense of the article 65(1) CPR? Can we interpret the term 'productive investment' and also "investment in infrastructure" in the way, that their obligatory part is the investment in fixed or immaterial assets from the accounting point of view?

Answer:

Sub-question 1:

As explained in recital 38 of the ERDF/CF Regulation productive investment should be understood as investment in fixed capital or immaterial assets of enterprises, with a view to producing goods and services and thereby contributing to gross capital formation and employment.

Complying with the conditions set out in in Article 65(1)(a) CPR ('a cessation or transfer of a productive activity') should be ensured for all co-financed productive investments.

Sub-question 2:

The scope of the operation or investment is not clear from the question. Generally speaking, in case the organization can be defined as an enterprise, investments in such an entity are considered as productive investments in the meaning of the regulation.

As explained in QA00148 - Support by the ERDF of activities for applied research and innovation undertaken by enterprises other than SMEs - QA 21-27 - RegioWiki (europa.eu) -, applied research in enterprises aims at developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. Such activities fall within the notion of productive investments as they constitute investment in fixed capital or immaterial assets with a view to producing goods and services and thereby contributing to gross capital formation and employment (see the reply to sub-question 1).

The managing authority must ensure that such investments are long-lasting and ensure the effectiveness, fairness and sustainable impact of the Funds.

Sub-question 3 and 4:

The nature of an activity or an operation supported should be assessed, to consider whether it constitutes a 'productive investment', meaning an investment in fixed

capital or immaterial assets of enterprises, with a view to producing goods and services and thereby contributing to gross capital formation and employment.

If a productive operation and/or activity supported is prone to 'a cessation' or 'a transfer', it has to be assessed whether it complies with the requirement of durability based on Article 65(1)(a). As explained in QA00180, Article 65(1)(a) CPR refers to a region, at NUTs 2 level, "in which an operation received support". In principle, an assessment of transfer outside that NUTs 2 region should therefore depend on the location of an operation as selected by the MA to contribute to the achievement of the objectives of the programme.

Where, due to the specificities of an operation, establishment of its location is not straightforward (such as for example 'virtual universities'), other justified parameters may be applied by the MA and under its responsibility to set the location of the operation, for example by taking into account the purpose of durability provisions. In accordance with recital 47 CPR, durability provisions are to 'guarantee that investments in infrastructure or productive investment are long-lasting and prevent the Funds from being used to undue advantage' as well as 'ensure the effectiveness, fairness and sustainable impact of the Funds'..

Having clarified this, Article 65(1) CPR sets out general rules for durability. If an operation constitutes State aid and the durability rules under the State aid differ compared to Article 65(1) CPR, then the operation has to comply with the durability rules under the State aid. If an operation does not constitute State aid or where applicable State aid rules do not provide for a specific durability period, Article 65(1) CPR applies. With regard to the durability of operations supported by the ESF+, or by the JTF under points (k), (l) and (m) of Article 8(2) JTF, Article 65(2) CPR applies.

QA00292 - DECLARATION OF ADVANCE PAYMENTS

Relevant Articles: Article 91(3)(a) and Article 63(2) CPR

Member State: HU

Question 1 (including any relevant facts and information):

Can the following advance payments be included in the payment application to the Commission under Article 91 CPR?

1. Advances paid by the managing authority (body granting the aid) to beneficiaries
2. Advances paid by beneficiaries to contractors

Answer

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

According to Article 63(2) CPR, expenditure is eligible for a contribution from the Funds if it has been incurred by a beneficiary or the private partner of a PPP operation and paid in implementing operations, between the date of submission of the programme to the Commission or from 1 January 2021, whichever date is earlier, and 31 December 2029.

Article 91(3)(a) CPR provides that payment applications are to include the total amount of eligible expenditure incurred by beneficiaries and paid in implementing operations as entered in the system of the body carrying out the accounting function.

Article 91(5) CPR sets out a derogation from Article 91(3) CPR for advances paid to the beneficiaries **by the body granting the aid** in the case of State aid and allows to include such advances into the payment applications provided that the cumulative conditions set out in Article 91(5) CPR are fulfilled.

Concerning advances paid **by beneficiaries** to contractors, such advances may be included in the payment applications provided that they are in line with national rules, they are incurred by beneficiaries and paid within the eligibility period in application of contractual obligations and duly justified through invoices or documents with equivalent probative value. Such advances have to be covered by the provision of works/supplies/services by the time of the completion of the operation.

QA00293 - INCLUSION OF PAID HOLIDAYS FOR DIRECT STAFF COSTS UNDER ARTICLE 55(2)(B) CPR

Relevant Article: Article 55(2)(b) of the CPR

Member State: HR

Question (including any relevant facts and information):

According to Article 55(2) CPR, for the purposes of determining direct staff costs, an hourly rate may be calculated in one of the following ways:

- by dividing the latest documented annual gross employment costs by 1 720 hours for persons working full time, or by a corresponding pro-rata of 1 720 hours, for persons working part-time;
- by dividing the latest documented monthly gross employment costs by the average monthly working time of the person concerned in accordance with applicable national rules referred to in the employment or work contract or an appointment decision (both referred to as the employment document).

Question 1. Is it correct to assume that option (b) is possible even in the case where the data on annual gross employment costs is available?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 2. In the case of option (b), what would be the average monthly working time?

In Croatia Labour Law defines the weekly pool of hours for all workers, which cannot be longer than 40 hours per week. According to this, in practice the monthly pool of hours is the sum of the days of the month, excluding Saturdays and Sundays (for a 40-hour work week). Working hours and holiday hours are included in the monthly pool of hours. The total number of hours for 2023 is 2,080, of which 2,000 are working hours and 80 are holiday hours. Therefore, is it correct to assume that the average monthly working time for 2023 is 173 hours (2080/12=173) or 167 (2000/12)?

Month	Monthly pool of hours (working hours + holiday hours)	Working hours
January	176	168
February	160	160
March	184	184
April	160	152
May	184	168
June	176	160
July	168	168
August	184	176
September	168	168
October	176	176
November	176	168
December	168	152
Total	2080	2000
AVERAGE	173	167

In the case of option (b), is it correct to assume that when applying the hourly rate calculated based on the above-mentioned option, the total number of hours declared per person for a given month cannot be higher than 173/167 as this was the number of hours used for the calculation of that hourly rate?

Answer:

Question 1:

Article 55(2)(b) of the Regulation (EU) 1060/2021 (CPR) clearly states that both options are possible to calculate an hourly rate to determine direct staff costs. Thus, we can confirm that option (b) is possible even in the case where the data on annual gross employment costs is available. However, it should be highlighted that, in case of option (a), the denominator (i.e. 1.720 hours) is a standard annual 'working time' that can be used directly, without there being a requirement for the Member State to perform any calculation.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 2:

The CPR does not provide any rules on how the average monthly working time (denominator) should be established for the purposes of Article 55(2)(b) CPR. Therefore, when calculating an hourly rate to determine direct staff costs based on this provision, it is for the MS to establish the average monthly working time, in accordance with applicable national rules referred to in the employment document.

When applying the calculated hourly rate, the total number of hours declared per person for the month (which do not necessarily need to be the actual no. of hours worked) cannot exceed the number of hours used for the calculation of that hourly rate, as provided in Article 55(3) CPR.

In the case of a project implemented over several years, the managing authority may choose to update the hourly rate for staff cost once new data are available or to use the same ones for the entire implementing period. If the implementation period is particularly long, a good practice would be to set out intermediary steps when and how the hourly rate for staff cost could be revised.

QA716_EMFAF_TRANSFERRING OR REFLAGGING OF FISHING VESSELS

Relevant Article: Article 15 of EMFAF Regulation

Member State: Germany

Question 1:

In June 2023 Germany received an interpretation of the Art. 25 para. 1 of Regulation (EU) 508/2014 (EMFF Regulation), stating that this article is only designed for investment measures for fishing vessels and that in the case of temporary decommissioning, the beneficiary only has to be the owner at the time of payment. The question now arises as to whether Article 15 of the EMFAF Regulation can be interpreted analogously to Article 25(1) of the EMFF Regulation.

Answer:

Article 15 of the EMFAF (Regulation (EU) No 2021/1139) provides that where support is granted in respect of a Union vessel, the vessel shall not be transferred or reflagged outside the Union during at least five years from the final payment for the supported operation.' The implicit consequence of a transfer or reflagging of a vessel before five years would be a financial correction by the Member State.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The purpose of the provision, which is similar to the purpose of provision 25(1) of the EMFF regulation, is to ensure that EMFAF support is used for long-lasting maximum positive impact within the Union and is not transferred outside of the intended area of effect too early, thus avoiding undue advantage.

From the wording "support granted in respect of a Union vessel" it follows that the support referred to here relates directly to the vessel. Article 15 of the EMFAF regulation thus concerns only investments that have a lasting effect on the ship itself. The support 'granted' in respect of a Union fishing vessel' should be understood as an investment that improves the vessel, hence that is also transferred as a part of the vessel. It does not include support generating immaterial benefit (e.g. compensation, training).

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner and should not duplicate or crowd out private financing or distort competition in the internal market.

QA714_EMFAF_PERMANENT CESSATION - MINIMUM REQUIREMENT OF FISHING ACTIVITY

Relevant Article: Article 20(2)(c) of EMFAF Regulation

Member State: Italy

Question 1:

We hereby ask whether, on the basis of the fishing system used, the proportional methodology laid down in point 276 of the Commission Communication C(2023) 1598 may be applied for the purposes of verifying compliance with Article 20(2)(c) of Regulation (EU) 2021/1139 (EMFAF Regulation).

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The Commission Communication on Guidelines for State aid in the fishery and aquaculture sector (C(2023) 1598 final of 17 March 2023 - "hereafter "the Guidelines"), applies in case of notified state aid measures when assessing whether aid to fishery and aquaculture sector can be considered compatible with the internal market within the meaning of Article 107(2) or (3) TFEU. The provisions of Article 20 EMFAF Regulation apply to EMFAF support in the form of compensation for the permanent cessation of fishing activities. Such support does not constitute state aid. Hence, the provisions of point 276 of the Guidelines are not applicable to compensation for the permanent cessation of fishing activities within the meaning of Article 20(2)(c) EMFAF Regulation.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA715_EMFAF_AID INTENSITY FOR THE LOCAL ACTION GROUPS' PREPARATORY SUPPORT

Relevant Article: Annex III, point 13 of the EMFAF Regulation

Member State: RO

Question 1:

In Regio Wiki, QA632_EMFAF_MAXIMUM AID INTENSITY FOR CLLD OPERATIONS has the following conclusion: to the operations resulting from the LAG strategy, as well as LAG preparatory and capacity building costs, the provisions of Article 41 EMFAF apply to define the maximum aid intensity. In the case of justified LAG running costs, the maximum 100% aid intensity rate of Point 12 of Annex III can apply."

The support foreseen by Art. 34 (1) (a) of the CPR ("preparatory support"):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

1. is of collective interest, since it is meant to support a strategy for the local community;
2. ensures public access to its results, since anybody eligible can apply for a project under the local development strategy.

Thus, provision of Row 13 of Annex III of Regulation (UE) 2021/1139 seem to met, meaning that the maximum aid intensity for preparatory support under CLLD is 100%.

Answer:

The provisions of Article 41 and Annex III of the EMFAF (Regulation (EU) 2021/1139) apply to define the maximum aid intensity for support under Article 34(1)(a) CPR (Regulation (EU) 2021/1060) for capacity building and preparatory actions supporting the design and future implementation of the strategy.

The related costs may fall under different maximum aid intensity rates. In line with row 13 of Annex III EMFAF Regulation, for CLLD related *operations supported under Article 30 EMFAF Regulation, which fulfil at least one of the following criteria:*

(i)they are of collective interest;

(ii) they have a collective beneficiary; or

(iii) they have innovative features, where appropriate, at local level, and ensure public access to their results.

They may benefit from a maximum aid intensity rate of 100% if at least one of the three criteria specified above applies to preparatory support under CLLD, then the support can benefit of a maximum aid intensity of 100%.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00294 - MEASURES APPLIED BY THE MANAGING AUTHORITY - COMMUNICATION RULES - INTERREG

Relevant Article: Article 36 of the Regulation (EU) 2021/1059 (Interreg Regulation)

Member State: N/A

Question 1 (including any relevant facts and information):

According to Article 36(6) of the Interreg Regulation, the managing authority shall apply measures by cancelling up to 2% of the support from the funds in case a partner of an Interreg operation or a final recipient has not taken remedial actions to respect the transparency and communication provisions.

1. When should the MA apply a financial correction and how can it decide on the correction to be applied?
2. To what is the correction applied? Should it be applied to the budget of the partner concerned or it can be applied to a specific invoice, action? What happens if the MA uses simplified cost options to reimburse the project partner?
3. Can the correction be applied multiple times?

Answer:

1. According to Article 36(6) of the Interreg Regulation, where remedial actions have not been put into place, the managing authority is required to apply measures, taking into account the principle of proportionality, by cancelling up to 2 % of the support from the funds to the beneficiary who does not comply with Article 47 of Regulation (EU) 2021/1060 or Article 36(4) and (5) of the Interreg Regulation, or to the final recipient who does not comply with Article 36(5) of the Interreg Regulation. Before applying the above-mentioned measures, the managing authority is required to allow the beneficiary / final recipient to put into place remedial actions. The decision on the measures to be applied in each case must be based on the managing authority's assessment following its own procedure and taking into account the principle of proportionality.
2. The cancellation of up to 2 % is to be applied to the support from the funds of the operation attributable to the beneficiary / final recipient who is not complying with Article 47 of Regulation (EU) 2021/1060 or Article 36(4) and (5) of the Interreg Regulation. This is regardless of the forms of reimbursement (real costs or simplified cost options). The cancellation can be applied to the support from the funds awarded to the beneficiary / final recipient or to the support of the funds on the basis of a payment claim.
3. The measures provided in Article 36(6) of the Interreg Regulation can be applied by the managing authority once or multiple times; the only legal

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

restriction in this regard is that they cannot exceed 2 % of the support from the funds.

(NB. The question as well as the answer is applicable to operations within the scope of the Interreg Regulation. Operations implemented under the Investment for jobs and growth goal should comply with Article 50(3) of the CPR.)

QA00295 - PUBLICATION OF DOCUMENTS OF THE MONITORING COMMITTEE

Relevant Article: Articles 38 and 69(5) CPR

Member State: PT

Question 1 (including any relevant facts and information):

Article 38.4 CPR states that "*The rules of procedure of the monitoring committee and the data and information shared with the monitoring committee shall be published on the website referred to in Article 49(1), without prejudice to Article 69(5)*".

In Portugal, the current practice of ESF+ programme MAs is to publish on the website only the final versions of the documents shared, and where relevant approved, in the MC. Would this interpretation comply with Article 38.4 CPR requirements? Would the same logic apply in case of a written consultation: would it be enough to publish only the final/adopted documents (e.g. selection criteria)?

Answer:

Based on Article 38(4) CPR, the data and information shared with the monitoring committee should be published on the programme`s website referred to in Article 49(1) CPR, without prejudice to Article 69(5).

The rationale of this provision is twofold: while it aims at ensuring the transparency of the work of the monitoring committee, it also ensures that citizens and stakeholders, interested or affected by decisions of the monitoring committee in relation to the use of the funds, are properly informed. Therefore, it is important to ensure that the application of this provision provides citizens and stakeholders with easy and simple access to the documentation examined and, where relevant, approved by the monitoring committee.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Based on above, documents submitted to the monitoring committee should be made available on the programme website referred to in Article 49(1) CPR, except for documents that fall within the scope of the derogation provided by Article 69(5) CPR, namely "*where Union law or national law excludes such publication for reasons of security, public order, criminal investigations, or protection of personal data in accordance with Regulation (EU) 2016/679.*"

The process of submitting a document to the monitoring committee – including nature of documents, persons entitled and procedure, as well as the timing and technical details of publication, including those beyond the minimum requirements set out by the CPR - is subject to the rules of procedures of the monitoring committee.

It is acceptable to replace a document previously submitted to the monitoring committee and already published on the programme website with its final version resulting from examination or approval in accordance with Article 40 CPR, for easy identification and access to the final approved or examined documents.

The above provisions however, set only the minimum requirements concerning transparency of the work of the monitoring committee. The MS and the Managing Authority are free to do more to ensure transparency of the work of the monitoring committee.

QA00026 - CROSS-FINANCING

Relevant Article: Article 25(2) of the CPR

Member State: n/a

Question 1 (including any relevant facts and information):

Article 25.2

*2.The ERDF and the ESF+ may finance, in a complementary manner and subject to a limit of **15**% of support from those Funds for each priority of a programme, all or part of an operation for which the costs are eligible for support from the other Fund on the basis of eligibility rules applied to that Fund, provided that such costs are necessary for the implementation. […]*

1. How should we understand the condition that '*such costs are necessary **for the implementation***'? Implementation **of what**? is it about the implementation of the programme, the implementation of the priority or the implementation, for instance, of the 'main' ESF+ operation that requires some necessary ERDF costs that will be supported by the ESF+.
2. We have understood that the cross-financing may support part of an operation (same as 2014 2020) or a full operation (new for 2021 2027). How should we

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

implement the new possibility to have an operation fully supported under cross financing?

2.1. For instance the costs of the operations are ERDF eligible costs, but a) should the operation itself be eligible to the ESF+ and allocated to one of the ESF+ specific objective OR b) should it be allocated to an ERDF specific objective? If it is the possibility b), how should we include ERDF specific objective under a mono Fund ESF+ priority? If it is a) should the text of the programme mention for instance that the infrastructures will be supported via cross financing, under the ESF + priority, even if it's not compulsory to mention the use of cross financing in the OP?

2.2. If the ERDF eligible costs supported by the ESF+ is an operation separate from the ESF+ main operation, how should the MS demonstrate that the ERDF costs are necessary for the implementation [of the ESF+ main operation]?

1. The changes in the article require to re-confirm which rules of the Funds will be applicable: if ESF operations/costs are supported with the ERDF:

3.1. which categories of intervention should be mentioned in the OP (the one related to the ERDF operation?)?

3.2. Should ESF+ common indicators be used?

3.3. Which enabling conditions will be applicable?

3.4. For which Fund will the amounts be included in the calculations to check thematic concentration?

1. How will the reporting of the cross financing be ensured?
2. How to interpret that the costs are necessary for the implementation? Could you please confirm that you share the interpretations below and provide a more robust legal reasoning?

Case 1: ERDF supporting some ESF+ costs: a local infrastructure partially built through training or local volunteers. In this case, the ESF costs are clearly necessary to build the infrastructure. Cross financing can be used.

Case 2: ERDF supporting some ESF+ costs: The ERDF supports the construction of a VET centre. The ESF+ costs/operations are trainings in this center. The ESF+ action is not necessary to build the center so cross financing cannot be used.

Case 3: ESF+ supporting ERDF costs: A MS plans to invest with ESF+ in homes infrastructures for a group of elderly or persons with disabilities from ESF+. It provides another group of elderly or persons with disabilities with improved services supported by the ESF+. As the infrastructure is not necessary for the improvement of the services, cross-financing cannot be used.

Case 4: ESF+ supporting ERDF costs. The ESF+ supports some trainings. The ERDF costs / operation supports the construction of the VET centre. This case is less clear cut and could depend on the possibilities to organise the trainings elsewhere or not. Furthermore, it's probably theoretical because 15% of ESF+ will probably be too small to support the building of an infrastructure. However, the ERDF costs could be necessary if there is a high number of ESF+ operations planned at the same place.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Case 5: ESF+ supporting ERDF costs. The ESF+ supports some trainings in a VET centre that will require some ERDF costs to improve the accessibility or to renovate some rooms. The ERDF costs / operation are necessary for the ESF+ operation. Cross financing can be used.

Answer:

1. Article 25(2) CPR allows the ERDF and the ESF+ to finance, in a **complementary manner and subject to a limit of 15% of the support from those Funds for each priority of a programme**, all or part of an operation for which the costs are eligible for support from the other Fund on the basis of the eligibility rules applied to that Fund, provided that such **costs are necessary for the implementation**. Unlike in 2014-2020, complementary financing by the ERDF and the ESF+, in accordance with Article 25(2) of the CPR is allowed for "all or part of an operation", however, in both situations, the support by the Funds to the costs eligible under the other Fund has to be necessary for the implementation of the specific objective and target of the priority under which they are implemented. Nevertheless, this provision should be read in conjunction with Article 73(2)(a) of the CPR that sets out the responsibility of the Managing Authority to ensure that selected operations provide an effective contribution to the achievement of the specific objectives of the programme. Consequently, for operations that are entirely or partially cross-financed the condition that "such costs are necessary for the implementation" should apply to the specific objective under which they are implemented.

1. Unlike in the period of 2014-2020, the new CPR Article 25(2) allows for complementary financing of an entire operation as well (further to the partial financing that was the case in 2014-2020). However, cross-financing is different from transfers: the part or the totality of the operation subject to cross-financing should comply with the eligibility rules of the other fund, but no other provisions of the other fund are applicable. In addition, the resources are not transferred to an other Fund, i.e. they remain as resources under the Fund, in spite of being used for supporting eligible costs of the other Fund.

2.1. Cross-financed elements should comply with the eligibility rules of the other fund. More concretely, in case the total cost of the operation is co-financed by the ESF+ but subject to cross-financing in accordance with the eligibility rules applicable to the ERDF, that operation should comply with the eligibility rules of the ERDF. No further ERDF-specific provision applies. Moreover, the operation should be supported under an ESF+ specific objective and it should be demonstrated that the implementation of that operation is needed for the implementation of that ESF+ specific objective of the programme.

Although the Common Provisions Regulation does not require to explicitly mention the cross-financing within the text of the programme, Article 22(3)(d)(i) CPR requires to provide information on the type of actions to be supported. Therefore, in case the

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Managing Authority plans to make use of this possibility for a whole operation, this may have an impact on the type of actions identified in the programme. In addition, plans of cross-financing should also be signalled in section 2.1.1.1.3 "Indicative breakdown of programmed resources (EU) by types of intervention". The Managing Authority should select codes related to the type of intervention to be supported in accordance with the eligibility rules of the other fund, i.e. in case of an ESF+ specific objective supported by the ERDF-type of action, the relevant ERDF-related codes should be selected and included in Section 2.1.1.1.3 of the programme.

2.2. It is the responsibility of the Managing Authority to satisfy itself and document that the operation fully or partially supported by cross-financing from the other fund is needed for the implementation of the same specific objective of the programme under which it is implemented.

1. In case an ERDF priority is financing costs, which are eligible under the ESF+, the elements of cross-financing should comply with the provisions related to eligibility of the ESF+. As Article 25(2) CPR only determines that the support is based on the eligibility rules of the other Fund, it means that only eligibility rules of the other Fund will apply.

3.1. In accordance with Annex I to the CPR, in case ERDF supports ESF+-type actions necessary for the implementation, code 172 is to be applied. (NB. On the contrary, if ESF+ finances ERDF-type actions necessary for the implementation, the relevant codes listed for ERDF in Annex I to the CPR are to be used.) It should be noted that pursuant to Article 73(2)(g) CPR, when selecting operations the managing authority has to ensure that selected operations are attributed to a type of intervention.

3.2. Common indicators do not fall under the eligibility rules. Therefore, monitoring of and reporting on common indicators should follow the rules of the fund that provides the financial resources to the operation. In the specific case of the question the rules of the ERDF should be followed.

3.3. Enabling conditions are linked to specific objectives. Elements under cross-financing – in this specific example - are still implemented under ERDF specific objectives. Therefore the enabling condition(s) relevant to the specific objective, under which the cross-financed operation is implemented, will be applicable.

3.4. In case an ERDF priority finances partially or fully an operation by the way of cross-financing, the financial support is still provided by the ERDF. The amount of cross-financing should be accounted against the provisions of thematic concentration of the ERDF.

1. As regards reporting, Annex VII to the CPR includes the template for regular reporting pursuant to Article 42. Table 2 of this template will provide data on "Breakdown of the cumulative financial data by type of intervention". In this table, the evolution of the amount of cross-financing will be followed by intervention codes which reflect the cross-financing for each specific objective and priority. The use of the intervention codes of the other Fund will make it possible to monitor compliance with the ceiling of 15% as set out in Article 25(2) CPR. This table will be provided by the Member States five times a year.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

2. In line with the previous points (in particular points 1 and 2.2), it is the responsibility of the Managing Authority to satisfy itself and document that the operation fully or partially supported by cross-financing from the other fund is needed for the implementation of the same specific objective of the programme under which they are implemented.

As regards the specific cases for which confirmation is requested, without knowing the structure of the programme within which they are planned to be implemented, the information is not sufficient to establish whether they may be acceptable for cross-financing. On the basis of information provided and in line with the above, they may all qualify for cross-financing but final confirmation can only be provided in the context of the structure of the programme they are financed from.

QA00296 - REIMBURSEMENT OF EXPENDITURE FOLLOWING FULFILMENT OF A PREVIOUSLY NON-FULFILLED ENABLING CONDITION – CONSEQUENCES

Relevant Articles:

Article 15 of the CPR

Article 73 of the CPR

Article 74 of the CPR

Article 96 and 97 of the CPR

Member State: n/a

Question 1 (including any relevant facts and information):

Following the procedure under Article 15(4) CPR i.e. when an enabling condition goes from unfulfilled to fulfilled, how will the Commission process the payment applications submitted by the Member State, which includes expenditure incurred by beneficiaries and was previously included in Appendix 2 of the payment application before the enabling condition was fulfilled?

Answer:

Where the Member State has informed the Commission that an enabling condition that was previously not fulfilled has been fulfilled and the Commission adopts a decision in accordance with Article 15(4) CPR in which it agrees with the Member State, the Member State needs to declare the expenditure in the main part of the payment application so that the amounts can be reimbursed by the Commission. The

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

fulfilment of the enabling condition will not automatically trigger payments from the Commission for the expenditure previously introduced in Appendix 2 (or Appendix 3 for AMIF, BMVI and ISF programmes) of the payment application, therefore the amounts need to be reintroduced in the main part of a new payment application.

It is important to recall Member States shall ensure that the expenditure entered into the accounts is legal and regular including all expenditure declared in relation to a previously unfulfilled enabling condition which was incurred when the enabling condition was not fulfilled.

QA00298 - USING SCOS IN THE LIGHT OF ARTICLE 56(1) CPR

Relevant Article: Article 56(1) of the CPR

Member State: PL

Question 1 (including any relevant facts and information):

Is it possible to use CPR Art 56(1) provisions to support one project being a part of larger operation, while rest of the projects in the operation are based on real costs?

Setting:

In one of the regional programmes there are modular operations, planned as a comprehensive support for R&D projects. Such an operation is implemented by one beneficiary (a company) under one funding contract. However, there are up to 5 projects inside (each with its own budget, timetable and indicators explicitly set out in the contract).

Each of the projects (or "modules" as the MA calls them) is financed basing on a different legal basis as the whole operation can contain several kinds of state aid, although only the first one is compulsory:

1. R&D works based on art 25 GBER (obligatory)
2. Pre-implementing of R&D works from module 1, based on art 28 of GBER (facultative)
3. R&D infrastructure needed for conducting module 1, based on art 14 GBER – investment aid (facultative)
4. Implementation of R&D effects of module 1 into business practice, based on art 14 GBER – investment aid (facultative)
5. Development of company staff competences related to new business processes/model – based on de minimis aid (facultative).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Staff costs are only in module 1, and the MA would like to use art 56(1) to finance other costs connected to this module only.

As modules 3 and 4 in most cases will be far more expensive than any other module, the 40% of staff costs of module 1 to cover all other expenses of the whole operation is not attractive.

Modules 2-5 are based on real costs.

Answer:

Article 56(1) CPR provides that a flat rate of up to 40 % of eligible direct staff costs may be used in order to cover the remaining eligible costs of an operation. The Member State is not to be required to perform a calculation to determine the applicable rate.

According to Article 2, point (4)(a) CPR, 'operation' means a project, contract, action or group of projects selected under the programmes concerned.

It is up to the managing authority to define the scope of the operation. According to the described set-up, we understand that the managing authority has defined it as one operation comprising several projects/modules. In line with Article 56(1) CPR, the flat rate of up to 40% is to cover all remaining eligible costs of **the operation** and not of one of the projects/modules of the operation. Therefore, if the Member State makes use of Article 56(1) CPR, no other costs (i.e. the costs related to other modules) may be declared on top of direct staff costs and the costs covered by the up to 40% flat rate.

QA00299 - ELIGIBILITY OF MACHINERY POWERED BY FOSSIL FUELS COMBUSTION IMPLEMENTING NATURA 2000 MANAGEMENT PLANS

Relevant Article: Article 7(1)(iii) ERDF/CF Regulation

Member State: HR

Question 1 (including any relevant facts and information):

Croatia is planning to finance measures for the restoration and conservation of the Natura 2000 sites under specific objective (SO) 2.7, as planned in the prioritised action framework (PAF) and Natura 2000 management plans. Some of these activities often require the use of machinery, such as weed harvester, tractors, mulchers, etc., which are powered through fossil fuels combustion, due to the specific environment in which they operate, and specific requirements.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 7 of the ERDF/CF Regulation stipulates that "*the ERDF and the Cohesion Fund shall not support investments related to production, processing, transport, distribution, storage or combustion of fossil fuels, with the exception of investments in vehicles, aircraft and vessels designed and constructed or adapted for use by civil protection and fire services*".

In this legal framework, the first question refers to the possibility of including "machinery" under the definition of "vehicles" included under Article 7(1)(iii) ERDF/CF Regulation, considering that the provision of civil protection and fire services is not ensured only through the procurement of vehicles, but also of other types of machinery.

The second question refers to the possibility of allowing investments in machinery for EU support, such as weed harvester, tractors, mulchers, etc., that are powered through fossil fuels combustion, whose use does not only serve to implement the activities planned in the Natura 2000 management plants, but also to provide "civil protection and fire services". As an example, the procurement of mulchers and weed harvesters to manage grasslands and wetlands, whose main objective is to achieve the SO 2.7 objectives, also contribute in parallel to provide fire prevention and flood protection benefits.

In this context, is the procurement of machines powered through the combustion of fossil fuels used to implement Natura 2000 management plan activities, while also providing civil protection and fire services, eligible for EU support?

Answer:

This answer was updated on 4 November 2024. The change is struck through and the new text is highlighted in blue.

The procurement of a machine powered through the combustion of fossil fuels may be eligible for EU funding if that machine can be considered "a vehicle" within the meaning of Article 7(1)(h)(iii) of the ERDF/CF Regulation and if it is *"designed and constructed or adapted for use by civil protection and fire services*", even if in parallel it contributes to implementing Natura 2000 management plan objectives. ~~The fulfilment of the aforementioned conditions must be checked on a case-by-case basis.~~

If the investment does not fall under the exception of Article 7(1)(h)(iii), it is only eligible if there is no viable alternative technology. Member States are responsible for ensuring this condition is met.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00303 - SCOPE OF STEP AND RELATION WITH ELIGIBILITY RULES UNDER THE FUNDS

Relevant Articles:

Articles 3, 5 and 7 of the ERDF Regulation

Articles 2, 8, 9 and 11 of the JTF Regulation

Articles 4, 12a and 16 of the ESF+ Regulation

Article 73 of the CPR

Member State: n/a

Eligibility: relation between Article 2 STEP and CPR and fund-specific rules

Question 1:

What technologies are eligible under the STEP regulation? Will the Commission provide a list of technologies eligible under STEP? Can STEP technologies apply to all sectors including shipping or food sector? Is it the type of technology that matters and not the field in which it is applied?

Sub-question 1a: Is it possible, for example, to finance under STEP plans for the electrification of ports to reduce ships' emissions during their stay in the port and/or charging ships with electric propulsion and batteries?

Answer to question 1

STEP supports the development and manufacturing of critical technologies in three technology areas: digital technologies and deep tech innovation, clean and resource efficient technologies, and biotechnologies. Indeed, the type of technology is considered, provided it falls within the STEP technology areas, regardless of its specific application (including shipping).

The STEP Guidance further describes technological areas under the scope of STEP and presents (under section 2), for each STEP area, an indicative and non-exhaustive list of examples and relevant definitions of technologies that could be considered in the scope of the STEP areas, including based on Union publications.

A technology could be supported by STEP provided it is critical for and specific to the development and manufacturing of the final products within the scope of STEP and meets the STEP conditions (e.g., related to innovative character and/or preventing/reducing strategic dependencies). A deployment of such a technology could not be supported as a STEP investment.

Eligibility of a particular technology needs to be assessed on a case-by-case basis against conditions set out in Article 2 STEP and against rules specific to the instrument or fund under which the technology is financed.

Answer to sub-question 1a:

The development and manufacturing of clean and resource efficient technologies, including wind and electric propulsion technologies, could be in line with Article 2 STEP provided they meet the STEP conditions. However, the deployment of such technologies in ports could not.

Question 2

What is the relation between eligibility under STEP (Article 2 STEP regulation) and eligibility under the funds? Which new technologies are eligible for ERDF and JTF under STEP?

Answer to question 2

To be considered as STEP relevant investment/technology need to comply with Article 2 STEP Regulation (see a reply to question 1 above).

Investments compatible with Article 2 of the STEP regulation need to be eligible and within the scope of the funds – they need to comply with the eligibility rules set out in the CPR and the funds specific regulations (as stated in recital 19 STEP regulation).

With regard to the ERDF and the JTF, investments need to comply in particular with Articles 5 and 7 ERDF/CF regulation and Articles 8 and 9 JTF regulation (exclusions from the scope), i.e., STEP investment cannot be financed if they are excluded from the scope of the funds.

With regard to the ESF+, STEP operations should contribute to the specific objectives of the ESF+ (Article 4 ESF+) and comply with eligibility rules, in particular those set out in Article 16 ESF+.

Eligibility under the fund-specific rules: scope of support, investment in enterprises other than SMEs

Question 3

Will ERDF support for enterprises other than SMEs be possible in transition and less developed regions?

Answer to question 3

Pursuant to the new Article 5(2)(e) of the Regulation on the European Regional Development Fund, the ERDF (as explained in recital 19 STEP regulation) will support productive investments in enterprises other than SMEs when they contribute to the specific STEP objective under PO 1, or to the specific STEP objective under PO 2, in less developed and transition regions (in all Member States), as well as more developed regions in Member States whose average GDP per capita is below the EU-27 average measured in purchasing power standards and calculated on the basis of Union figures

for the period 2015-2017, while preserving a focus on SMEs. Those Member States are: BG, CZ, EE, EL, ES, HR, IT, CY, LV, LT, HU, MT, PL, PT, RO, SI, SK. (Source: Eurostat). The funding continues to be subject to applicable State aid rules.

Under Interreg, productive investments in enterprises other than SMEs are eligible as long as the geographical coverage of the programme **within the Union** consists **exclusively** of the regions listed above.

Question 4

Does the support for companies other than SMEs apply regardless of the category of region or area under the JTF?

Answer to question 4

The new subparagraph added to Article 8(2) JTF on productive investments in enterprises other than SMEs does not restrict STEP-related productive investments to assisted areas ('assisted area' means either an '"a" area' or a '"c" area'; "a" areas' mean areas designated in a regional aid map in accordance with Article 107(3)(a) of the Treaty and '"c" areas' mean areas designated in a regional aid map in accordance with Article 107(3)(c) of the Treaty). However, such productive investments must be compatible with the expected contribution to the transition to climate neutrality in a designated region covered by the TJTP as set out in the territorial just transition plans, must comply with applicable State aid rules and with the applicable rules set out in the CPR and JTF regulation.

Question 5

Concerning the JTF, we understand that companies other than SMEs that fall within the scope of the areas targeted by STEP will not be included in the list provided for in article 11(2)(h), and no analysis of the employment balance will be required. Thus, for these specific cases, there would be no modification of the TJTP. Can you confirm this interpretation?

In which cases should TJTPs be modified to include large companies and eligible new technologies? If a list of large companies and projects has to be drawn up, should it be forwarded to the Commission for validation before the program is modified, or should it be appended to the program? Furthermore, does this list have to be exhaustive, or can it be increased as the program progresses.

Our understanding is with STEP it is no longer necessary to carry out a gap analysis in order to grant support to productive investments in large enterprises. However, it is not clear whether it is still necessary to provide an indicative list of operations and large enterprises that will receive support.

Answer to question 5

To support productive investments that contribute to STEP objectives in enterprises other than SMEs under JTF, the jobs gap analysis is no longer required pursuant to the last subparagraph of Article 8(2) JTF, as amended by STEP regulation.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

However, STEP regulation has not amended the rules regarding the indicative list of productive investments in enterprises other than SMEs, namely:

- the list must be included in a territorial just transition plan (TJTP), in accordance with Article 11(2)(h) JTF, wherever support to productive investments in large enterprises is envisaged in the programme,
- The list remains, in principle, indicative even once approved by the Commission within the TJTP as part of the programme. Thus, the list is not exhaustive.
- The list loses de facto its "indicative" character if the support is to be granted under Regional State Aid Guidelines (the RAG) to large enterprises for initial investments located in 'c' areas that do not create new economic activities, see derogation under paragraph 14 of the RAG. For these investments, both the investment and the beneficiary should be identified in the TJTP of a Member State approved by the Commission before the aid can be notified to the Commission pursuant to Article 108(3) TFEU[1].
- The investments from the list in the TJTP approved by the Commission and those productive investments in large enterprises that may be identified in the future (after the approval of the TJTP) are still subject to selection procedures in accordance with Article 73 CPR.

The need to amend the territorial just transition plan and the obligation concerning the indicative list will therefore vary according to the following cases:

- **The TJTP already envisages productive investments in large enterprises, and new productive investments in large enterprises are identified:**

The modification of the indicative list is encouraged, but not compulsory when amending the JTF programme (the TJTP) unless the list loses its indicative character as the Member State decides to make use of the derogation under paragraph 14 of the RAG.

Further amendments to the programme may nevertheless be needed in some cases, e.g., if a dedicated STEP priority is introduced, the amount of current support and consequently the values of indicators are changed etc.

- **The current scope of the TJTP does not envisage any support to productive investments in large enterprises:**

The modification of the TJTP is necessary and must be done through a programme amendment. In this case, the TJTP should explain the expected contribution of such investments to alleviating the impact of the transition. The indicative list must be established and included in the TJTP, and other relevant changes have to be reflected in the programme.

If the Member State envisages to select productive investments in large enterprises through open calls for projects, the list can be established through a prior call for interest that will allow to identify potentially eligible operations and enterprises.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 6

Regarding JTF, how to understand Article 11 of the STEP Regulation: other enterprises can be supported but there has still to be a focus on SMEs - is the view to take on the whole JTF or just a measure?

Answer to question 6

Supporting SMEs is the rule under both the JTF and the ERDF, while support for large enterprises (enterprises other than SMES) is the exception. The STEP Regulation has not modified that premise.

Question 7

The current TJTP contains the following sentence: "Support for productive investments by companies other than SMEs is not eligible." Can the European Commission confirm that this type of sentence can be removed from the TJTPs, leaving the GA free to finance large-scale corporate projects if they are compatible with the STEP modification?

Answer to question 7

If a programme or a corresponding TJTP contains provisions that would not allow investment by companies other than SMEs, it needs to be amended regardless of whether they contribute to STEP related objectives or to the "pure" JTF objective. The Member States are encouraged to discuss and pre-agree the scope of a programme amendment with the Commission before the official submission of their amendment request. As such a programme does not yet have an indicative list of operations and large enterprises, the amendment will have to include such a list as requested under Article 11(2) point (h) of the JTF Regulation.

Question 8

According to the STEP Regulations and amendments to the Regulation 2021/1058, "the ERDF shall also support training, life-long learning, reskilling and education activities". Is there any % limit for that type of expenditure?

Answer to question 8

There is no limit to expenditure related to training, life-long learning, reskilling and education activities. The overall limit of allocation that can be used for STEP under the ERDF and the Cohesion Fund is 20% of initial ERDF resources in accordance with (the new) Art. 3(1a) ERDF/CF Regulation.

Eligibility under the fund-specific rules: exclusions from the scope

Question 9

Please clarify the scope of STEP regulation in the context of the exclusions under Article 7 ERDF/CF regulation:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

a) Does a project related to storage of CO2 emissions of activities listed in Annex I to Directive 2003/87/EC comply with Article 2 STEP? Is there a possibility to finance such a project under ERDF?

b) Does a project related to the development or strengthening of value chains comprising the production of nuclear-generated electricity comply with Article 2 STEP? Taking into account that the ERDF does not support the dismantling or construction of nuclear power plants (Article 7 of Regulation 2021/1058), will it be possible, via an ERDF STEP priority, to support the development or strengthening of value chains for nuclear electricity production?

c) Does pyrolysis comply with Article 2 STEP regulation? Is there a possibility to finance such a project under ERDF?

Answers to question 9

Any activities or operations compatible with STEP objectives (Article 2 STEP) implemented through the cohesion policy programmes need to comply with the rules of both the CPR and the specific fund.

Point a)

The development and manufacturing of clean and resource efficient technologies, including the storage of CO2 emissions, could be in line with Article 2 STEP regulation ('carbon capture technologies' are covered by NZIA, see section 2.2 of the guidelines) provided they meet the STEP conditions, while the deployment of such technologies cannot be supported through STEP.

However, storage of CO2 emission, being the result of combustion of fossil fuels is excluded from support by the ERDF on the basis of Article 7(1)(h) ERDF/CF Regulation.

Point b)

The development and manufacturing of nuclear technologies could be in line with Article 2 STEP regulation ('nuclear fission energy technologies, including nuclear fuel cycle technologies' and 'other nuclear technologies not covered in previous categories' are covered by NZIA; see section 2.2 of the guidelines on the scope of STEP) provided they meet the STEP criticality conditions. The deployment of such technologies cannot be supported through STEP.

The decommissioning or the construction of nuclear power stations is excluded on the basis of Article 7(1)(a) ERDF/CF Regulation and related projects could not be financed under the ERDF. See interpretation for mirroring exclusion under the JTF for completeness (QA00066 - Questions on eligibility under JTF - RegioWiki Extranet - RegioWiki (europa.eu)).

In general, the EU budget itself does not finance nuclear energy production, with the exception of Euratom. The EU provides funding for nuclear-related activities in areas, which are of critical importance, such as decommissioning of nuclear plants and the ITER project (research in nuclear fusion energy) under other budget lines.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

For completeness, in relation to investment in nuclear fusion please consult: QA00375 - Can the ERDF support research and development of new technologies in the area of nuclear fusion energy?

Point c)

When used to produce net-zero technologies, the components used to perform pyrolysis fall under the scope of the NZIA. Pursuant to article 2(1) of the STEP Regulation, clean and resource efficient technologies within the scope of STEP include net-zero technologies as defined by the NZIA in its Article 4. Such projects can be financed under STEP, if they comply with the criticality condition of Article 2(2) of the STEP regulation. Pursuant to Article 2(4) of the STEP Regulation, projects recognised as strategic under the NZIA are automatically deemed to contribute to STEP objectives.

The conditions related to the support to pyrolysis projects from the ERDF or the JTF have been detailed in the QA00263 (QA00263 - Eligibility of recycled carbon fuel under JTF and climate proofing of infrastructure).

Question 10

Please clarify the exclusions under Article 9 JTF regulation.

It is not clearly or at best indirectly regulated who can be a beneficiary of the JTF. Since Article 2 of the JTF Regulation, which contains the specific objective of the JTF, adds that the JTF can also support the objectives of STEP and Article 8 para. 1 of the JTF Regulation is not to be amended with the funding catalogue, support for STEP priorities seems potentially possible across all JTF funding objects (i.e. not only business support but also research funding). Can only enterprises be eligible in the context of STEP priority in an JTF programme or could it be also equipment and research infrastructures?

Answer to question 10

In accordance with Article 2 of JTF Regulation, amended by Article 11(1) STEP Regulation, the JTF may also support investments contributing to the objectives of STEP referred to in Article 2 of the STEP Regulation. These objectives are (i) supporting the development or manufacturing of critical technologies or safeguarding and strengthening their value chain in defined sectors; and (ii) addressing related labour shortages and critical skills.

In line with Article 8(1) JTF, the JTF should only support activities that are directly linked to its specific objective as set out in Article 2 and which contribute to the implementation of the territorial just transition plans.

Consequently, in the framework of STEP, activities listed in Article 8(2) JTF Regulation need to demonstrate contribution to STEP objectives. They also need to address the social, employment, economic and environmental impacts of the transition that the JTF region is undergoing and implement the territorial just transition plan.

In this context, research and development infrastructure could be supported by STEP provided it is critical for and specific to the development and manufacturing of the final products within the scope of STEP and meets the STEP conditions (e.g., related to

innovative character and/or reducing or preventing strategic dependencies). Moreover, research and development infrastructure may be supported via STEP provided it is considered as necessary to perform an ancillary service (i.e., an inherent part of the investment cost of a STEP project). The deployment of such infrastructure is not supported through STEP.

Question 11

According to STEP Regulation's Article 2, the support from STEP could be dedicated for the development or manufacturing of critical technologies. Could you please specify, whether installation of biotechnologies, digital, clean and resource efficient technologies (e.g. such as renewable energy resources technologies) in a concrete enterprise could be supported under STEP.

Answer to question 11

Cohesion policy programmes may support investments contributing to the objectives of the STEP as referred to in Article 2 of STEP Regulation, i.e., the development or manufacturing of critical technologies at any stage of the value chain (see Article 3 of the STEP Regulation). Enterprises can be supported if the investment consists in development or manufacturing of critical technologies by that enterprise (see recital (4) of the STEP Regulation). Therefore, a simple installation of a technology developed and manufactured elsewhere having as a main goal for example bringing savings to the given enterprise but not developing or manufacturing further/ other critical technologies would not fall under the scope of STEP.

However, for the ESF +, it should be recalled that support can be provided to the objectives of the Strategic Technologies for Europe Platform (STEP) referred to in Article 2(1), point (b), which reads as follows: addressing shortages of labour and skills critical to all kinds of quality jobs in support of the objective set out in point (a), in particular through life-long learning, education and training projects, including the European Net-Zero Industry Academies established pursuant to the relevant provision of the Net-Zero Industry Act, and in close cooperation with social partners and education and training initiatives already in place.

Therefore, support to the development or manufacturing of critical technologies, as detailed in Article 2 (1)(a), cannot be provided under the ESF +.

Eligibility: scope of ESF+

Question 12

In which fields should the human resource from SMEs be trained through ESF+? Is the training aimed at exclusive specialization in the company's field of activity with recognition at its level, or outside the framework of national authorization?

Answer to question 12

In accordance with Article 12a of the ESF+ Regulation (Regulation (EU) 2021/1057, as amended by the STEP Regulation (Regulation (EU) 2024/795), Member States may use the ESF+ to provide support to the objectives of the Strategic Technologies for Europe Platform (STEP) referred to in Article 2(1), point (b) of the STEP Regulation, i.e. for addressing shortages of labour and skills critical to all kinds of quality jobs in the sectors referred to in Article 2(1)(a) of the STEP Regulation, which are

- **digital technologies and deep tech innovation,** including those contributing to the targets and objectives of the Digital Decade Policy Programme 2030, multi-country projects as defined in Article 2, point (2), of Decision (EU) 2022/2481, and deep tech innovation;
- **clean and resource efficient technologies, including net-zero technologies** as defined in the Net-Zero Industry Act;
- **biotechnologies**, including medicinal products on the Union list of critical medicines and their components

This support can be provided under the ESF +'s relevant specific objectives. In light of this, it is important to emphasise that the ESF+ support for the development of skills is not limited to the development of skills for workers in companies, including SMEs. It is also not limited to supporting training tailored for companies. It may also *cover inter alia*, the development of skills through training developed/implemented through public employment services or even learning programmes in education, for instance vocational education programmes or higher education.

STEP targets the skill sets relevant to the development and manufacturing of critical technologies across the STEP sectors, while creating quality jobs and apprenticeships. Skills development beyond the scope of STEP within these sectors is still eligible under ESF+ as the support by the ESF+ to skills development is not limited to specific sectors, however, in such a case (i.e support to development of skills in sectors not falling within the scope of STEP) such support is not considered as contributing to STEP.

Explanation of terminology used in the STEP regulation

Question 13

Can you explain terms used in Article 2 STEP Regulation:

a) critical technology and significant economic potential

b) strategic dependency

c) critical raw materials

More specifically in relation to raw materials:

- are raw material processors included in the term "production of materials" that save critical resources?
- to what extent can we extrapolate or expand the notion of value chain specifically to projects linked to the recovery or transformation of raw

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

materials into secondary raw materials to fuel the development or production of technologies targeted by STEP?

d) creating attractive, high-quality jobs that are accessible to all

Answer to point 13a)

To qualify as critical under STEP based on the condition related to innovative character, a technology must exhibit at least two of the three characteristics—innovative, emerging, or cutting-edge. Additionally, it must demonstrate significant economic potential, as further detailed and supported in the subsequent paragraphs of the guidance (see Section 3.1). These paragraphs elaborate on assessing economic potential in terms of the technology's capacity to address various Union markets, its substantial impact on technology development or manufacturing, and the positive spillover effects it can generate across other Member States.

Answer to point 13b)

The STEP Guidance refers to a number of dependencies and vulnerabilities have been identified in a set of assessments and roadmaps carried out at Union level. The understanding of what constitutes strategic dependencies evolves in accordance with technological changes and/or geopolitical and international trade developments. Strategic dependencies may be recognised in other EU-level documents than the ones already outlined in the STEP Guidance. Moreover, a strategic dependency may be deemed to exist where the European Union relies significantly on third-countries sources of supply for a technology referred to in Article 2(1), point (a) of the STEP Regulation. The STEP Guidance outlines several factors that should be considered when determining whether technologies reduce or prevent strategic dependencies of the Union.

Answer to point 13c)

Under The Critical Raw Materials Act[2] (CRMA), projects for materials that are "able to substitute strategic raw material in one or more strategic technologies" can also be designated as Strategic Projects. For this, they need to increase the production of the substitute raw material "while taking measures to achieve an equal or lower environmental footprint compared to the strategic raw material that is substituted." (Annex III 1(c) CRMA).

The CRMA explicitly includes projects related to increasing the recycling capacity for Strategic Raw Materials. Article 2(13) of CRMA defines that "recycling operations for strategic raw materials after re-processing, including the sorting and pre-treatment of waste, and its processing into secondary raw materials" are included.

Answer to point 13d)

The STEP Regulation does not provide a definition or criteria for defining "attractive and high quality jobs". However, the Council Recommendation on a European Framework on Quality and Effective Apprenticeships and the Council Recommendation on a Reinforced Youth Guarantee provide recommendations to Member States for the

creation of quality apprenticeships and jobs. In addition, the International Labour Organisation provides a definition of 'decent' work and a further examination of 'quality' work together with Eurofound around 7 different dimensions Working conditions: Job quality of concern to all workers (ilo.org), which also may serve as reference for Member States in the context of STEP. More information can be found here: Job quality of concern to all workers | International Labour Organization (ilo.org)

Question 14

In relation to Net-Zero Industry Act referred to in Article 2 STEP:

a) The NZIA regulation lists nineteen technologies, including hydrogen technologies, without specifying the renewable nature of this source (see discussions on the green hydrogen/grey hydrogen distinction). Will the NZIA regulation be further clarified?

b) The definition of 'net-zero technologies' in Net Zero Industry Act (NZIA) Article 3(1)(a) states that specified technologies should have reached technology readiness level 8. What is the relation between the definition in Article 3(1)(a) NZIA and support for net zero technologies under STEP regulation?

c) With regard to the NZIA regulations, is there a standard way of identifying projects that comply with the texts (list of NACE codes, etc.)?

Answer to point 14a)

Pursuant to article 2(1) of the STEP Regulation, clean and resource efficient technologies include net-zero technologies as defined by the NZIA in its Article 4. In addition, at the latest by 9 months of the entry into force of the NZIA, the Commission is to adopt a delegated act to amend its Annex based on the list of net-zero technologies set out in Article 4 of the NZIA, in order to identify the sub-categories within net-zero technologies and the list of specific components used for these technologies.

Answer to point 14b)

The STEP regulation does not introduce restrictions based on TRL levels. As a reminder, whereas the regulation confirms that NZIA projects are considered to advance STEP objectives, whether a specific project is indeed a STEP project or not depends on how it scores vis-à-vis the quality and award criteria of a STEP relevant call.

Answer to point 14c)

There is no standard way of identifying projects that comply with the requirements in the Act. However, a forthcoming delegated act will provide a list of components that will de facto be in the scope of the Act. Furthermore, the text provides criteria to assess whether projects fall under the scope of the Act.

Question 15

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Could you explain in more detail the European Skills Academies referred to in Article 12a STEP regulation and Net Zero Academies referred to in Article 2 STEP regulation?

Answer to question 15

Under the European Centres of Vocational Excellence as well as the Pact for Skills, and the associated Blueprints for Sectoral Skills Development, partners are developing skills intelligence and new learning programmes in many of the industry ecosystems covered by STEP (see more in Centres of Vocational Excellence - Employment, Social Affairs & Inclusion and Pact for Skills).

In addition, to strengthen the manufacturing capacity of net-zero technologies a sizeable skilled workforce is key. Net-Zero Industry Act (NZIA) will enhance skills for net-zero technologies by setting up dedicated training programmes through Net-Zero Academies and facilitating the portability of qualifications in regulated professions. The academies, each focussing on one net-zero industry technology, will aim to train 100.000 learners each within three years of establishment.

---

[1] For more details, see QA00101 - Procedure of selection of projects of productive investments in large enterprises for the indicative list of the TJTP.

[2] Regulation (EU) 2024/1252 of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020 (OJ L, 2024/1252, 3.5.2024).

QA00301 - DECLARING EXPENDITURE IN 2021-2027 PROGRAMMING PERIOD FOR THE SECOND PHASE OF A PHASED MAJOR PROJECT BEFORE IT IS APPROVED BY THE COMMISSION UNDER THE CPR 2014-2020

Relevant Articles:

Article 63 of the CPR

Article 74 of the CPR

Article 75 of the CPR

Article 91 of the CPR

Article 118 of the CPR

Article 118a of the CPR

Member State: HR

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

The question concerns specifically major projects which were earlier approved by the Commission, but need to be amended either to split them into two phases or to re-adjust the scope of the phases already approved, and which therefore are undergoing an appraisal by independent experts in accordance with Article 102(1) of Regulation (EU) 1310/2013.

In line with Article 118 CPR 2021-2027 the managing authority may proceed with the selection of an operation consisting of the second phase of an operation selected for support and started under Regulation (EU) 1303/2013. This applies to major projects as well.

Can the expenditure related to such a second phase be included in the payment application for the 2021-2027 programmes after the managing authority has informed the Commission of the submission to the independent experts of the information required under Article 101 of Regulation (EU) No 1303/2013, but **before it is deemed to be approved by the Commission** in line with the second paragraph of Article 102(1) of Regulation (EU) 1303/2013.

Answer:

We understand the case under question is a major project selected under the programming period 2014-2020 which is in the process of being amended to phase it into the programming period 2021-2027 (or to adjust the scope of phases) and has been submitted for an appraisal to the independent experts.

The Member State may proceed with the selection of the second phase of operations falling under Article 118 CPR (or may proceed with directly granting support to the second phase of operations falling under Article 118a CPR) provided that the conditions set out in Articles 118 or 118a CPR respectively are complied with.

Once the second phase has been selected (or decision to grant support has been taken), the Member State may include expenditure in the payment applications for these operations under the programming period 2021-2027 before the amendments of the related major projects under the programming period 2014-2020 are (deemed to be) approved.

QA00302 - QUESTIONS RELATED TO PROGRAMMING OF STEP, DEDICATED PRIORITIES AND PROGRAMME AMENDMENTS, INDICATORS

Relevant Articles:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Articles 22, 24 and 111 of the CPR

Article 3 of the ERDF

Articles 2 and 8 of the JTF

Articles 12a and 17 ESF+

Member State: n/a

Question 1

Is it compulsory to set up new STEP priorities or is it related to the use of certain incentives (which ones)? Is creating dedicated priorities linked to the newly introduced specific objectives? Does it require a programme amendment?

Can the new STEP objectives be integrated into existing priorities, if 100% co-financing is waived? Does it require a programme amendment?

Answer to question 1

The uptake of STEP investments, including creating dedicated priorities, is voluntary – it depends on the decision of the Member State.

The introduction of a dedicated STEP priority into the programme is a condition for benefitting from the following incentives set out in the STEP Regulation:

- increased (up to100%) co-financing rate for the ERDF, the Cohesion Fund, the ESF+ and the JTF,
- one-off prefinancing of 30% of the resources programmed under such priorities for the ERDF, the Cohesion Fund, the ESF+.

Furthermore, the dedicated STEP priorities are not subject to mid-term review if they are included in the programme through an amendment submitted by 31 August 2024.

Creating a dedicated priority requires a programme amendment.

The STEP Regulation introduced new STEP related specific objectives only for the ERDF and the Cohesion Fund. Including STEP specific objectives in the programme under the ERDF and the CF requires introducing dedicated STEP priority(ies). This is not the case for the ESF+ and the JTF. Where a Member State decides to make use of incentives, it needs to create one or more dedicated priorities under the relevant ESF+ specific objectives set out in Article 4(1) ESF+ Regulation or under JTF specific objective.

It is possible to implement operations under any of the funds that fit into STEP objectives under priorities that are not dedicated to STEP (i.e., without the reprogramming) provided such operations falls under the scope of the programme. In that case, however, the programme will not be able to benefit from the other incentives set out in the STEP Regulation.

Question 2

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

If a programme decides to take up STEP and make use of increased co-financing for all funds, would it need to establish four dedicated priorities?

Is creating multi-fund STEP priorities possible? Can a single STEP priority be created for different ERDF policy objectives? If a dedicated priority for STEP is introduced, is it possible to combine specific objectives of both policy objectives into one or are two separate axes necessary?

Answer to question 2

As in accordance with Article 22(2) CPR, each priority shall correspond to a single policy objective or the specific objective of the JTF […], it is not possible to combine different policy objectives in one priority. It is only possible for Member States to create a multi-fund priority under STEP for support under the same policy objective. In practice, this means that it is only possible to set up multi-fund priorities which combine funding under the ERDF and the CF under the same policy objective (PO2). It is not possible to create a multi-fund dedicated priority combing support from the ESF+ with the ERDF or the CF since the support by the ESF+ under STEP will always be programmed under PO 4, whilst under the ERDF and the CF it is programmed under PO1 and/or PO2. It is not possible to create multi-fund priorities which combine the ERDF, the CF or the ESF+ with the JTF.

If a programme plans investments under both STEP specific objectives introduced under ERDF/CF regulation, at least two priorities are required: one for the ERDF under PO1 and one for the ERDF and/or the Cohesion Fund under PO2. If furthermore a programme plans introducing dedicated priorities also for the ESF+ and the JTF at least four dedicated priorities are required.

Question 3

Can dedicated STEP priorities under the ERDF and CF contain next to SOs newly created by the STEP regulation also other SOs?

Answer to question 3

No, as dedicated priorities are linked to the incentives set out in the STEP Regulation, a dedicated STEP priority financed by the ERDF or by the CF may only include a new STEP specific objective created under the STEP regulation. Under PO1, a dedicated STEP priority may only include SO 1.6 (Art. 3(1)(a)(vi) of the ERDF/CF Regulation). Under PO2, a dedicated STEP priority may only include SO 2.9 (Art. 3(1)(b)(ix) of the ERDF/CF Regulation).

STEP-related investments can be financed under the existing priorities and SOs, however, it will not be considered as a dedicated STEP priority and will not benefit from the STEP incentives.

Question 4

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In contrast to the original proposal for STEP regulation, it seems that the JTF can contribute to all three STEP sectors defined in article 2 STEP Regulation (not just clean technologies). Can you confirm?

Answer to question 4

In accordance with Article 2 of the JTF Regulation, as amended by the STEP Regulation, the JTF may also support investments contributing to the objectives of STEP referred to in Article 2 of the STEP Regulation: (i) supporting the development or manufacturing of critical technologies or safeguarding and strengthening their value chain in all defined sectors (i.e., digital technologies, deep tech innovation, clean and resource efficient technologies, and biotechnologies); (ii) addressing related labour shortages and critical skills.

As explained in Recital 21 of the STEP Regulation, the scope of support of the JTF has been extended to cover investments in technologies covered by the STEP Regulation, as well as to address shortages of labour and skills necessary to realise those investments, provided that such investments are compatible with the expected contribution to the transition to climate neutrality as set out in the territorial just transition plans, as set out in the JTF regulation. In accordance with Article 8(1) of the JTF Regulation, the JTF should only support activities that are directly linked to its specific objective and which contribute to the implementation of the territorial just transition plans.

Question 5

In the light of a new specific priority would be planned for STEP activities in a programme, please explain whether ERDF funds and indicators dedicated to this priority will have to be broken down by regions (more/ less-developed region). Our understanding is that the concept of CF would be applicable with the aim to promote the use of STEP - (with no separation by regions would be required) would apply. Please note, that according to our estimations the biggest share (or even all amount) of funding to the new STEP priority would be taken from the less developed region. (reference to recital 19 and article 10.2 STEP).

Answer to question 5

The ERDF resources under dedicated STEP priorities need to be divided by category of region according to Article 22(3)(g) and tables 10 and 11 of Annex V of CPR. So do the indicators, according to tables 2 and 3 of Annex V of the CPR.

Resources allocated to each of the categories of region need to be in line with Commission's Implementing Decision (EU) 2021/1131 setting out the annual breakdown by Member State of global resources for the Funds (OJ L 244/21, 5.07.2021). The Cohesion Fund resources do not need to be split by category of region.

The transfer between categories of region is possible in the context of the mid-term review according to Article 111 CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 6

Will it be possible to provide grant support for SMEs and large enterprises under a separate priority for STEP from the ERDF regardless of the original breakdown in the programme for grant and repayable support?

Answer to question 6

Introducing a dedicated priority contributing to the STEP specific objective requires an amendment of a programme. During this process, the breakdown of the programmed resources by form of support for specific objectives under existing priorities (section 2.1.1.1.3 -Table 5: Dimension 2 - form of financing) should be adjusted where relevant.

In accordance with Article 22(3)(d)(vii) CPR, for each newly added specific objective under the ERDF / CF (or JTF specific objective) under the dedicated STEP priorities, the amended programme should describe the planned use of financial instruments, if such form of support is envisaged in Table 1 in the section related to the programme strategy.

Question 7

What does it mean "amendments exclusively related to STEP" (Article 24(10) CPR, as amended by Article 13(5) STEP)? Can transfers between the funds (based on Article 26 CPR) be considered as exclusively related to STEP?

Answer to question 7

The introduction of a dedicated STEP priority through a programme amendment will be done together with related changes covering:

- all the necessary elements of that priority (e.g. allocation, indicators, codes of intervention, etc.)
- elements of the other priorities of the programme linked to reallocations or the use of flexibility amounts.

In this respect, transfers between the funds within a programme for the purpose of financing of the STEP dedicated priority could also be considered to be "exclusively related to the introduction of priorities contributing to the STEP objectives" provided that this transfer would be strictly aimed at provided additional funding to the STEP priority.

However, where an amendment entails re-allocations from a programme to another programme aimed at providing resources to the STEP dedicated priority in the latter, the Commission would aim for adoption of the STEP related programme amendments within the 2 months deadline, assuming credits from the giving programme are available. This is because the amendment related to transfers from the programme providing financing would need to be approved first, or at least at the same time.

Question 8

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Is it possible to include elements in a STEP programme amendment which are not linked only to STEP? After 31 August 2024, what are the deadlines for submitting a programme amendment to integrate a STEP priority?

Answer to question 8

It is possible to include elements not linked to STEP in a STEP-related programme amendment. In such a case however, the deadline of two months for adoption by the Commission of the programme amendment set out in Article 24(10) CPR will not apply, as this deadline only applies to the adoption of amendment of programmes exclusively concerning the introduction of dedicated priorities to investments contributing to the STEP objectives.

There is no regulatory deadline for Member States to submit a STEP-related programme amendment, including for the purpose of introducing a dedicated priority to investments contributing to STEP. Member States may do so throughout the programming period, as it is the case for other programme amendments. However, benefiting from certain incentives depends on the timing of the submission of a request.

Firstly, in accordance with Article 24(9) CPR, dedicated STEP priorities are excluded from the mid-term review only if the programme amendment is submitted by 31 August 2024. In such a case, a Commission decision approving the programme amendment should also be adopted within two months of its submission, provided that it contains only STEP-related modifications. The whole programme can also be exempted from the mid-term review if the whole flexibility amount under this programme is allocated to STEP dedicated priorities.

Secondly, in accordance with Article 3(1a) of the ERDF/CF Regulation and Article 12a ESF+ Regulation, the pre-financing linked to the dedicated STEP priorities for the ERDF, the Cohesion Fund and the ESF+ is only paid if the programme amendment is submitted by the Member State by 31 March 2025.

Question 9

After the programme is amended by the Commission decision and new priority/priorities for the STEP objectives have been added, if the entire allocation for STEP (from ERDF funds) cannot be used, how, when and under what conditions can they be used again under the programme? Can the Managing Authority in line with article 24 (5) of regulation 2021/1060 transfer up to 8% of this priority to another priority and notify the Commission? Is the "initial allocation of the priority" counted from the start after the programme has been amended?

Answers to question 9

If the ERDF resources programmed for investments related to STEP are not fully used, i.e. face implementation difficulties, the usual programme management practice apply. Among other things, amounts under the STEP priority can be re-allocated to

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

other priorities/programmes as needed. This should be considered as a last resort if all other actions to continue the implementation fail.

Such reallocation may also take the form of a non-substantial transfer from dedicated STEP priorities without the need for a formal programme amendment in accordance with Article 24(5) CPR. After the transfer, the programme must still comply with all the applicable regulatory requirements. Non-substantial transfers may also trigger related changes, the conditions for which are explained in QA00264 - Programme amendments – non-substantial transfers and related changes .

Indicators

Question 10 (ESF+ indicators)

In annex 1, table 1 related to art. 13 of the proposed Regulation, 2 intervention codes are introduced that can be associated with ESF+, without the association of indicators that correspond to the intervention codes. Through the new priority, additional indicators will be introduced to those existing in the current form of the program?

Answer to question 10

According to Article 7 of the STEP Regulation (Regulation (EU) 2024/795), the Commission will monitor STEP's implementation on the basis of the existing Union programmes' monitoring frameworks. The STEP regulation, did not introduce any amendments to the list of common indicators set out in Annex I of the ESF + Regulation (Regulation (EU) 2021/1057). Therefore, in line with Article 17 ESF+ regulation, *programmes shall use common output and result indicators, as set out in Annex I to monitor progress in implementation. The programmes may also use programme-specific indicators.* This means that the list of indicators set out in Annex I in the ESF+ Regulation remains unchanged and should be used to these types of operations as is clear from Article 17(1) ESF+. Member States may establish programme-specific indicators for these operations, however, the Commission considers this is not necessary as the existing common indicators remain relevant for STEP operations.

Moreover, Member States will be able to report on the financial contribution by the ESF+ to STEP objectives through the new types of interventions[1] introduced and the new secondary theme[2].

It should be noted that these types of interventions should be used not only for priorities dedicated to STEP but also for any other priorities which include (but are not limited to) operations which provide support to STEP objectives. In case a Member State has planned to use the ESF+ for STEP operations but is not required to amend their programmes to use the ESF+ for STEP (i.e. in case these operations are already eligible under the programme), the Member State is encouraged to include the new types of interventions and secondary theme in a future programme amendment.

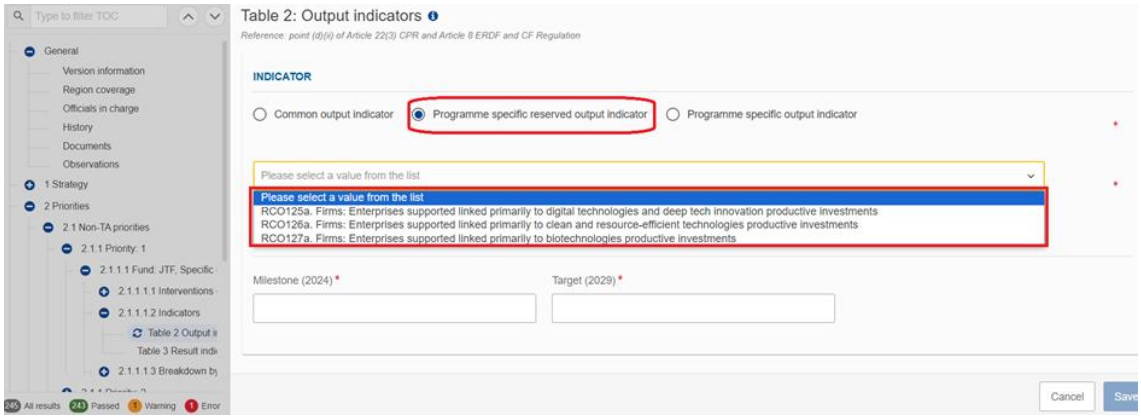
Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 11 (JTF indicators)

Do the new ERDF STEP-indicators (RCO125, RCO126 and RCO127) also apply to the JTF?

Answer to question 11

No new common indicators were included in the JTF regulation, but managing authorities can use programme specific indicators mirroring the ones envisaged for the ERDF/CF. It will be possible to choose programme specific indicators in SFC (the same code with 'a' at the end).



Question 12

Indicators that can be used for SO 1.6 'supporting investments contributing to the achievement of the STEP objectives referred to in Article 2 of Regulation (EU) 2024/795' are all RCOs listed in relation to specific objectives 1.1, 1.3 and 1.4 as well as RCOs 125-127. The situation is similar for result indicators (RCR).

a) In the context of support under STEP for digital technologies: why the indicators related to SO 1.2 cannot be used?

b) In the context of a reference to "productive investments" in indicators for STEP, will it be possible under the ERDF to support investments in STEP areas of research and development?

Answer 12

Point a)

Co-legislators proposed three indicators tailored made for the technological sectors referred to in Article 2 STEP. RCO 125 'Firms: Enterprises supported linked primarily to digital technologies and deep tech innovation productive investments' well covers investment related to the development or manufacturing of digital technologies. As deployment or roll out of digital technologies does not fall within the scope of Article 2 STEP (compare with the QAs on scope of Article 2 STEP), the use of indicators related to SO 1.2 'Reaping the benefits of digitalisation for citizens, companies, research organisations and public organisations' was not deemed necessary.

Point b)

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

It will be possible to use the indicators related to research and development, to the extent such investments fall within the scope of Article 2 STEP regulation (compare with the QAs on scope of Article 2 STEP and STEP Guidance).

Question 13

Will the definitions of indicators RCO125, RCO126, RCO127 be prepared for the STEP initiative?

Answer to question 13

It is planned that the definitions of indicators RCO125, RCO126, RCO127 will be incorporated in a revised version of SWD(2021)198 after consultation with the DG REGIO Evaluation Network of national experts.

---

[1] Annex I, table 1, intervention codes: 145a, b and 188 - 193

[2] Annex I, table 6, secondary theme: '11 Contributing to skills and jobs in digital technologies and deep tech innovation, clean and resource-efficient technologies, and biotechnologies

QA00304 - QUESTIONS RELATED TO CLIMATE TARGETS, 20% CEILING OF ERDF RESOURCES AND COMMUNICATION

Relevant Articles:

Articles 6 and 49 of the CPR

Article 3 of the ERDF Regulation

Member State: n/a

Question 1

Article 13(2) refers that the flexibility for climate targets applies when the revision is as the result of a programme amendment for the STEP platform. Can you confirm that this flexibility also applies when the revision contains amendments for STEP as well as other amendments?

Answer to question 1

In line with recital 20 of the STEP regulation, the amount of the climate contribution of the Cohesion Fund that exceeds 37 % of its total allocation should be allowed to be taken into account when calculating the climate contribution of the ERDF on the one hand and the amount of the climate contribution of the ERDF that exceeds 30 % of its

total allocation should be allowed to be taken into account when calculating the climate contribution of the Cohesion Fund on the other.

Article 6(1) CPR as amended allows for compensating the contribution to climate targets in situations where as a result of STEP reprogramming in one or more programmes the climate contribution under either ERDF or the Cohesion Fund at national level will drop below the threshold due to selecting intervention fields of Annex I CPR with lower climate contribution).

The Cohesion Fund contribution to climate target above 37% may compensate a drop (resulting from STEP reprogramming) in the ERDF contribution below the 30% target.

The ERDF contribution to climate target above 30% may compensate a drop (resulting from STEP reprogramming) in the Cohesion Fund contribution below the target.

Question 2

Does the ceiling of 20% of the initial national envelope for mobilizing funds (cf. article 10.1(c)) include technical assistance? Does it include flexibility amount?

Answer to question 2

The initial national allocation for the ERDF referred to in Article 3(1a) ERDF/CF Regulation relates to the annual breakdown by Member State of global resources allocated under the Investment for Jobs and Growth goal and European Territorial Cooperation goal as set out in the Commission implementing decision (EU) 2021/1131 of 5 July 2021.

Initial national allocation for the ERDF includes technical assistance and flexibility amounts.

Question 3

How often will the cohesion programme management authorities have to send to the Commission the information requested on their ERDF/ESF/JTF calls for projects on STEP? (when there is particular news to report, or transmission at a regular frequency?)

Answer to question 3

As set out in Article 13(6) STEP regulation, where support is programmed for the STEP objectives, information to be published required by Article 49(2) CPR (a timetable for planned calls with the indicative data listed in points (a) to (e) of that provision), should be submitted to the Commission for publication on the Sovereignty Portal at least three times a year. The link to the calls of proposals should be submitted on the day of their publication.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00305 - QUESTIONS RELATED TO ELIGIBILITY RULES, ELIGIBILITY START DATE AND INTERVENTION CODES

Relevant Articles:

Articles 24, 63 and 73 of the CPR

Article 5 of the ERDF

Articles: 12a and 4 of the ESF+ Regulation

Member State: n/a

Question 1

What is the starting date of eligibility for STEP related expenditure? How is related to the introduction of the new codes for the types of intervention from Annex I CPR (intervention codes)?

Is it necessary to allocate to the new STEP priorities intervention codes introduced by the STEP Regulation? Is necessary to amend the programme when introducing new intervention codes?

Answer to question 1

In accordance with Article 63(7), first subparagraph, of the CPR, expenditure related to the operation falling within the scope of STEP that was not eligible under the programme or under the CPR and the Fund-specific Regulations before the entry into force of the STEP Regulation, will become eligible from the date of submission of a request for a programme amendment to the Commission.

Operations in line with STEP objectives would be eligible under a programme provided that they are covered by the description of actions under any of the programme priorities (for example where the description of actions under a programme refers to innovation or support for new technologies) and they contribute to the corresponding specific objectives under which they are to be supported.

For the ERDF and the Cohesion Fund, the eligibility rule newly introduced in Article 5(2), point (e) ERDF/CF Regulation relates to productive investments in enterprises other than SMEs implemented under the STEP specific objectives. Expenditure related to such investments contributing to the STEP specific objectives can only be eligible from the date of submission of a request for a programme amendment including in the programme one or more dedicated STEP priorities.

For the JTF, the newly introduced rules that need to be taken into account relate to:

- The JTF specific objective was modified in order to clarify that the JTF may also contribute to STEP objectives within its scope of support.
- Removing the requirement to conduct a gap analysis for STEP related productive investments in enterprises other than SMEs.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- Removing under the JTF regulation geographical restrictions related to areas designated as assisted areas for the purposes of points (a) and (c) of Article 107(3) TFEU for productive investments contributing to STEP objectives (please see QA on state aid aspects on application of regional state aid rules: QA00310 - Questions related to State aid aspects)
- The expenditure related to the removed geographical restrictions relating to areas (a) and (c) under the State aid rules (the restrictions are lifted for productive investments pursuing STEP objectives) can be eligible only from the date of submission of the programme amendment.

Introducing new categories of intervention (188-193) into **ERDF, CF or JTF** programmes which cover in the description of actions under the relevant priorities that are in line with STEP would not be linked to new starting date of eligibility, provided that these actions already fall under the scope of other categories of intervention set in the programme. In such a case, the changes can be introduced in the forthcoming programme amendment.

In relation to the ESF+, it is important to note that the second subparagraph of Article 63(7) CPR does not apply to operations supported by the ESF+, i.e. for this Fund the introduction of a new intervention field does not have an impact on eligibility of expenditure. Eligibility of expenditure is rather determined by the fact whether the operations supported contribute to and are covered by the specific objectives and types of actions set out in the programme. In this respect, in accordance with Article 12a ESF+ Regulation (as introduced by Regulation (EU) 2024/795 – the STEP Regulation), Member States may use the ESF+ for operations contributing to the STEP objective set out in Article 2(1)(b) STEP Regulation under the relevant ESF+ specific objectives set out in Article 4(1) ESF+ Regulation. This means that operations contributing to STEP objectives, were already eligible under the ESF+ before the entry into force of the STEP Regulation (as they could already contribute to many of the ESF+ specific objectives).

Therefore, provided that operations contributing to STEP objectives also contribute to the ESF+ specific objectives established in the programme and that the operation also fits into the related types of actions which are already included in the programme, the types of expenditure introduced in Article 2 STEP regulation could be eligible under the ESF+ rules between the date of submission of the programme to the Commission or from 1 January 2021, whichever date is earlier, from 1 January 2021 in accordance with Article 63(2) CPR.

Nevertheless, as the STEP regulation introduced two new intervention fields dedicated to STEP (145a and 145b) Member States are strongly encouraged to use them to track support contributing to STEP objectives. To do so, a programme amendment will be needed in order to introduce them in table 4 of the programme. However, as the intervention fields – in line with Article 63(7) CPR and as explained above – have no

impact on the eligibility in the ESF + context, they can be introduced in the forthcoming programme amendment.

Question 2

Can the new intervention fields be added to existing non-STEP priorities (without creating a new STEP priority)?

Answer to question 2

New intervention fields related to the STEP may be introduced into existing non-STEP priorities without creating a dedicated STEP priority. However, in the latter case the programme will not be eligible for the exceptional pre-financing under the ERDF, CF and ESF+ or for the 100% co-financing rate under the ERDF, CF, JTF and the ESF+, where the provisions refer clearly to "dedicated priorities".

Introducing categories of intervention related to STEP would be strongly encouraged to be able to track these investments.

Question 3

Can completed/ in progress/ selected for co-financing projects be eligible for STEP if they fall within the scope of support under STEP?

Answer to question 3

In accordance with Article 63(6) CPR, operations that have been physically completed or fully implemented prior to the submission of the application for funding under the programme should not be selected for support from the Funds, irrespective of whether all related payments have been made. The STEP Regulation has not changed that rule.

As for operations in progress (financed either from national resources, or by Funds), they can be eligible if they fall within the scope of support under STEP.

Question 4

Having in mind that procedures for granting of different EU funds under shared management are already established (criteria for selection of operations as well as calls for proposals) and that any amendment of a programme considering such operation could further delay implementation of such calls, is it possible to continue a selection procedure, grant a contract, and to amend the programme later with view of establishing STEP priority(ies) within a programme on which rules of 30% prefinancing and 100% co-financing could be retroactively put in place?

Answer to question 4

Managing authority (MA) may start selecting STEP related operations within the existing priorities/programmes provided that their content covers investments in line

with STEP objectives while taking into account the above explanations about the starting date of eligibility.

Resources dedicated to the yet-to-be-established dedicated STEP priority could cover ongoing calls of proposals (launched before the programme amendment) at risk of the managing authority. However, investments selected under such calls must be in line with the objectives of this priority, as ultimately agreed with the Commission in the later programme amendment, and comply with all the requirements set out in Article 73(2) CPR, applicable law and eligibility rules introduced by STEP regulation. Furthermore, it is for the managing authority to make sure that any change in the selection procedure ensures the transparency, non-discrimination and equal treatment of beneficiaries.

For the ERDF, the CF and the ESF+ both prefinancing and increased co-financing rate may be applied from the notification of the decision on programme amendment (to note: exceptional prefinancing for the JTF was not related to programme amendments and was already paid; the increased co-financing rate may be applied from the notification of the decision on programme amendment).

Question 5

The existing JTF priority under our programme includes only productive investments in large enterprises that are in line with the allowed scope of support under Article 2 of the STEP regulation. These investments are currently placed under intervention code 22, as recommended by the Commission for productive investments in large enterprises under JTF. The priority does not include other types of activities.

Can this existing JTF priority become a STEP dedicated priority or STEP dedicated priorities should be newly established under the programme?

Through a programme amendment, we would add to the existing priority a new STEP intervention code for productive investments in large enterprises linked primarily to clean and resource-efficient technologies (code 188). Eligibility of investments will therefore continue under the new code. If the amendment is approved, could this priority benefit from 100% co-financing in accordance with article 11 of the STEP Regulation (10(4) JTF)?

Answer to question 5

Yes, the existing JTF priority can become STEP dedicated priority provided that the existing priority includes exclusively the types of activities and related types of intervention that fall into the scope of investments contributing to the STEP objectives referred to in Article 2 of the STEP Regulation.

In case where it is clear that existing types of actions covered STEP activities, the introduction of the new types of intervention (introduced by STEP regulation) in practice does not lead to new eligibility of expenditure. In line with Article 63(7) CPR the amendment related to the introduction of the new intervention codes, in particular those of 188 to 193 would *de iure* result in new eligibility, *de facto* the amendment will not have an impact of eligibility as these activities were already

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

eligible under the programme based on the previous types of intervention and the eligibility of the expenditure will continue under the new codes.

For purely monitoring purposes, it is recommended to use the new intervention codes for STEP-related investments in the priority, i.e., 145a, 145b and 188 to 193 from annex I of the CPR, and the corresponding allocations under this priority should be moved to them. It would require a programme amendment.

Consequently, this priority will be considered as a STEP dedicated priority, and it can benefit from up to100% co-financing in line with Article 10(4) JTF.

The derogation from the mid-term review under conditions set out in Article 24(9) CPR is also possible if the request for a programme amendment is submitted by 31 August 2024.

QA00306 - QUESTIONS RELATED TO THE MID-TERM REVIEW

Relevant Article:

Articles 18 and 24 of the CPR

Member State: n/a

Question 1

STEP regulation introduced an incentive (under certain conditions) allowing to exclude a priority or a programme from the mid-term review. The conditions are related to the timing of submitting a programme amendment introducing STEP dedicated priority or priorities (by the end of August 2024) and the allocation of totality of the flexibility amount to dedicated priority(-ies).

Can you explain how those conditions will be applied? Can the priority or programme be excluded from the mid-term review if a request for amendment is submitted after 31 August 2024? If not, would it be necessary to set a flexibility amount for dedicated STEP priorities, that would undergo the mid-term review?

Answer to question 1

In line with Article 13(5) STEP regulation, a derogation from the mid-term review will be granted to priorities dedicated to STEP provided that they are introduced through a programme amendment submitted by the Member States by 31 August 2024, and that it is subsequently approved by the Commission.

Additionally, where the full flexibility amount for a programme (for all funds under a programme) is allocated to dedicated STEP priorities (for a programme amendment submitted within this deadline), the mid-term review for this programme does not need to be carried out.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The flexibility amount cannot be allocated to dedicated STEP priorities in programme amendments submitted after 31 August 2024, unless it is based on the outcome of the mid-term review and submitted as an amendment linked to the MTR under Article 18 CPR. Any such amendments, allocating a part or the total flexibility amount to the new STEP priority(-ies), should be done in the context of the mid-term review. See also QA00274 on reallocation of the flexibility amount confirmed after the mid-term review.

Question 2

Does the STEP reprogramming require the corresponding amount of the flexibility amount to be allocated to the new STEP priorities? How to understand the ceiling of resources that can be devoted to STEP (20% of the total ERDF allocation) in the context of the total flexibility amount which is lower? Can you explain practical aspects of allocating a part or the total flexibility amount and changes to table 11 of Annex V CPR (a programme template)?

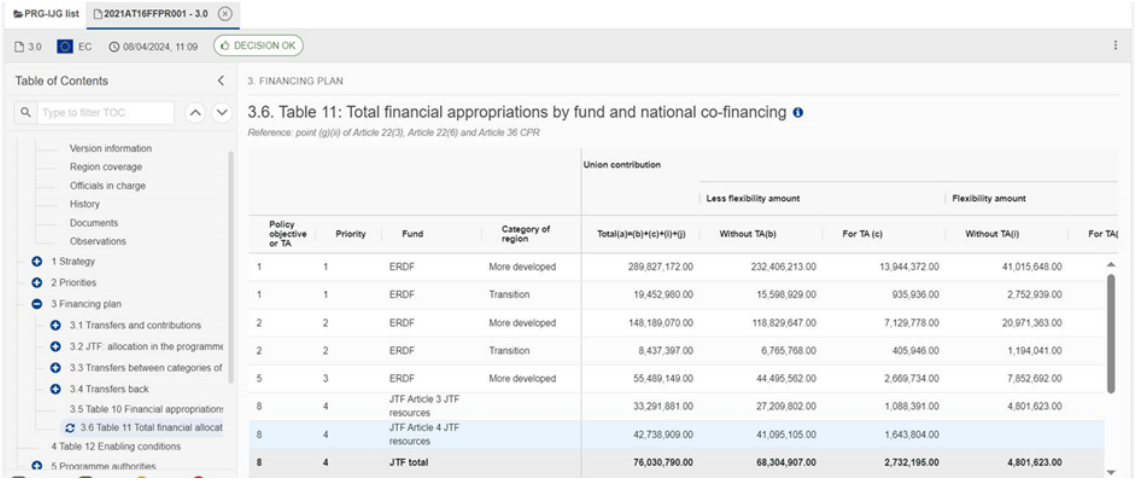
Answer to question 2

STEP reprogramming may be linked, in line with Article 24(9) CPR with a definitive allocation of the totality or part of the flexibility amount, but this is not an obligation. Resources for STEP, limited in case of the ERDF and the Cohesion Fund to 20% of the initial ERDF resources for the a given Member State, may be also related to reallocations of non-flexible amounts between priorities.

When financial reallocations to STEP priorities (through for example a definitive allocation of the full or part of the flexibility amount or transfers between priorities of the allocation without the flexibility amount) are done as part of a request for programme amendment, the relevant financial tables need to be amended accordingly.

In table 11 of annex V (a programme template), the flexibility amount of the STEP priority should remain in the column "Flexibility amount" and not be moved to a column related to "Union contribution less the flexibility amount". Such an approach allows for tracking the shifts of flexibility amounts (if partially or fully reallocated), transparency on where the flexibility amounts have definitively been allocated and easier financial management of their release.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.



QA00307 - QUESTIONS RELATED TO PARTNERSHIP AGREEMENT AMENDMENT

Relevant Article: Article 13 of the CPR

Member State: n/a

Question 1

What should be the sequence of amendments to the respective programmes and the partnership agreement? Could this happen separately? Can a STEP-related programme amendment can be submitted even if an amendment of the partnership agreement has not yet been submitted?

What is the deadline for PA amendment? Can the partnership agreement be subject to a single modification by 31 March 2025 (regardless of the timing of programme amendment related to STEP)?

Answer to question 1

The amendment of the partnership agreement (PA) is optional, it is not a necessary condition to adopt the STEP-related amendments of programmes. It depends on the Member State if it sees the need to amend the PA.

In accordance with Article 13(5) CPR, as amended by the STEP Regulation, a Member State may submit to the Commission an amended PA to take into account the

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

introduction in the programmes of priorities contributing to the STEP objectives referred to in Article 2 of the STEP Regulation.

The STEP-related amendment of the PA is without prejudice to the possibility to amend the PA by 31 March 2025 to take into account the outcome of the mid-term review.

The STEP Regulation does not set any specific deadline for submitting the amendment of the PA referred to in Article 13(5) CPR. Therefore, it does not have to be submitted by 31 March 2025.

To allow the PA amendment to take stock of programme amendments related to the introduction of dedicated STEP priorities, and to reduce the administrative burden from consecutive amendments related to both the STEP and the outcome of the mid-term review, Member States could consider submitting the PA once the relevant programme amendments are approved by (or at least pre-agreed with) the Commission to ensure full consistency between all programming documents.

QA709_EMFAF_FISHERIES CONTROL AND ENFORCEMENT IN INLAND WATERS

Relevant Article: Article 22 of the EMFAF Regulation

Member State: Estonia

Question:

I have a question about financing the fisheries control and enforcement in inland waters.

Article 22 paragraph 1 of EMFAF Regulation refers to the "Union fisheries control system as provided for in Article 36 of Regulation (EU) No 1380/2013 and further specified in Regulations (EC) No 1224/2009 and (EC) No 1005/2008". In articles 16 and 25 of EMFAF Regulation the inland fishing is mentioned specifically, but inland fishing is not mentioned in the Article 22.

Should this be understood that the control and enforcement activities in inland waters cannot be financed from EMFAF or is there still a certain room for flexibility eg control activities with regard of migratory fish etc?

Answer:

Per Article 14.2 of the EMFAF regulation, support under Priority 1 (which includes control) may be granted to inland fishing under the conditions provided for in Article 16 of the same regulation. Article 16 excludes or makes conditional the support for

certain activities in relation to inland fishing (e.g. Article 20 in respect of permanent cessation). Article 16 does not exclude support for control and enforcement in inland waters.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added-value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA00308 - QUESTIONS RELATED TO PRE-FINANCING AND CO-FINANCING RATE

Relevant Article:

Articles 90, 91, 92 and 105 of the CPR

Member State: n/a

Question 1:

Is the 30% pre-financing linked to the creation of a dedicated STEP priority? Can a programme contributing to STEP objectives benefit from automatic 30% pre-financing without a STEP priority?

Answer to question 1

For the ERDF, the Cohesion Fund and the ESF+, the exceptional one-off pre-financing is linked to creating priorities dedicated to investments contributing to the STEP objectives. The amount of pre-financing to be paid is related to the allocation programmed under dedicated STEP priorities. A programme contributing to the STEP

objectives, in which there are no dedicated STEP priorities, cannot benefit from the exceptional one-off pre-financing.

In the case of the JTF, the exceptional pre-financing of 30% was automatic under the STEP Regulation and was paid in the first half of March 2024. The pre-financing for the JTF was calculated in relation to the entire JTF allocation in a programme. No action by programme authorities and no programme amendment was required.

Question 2:

Does the 30% pre-financing have an impact on the calculation of the automatic decommitment threshold? If so, from which year onwards and in what way?

Answer to question 2

Yes – for all funds. According to Article 105 CPR, any amount in a programme which has not been used for pre-financing in accordance with Article 90 CPR, or for which a payment application has not been submitted in accordance with Articles 91 and 92 CPR will be decommitted by the deadline specified in that article. The amount to be de-committed will be reduced by the pre-financing paid.

The one-off pre-financing of 30% can be paid provided that the programme amendment related to STEP is submitted to the Commission by 31 March 2025 (so paid either in 2024 or 2025). The first year the N+3 rule will apply is 2025 (for commitment for 2022). From 2025, the one-off pre-financing can contribute to the achievement of the N+3 target.

Question 3

Could you confirm MSs could decide whether to apply the increased co-financing rate to STEP dedicated priorities?

Answer to question 3

The take-up of STEP and related incentives is voluntary. MS may decide if to make use or not of the options envisaged in the regulation. An increased co-financing rate up to a maximum of 100% can be applied to dedicated STEP priorities, but it is not an obligation.

Question 4

If a 100% EU co-financing ratio is introduced in STEP actions, will this correspondingly reduce the need for national co-financing in the fund in question or should the total volume of funding still remain unchanged?

Answer to question 4

A dedicated STEP priority with a 100% co-financing rate does not have to present any national contribution in the financial plan of the programme. The total volume of the programme (EU and national contribution) may decrease as a result.

The actual need for national contribution (public or private) at the level of an operation depends on, among others, applicable State aid rules, or national decisions related to required own contribution of beneficiaries.

Question 5

How and when increased co-financing rate and one-off prefinancing will be applied?

Answer to question 5

Programmes financed from the ERDF, the Cohesion Fund, the ESF+ may benefit from additional pre-financing provided that the programme amendment to introduce one or more STEP dedicated priorities is submitted before 31 March 2025 (as explained above, exceptional prefinancing for the JTF was not related to programme amendments and was already paid).

Both prefinancing and increased co-financing rate may be applied from the notification of the decision on programme amendment.

The co-financing rate approved in the financing plan of a programme through a decision approving a programme amendment would be applied to payment applications submitted under that programme.

QA00309 - QUESTIONS RELATED TO SOVEREIGNTY SEAL, SYNERGIES, CUMULATIVE FUNDING

Relevant Article:

Articles 63 and 73 of the CPR

Member State: n/a

Question 1

Please clarify how the sovereignty seal will be awarded.

1. Which criteria should projects meet in order to receive the seal? Should these criteria be listed in the calls for applications in order for the seal to be applicable?
2. Who awards the seal? Is it the European Commission? Or is it the managing authorities? Can the seal be awarded under funds/programme in shared management?
3. Is there a possibility that Sovereignty Seal is awarded to projects that have been evaluated in already closed calls under directly managed instruments?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

4. Is it possible to award the seal to a project implementation of which has already started?

Answer to question 1

The European Commission awards the Sovereignty Seal under the following programmes: Horizon Europe, the European Defence Fund, the Innovation Fund, the EU4Health Programme or the Digital Europe Programme.

A sovereignty seal should be awarded to projects contributing to the STEP objectives, provided that the project has been assessed and complies with the minimum quality requirements, in particular eligibility, exclusion and award criteria. These conditions will be described in the calls for proposals in the above mentioned directly managed instruments. The Seal will be provided both for projects that are retained for funding under the instrument to which they applied and for those that comply with the aforementioned conditions, but cannot be funded due to budgetary reasons.

The Sovereignty Seal will be awarded to projects only after the STEP regulation has come into force. The Seal will not be awarded to closed calls retrospectively.

It will be possible to provide financial support to a project with a Sovereignty Seal after its implementation has started, as long as double funding is avoided. The Seal is valid for the full duration of the project, provided that the project is not relocated outside the EU.

The Sovereignty Seal can only be awarded by the Commission under certain directly managed Union instruments identified in the STEP Regulation. Therefore, it cannot be awarded by Member States to operations supported under shared management. According to Art. 73(4) CPR, Managing Authorities may decide to grant support to projects that have been awarded a Sovereignty Seal by the Commission under the referred Union instruments, provided that such projects meet the requirements set out in points (a), (b) and (g) of Article 73(2) CPR. This support may only come from the ERDF or the ESF+.

Question 2

What is the difference between the Seal of Excellence and the Sovereignty Seal? They are both awarded after being assessed as compliant with minimum quality requirements, in particular eligibility, exclusion and award criteria, provided for in a call for proposals under Union instruments. Are there any differences between projects being labelled with the Seal of Excellence and the Sovereignty Seal in terms of national award procedures and faster implementation? What is the difference in practice?

Answer to question 2

The Seal of Excellence is different from the Sovereignty Seal, as the latter, in accordance with Article 4(3)(b) of the STEP Regulation, allows for cumulative funding. Article 4(7) STEP Regulation refers to the rules on cumulative funding.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The Sovereignty Seal will only be awarded to projects that have been selected under one of the 5 instruments in direct managed mentioned in the Regulation (European Defence Fund, Horizon Europe, Digital Europe Programme, EU4Health, Innovation Fund) and only after the STEP regulation has come into force.

The Seal of Excellence can be awarded under Horizon Europe, Digital Europe Programme, LiFE, Erasmus+, the Act in Support of Ammunition Production (ASAP) and Connecting Europe Facility - Digital. As the Seal of Excellence does not allow for cumulative funding it can only be awarded to projects that did not receive funding under the respective programmes. In contrast, the Sovereignty Seal can be awarded also to projects which have received funding – these could subsequently be eligible for cumulative funding.

Based on Art. 63(9) CPR, ERDF or ESF+ programmes may support projects that also receive funding from a directly managed Union instrument provided that the same expenditure is not declared for both instruments. To this purpose, it determines that the amount of expenditure to be entered into a payment application of a Fund may be calculated for each Fund and for the programme or programmes concerned on a pro rata basis, in accordance with the document setting out the conditions for support. The Notice on synergies between ERDF programmes and Horizon Europe describes in detail the modalities of implementation of cumulative funding, including respecting the prohibition of double declaration and reporting obligations.

Question 3

Under ERDF and ESF+ it is possible to grant support directly for operations attributed a seal. Does this apply exclusively to the ERDF and ESF+ or it this also possible in the JFT?

Answer to question 3

Support for projects with a Sovereignty Seal in accordance with Art. 73(4) CPR can only be granted from the ERDF or the ESF+.

Question 4

When will we receive guidance in how to apply the seal? Is the Commission planning active communication to raise the profile of these projects, particularly aimed at private investors, via its relays in the Member States, or regular information, via the managing authorities of the regions concerned, on the beneficiaries of this label (cf. what feedback has been received on the Seal of Excellence)?

Answer to question 4

There will be no specific guidance related to the application of the Sovereignty Seal under shared management. The guidance on Synergies between Horizon Europe and ERDF programmes could be of use for the issue of cumulative funding. Taking into account applicability of Article 73(4) CPR to the Sovereignty Seal, the rules and existing guidance as well as practical solutions related to the implementation and award of the seal of excellence are also applicable to the Sovereignty Seal.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

To help raise awareness and increase the information flow, to private investors, public banks, and Managing Authorities the list of projects awarded a Sovereignty Seal will be published on the STEP Portal. Furthermore, the Commission will regularly communicate the list of Sovereignty Seal holders to the STEP National Contact Points, so they are aware of quality projects in their respective Member State.

Question 5

With regard to the statement that "Member States may grant support from cohesion policy funds to projects that have received a sovereignty label directly, without any additional selection procedure", this was not possible with the "seals of excellence" because the projects had to comply with certain procedures and criteria. Does the EC have any special provisions for applying this possibility?

Answer to question 5

The STEP Regulation amends the definition of the "Seal of excellence" set out in Article 2(45) CPR in order to cover as well as the "Sovereignty Seal". Therefore, for the purpose of CPR, the "Sovereignty Seal" is considered a "Seal of Excellence". Consequently, the rules set out in Article 73(4) with regard to the selection of projects which have been awarded a Seal of Excellence also apply to the Sovereignty Seal. As in the case of the Seal of Excellence, in the case of projects with a Sovereignty Seal, the Managing Authorities do not have to follow the entire selection procedure for the award of funding from the ERDF or the ESF+. Nevertheless, the requirements set out in points (a), (b) and (g) of Art. 73(2) CPR need to be met. For example, the Managing Authorities will have to verify whether the selected project falls within the scope of the given Fund or whether it contributes to the achievement of the objectives of the ERDF/ESF+ programme.

Question 6

In relation to the selection of operations with awarded seal of sovereignty, please clarify:

1. whether a managing authority may refuse to support a project if, despite the awarded seal of sovereignty, it does not meet the conditions under the programme/call for proposals?
2. for cases where support for STEP projects will be provided through competitive calls for proposals (where applications can only be submitted within a specific call period), will it be sufficient to provide preferences for projects with the sovereignty seal through a point bonus at the evaluation stage, which will not provide a 100% guarantee of support for such projects, if there are other projects without the sovereignty seal that will receive a higher number of points under other criteria or the sovereignty seal concerns a different goal than the one planned for implementation in the selection under the programme?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

3. how it will be possible to identify whether the operation with awarded seal off sovereignly concerns a STEP area that will be supported from the level of the program? Will there be any demarcation criteria planned between programmes under which STEP projects will be supported?

Answer to question 6

The STEP Regulation amends the definition of the "Seal of Excellence" set out in Article 2(45) CPR in order to cover as well as the "Sovereignty Seal". Therefore, for the purpose of CPR, the "Sovereignty Seal" is considered a Seal of Excellence" and the only difference between the two is that cumulative funding is possible under the Sovereignty Seal.

Consequently, the rules set out in Article 73(4) with regard to the selection of projects which have been awarded a seal of Excellence also apply to the Sovereignty Seal, as provided for in recital (24) of the STEP Regulation. Granting of funding from ERDF/ESF+ programmes to projects with the Sovereignty Seal is a possibility, not an obligation for the Managing Authorities. As in the case of the Seal of Excellence, in the case of projects with a Sovereignty Seal, the Managing Authorities do not have to follow the entire selection procedure for the award of funding from the ERDF or the ESF+. Nevertheless, the requirements set out in points (a), (b) and (g) of Art. 73(2) CPR need to be met – among other things, whether the project is in the scope of the Funds and contributes to achievement of ERDF/ESF+ programme objective.

However, MA may apply all requirements of Article 73(2) CPR to the projects awarded a Seal of Excellence or a Sovereignty Seal. For STEP related projects that have not been awarded either of the Seals, all requirements set out in Article 73(2) CPR apply.

In practice, Managing Authorities are free to organise themselves in terms of selection of these projects: e.g. through additional points in a general call (not only for Sovereignty Seal projects) or through launching a specific call for Sovereignty Seal projects.

In case of directly managed funds (European Defence Fund, Horizon Europe, Digital Europe Programme, EU4Health, Innovation Fund), a Sovereignty Seal can be awarded to projects contributing to STEP objectives within the scope of the relevant fund (e.g. the Innovation Fund will only fund and award seals to cleantech projects) and complying with the fund-specific rules. These funds will publish dedicated STEP-relevant calls, defining the minimum quality requirements (in particular eligibility, exclusion and award criteria) to obtain the Sovereignty Seal.

The Sovereignty portal will contain information on projects that have been awarded a Sovereignty Seal, including the directly managed instrument under which the Seal was awarded, as well as the specific STEP sector addressed (deep & digital technologies, clean and resource efficient technologies or biotechnologies) and a short project description.

In order to apply for financing from the ERDF or the ESF+ under Article 73(4), a project with a Sovereignty Seal must retain its initial scope because otherwise the assessment under the directly managed Union instrument on the basis of which the quality label is awarded is no longer valid.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 7

Please clarify how projects with awarded seal of sovereignty will be communicated/published?

1. Where will it be possible to access the list of companies with the sovereignty label?
2. When will the list of winners be published on the platform?
3. Is a geographical information included in the list of labelled projects to help identify projects in a given territory? If so, at national or regional level?

Answer to question 7

Projects with a Sovereignty Seal are envisaged to be published in the STEP Portal, in line with GDPR and other relevant data protection legislations. The Commission will also regularly communicate the list of Sovereignty Seal holders to the STEP National Contact Points.

The first projects that will be awarded the Sovereignty Seal are expected towards the end of 2024. The Commission will periodically update the list of projects awarded the Seal, in line with the evaluation timelines of the STEP calls launched under the relevant programmes in direct management covered by STEP.

The intention of the Commission is to indeed include geographical information about the projects awarded the Seal in the STEP Portal. This information will be at least at national level. Provision of information at regional level will depend on the technical feasibility and availability of resources.

Question 8

Can you confirm that the seal of sovereignty provided for in Article 4 is not a prerequisite for ERDF or JTF support for a project via funds earmarked for a STEP priority, but constitutes an advantage for projects, in particular by enabling the cumulation of European aid for the same expenditure?

Answer to question 8

The Sovereignty Seal is not a prerequisite for funding under the newly introduced STEP priorities in Cohesion policy programmes. It only provides the possibility to obtain (additional) funding from ERDF or ESF+ programmes for projects that first applied for funding from directly managed Union instruments.

Projects with the Seal can be financed also from the JTF (not necessarily via a dedicated priority), however, the simplified selection procedure under Article 73(4) would not apply.

Question 9

Article 4.2 of the STEP Regulation specifies that geographical criteria do not appear to be mandatory. Will programs have to incorporate these criteria more often, particularly the geographical criterion, in order to better identify the location of project leaders or projects?

Answer to question 9

Geographical criteria are not mandatory for calls for proposals under the Union instruments referred to in Art. 4(1) STEP Regulation.

In case of directly managed funds (European Defence Fund, Horizon Europe, Digital Europe Programme, EU4Health, Innovation Fund), a Sovereignty Seal can be awarded to projects contributing to STEP objectives within the scope of the relevant fund (e.g. the Innovation Fund will only fund and award seals to cleantech projects) and complying with the fund-specific rules. These funds will publish dedicated STEP-relevant calls, defining the minimum quality requirements (in particular eligibility, exclusion and award criteria) to obtain the Sovereignty Seal.

Question 10

In relation to recital 6 – in case the IPCEI procedure has been finalized and direct and indirect partners were also established, is it possible to consider that the Seal of Excellence is granted to direct/indirect partners?

Answer to question 10

Pursuant to Article 2(6) of the STEP Regulation, where an important project of common European interest (IPCEI) approved by the Commission relates to STEP technologies, the relevant technology shall be deemed critical, and consequently the given project can be considered as within the scope of STEP. This however does not mean that the project would be granted the Sovereignty Seal (assuming this is the Seal the question intended to refer to). As Article 4(1) of the STEP Regulation states, Sovereignty Seals are to be awarded by the Commission only to projects that have been assessed and comply with minimum quality requirements (in particular eligibility, exclusion and award criteria) provided for in a call for proposals by the European Defence Fund, Horizon Europe, Digital Europe Programme, EU4Health, or the Innovation Fund.

Question 11

Could you provide us with an example on if and how in the eyes of COM the following financial sources could be combined (realised in practice): i.e. the STEP activities from ERDF under OP 2021-2027 (Investment Programme) and the funding from directly managed European funding programme by the COM, for example Horizon Europe, Digital Europe Programme (DIGITAL), etc. – reference to STEP regulation Article 4, point 3b.

Answer to question 11

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The combination of funds under STEP follows the framework for synergies set out in the regulatory framework of the respective funds for 2021-2027. Those provisions are interpreted in detail in the Commission Notice on synergies between Horizon Europe and ERDF programmes (OJ C 421, 4.11.2022), in particular in points 2 and 3 of the Notice.

QA00310 - QUESTIONS RELATED TO STATE AID ASPECTS

Relevant Article: n/a

Member State: n/a

Questions 1

Considering the eligibility of large enterprises, we are interested whether the Commission foresees other possible flexibilities as regards state aid rules?

Answer to question 1

There are already a lot of possibilities to grant State aid to large enterprises under the current State aid rules. If the question concerns manufacturing, initial investment aid to large enterprises is possible under the Regional Aid Guidelines in 'a' areas (less developed) and, provided the initial investment creates new economic activities, also in 'c' areas. When it concerns a JTF territory in a 'c' area, then regional aid to large enterprises can not only be granted for initial investments that create new economic activities but also for the diversification of the output of an establishment or for a fundamental change in the overall production process of the product(s) concerned by the investment provided the conditions under paragraph 14 of the Regional Aid Guidelines are fulfilled.

Support for manufacturing investment carried out by large enterprises is also possible under the regional aid section of the GBER, i.e. also in assisted areas.

In addition, for some of the sectors covered by the STEP regulation (namely the strategic sectors for the transition towards a net-zero economy as defined in the Temporary Crisis and Transition Framework (TCTF)), section 2.8 of the TCTF provides the possibility to support initial investments to large enterprises beyond assisted areas, provided all conditions thereunder are fulfilled.

With regard to regional investment aid, the Commission has introduced the possibility for Member States to increase aid intensity for STEP projects by up to 5% of eligible costs in 'c' areas and 10% in 'a' areas, to maintain the cohesion policy objective by allowing more support in the most disadvantaged areas.

Please note that under the ERDF Regulation, as amended by the STEP Regulation, productive investments in large enterprises may be supported only in less developed

and transition regions, as well as more developed regions in Member States whose average GDP per capita is below the EU-27 average measured in purchasing power standards and calculated on the basis of Union figures for the period 2015-2017. In all cases however, the ERDF co-funding remains without prejudice to State aid rules, which implies that it needs to be checked whether the less developed / transition region where the investment would occur appears on the Member State's approved regional aid map.

Question 2

How will the state aid scheme for STEP be handled: will there be an exemption or a specific scheme? Or will it have to fit in with existing schemes?

Answer to question 2

Support granted under STEP that is considered State aid will be handled the same way as other State aid schemes or individual aid. State aid should be notified (or be covered by a notified scheme) unless it is exempted from notification under an existing exemption Regulation.

Question 3

In the context of the rules on public aid (regional investment aid) and the rules on ERDF support for investments in assisted areas that meet the conditions set out in Art. 107 section 3 letter a) of the Treaty, aid may be granted for an initial investment in any form, regardless of the size of the beneficiary's enterprise and in accordance with Art. 5 of the ERDF Regulation, support may be granted for productive investments in enterprises other than SMEs, for projects referred to in point (a). a-d above Article 5.

- whether support for large enterprises under STEP, if the aid constitutes public aid - regional investment aid for an initial investment of a production nature (it will not be aid for research projects), will be in accordance with the above-mentioned Art. 5 of the ERDF Regulation, which means that such entities will not have to ensure mandatory cooperation with SMEs

- if research and development projects covered by public aid from the ERDF are allowed under STEP, will it be obligatory to ensure cooperation between large enterprises and SMEs, or is there any derogation planned in this respect?

- whether the conditions for cumulation of aid set out in Art. 8 of Regulation 651/2014 (in the case of projects covered by public aid), are any derogations planned in this respect?

Answer to question 3

Under State aid rules, support to initial investments can be granted to large enterprises in 'a' areas under the Regional Aid Guidelines and the regional aid section of the GBER (for the sake of completeness, such support can be granted also in 'c' areas, provided the initial investment creates new economic activities). In addition, section 2.8 of the TCTF provides, for some of the sectors targeted by the STEP

regulation (namely the strategic sectors for the transition towards a net-zero economy as defined in the TCTF), the possibility to support initial investments to large enterprises beyond assisted areas, provided all conditions thereunder are fulfilled.

We understand the question is more about the conditions for the use of ERDF to support productive investment (or initial investments) in large enterprises in 'a' areas (as defined under Article 107(3)(a) TFEU). Under State aid rules, investment aid to large enterprises in assisted areas is not conditional upon, or linked to, their cooperation with SMEs. In accordance with Article 5(2) of the ERDF Regulation, productive investment in large enterprises may be supported if it falls in one of the sub-paragraphs (a) to (e) of this Article, depending on the applicable specific objective of the investment. If ERDF support is granted to a large enterprise under the STEP specific objective, then the conditions of Article 5(2)(e) apply and cooperation between large enterprise and SMEs is not required. Cooperation with SMEs may be required for large enterprises to receive certain State aid related to research and development (for example, under Article 29 GBER on process and organisational innovation) – there are no plans to implement derogations, in this regard.

There is a cumulation limit of Union and national funding under State aid rules (and also under EU funds rules) to avoid overcompensation. Public funding must be necessary to enable the commercial project to go ahead, while it would not take place in the absence of such public funding (incentive effect). At the same time, it is important that this public funding does not crowd out private investment. Therefore, it is not planned to derogate from the rules set out in Article 8 GBER in the case of STEP projects.

Question 4

In the case of enterprise investment projects in the area of digitalization for STEP projects, regional investment aid will most often apply, for which, in accordance with Art. 14 of Regulation 651/2014 is the requirement to provide a minimum 25% own contribution to the project, free of any public funds.

- are there any changes planned in the scope of aid cumulation that would enable, in the case of STEP projects financed by regional investment aid, cumulation with funds from other programs to a higher aid intensity than in accordance with the regional aid map and cumulation exceeding the current division into ERDF funds and the required own contribution to the RPI at the level of 25% of eligible expenditure?

- are there generally planned changes in the scope of Regulation 651/2014 in terms of possible support for STEP projects from public aid, taking into account that not every investment in the above-mentioned the regulation will include an adequate and favorable legal basis for granting aid, but granting de minimis aid may be impossible due to the de minimis aid limit and other exclusions, whether any derogations are planned to be introduced in terms of the conditions specified in individual articles of Regulation 651/2014 (in particular Articles 1, 25 and 13 and 14)?

Answer to question 4

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Where an investment project supported by STEP constitutes State aid that can be exempted under Article 14 GBER (regional investment aid), the requirement of a minimum of 25% own contribution by the beneficiary must be complied with and taken into account in the calculation of maximum aid intensity.

Cumulation with public funding from a centrally managed source remains possible on a project, but the project must still comply with the condition that the beneficiary must provide a 25% contribution to the project that is free of public support.

With regard to regional investment aid (under Article 14 GBER and the Guidelines on Regional State aid), the Commission has introduced the possibility for Member States to increase aid intensity for STEP projects by up to 5% of eligible costs in 'c' areas and 10% in 'a' areas, to maintain the cohesion policy objective by allowing more support in the most disadvantaged areas. Such increased maximum aid intensities will be part of the regional aid maps and therefore also applicable to projects implemented under the GBER.

There are no plans to further amend the GBER in view of STEP.

Question 5

Regarding the issue of the possibility of financing projects up to 100% and the rules of state aid: will there be any changes prepared in this regard, e.g. in the GBER regulation, or will such support be possible only under the rules of de minimis aid, which would entail a strong quota limitation?

Answer to question 5

The principles laid down in the Treaty apply to STEP in the same way as to other policy areas. In accordance with the TFEU, State aid should remain exceptional, and be limited to the minimum necessary for projects that contribute to certain objectives to be undertaken. Article 8 GBER provides for cumulation rules to avoid overcompensation. It is important that public funding does not crowd out private investment. Article 8 GBER allows for a high coverage of eligible costs in the case of co-funding with centrally managed funds. It is not planned to amend Article 8 GBER. De minimis is an alternative to the GBER in suitable cases and indeed exceptionally allows coverage of 100% of a project's costs.

Question 6

There seem to be a gap between the provisions of the STEP Regulation and the GBER Regulation regarding the Seal of Excellence, specifically the new type of seal introduced by the STEP Regulation. In addition to the Seal being introduced, amendments to Regulation 651/2014 (GBER) are also necessary due to the fact that national operational programmes benefit from public subsidies under the aforementioned regulation. Regulation 651 contains provisions considering SoE only in the context of the HE programme and it will not be possible under it to apply specific exceptions to projects with the Sovereignty seal.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer to question 6

While the GBER does not provide for specific conditions to exempt Seals of Sovereignty granted under the STEP Regulation from notification to the Commission, Member States are entitled to apply any GBER article to a project, as long as it fulfils the conditions in that article. The absence of a specific provision, therefore, should not impede the application of the GBER to projects granted a STEP Seal of Sovereignty.

Question 7

In the case of allocation of funds from the ERDF for STEP projects and the possibility of combining support with funds from other budgets (e.g. Recovery and Resilience Facility, RePowerEU, InvestEU, Digital Europe Programme, Horizon Europe, provided, of course, lack of double financing of given expenses), approach the issue of examining the occurrence of the incentive effect - projects from the ERDF for enterprises will be covered by public aid on the basis of the relevant regulations of Regulation 651/2014, therefore the project must meet the incentive effect, which may be a significant obstacle to combining financing from various programs in relation to one comprehensive investment that is to be financed from various sources supporting STEP projects - is it therefore planned at the level of legal regulations, for example, to exclude the obligation to meet the incentive effect for STEP projects in the case of granting public aid from ERDF funds, in order to enable combining support from various programs, without violating the above-mentioned incentive effect.

Answer to question 7

The question is unclear, as why the incentive effect should not apply to a STEP project that needs to combine several sources of funding. Incentive effect is an essential condition to grant State aid and cannot be derogated from.

Question 8

The sovereignty seal introduced under STEP regulation aims to increase flexibility in combining support instruments, but also to prevent possible double financing. In this context, the possibility of applying for support from different programmes for the same project seems logical (while not for the same costs, taking into account the prohibition of double financing of expenditure), moreover, the content of the STEP Regulation directly implies the possibility of cumulating and combining aid under different programs ("the sovereignty seal should also support better access to Union financing, in particular facilitating cumulative or combined financing from several Union instruments" - recital 11 and Article 4 of the STEP Regulation).

Please clarify whether the conditions for cumulation of aid set out in Art. 8 of Regulation 651/2014 (in the case of projects covered by public aid), are any derogations planned in this respect?

Answer to question 8

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The principles laid down in the Treaty apply to STEP in the same way as to other policy areas. In accordance with the TFEU, State aid should remain exceptional, and be limited to the minimum necessary for projects that contribute to certain objectives to be undertaken. Article 8 GBER provides for cumulation rules to avoid overcompensation. It is important that this public funding does not crowd out private investment. Article 8 GBER allows for a high coverage of eligible costs in the case of co-funding with centrally managed funds. It is not planned to amend Article 8 GBER. De minimis is an alternative to the GBER in suitable cases and indeed exceptionally allows coverage of 100% of a project's costs.

QA00316 - TERRITORIAL DELIVERY MECHANISM CODES FOR PROJECTS PHASED UNDER ARTICLE 118A CPR 2021-2027

Relevant Articles:

Article 118a of the CPR

Article 73 of the CPR,

Article 28 of the CPR

Article 29 of the CPR

Article 32 of the CPR

Article 11 of the ERDF/CF

Member State: n/a

Question 1 (including any relevant facts and information):

In line with the provisions of Article 118a, our understanding is that if eligible phased projects from 2014-2020 are to be implemented under PO5 they will have to be linked with types of actions programmed under SO 5.1 or SO 5.2, but not necessarily complying with provisions of Integrated territorial development (Art 28 CPR 2021-2027). Does it mean that as regards territorial delivery mechanism and territorial focus codes phased projects financed under PO5 that are not linked to integrated territorial development (Art 28 CPR 2021-2027) can have other codes (i.e. 25 to 33) than the codes allowed under PO5 (i.e. 01 to 24)?

Answer:

In line with the reply provided in QA00204, taking into account the derogation from Article 73(1) and (2) CPR, operations phased under Article 118a CPR are the operations

that have been selected in accordance with applicable rules under CPR and Fund-specific Regulations for 2014-2020. The scope of eligibility applicable to those operations is the one of the CPR and Fund-specific Regulations for 2014-2020. The rules which apply for the implementation of the second phase of operations phased pursuant to Article 118a are those of the programming period 2021-2027.

Based on above, the obligation enshrined in Article 3(1)(e), second subparagraph of ERDF/CF Regulation to provide support under PO5 through territorial or local development strategies through the forms set out in Article 28 CPR, does not apply to the second phase of operations phased pursuant to Article 118a CPR, as this obligation can be considered as falling under the scope of eligibility.

Contrary, as explained in recital (10) of Regulation (EU) 2022/2039 (CPR amendment for the purpose of FAST-CARE), support for operations phased pursuant to Article 118a CPR should not affect Member States' obligations to comply with thematic concentration requirements and climate contribution targets. Therefore, as the minimum level of resources for sustainable urban development set out in Article 11 ERDF/CF Regulation is considered as one of the concentration requirements, it does apply to the second phase of those operations and needs to be tracked through the territorial delivery mechanism codes set out in Annex I CPR.

Table 3 of Annex I CPR lists codes from 01 to 24 linked to the territorial delivery mechanism used for reporting under PO5.

For codes 25 to 33 it is stated that those should be used for *"Other approaches undertaken under policy objectives other than policy objective 5 and not in a form of integrated territorial investment or in form of community-led local development"* (footnote 28 to Table 3 of Annex I CPR).

Therefore, phased operations financed under PO5 should be reported under codes 01 to 24.

However, in line with Article 11(2) 1st and 2nd sub-paragraph ERDF/CF Regulation, ERDF resources should be allocated to sustainable urban development in one or more of the forms referred to in Article 28 CPR while respecting the requirement to involve the territorial authorities or bodies in the selection of operations in accordance with Articles 29(3)(d) and 32(3) CPR. Therefore, phased operations financed under PO5 should use codes 1 to 3, 9 to 11, and 17 to 19 (counted towards earmarking) only when relevant territorial authorities or bodies selected operations or were involved in the selection of operations.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00315 - COLLECTION AND RECORDING THE DATA ON BENEFICIAL OWNERS (BO) OF THE RECIPIENTS OF UNION FUNDING

Relevant Article:

Article 72(1)(e) of the CPR

Annex XVII

Member State: GR

Question 1 (including any relevant facts and information):

Please find hereunder questions raised by the Greek authorities concerning the collection and recording the data on beneficial owners (BO) of the recipients of Union funding:

Following the obligations deriving from 2021-2027 CPR for collecting and recording data on beneficial owners (BO) of the recipients of Union funding, the Greek Special Service for Institutional Support and Information Systems, as responsible for the Management and Control System (MCS) for 2021-2027 Programmes, has drawn up the guidelines *"O.I.1_2: Data to be recorded and stored electronically on beneficial owners"* addressed to managing authorities, intermediate bodies and beneficiaries, taking into account the provisions of CPR, Articles 69(2), 72(1)(e) and Annex XVII.

In the aforementioned guidelines which are part of the Greek MCS,

- Greece identified the obligation to record BO data in our central Management Information System (MIS) for 2021-2027 Programmes with the obligation to register BO data in the Central Registry of Beneficial Owners of the State (i.e., if an entity is not obliged to register BO data in the Central Registry, then it is not obliged to register BO data in the MIS/OPS either),
- on the grounds that since AML Law 4557/2018, which transposed into our national legislation the Directive (EU) 2015/849, exempts certain entities from the relevant obligation (following an approvement by the competent EU Directorate), then likewise these entities will be exempted from the requirement to record BO data in the MIS/OPS.
- The above rationale is supported by the wording of CPR/Annex XVII/field 3: "3. Information on all beneficial owners of the beneficiary**, if any, as defined in Article 3(6) of Directive (EU) 2015/849**, namely [...]".

Consequently, as stated in the attached guidelines, **the entities not required to register BO data** in the MIS (as in the Central Registry of BOs) are:

- **the General Government Bodies, as well as legal entities wholly owned or controlled by the Greek State**, since for these entities, according to the competent Coordinating AML Department of the Ministry of National Economy and Finance, the requirement of full transparency is already met. The rationale is available at the link (see section B):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

https://www.gsis.gr/sites/default/files/2020-03/13-3-2020%20%20%CE%9C%CE%97%CE%A4%CE%A1%CE%A9%CE%9F%20%CE%A0%CE%94_%CF%85%CF%80%CF%8C%CF%87%CF%81%CE%B5%CE%BF%CE%B9%20%CE%BA%CE%B1%CF%84%CE%B1%CF%87%CF%8E%CF%81%CE%B9%CF%83%CE%B7%CF%82%2053_20%20%CE%93%CE%99%CE%91%20%CE%91%CE%9D%CE%91%CE%A1%CE%A4%CE%97%CE%A3%CE%97.pdf)

- In case of a listed company, the registration data includes the VAT registration number or TIN, the Legal Entity Identifier and the company's contact details.

The Greek authorities ask for DG REGIO confirmation on the correctness of the above-mentioned approach.

Answer:

As stated in data field 3 of Annex XVII to the CPR, the managing authority should record on each operation "*information on all beneficial owners of the beneficiary, if any* […]". This obligation should be understood in a way that if the beneficiary has a beneficial owner as defined in Article 3(6) of Directive (EU) 2015/849 (AMLD), the information on it should be recorded and stored electronically by the managing authority or Member States may comply with this requirement by using the data stored in the registers as referred to in Article 30 AMLD. Exemptions from data collection obligations under the AMLD have no impact on the obligations under the CPR.

QA00313 - ERDF/CF INVESTMENTS IN NATURAL GAS-FIRED BOILERS AND HEATING SYSTEMS IN HOUSING AND BUILDINGS REPLACING SOLID FOSSIL FUELS

Relevant Article: Art. 7 ERDF regulation (Exclusion from the scope of the ERDF and Cohesion Fund)

Member State: n/a

Question 1 (including any relevant facts and information):

Can operations supported by the ERDF and the Cohesion Fund under point (h)(i), third indent, of paragraph 1, article 7, of the ERDF/CF regulation be selected by the managing authority by 31 December 2025, in light of the recast of the EPBD?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

The ERDF/CF Regulation Article 7(4) sets out a time limit for possible support for investment in natural gas boilers in housing and buildings replacing solid fossil fuels boilers referred to in Article 7(1), point (h)(i), third indent: the related operations must be selected by the managing authority by 31 December 2025[1]. On the other hand, Article 17(15) of the recast of the EPBD stipulates that any financial incentives for the installation of stand-alone fossil fuel-based boilers should cease from 1 January 2025, with the exception of those selected for investment, *before* 2025, in accordance with Article 7(1), point (h)(i), third indent, of the ERDF/CF Regulation.

"*Financial incentives for the installation of stand-alone boilers powered by fossil fuels (…)*", as referred to in Article 17(15) of the recast of the EPBD, should be understood in the context of cohesion policy as types of action set out in a programme.

In practical terms, this means that any programme or request for programme amendment submitted before 1 January 2025 (subsequently approved), which contains types of action related to the replacement of solid fossil fuels-based heating systems with gas-based heating systems and the corresponding intervention field from Table 1 of Annex I to the CPR (code 56), would comply with Article 17(15) of the recast of the EPBD. Managing authorities will be able to select operations related to investment in natural gas-fired boilers included in ERDF/CF programmes until the end of 2025, in accordance with Article 7(4) ERDF/CF Regulation.

[1] This issue does not affect JTF programmes, as article 9 of the JTF regulation on fossil fuels exclusion does not allow JTF support for natural gas boilers.

QA00311 - Cumulative funding from AMIF and ESF+ for the creation of Foreigners Integration Centres in Poland

Relevant Articles:

Article 32(1) of Regulation (EU) 2021/1147 (AMIF Regulation)

Article 63(9) of the CPR

Member State: PL

Question 1 (including any relevant facts and information):

The AMIF Managing Authority would like to publish a call for proposals for the creation of Foreigners Integration Centres in 16 regions. Such centres would be established and operated by regional authorities, which are also in charge of ESF+ regional programmes.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

1. Is it possible **to cumulate the funding of the operation through AMIF** (for which the co-financing rate at specific objective/type of action level is 90%) **and ESF+** (with a co-financing rate of 75% at priority level)?
2. Provided that the reply to question 1 is yes, is it possible **to cover 100% of the costs of the operation through EU funding**, for example in a following way?

- 90% of costs are funded by the AMIF and follow the AMIF rules.
- 10% of costs (separated from those funded by AMIF) are funded by the ESF+ and follow the ESF+ rules.
- The total EU contribution to the operation is 100% (i.e. covering 100% of costs of the operation) and is composed of 90% from the AMIF and 10% from the ESF+.

Answer:

In accordance with Article 32(1) of AMIF Regulation and Article 63(9) CPR, an operation may receive contribution from two different Funds/programmes (in this specific case the AMIF and the ESF+ programmes), provided that the contributions do not cover the same costs. The expenditure declared in a payment application for one of the Funds/programmes cannot be declared for the support from the other Fund/programme. The amount of expenditure to be entered into a payment application of a Fund/programme may be calculated for each Fund/programme concerned on a pro rata basis, in accordance with the document setting out the conditions for support. It is the responsibility of the Member State to ensure that the double funding is avoided. Moreover, the rules of the relevant Fund/programme apply to the corresponding contribution to the operation. At the level of the operation, financing from both Funds cannot exceed the total eligible costs.

For the example in question, the eligible costs for part (90%) of the operation is to be supported by the AMIF with the co-financing rate of 90%. The eligible costs of the remaining part (10%) of the operation is to be supported by the ESF+ with the co-financing rate of 75%. For the combined costs of the operation, 88.5% of the amount declared for that operation under two separate payment applications for each Fund/programme can then be reimbursed by the Commission.

It is to be noted that under shared management, the co-financing rates at the priority level for the ESF+ and specific objective/type of action level for the AMIF may differ from the co-financing rate at the level of the operation as set by the managing authority (or intermediate body, where applicable) in the document setting out the conditions for support. It is therefore possible that 100 % of the eligible expenditure in an operation is covered by the Union budget if the co-financing rate at the level of the operation is set at 100%.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00237 - STATE AID IN PARTNERS PROJECTS IN POLAND

Relevant Articles:

Article 2(9) of Regulation (EU) 2021/1060 (CPR)

COM Regulation (EU) No 651/2014 (GBER)

Member State: PL

Question 1 (including any relevant facts and information):

Polish authorities would need clarification on the situation where an operation is implemented by partners forming a partnership and, apart from the lead partner, non-lead partners would be receivers of the state aid too. The provisions set in Polish act on the principles of implementation of the cohesion policy programmes indicate that the financing agreement is concluded solely with a lead partner and also that the Managing Authority will be the body granting state aid. In the view of the above I would like to ask about the role and possible entitlements of the rest of the partners forming the partnership in case where a state aid is involved.

Additional information

As part of the support for R&D projects under the Cohesion Policy, particular attention was paid to the role of cooperation in research and development activities. This cooperation takes the form i.e. of projects implemented jointly by: entrepreneurs, research organizations and non-governmental organizations. All partners in such projects will be known and evaluated as part of the assessment of the application for the project co-financing, and a partnership agreement will be submitted as a part of the application. Thanks to this, already at the stage of assessment of the application for the project co-financing it will be known who and to what extent is responsible for the implementation of the project. In Polish Authorities' opinion, it is important that each partner individually is entitled to receive State aid based on the opportunities provided by GBER (to note: in the case of R&D projects implemented by several entities, define effective cooperation).

Is it possible for non-lead partners participating in the implementation of the operation to be receivers of funding including state aid, without being beneficiary per se?

In addition, bearing in mind the above, Polish Authorities would like to ask whether it is in compliance with the Common Provisions Regulation, to implement:

- an R&D project in which the effective collaboration between several entities, as referred to in the GBER regulations would take place, and
- consequently, State aid would be granted individually to each entrepreneur/research organisation who participate in this project,

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- other projects based on the cooperation/partnership of various entities, in the case of which the GBER provisions enable State aid to be provided individually to entrepreneurs participating in one project implemented in partnership?

Answer:

We understand that the question is about R&I projects or a group of projects implemented jointly by entrepreneurs, research organizations and non-governmental organizations. According to the explanations, all partners in such projects will be identified and evaluated as part of the assessment of the application for co-financing, and a partnership agreement will be submitted as a part of the application, so that it will be known who and to what extent is responsible for the implementation of the project.

Our understanding is that Polish authorities refer to a situation whereby an operation is implemented by partners forming a partnership and each partner is to receive State aid.

It should be noted that the notions of 'partnership' or a 'lead partner' are not defined in the CPR. The latter is recognised by Article 33(2) of the CPR with regard to local action groups, but in our understanding, this is not the case here as the operation is not implemented by a local action group. The set-ups including different partners maybe different in different Member States depending on national rules. It is for the Polish authorities to identify the beneficiary of the operation in accordance with the definition as set out in Article 2(9) of the CPR.

In accordance with Article 2(9) of the CPR, the beneficiary means:

(a) "a public or private body, an entity with or without legal personality, or a natural person, responsible for initiating or both initiating and implementing operations; (…)

(c) in the context of State aid schemes, the undertaking which receives the aid;

In the set-up proposed by Poland, we understand that one partner initiates and implements the operation and other pre-defined partners implement parts of the operation and receive State aid. Therefore, it appears that all partners of the partnership may fulfil the definition of a beneficiary under Article 2(9)(a) or (c) CPR.

We can understand that the partnership formed by all partners, is the beneficiary of the operation. Under the CPR, it is required that all the partners within the partnership should be identified at the moment of the selection of the operation and specified in a document setting out the conditions for support (Article 73(3) CPR).

Nothing would preclude the partnership to be represented by one of the partners in the relations with the managing authority.

A distinction has to be made between the definition of beneficiary under the CPR (Article 2(9)) and the definition of a beneficiary under State aid rules. The State aid rules apply where the beneficiary of a measure is an 'undertaking'. The two sets of rules apply separately.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In conclusion, nothing in the CPR provisions prevents the Polish authorities to implement projects based on the cooperation/partnership of various entities as long as it complies both with the definition of the beneficiary under the CPR and with State aid rules. The compliance with State aid rules has to be assessed and ensured by the Member State.

QA00318 - IN-KIND CONTRIBUTION IN THE FORM OF VOLUNTARY WORK UNDER ARTICLE 39 ETC

Relevant Articles:

Articles 39 and 41 of the Interreg Regulation,

Articles 67(1) and (53)(1)(a) of the CPR

Member State: n/a

Question 1 (including any relevant facts and information):

For Interreg Programmes, can voluntary work (i.e. in-kind contributions) be declared as staff costs and therefore included in the basis costs for the application of flat rates, including those set out in Articles 54(b) and 56 CPR and in Article 41 Interreg Regulation?

Answer:

In-kind contributions in the form of provision of work for which no payment supported by invoices or documents of equivalent probative value has been made (unpaid work), may be eligible if the conditions set out in Article 67(1) CPR are met.

The definition of direct staff costs is not linked to whether the staff costs take the form of in-kind expenditure or not. Therefore, in-kind contributions in the form of unpaid work can be included in the direct staff costs and be used as a basis for the calculation of flat rates, including those under Articles 54(b), 56(1) CPR and Article 41(5) Interreg Regulation.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA721_EMFAF_STATE AID AND VERIFICATION OF ENTERPRISES IN DIFFICULTY, INCLUDING SMES

Relevant Article: Article 10 of the EMFAF Regulation

Member State: CZ

Question:

Can you please confirm that the financial support granted under EMFAF Regulation is not state aid and therefore, there is no need to verify the enterprises in difficulty, including SMEs?

Answer:

According to article 42 of the Treaty on the Functioning of the European Union (TFEU) the fishery and aquaculture sector is subject to competition rules (which include State aid) only to the extent determined by the legislator in the framework of Article 43(2) TFEU, which includes the Common Fisheries Policy. Article 42 TFEU refers to the production and trade of agriculture products (which covers the production, processing and marketing of fishery and aquaculture products). The legal bases for the EMFAF regulation include article 42 and 43(2) of the TFEU.

Article 10(2) of the EMFAF Regulation states that Articles 107, 108 and 109 of the Treaty on the Functioning of the EU shall not apply to payments made by Member States under this Regulation, which fall within the scope of Article 42 of the Treaty on the Functioning of the EU. A similar rule was already in place under the EFF and the EMFF.

Commission Regulation (EU) No 2022/2473 declares certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market, in the application of Articles 107 and 108 TFEU. As explained in the previous paragraph articles 107 and 108 TFEU do not apply to payments made by Member States pursuant to the EMFAF regulation and falling within the scope of article 42 TFEU. Commission Regulation (EU) No 2022/2473 is therefore not applicable to the EMFAF payments.

Regulation (EU) 2021/1058 on the European Regional Development Fund and the Cohesion Fund, which provides that if an enterprise is in difficulty, it cannot be supported by the European Regional Development Fund or the Cohesion Fund is also not applicable to the EMFAF.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 15 of the common provisions regulation, Regulation (EU) 2021/1060, which also covers the EMFAF, sets as a horizontal enabling condition that managing authorities have the tools and capacity to verify compliance with State aid rules for undertakings in difficulty and undertakings under a recovery requirement. However, as explained articles 107 and 108 TFEU do not apply to payments made by Member States pursuant to the EMFAF regulation and falling within the scope of article 42 TFEU.

It should furthermore be noted that the EMFAF regulation does not contain any specific provisions on undertakings in difficulty.

Since the payments made under CZ EMFAF programme fall within the scope of EMFAF Regulation and at the same time are covered by the scope of Article 42 of the TFEU, the Articles 107, 108 and 109 TFEU shall not apply to these payments.

Consequently, the financial support granted under the EMFAF does not constitute state aid and therefore, the question of enterprises in difficulty, including SMEs does not have to be considered, i.e. there is no provision that would make it necessary to verify whether enterprises, including SMESs, are in difficulty, as regards to EMFAF payments.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner and should not duplicate or crowd out private financing or distort competition in the internal market.

QA718_EMFAF_ANNEX III

Relevant Article: Annex III, Article 41 of the EMFAF Regulation

Member State: Spain

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Questions:

With regard to EMFAF Annex III, relating to aid intensities, and specifically to line 14 (III), which states: '*have innovative features **or** ensure public access to their results*', and to line 13 (III) which states: "*have innovative features, where appropriate, at local level, **and** ensure public access to their results*", different questions have arisen.

Taking into account the different wording of lines 13 and 14 in red, and considering that both the Spanish and English versions of the Regulation state the same, we have the following doubts:

- **First question**: What is the difference in the application of line 13 (III) and line 14 (III) in relation to the use of the wording '**and**' and '**or**'?
- **Second question**: In relation to line 14 (III), is it possible to separate the requirement of innovative characteristics from the requirement to ensure public access to results? If so, would a project which, without having innovative features, but ensures public access to its results, comply with section III of line 14? For example, would a Producers Organization study on accidental mortality, whose report and results are published on its website, meet the requirement of line 14 (III)?
- **Third question**: If the answer to the second question is affirmative, Spain considers it necessary to restrict the type of projects likely to have results for which public access would benefit other operators. We would therefore like to confirm with the Commission that it is possible at Member State level to impose any restrictions in this regard. In addition, we would also like to know whether the Commission has any pattern or consideration to be taken into account when establishing such a restriction.

Answers:

In reply to the first question:

Annex III Row 13 is specifically linked to Article 30 of the EMFAF Regulation on Community-led local development. Row 13 requires one out of three conditions to be fulfilled to benefit operations from the maximum aid intensity rate therein:

"(i) they are of collective interest;

(ii) they have a collective beneficiary;

(iii) they have innovative features and ensure public access to their results"

On the other hand, Annex III Row 14 applies to all other operations than the ones covered by Article 30. Under row 14 the three criteria must be cumulatively fulfilled to benefit from the maximum aid intensity rate therein:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

"(i) they are of collective interest;

(ii) they have a collective beneficiary;

(iii) they have innovative features or ensure public access to their results"

A further difference between both rows is that criterion iii) in row 13 is cumulative in itself, for it uses the wording "and", whereas Row 14 iii) only requires one of the two subcriteria, being "innovative features" **or** "ensure public access to their results" to be fulfilled. However as described above in order to rely on row 14 all its criteria (i.a. 14(i), 14(ii), and 14(iii) must be fulfilled.

In reply to the Second question:

In the EMFAF context this may include:

- identification or application of innovations that are useful in finding marketing solutions,

- identification or application of new ideas that are useful in finding solutions to issues of business processes (e.g. more sustainable fishing),

- identification or application of new ideas that result in new products and services (e.g. environmental and social services),

- support for changes or improvements in a series of linked tasks or activities to better help businesses reach their goals.

Please note that mere studies, research and advice on potential innovations in the future do not constitute innovation activities.

The mere publication of one study without innovation activities associated to it would not be eligible.

Public access to the results of a project refers to the fact that the general public should not be restricted from information about the results of the operation.

In reply to the Third question:

The Member State may restrict the type of projects through its appreciation of row 14's cumulative criteria as being fulfilled or not.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA717_EMFAF_INCLUSION OF RETAIL SALE OF FISH, INCLUDING BASIC FISH PROCESSING UNDER ARTICLE 26

Relevant Article: Article 26, 27 and 28 of the EMFAF Regulation

Member State: CZ

Question:

Inclusion of retail sale of fish, including basic fish processing, under Article 26 of the EMFAF Regulation and therefore not monitoring the size of the enterprise, in order to exclude large enterprises from support in the 2021-2027 programming period.

Answer:

Article 26(1)(a) of the EMFAF Regulation, refers to 'promoting sustainable aquaculture activities, especially strengthening the competitiveness of aquaculture production, while ensuring that the activities are environmentally sustainable in the long term.'

Under the Article 26(1)(b) of the EMFAF Regulation, support is granted for 'promoting marketing, quality and added value of fishery and aquaculture products as well as processing of these products.'

The EMFAF Regulation does not contain a definition of retail but Regulation (EU) No 1379/2013 on the common organization of the markets in fishery and aquaculture products contains the following definition in its Article 5(g):

" 'retail' means the handling and/or processing of food and its storage at the point of sale or delivery to the final consumer, including distribution terminals, catering operations, factory canteens, institutional catering, restaurants and other similar food service operations, shops, supermarket distribution centers and wholesale outlets; "

Article 28 of the EMFAF prescribes that if support is granted to enterprises other than SMEs' for the promotion of marketing, quality and added value of fishery and aquaculture products as well as processing of these products' this can only be done

through financial instruments as provided for in Article 58 of Regulation (EU) 2021/1060 or through InvestEU, in accordance with Article 10 of Regulation (EU) 2021/523.

Considering this legal framework the "processing" of fishery and aquaculture products by large undertakings is subject to the limitations of Article 28 of the EMFAF Regulation. Where retail sale takes the form of processing these activities will therefore also be covered by this provision.

However, where the retail sale of fishery and aquaculture products includes some processing of a minor nature which would be inherent in the retail sale activity in question such activities should not be covered by Article 28 of the EMFAF Regulation.

In cases of retail sale which would not fall under the exemption of Article 28 of the EMFAF Regulation, support measures would naturally still have to comply with all other EMFAF eligibility conditions.

Therefore, it can be concluded that where the retail sale activities of the beneficiaries do not qualify as processing activities, the beneficiaries are not limited by the size of the enterprise and it is not necessary to introduce a control on the size of the enterprise.

This leads also to the considerable reduction of the administrative burden and simplification on both sides the Managing Authority and the applicant/beneficiary.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA723_EMFAF_PUBLIC INTENSITY FOR OPERATIONS RELATED TO SMALL-SCALE COASTAL FISHING

Relevant Article: Annex III and article 41 of the EMFAF Regulation

Member State: Cyprus

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question:

According to annex III of the EMFAF Regulation, **public intensity** for Operations related to small-scale coastal fishing can reach a maximum of 100% intensity rate. What we would like to have clarification on is **to which extent is an action/investment considered to be related to small-scale coastal fishing** as operators of small scale coastal fishing are also motivated and given incentives to obtain supplementary incomes from activities outside the fishing/catching sector some of which can be cofinanced through priority Priority 3: Enabling a sustainable blue economy in coastal, island and inland areas, and fostering the development of fishing and aquaculture communities.

In fact under the Q&A in the Regio wiki website for EMFAF under 2.7 (shared management- rules for implementation) there is a question by Latvia on this, which is highlighted in yellow below which specified only that the **beneficiary has to be an operator in the "small-scale coastal fishing" sector and that their investments related to marketing can be eligible for 100% support**. While someone can interpret this investment in the specific example by Latvia as being directly linked to fishing operations if sold directly from the vessel it does not clarify if for example for the cases when the fisherman decided to open a fish market establishment to sell fish if such an investment would be considered as being outside the scope of this category of "operations related to small-scale coastal fishing" and thus eligible or not for 100% public aid.

We therefore request a clarification whether the investments by operators in SSCF can benefit from the maximum 100% support of public intensity aid only if the investments are **directly linked with small scale coastal fishing** such as:

- marketing fish directly to consumers from the vessel,
- investments on board fishing vessels,
- investments in equipment related to catching fish or control of fishing activity.

We would like to know investments in diversification of activities **outside fishing (catching sector)**, such as :

- processing or marketing establishments,
- tourism, including fishing tourism

can benefit from the 100% public intensity?

Please note that fishing tourism can involve investments on land as well such as transport vehicles hospitality and accommodation and other services.

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In line with Annex III of the EMFAF Regulation (2021/1139), operations related to small-scale coastal fishing (SSCF) may benefit from a maximum 100% aid intensity rate under shared management.

Article 2(2)(14) of the EMFAF Regulation provides the definition of the SSCF stating that " '*Small-scale coastal fishing' means fishing activities carried out by:*

(a)marine and inland fishing vessels of an overall length of less than 12 metres and not using towed gear as defined in point (1) of Article 2 of Council Regulation (EC) No 1967/2006(28); or

(b)fishers on foot, including shellfish gatherers;".

That means, operations related to SSCF should directly relate to small scale coastal fishing activities.

The Common Fisheries Policy Regulation (1380/2013) defines in Article 4(1)(28) fishing activity as *"searching for fish, shooting, setting, towing, hauling of a fishing gear, taking catch on board, transhipping, retaining on board, processing on board, transferring, caging, fattening and landing of fish and fishery products".*

The examples given which involve activities and investments on land such as investments in diversification of activities outside the fishing/catching sector; processing or marketing establishments; and tourism are not directly related to the activities defined in Article 4(1)(28) of the CFP regulation. Therefore, these activities and investments do not fall under the definitions quoted above and are as a result excluded from the provisions of 100% public intensity aid. They are considered as being outside the scope of the category of "operations related to small-scale coastal fishing".

Finally, it should be noted that it is the role of the Managing Authority/ the Member State to assess the type of beneficiary and the type of operation and subsequently to determine the aid intensity.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00319 - OVERHEAD COSTS, SIMPLIFIED COST APPROACH - ARTICLE 25(3)(E) GBER

Relevant Articles:

Article 55(2) of the CPR

Article 7 GBER – Aid intensity and eligible costs

Article 25(3)(e) GBER - Aid for research and development projects

Member State: PL

Question 1 (including any relevant facts and information):

Based on Article 55(2) of the Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, in conjunction with Article 7(1) of the GBER, it is possible to determine direct R&D staff costs referred to in Article 25(3)(a) of the GBER through the calculation of an hourly rate. On the other hand, according to Article 25(3)(e) of the GBER, additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project, without prejudice to Article 7(1) third sentence, may be calculated on the basis of a simplified cost approach in the form of a flat-rate of up to 20 %, applied to total eligible research and development project costs. In this case, the research and development project costs used for the calculation of the indirect costs shall be established on the basis of normal accounting practices and shall comprise only eligible research and development project costs referred to in Article 25(3) points (a) to (d). In view of the wording of this provision it seems that the simultaneous application of an hourly rate for staff cost of this project and a flat rate of up to 20% for additional overheads and other operating expenses may be not possible. Having the above in mind we would like the Commission to clarify whether different SCOs may be implemented in a single R&D project, or, as suggested in Article 25(3)(e) of the GBER, applying at the same time an hourly rate for direct staff costs and a flat-rate of up to 20 % of the total eligible R&D project costs referred to in Article 25(3) points (a) to (d) is not possible.

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The distinction between GBER Article 7.1 on simplified costs and Article 25.3(e) on calculation of indirect costs was clarified in the *reply to Q6 in the Q&A table on GBER/TCTF from the SAM WG, May 2023* (*available in eState aid wiki*). Where all conditions of Article 7.1 are fulfilled the simplified cost approach can be applied for when calculating costs that are eligible for aid under the GBER. However, Article 25.3(e) GBER also allows an option of calculating eligible overheads and other indirect costs in situations where the conditions of Article 7.1 are not met. If, in the case that you describe, all relevant conditions of the EU funding rules, as well as the ones of the GBER (in particular Article 7.1 and Article 25) are met, you can indeed use an hourly rate (unit cost) in line with relevant EU funding rules for determining direct costs, e.g. of personnel under Article 25.3 (a) and then use the 20% flat-rate under Article 25.3(e), applied to the direct costs calculated as explained above, for calculation of indirect costs.

QA00321 - ELIGIBILITY OF PURCHASE OF CNG BUSES (WITHIN SO 2.8.)

Relevant Article: Art. 7(1)(h)(iii) of the ERDF/CF Regulation

Art. 4(4) of Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles

Recital (64) and Art. 2 of Regulation 2023/1804/EU on the deployment of alternative fuels infrastructure

Member State: SK

Question 1 (including any relevant facts and information):

- Can acquisition of CNG buses (within SO 2.8.) be considered eligible expenditure in 2021-2027? The question is raised in reference to the amended legislation defining "clean vehicles".
- If the reply to the previous question is YES, can CNG buses be included in the intervention field 082 'Clean urban transport rolling stock'?

Answer:

In principle, Article 7(h) of Regulation 2021/1058 does not allow the ERDF or the Cohesion Fund to support investments in vehicles that involve the […] **combustion** of fossil fuels". However, the exception under point (iii) of the same paragraph allows the financing of 'clean vehicles' as defined in Directive 2009/33/EC. Article 4(4)(b) of that Directive defines a clean vehicle as a vehicle of, among others, category M_3 (defined in

point (iii) of Article 4(1)(a) of Regulation (EU) 2018/858), using alternative fuels such as (inter alia) compressed natural gas (CNG; see points (a) and (b) of Article 2(4) of the Regulation 2023/1804).

It follows from the above that the acquisition of busses powered by CNG can be supported under the ERDF and the Cohesion Fund in 2021-2027.

Even though CNG-powered buses fulfil the requirements to be regarded as clean vehicles, the footnote for the intervention field 082 in Annex 1 of Regulation 2021/1060 states that "Clean urban transport rolling stock refers to **zero-emission** rolling stock" only. CNG cannot be considered as a zero-emission fuel, therefore CNG-powered buses cannot be included in the intervention field 082. However, because CNG-powered buses can be regarded as clean vehicles, as defined in point (iii) of Article 4(1)(a) of Regulation (EU) 2018/858, usage of intervention field 077 'Air quality and noise reduction measures' could be considered.

QA00320 - PHASING OF PROJECTS FOR WHICH ELIGIBLE EXPENDITURE WAS CAPPED IN 2014-2020

Relevant Article: Article 118a CPR

Member State: RO

Question 1 (including any relevant facts and information):

The question concerns financing of the second phase of operations selected for support before 29 June 2022 which fulfil all the conditions under Article 118a.

For some of the phased projects, the original document setting out the conditions for support under the 2014-2020 rules included a ceiling on the eligible expenditure which can be declared. For example, the value of categories of eligible costs was 12 million euro, but the support was capped at 5 million euro; or the amount in the financing contract was estimated based on pre-feasibility studies which subsequently, based on the detailed technical design or tender results, led to significant increase in costs, which is higher than just general price increase on the market.

The managing authorities would like to phase those projects, keeping the scope and categories of eligible costs the same, but removing the ceiling on expenditure and awarding higher grant than originally envisaged in 2014-2020. Would it be possible based on Article 118a?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Our understanding is that the operations under question were selected for support and started before 29 June 2022 and the managing authorities would like to phase those projects, keeping the scope and categories of eligible costs the same. The answer is yes, if all the conditions under Article 118a CPR are met, the managing authority may decide to grant support to such operations and the ceiling can be removed.

QA00322 - DECISIVE POINT IN TIME FOR PHYSICALLY COMPLETED/FULLY IMPLEMENTED OPERATIONS NOT TO BE ELIGIBLE

Relevant Article: 63(6) of the CPR

Member State: LV

Question 1 (including any relevant facts and information):

Article 63 (6) of CPR states that: "Operations shall not be selected for support by the Funds where they have been physically completed or fully implemented before the application for funding under the programme is submitted, irrespective of whether all related payments have been made."

However, an ambiguity has been caused by the following. The report published by the European Court of Auditors Review 03/2024: *"An overview of the assurance framework and the key factors contributing to errors in 2014-2020 cohesion spending" (https://www.eca.europa.eu/ECAPublications/RV-2024-03/RV-2024-03_EN.pdf Page 51 (Box 6)*) states that "...projects originally financed from national resources, that had been physically completed before **they were approved for EU funding and were therefore ineligible**. The member state authorities had interpreted "physical completion" incorrectly as referring to the financial or administrative closure of a project. In fact, it refers to the completion of works or activities necessary for the project's output, which generally takes place before financial and administrative closure.".

Our understanding of the Article 63 (6) CPR has been that a project cannot be completed (irrespective of whether all related payments have been made) before and at the day an application for its funding is submitted. However, considering different lengths of projects implementation periods and time period until the same project gets evaluated and final decision made, **in case this project gets completed by the time the granting authority makes the final decision, the fully completed project still can be selected and effectively the costs of the project would be eligible costs in this respect.**

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

What happens if the project is completed between the submission of the application for the funding and the final decision by the granting authority? In the Latvian authorities' understanding, the project would then be eligible. Is this correct?

Answer:

According to Article 63(6) CPR, operations that are physically completed or fully implemented before the application for funding under the programme is submitted, irrespective of whether all related payments have been made, cannot be selected for support by the Funds. The point in time before which the operations should not be physically completed or fully implemented is clear from the provision, i.e. it is the date of the submission of the application for funding under the programme.

There is a difference between the point in time when an application for funding under the programme is submitted, and the point in time when a granting authority makes the final award decision. If an operation becomes physically completed or fully implemented after the date of the submission of the application for funding under the programme, it can still be selected for support by the Funds. The fact that the operation becomes physically completed or fully implemented before the granting authority makes the final award decision is not relevant.

In the context of the selection of such operations, it is recalled that in accordance with Article 73(2)(f), the Managing authority has the obligation to: *"verify that where the operations have started before the submission of an application for funding to the managing authority, applicable law has been complied with".*

QA00323 - ELIGIBLE INVESTMENTS UNDER STEP AND STATE AID IMPLICATIONS

Relevant Article: Art. 5 ERDF/CF regulation

Member State: IT

Question 1 (including any relevant facts and information):

The STEP Regulation aims to support the development or manufacturing of critical technologies throughout the Union, or to safeguard and strengthen their respective value chains. In the context of the STEP Regulation, development and manufacturing concern the transition of technologies from the feasibility demonstration phase to

their production on a commercial scale, including the refinement of prototypes and/or ensuring that the technologies meet stringent performance and scalability standards.

During the recent webinar of 25 April on the application of the STEP Regulation in cohesion policy, the Commission clarified (slide no. 13 of 93 of the presentation used during the webinar) that "*No restrictions based on TRL levels for STEP. However, fund-specific rules apply".*

Please confirm that, in the context of projects eligible for support under the STEP objective, industrial research costs, in addition to experimental development costs, are also eligible for funding, subject to the limits of the applicable State aid rules (in particular, Article 25 of the General Block Exemption Regulation).

Answer:

Under the new specific objectives related to STEP, ERDF programmes may support manufacturing and development of critical technologies as defined by the STEP Regulation. Following Article 5(1)(b) of the Regulation (EU) 2021/1058 (ERDF/CF), ERDF investments should support applied research. Against this background, the focus of STEP is even more targeted as it addresses stages of applied research that are the closest to commercialisation, corresponding to the category of experimental development of Art. 25(5)(c) of the GBER. If necessary, the investment may include elements of industrial research (Art. 25(5)(b) GBER) that are inextricably linked to it as a direct step towards development.

QA00324 - STEP BONUSES – MODIFICATION OF REGIONAL AID MAPS

Relevant Article: n/a

Member State: ES, HR

Question 1 (including any relevant facts and information):

When modifying the regional aid map to consider the STEP-related increased aid intensities, will the other specific conditions for regional State aid be maintained?

Answer:

Yes, all conditions of regional aid remain.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1.1:

Do we only need to identify the regions where the maximum regional aid intensity should increase if they are covered by STEP?

Answer:

For the purpose of the amendment to the regional aid maps, there is no need to identify the regions that benefit from investments covered by Regulation (EU) 2024/795 (STEP).

Member States simply need to notify an amendment to state that for investments covered by Regulation (EU) 2024/795, the maximum aid intensities in the [currently in force] 'a' areas are increased by up to 10 percentage points and the maximum aid intensities in the [currently in force] 'c' areas are increased by up to 5 percentage points for the period as from 1 March 2024 at the earliest to 31 December 2027.

Question 1.2:

Should this modification of the intensities be reviewed on the basis of the latest approved map for Spain, which adds the Murcia region to the list of areas eligible for regional investment aid under the derogation in Article 107(3)(a) of the Treaty on the Functioning of the European Union ("TFEU") ("a" areas)?

Answer:

Yes, the latest version of the regional aid map as amended is taken into account.

Question 2:

When Member States amend their regional aid maps, following the Communication from the Commission supplementing the Guidelines on regional State aid with regard to the STEP, is the regional aid map must be directed to the exact sources of funding in the framework of the STEP and indicate them in the text?

Answer:

The sources of funding do not need to be indicated in the amendment to the regional aid map. The purpose of amending the regional aid map in the context of STEP is to specify which maximum aid intensities apply to investments covered by STEP in 'a' areas (up to 10 percentage points) and 'c' areas (up to 5 percentage points), applicable as from 1 March 2024 at the earliest to 31 December 2027.

QA00325 - STEP FURTHER QUESTIONS ON STATE AID ISSUES

Relevant Article: n/a

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member States: RO, CZ, ES, HU, FR

Beneficiary's contribution

Question 1:

Does the provision of Article 14, paragraph (14) regarding the beneficiary's contribution of at least 25% of the eligible costs remain valid? Is it possible to reach an intensity of regional state aid higher than 75% for small enterprises?

Answer:

It remains valid. Currently, under Article 14 GBER, it is not possible to reach an intensity higher than 75%, except for outermost regions.

Question 2:

Can you clarify the cumulation rules to be applied when an undertaking receives, for the same eligible costs (in whole or in part):

(i) a State aid (granted on the basis of the GBER, guidelines or a temporary framework) and

(ii) a funding from the CPR funds covered by the STEP Regulation?

The management of c CPR funds (funds covered by Common Provisions Regulation 2021-2027, i.e., European Regional Development Fund (ERDF), Cohesion Fund (CF), European Social Fund Plus (ESF+) and Just Transition Fund (JTF)) is the responsibility of both the Commission and the Member States ('shared management'). National authorities have a certain margin of discretion as to their use, including the selection of beneficiaries (of STEP funding). Consequently, resources from CPR funds (and thus STEP funding under those funds) are considered as 'state resources' and may therefore constitute State aid.

Where STEP funding from a CPR fund is combined with other State aid, the total amount of State aid (= STEP funding + other aid granted) for the same project, for the same eligible costs, must be taken into account when determining whether notification thresholds and maximum aid intensities or maximum aid amounts are respected.

The cumulative total amount of State aid, covering the same eligible costs, partially or totally overlapping, must not result in exceeding the highest aid intensity or aid amount applicable to such aid under the GBER.

Other exemptions under state aid rules for STEP projects

Question 3:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

What exemptions for the provision of the state aid can be used for projects suitable to the STEP platform? Is it possible to establish a notification of aid according to Art. 107 TFEU on conditions of STEP Platform?

Answer:

Depending on the objective of the individual project, various exemptions under the General Block Exemption Regulation (GBER) can apply, assuming the conditions of application of those provisions are met.

Among those, the following appear to be most relevant: Regional investment aid (Art. 14 GBER); Investment aid to SMEs (Art. 17 GBER); aid for R&D-projects (Art. 25); Aid provided to a co-funded R&D-project/feasibility study, including R&D-projects implemented under a European institutionalised Partnership based on Article 185 or Article 187 of the Treaty or a programme co-fund action, as defined in the Horizon Europe programme rules (Art. 25c GBER); Aid provided to co-fund an R&D-project funded by the European Defence Fund or the European Defence Industrial Development Programme (Art. 25e GBER); Investment aid for research infrastructures (Art. 26 GBER); Investment aid for testing and experimentation infrastructures (Art. 26a GBER); Investment aid for CO2 capture and transport (Art. 36 GBER); Investment aid for the promotion of energy from renewable sources, of renewable hydrogen and of high-efficiency cogeneration (Art. 41 GBER); Investment aid for resource efficiency and for supporting the transition towards a circular economy (Art. 47 GBER); Investment aid for energy infrastructure (Art. 48 GBER); and if the project is supported with InvestEU funds: Aid involved in financial products supported by the InvestEU Fund, for example for energy generation and energy infrastructure, environmental protection, including climate protection, R&D, innovation and digitalisation (Art. 56e or 56f of the GBER).

If a State aid measure does not meet the criteria of the GBER, it must be notified (prior to its implementation) to the Commission, which will then assess whether the State aid can be approved under State aid guidelines applicable to the aid objective (such as Regional Aid Guidelines for 2022-2027, the Framework for State aid for research and development and innovation; or the Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest ('IPCEI')), or directly under Art. 107 (3) lit. a, b or c of the Treaty).

Question 4:

Sovereignty Seal: is it planned to amend the GBER to include a specific category of aid for projects with a "sovereignty Seal"?

Answer:

The Commission is not planning to amend the GBER to include a specific category of aid for projects with a Sovereignty Seal. Please see also the reply under *QA00310*.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 5:

In the case of projects that contribute to the objectives of STEP, does the Commission plan to introduce other incentive measures in relation to the General Block Exemption Regulation (Commission Regulation 651/2014/EU) in addition to increasing the maximum aid intensity that can be provided in the case of regional investment aid - regulated in the RAG?

Answer:

There are no other measures envisioned at this stage. Please note that the STEP bonus applies also for aid under the GBER in view of Article 14(12) which refers to the applicable aid intensities in the regional aid map.

QA00326 - APPLICATION RULES FOR STEP BONUSES

Relevant Article:

Member States: RO, HR, NL, IT, LV, ES, FR

Level of application: STEP-related investment or STEP dedicated priority

Question 1:

Does the bonus provided in the amendment to the Regional Aid Guidelines apply to the entire investment project or only to the activities in the project that contribute to the STEP objectives?

Answer:

The aid intensities established in the regional aid map are increased with the STEP bonus. Therefore, the aid intensity in the area concerned (including the STEP bonus) only applies where the entire investment project is in the scope of the STEP Regulation.

Question 2:

It is important to clarify the scope of the increase provided for in recital 5 of the Communication from the Commission supplementing the guidelines on regional State aid related to STEP. It is stated that the bonuses can be applied "for investments covered by Regulation (EU) 2024/795".

Could you confirm that it is sufficient for a project to contribute to the objectives of the STEP Regulation (e.g. projects to create a firm to produce net-zero technologies) in order to benefit from the bonuses, and that there is no need for the project to be labelled with a "STEP seal" under the STEP Regulation?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

To be able to benefit from the increase of maximum aid intensities applicable to investments covered by Regulation (EU) 2024/795 ('STEP Regulation), as introduced by the recent amendment to the Guidelines on regional State aid ('RAG'), the project needs to be covered by the STEP Regulation. The existence of a STEP seal for a particular project is not a condition of application of the STEP bonus.

Question 3:

Following the Communication from the Commission supplementing the Guidelines on regional State aid with regard to the STEP we request clarification on the following: to qualify a project for the use of the Regional Aid Map, is it important that the project is programmed (in CP programmes and RRF as well) in the STEP priority, or does this apply to projects that have a STEP "label" assigned to existing projects (e.g., STEP intervention code), or does this apply to any project that, in its "spirit" aligns with STEP goals?

Answer:

As regards projects selected for support under the ERDF, the Cohesion Fund, the ESF+ or the JTF, a project qualifies for the increased aid intensities related to STEP for assisted areas (under the State aid guidelines) when it aligns with STEP objectives under Article 2 of Regulation (UE) 2024/795 regardless of whether it is included in the programme in the priorities dedicated to investments contributing to the STEP objectives (unless required by the funds-specific regulation) or whether it has a "Sovereignty Seal" under Article 4 of Regulation (EU) 2024/795.

Question 4:

Can the Commission clarify whether the relaxed State Aid regime (the so-called STEP Bonus) also applies to the regular JTF activities, i.e. the activities that are not explicitly programmed under the STEP objective in the CPR?

Answer:

The increased aid intensities related to STEP in assisted areas apply to investments contributing to the STEP objectives referred to in Article 2 of Regulation (EU) 2024/795 regardless of whether such investments are included in the programme in the priorities dedicated to investments contributing to the STEP objectives. All other conditions of Article 14 GBER or RAG must be complied with.

Question 5:

Recital 6 of the Communication from the Commission supplementing the Guidelines on regional state aid related to the Strategic Technologies for Europe Platform (STEP) states that 'increases may apply to the period from 1 March 2024, the date of entry into force of Regulation (EU) 2024/795, to 31 December 2027, the date until which the current regional aid maps apply'.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Could you specify the practical arrangements for applying this provision? In particular:

1) Could you confirm that it is possible to apply the increase in aid intensity to any aid for STEP investments granted as from 1 March 2024, subject to compliance with the principle of incentive of aid, i.e. works related to the project have not started)?

Answer to ad 1):

Yes, we confirm that the increase applies retroactively to any aid granted as from 1 March 2024, provided that the principle of incentive of the aid is respected.

2) Clarify whether it is possible to apply this increase already as of now or whether it is necessary to wait for the notification of the amendment of the regional aids maps by the Member State?

Answer to ad 2)

To apply the bonus, the Member State must first notify the amendment to its regional aid map.

Question 6:

The STEP bonus may be applied retroactively from 1 March 2024 on the adjustment of the regional aid map. How does this work in practice (and how does this relate to the requirement of an incentive effect of support) since such projects have already started even without the STEP bonus?

Answer:

The incentive effect remains a fundamental condition of granting State aid. This means that where aid applications for aid measures were introduced already before 1 March 2024, the 'aid amount deemed necessary' identified in the original aid application cannot be amended retroactively after the start of works on the project to justify an aid intensity increased by the 'STEP bonus', as then the aid would lack incentive effect.

If works have not yet started on a given project, the aid applicant may withdraw their application and submit a new one. Please note that in the case of *ad hoc* aid to large enterprises under the GBER or aid under the RAG, the application must still show that the aid fulfils the requirements of substantive incentive effect, i.e. the increased aid amount is needed to incentivise the company to invest. This will not be the case if the funding gap is already covered by the previously requested, lower amount of aid, or such lower amount of aid reaches the required rate of return of the company for the given project.

Calculation and cumulation rules

Question 7:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Considering the RAG, which in point 184 state that if a 'c' area is adjacent to an 'a' area, the aid intensities for large enterprises in the NUTS 3 regions or parts of NUTS 3 regions within that 'c' area may be increased as necessary so that the difference in aid intensity between the two areas does not exceed 15 percentage points.

Given the regional aid map for Italy (consolidated), which envisages a maximum aid intensity for large enterprises equal to, for example, 40% in the Campania Region ('a' area"") and 25% in the adjacent 'c' areas of the Lazio Region;

Considering the Communication from the Commission of 31.05.2024 supplementing the Guidelines on regional State aid with regard to the Strategic Technologies for Europe Platform (STEP) stating that Member States may amend their national regional aid maps to allow for increased aid intensities for investments covered by the STEP regulation and, in particular, the possibility of increasing aid intensity for STEP investments:

- by a maximum of +10 percentage points in 'a' areas;
- by a maximum of +5 percentage points in 'c' areas;

Considering that the application of the provisions in the last point could lead to a difference in aid intensity between adjacent 'a' areas and 'c' areas exceeding that specified in the first point, can aid intensities be further increased in the 'c' areas adjacent to the 'a' areas to ensure compliance with point 184 of the RAG?

Example: By increasing the aid intensity in Campania by 10 percentage points, it would reach 50%, while in the adjacent 'c' areas of the provinces of Latina and Frosinone, by increasing the intensity by 5 percentage points, it would only reach 30%, resulting in a difference of 20 percentage points. In order to comply with point 184 of the RAG, while maintaining a maximum difference of 15 percentage points between the two areas under consideration, is it possible to further increase the aid intensity of the adjacent 'c' areas in the Lazio Region?

Answer:

The STEP bonus is an increase in the aid intensities only for investment projects covered by the STEP Regulation. Member States that notify an amendment to their regional aid maps concerning the STEP bonus may not increase further the aid intensities in application of paragraph 184 RAG.

Question 8:

The Guidelines on regional State aid are amended as follows: "*186.a For investments covered by Regulation (EU) 2024/795, the maximum aid intensity in the area concerned may be increased by up to 10 percentage points in "a" areas and by up to 5 percentage points in "c" areas as from 1 March 2024.*"

From the wording of point 186a. it is not clear whether it is possible to combine STEP bonus with all the bonuses which are already stated in Regional aid guidelines and

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

approved in national regional aid maps (in Latvia's case it could be for example base intensity 30% + bonus for outermost regions 10% + bonus for SME's maximum 20% + bonus for JTF 10% + bonus for STEP 10% = maximum 80% aid intensity).

For instance, previously DG COMP has explained to Latvia that the aid intensities can be increased on top of each other (this means RAG Sections 7.4.1.+ 7.4.4.+ 7.4.5.+7.4.3.). However, in wording of point 186a. of the Regional aid Guidelines, it is not specified whether the aid intensities can be increased on top of each other (this means 7.4.1. + 7.4.4.+ 7.4.5.+7.4.3+7.4.3a.). **We kindly ask the European Commission's clarification in this regard.**

Answer:

The STEP bonus applies in addition to all other applicable bonuses in the RAG. However, the 25% own contribution requirement (paragraph 48 RAG and Article 14(14) GBER) remains applicable. Please note, as Latvia does not have any outermost regions, the 10 percentage points increase on that basis is not applicable for Latvia.

Question 9:

In accordance with the Guidelines on Regional State Aid - adopted by the Commission with Communication 2021/C 153/01 - the Regional Aid Map for Italy was approved (effective from 1 January 2022 to 31 December 2027, pursuant to decision C(2021) 8655 final). With the second amendment to the Map (approved by decision C(2023)3913), the aid intensities were increased for the territories that were selected to benefit from the support of the Just Transition Fund, based on the provisions of paragraph 7.4.4, point 187 of the Guidelines.

Specifically, for Sulcis Iglesiente, the maximum aid intensity currently allowed is 40%, and for the Province of Taranto it is 50%. In addition, for investment projects with eligible costs not exceeding €50 million, the maximum rates indicated above are increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises, as defined in the Commission Recommendation of 6 May 2003 on the definition of micro, small and medium-sized enterprises (Official Journal L 124 of 20.5.2003, p. 36). For large investment projects, the maximum aid intensities for large enterprises also apply to small and medium-sized enterprises.

The recent Commission Communication C/2024/3516, published in the Official Journal of the European Union on 3 June 2024, has supplemented the Guidelines on Regional State Aid by inserting, after point 186, an additional section, 7.4.3 bis, which provides for increased aid intensities applicable to investments under Regulation (EU) 2024/795.

Specifically, the new point 186a. states that "For investments covered by Regulation (EU) 2024/795, the maximum aid intensity in the area concerned may be increased by up to 10 percentage points in 'a' areas and by up to 5 percentage points in 'c' areas as from 1 March 2024".

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In light of the above, while it is still necessary to submit a proposal for a further amendment to the Regional State Aid Map to the Commission in order to benefit from this latest increase for investments under Regulation (EU) 2024/795, we would like to ask for clarification on whether this increase, for investment projects relating to the territories supported by the JTF, should be considered in addition to the higher aid intensities already approved for those territories, or whether the two increases (provided for in paragraphs 186bis and 187 of the Guidelines on Regional State Aid) are alternative and therefore not cumulative.

Answer:

The STEP bonus applies in addition to all other applicable bonuses in the RAG. The bonus is therefore not alternative, but cumulative. However, the 25% own contribution requirement (paragraph 48 RAG and Article 14(14) GBER) remains applicable.

Question 10:

In the case of the submission of a STEP type project under GBER measures other than those relating to regional aid and which already provide for surcharges for areas 107.3 (a) and 107.3 (c) TFEU, does there be a cumulation between the increases provided for in the individual GBER sectoral article for the same areas and those provided for in the new map once notified and approved by the Commission, for the implementation of investment projects covered by Regulation (EU) 2024/795?

Answer:

The STEP bonus applies to the maximum aid intensities applicable to regional investment aid (Article 14 GBER). The rest of the rules under the GBER, including on cumulation, remains applicable.

Question 11:

How does the STEP increase relate to the maximum aid intensities as included in Article 179 for large companies? Will this increase be on top of it, as it is for SMEs, or not? If that is the case, it would imply that 80% investment support is possible for small SMEs in some Member States.

Answer:

The STEP bonus applies in addition to all other applicable bonuses in the RAG. However, the 25% own contribution requirement (paragraph 48 RAG and Article 14(14) GBER) remains applicable. It is therefore not possible to reach an intensity higher than 75% (the only exception would be in outermost regions).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Scope of applicability

Question 12:

It is possible to apply the STEP surcharges provided for in the Guidelines for Purpose regional, following the changes introduced and the approval of the new map regional aid by the European Commission, to categories of aid regional in the General Exemption Regulation – GBER. This applicability would seem possible through GBER provisions referring to aid regional aid map approved by the EU Commission, following a State notification. Please confirm whether this interpretation is correct.

Answer:

The maximum aid intensities applicable in assisted areas are set out in the regional aid maps that are established on the basis of the RAG. Those maximum aid intensities then apply to both, aid granted under the GBER and under the RAG. Therefore, if the Member State intends to apply the possibility of increase for STEP projects, it has to notify an amendment to its regional aid map to reflect this increase in its regional aid map. Following the approval of the amendment, the increased aid intensity for STEP projects can apply to both, aid under the GBER and under the RAG.

Question 13:

The STEP surcharges for areas 107.3 (a) and 107.3 (c) TFEU may also be applied to categories of aid other than regional aid measures provided for in the GBER, limited to the articles eligible for STEP purposes, such as those relating to environmental protection, industrial research and start-ups where STEP projects are carried out in areas 107.3 (a) and 107.3 (c) TFEU. For example, reference is made to Article 47 of the GBER on aid for investments for resource efficiency and support for the transition to a circular economy for the circular economy and Article 22 on aid to start-ups.

Answer:

The STEP bonus only applies to the maximum aid intensities applicable to regional investment aid (Article 14 GBER).

Question 14:

Large enterprises: can the Commission confirm the possibility of granting aid to large companies in the context of STEP under other categories of the GBER different than regional aid, in particular under Article 25 of the Regulation (aid for R&D projects)?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The addition of a STEP bonus for the purposes of regional aid does not affect other provisions of the GBER. Therefore, where applicable, it remains possible to grant aid concerning technologies falling within the scope of the STEP Regulation to large enterprises under other provisions of GBER than regional aid (such as Art. 25 GBER).

Question 15:

Please clarify to which types of aid the increased intensity provided for investments linked to the STEP Regulation applies, specifying, in particular, whether it concerns exclusively the regional aid categories referred to in Articles 13, 14, 15 and 16 of Regulation (EU) No 2014/651 (GBER), or also other types of State aid.

Reference is made, inter alia, to the cases for which the GBER also provides increased aid intensities or aid amounts linked to assisted areas that meet the conditions of Article 107, paragraph 3, letter c) TFEU (e.g., Article 22 GBER). In this regard, please indicate, where applicable, whether the increases provided by the GBER and those established for investments related to the STEP Regulation are cumulative.

Answer:

The increase provided in paragraph 186a of the RAG applies only to the aid intensities established in the regional aid map and thus to regional investment aid (i.e., Article 14 GBER and RAG).

QA00327 - STEP TECHNOLOGIES

Relevant Article: n/a

Member State: CZ, IT

Question 1 (including any relevant facts and information):

The support for specific machinery and components is mentioned in STEP guidelines (point 1.1.2): *„Specific components and specific machinery are intended as parts and equipment primarily used for the development and manufacturing of critical technologies.*"

What is meant by "the primary use" for development and manufacturing of critical technologies?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

'Primarily used' refers to specific machinery and specific components which are essential for the development and manufacturing of critical technologies under a STEP sector. To qualify as critical under STEP, technologies should be required to satisfy either of the STEP conditions on innovativeness or reducing/preventing strategic dependencies. In this case, it is irrelevant whether specific machinery and specific components are also used for development and manufacturing of technologies other than STEP critical technologies.

Question 2:

Point 1.1.1 of Communication C/2024/3209 states that "*Manufacturing includes setting up production lines, first-of-a-kind-facilities, the extension or repurposing of existing facilities, scaling up processes to meet demand, and/or implementing quality control mechanisms to ensure the consistent production of high-quality products*."

Since Regulation 2024/795 does not seem to make any reference to this characteristic and Communication C/2024/3209 associates it only with the "*setting up*" of production lines or facilities - without providing specifications for the other types of intervention that could therefore be evaluated in the ordinary way - it would be useful to clarify whether it is actually necessary to carry out such an evaluation.

If it is confirmed that only "*first-of-a-kind*" facilities can be financed, who is responsible for recognizing the qualification and what procedure should be followed? In other cases (e.g., in the context of the chip act), the attribution of the qualification is left to the evaluations of the European Commission within the framework of an individual notification procedure (a circumstance that, in this case, would lead to a burdening of procedures that would be difficult to sustain).

Answer:

As it follows from the wording of point 1.1.1 of Communication C/2024/3209 quoted in the question, manufacturing is not limited to setting up 'first-of-a-kind-facilities'.

Question 3:

Regulation 2024/795, in Article 2, paragraph 2 provides that "*The technologies referred to in paragraph 1, point (a), shall be deemed critical where they meet either of the following conditions: a) they bring to the internal market an innovative, emerging and cutting-edge element with significant economic potential; b) they contribute to reducing or preventing strategic dependencies of the Union*".

Please confirm that it is not necessary to verify the fulfilment of the conditions set out in Article 2, paragraph 2, of Regulation 2024/795 if the intention is to support

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

investments concerning the critical technologies identified within communication C/2024/3209. (*Italy*)

Answer:

Please note that the technologies listed in Section 2 of Communication C/2024/3209 are not by definition STEP critical technologies. While those technologies can be considered in the scope of the STEP sectors, in order for them to qualify as critical under the STEP regulation, these technologies should meet at least one of the conditions set out in Article 2, paragraph 2, of Regulation 2024/795, i.e., either to bring to the internal market an innovative, emerging, and cutting-edge element with significant economic potential, or to contribute to reducing or preventing the strategic dependencies of the Union. See section 3 of the STEP scope communication for more details on how to assess compliance with these conditions.

QA00328 - STEP - STATE AID - MISCELLANEOUS

Relevant Article: n/a

Member State: CZ, DK, ES

GBER

Question 1 (including any relevant facts and information):

Will the Commission clarify whether they see the technologies mentioned in the STEP-regulation Article 2(1)(a)(ii), that if found to be defined in NZIA and vice versa, that the technologies will be equal to or below TRL 8 (technological readiness level) as regard to the categories of aid (experimental development and industrial research) mentioned in GBER Art. 25? If not, are there any technologies under NZIA, Art. 4(1), that the Commission will conclude, would be equal to or below TRL 8?

Answer:

The STEP Regulation does not use TRLs. In the context of the STEP Regulation, development and manufacturing pertain to advancing technologies from the stage where feasibility was demonstrated through to commercial production – largely from TRL 4-8. As TRL9 could already constitute deployment or installation of the final products, it is considered to go beyond the scope of the definition of experimental development and should consequently be excluded from the scope of Regulation (EU) No 651/2014 (GBER).

When Member States provide State aid for investments carried out under the STEP Regulation, they need to assess the underlying activity to be supported and, on that

basis, identify the relevant State aid compatibility basis which is applicable to the supported activity.

Chips Act conditions for notification

Question 2:

Is it possible to combine STEP Platform and Chips act? If the technology meets the STEP objectives, is it necessary also to meet the Chips act conditions for notification (e.g. first of its kind)?

Answer:

The STEP Regulation does not envisage any formal link between STEP and the Chips Act. STEP is a financing tool that is relevant for deep and digital technologies. This includes initiatives such as the Chips Act that is funded by two STEP relevant direct management programmes, Horizon Europe and the Digital Europe Programme. Nonetheless, compliance with the scope of STEP does not automatically preclude further assessment necessary to meet the Chips Act conditions for notification.

Innovation Fund

Question 3:

Combination of Innovation Fund and State Aid (under Article 14 GBER): how should we apply the cumulation rules to ensure that the total funding of the project does not exceed the State aid thresholds when the methods for calculating eligible costs differ in different funding schemes?

Example: a company receives financial support for a project under the EU Innovation Fund scheme, which specifies a threshold of 60 % of the relevant costs. The calculations determine, for example, that the relevant costs are EUR 400 million. Therefore, in this case, the threshold indicates a maximum amount of Innovation Fund support of EUR 240 million. The aid granted under the scheme amounts to EUR 200 million. This amount represents only 50 % of the relevant costs.

The company requests additional support from the government of the Member State in which it operates, under the rules of the GBER, more specifically under Article 14 on regional investment aid. In this case, the maximum amount of eligible costs is EUR 100 million and the maximum intensity at the time of the application for financial aid is 11.25 %. As a result, the company can obtain EUR 11.25 million from the government of the Member State.

The costs are considered eligible under both funding schemes, but the methods for calculating them are different, e.g. capex in one case and cash flows over a certain number of years representing all capex and opex in the other.

Answer:

According to Article 8(2) GBER, when combining aid under the GBER with centrally managed EU funding such as Innovation Fund grants, the total amount of public

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

funding granted in relation to the same eligible costs must not exceed the most favourable funding rate laid down in the applicable rules of Union law.

In this particular case, that means that for the same project, the total combined amount of public funding (Innovation Fund support plus GBER regional aid under Article 14) shall not exceed the highest amount of (i) 60% of the relevant costs as calculated under the Innovation Fund rules, or (ii) the adjusted aid amount calculated in accordance with Article 2(20) GBER, as required by Article 14(12) GBER.

Since the combined amount of public funding of EUR 211.25 million (resulting from adding Innovation Fund support plus GBER regional aid) is below EUR 240 million, which would be the most favourable funding rate in this particular case, then the cumulation rule of Article 8(2) GBER is respected.

QA00329 - STEP TECHNOLOGIES - LARGE ENTERPRISES - ELIGIBILITY OF CALLS FOR PROPOSALS

Relevant Article: n/a

Member State: ES

Question 1 (including any relevant facts and information):

According to the Guidelines on national regional aid (point 14):'Since regional aid for investments by large enterprises is not likely to have an incentive effect, it cannot, as a general rule, be considered compatible with the internal market under Article 107(3)(c) of the Treaty, unless it is granted for initial investments attracting new activities to those "c" areas in line with the criteria set out in these Guidelines.'

Furthermore, according to Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (General Block Exemption Regulation), Article 14(3): "3.... In assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, aid may be granted to SMEs for any form of initial investment, and to large enterprises only for an initial investment creating a new economic activity in the area concerned.'

Considering these provisions, a call for proposals to support investments undertaken by large enterprises to produce fundamental technologies without creating a new activity in the area concerned, could be supported under STEP?

Answer:

Under the STEP Regulation, investments by large enterprises to support the manufacturing of critical technologies can be supported. Such activities may include

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

the extension or repurposing of existing facilities, scaling up processes to meet demand, and/or implementing quality control mechanisms to ensure the consistent production of high-quality products.

State aid rules must be respected when they are applicable to STEP projects. State aid rules may apply if the investment concerns economic activities and will be financed by State resources (including EU Funds in shared management). Support for such investments under a call for proposals may, therefore, constitute State aid.

Regional aid rules are applicable when granting regional aid (either under RAG or GBER), including when a project is a STEP project. Therefore, for regional aid granted to large enterprises in 'c' areas, the investment should consist in an initial investment that creates a new activity. In 'a' areas (less developed), aid may be granted for any form of initial investment regardless of the size of the beneficiary.

There is a derogation under the RAG for JTF territories, for the duration of the JTF, which permits regional aid to be granted for initial investments by large enterprises in 'c' areas, not only for initial investments that create new economic activities, but also for the diversification of the output of an establishment or for a fundamental change in the overall production process of the product(s) concerned by the investment. This is on condition that (1) the initial investment is in a territory identified for co-financed support from the JTF (JTF territory) in a 'c' area that has a GDP per capita below 100 % of the EU-27 average; (2) the investment and the beneficiary are identified in the territorial just transition plan of the given Member State approved by the Commission; and (3) the State aid for the investment is covered by the JTF to the maximum allowed. The other conditions for regional aid under the RAG remain applicable.

In addition, section 2.8 of the TCTF provides, for some of the sectors targeted by the STEP regulation (namely the strategic sectors for the transition towards a net-zero economy as defined in the TCTF), the possibility to support investments of large enterprises also in non-assisted areas, provided all applicable conditions of section 2.8 TCTF are fulfilled. Please note that section 2.8 is in force until the end of 2025, and thus aid granted under that section must be granted by 31 December 2025.

QA727_EMFAF: COSTS ELIGIBLE FOR INNOVATIVE FEATURES

Relevant Article: Annex III, point 13, 14, 18 of the EMFAF regulation

Member State: RO

Question:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The implementation of EU funds must be carried out in accordance with the principle of sound financial management, as provided by art. 69 (1) of Regulation (EU) no. 1060/2021. In the spirit of applying this principle and taking into account the provisions of rows 13, 14 and 18 of Annex III of the EMFAF Regulation, please let us know whether the maximum rate of aid intensity provided for in these rows should also apply in the situation where not all the activities or not all the costs of the operation are significantly different. E.g:

1. a) A company purchases new equipment, with a significantly higher yield than the old one, but the installation of this new equipment requires:

- replacing some parts with ones of the same type, but new (examples: electrical wires, pipes, partitions, etc.), so not significantly different;
- ordinary installation work.

1. b) A company submits a project in which it acquires an innovative equipment (at enterprise level) and an equipment/ a computer/ a machine for transporting fish necessary to achieve the objective of the project, but the latter is not innovative.

In the end, the product, process or equipment is significantly different and can be considered innovative. However, only part of the total cost is related to the innovative process or result.

Please let us know whether, in the examples given, the maximum aid intensity rate provided for in row 18 of Annex III can be applied to all costs of the operation or not.

Answer:

The term **"innovative" refers to innovation activities and should be used for the scope of points 13, 14 and 18 of Annex III of the EMFAF Reg.**

According to the OSLO manual:

- A *business innovation* is a new or improved product or business process (or combination thereof) that **differs significantly from the firm's previous products or business processes and that has been introduced on the market** or **brought into use by the firm.**
- A *product innovation* is a new or improved good or service that differs significantly from the firm's previous goods or services and that has been introduced on the market.
- A *business process innovation* is a new or improved business process for one or more business functions that differs significantly from the firm's previous business processes and that has been brought into use by the firm.

Thus the innovation is a new or improved product or business process (or combination thereof) that differs significantly from the firm's previous products or business processes and that has been introduced on the market. Alternatively the innovation has been brought into use by the firm itself.

In the EMFAF context this may include:

- identification or application of innovations that are useful in finding marketing solutions,
- identification or application of new ideas that are useful in finding solutions to issues of business processes (e.g. more sustainable fishing),
- identification or application of new ideas that result in new products and services (e.g. environmental and social services),
- support for changes or improvements in a series of linked tasks or activities to better help businesses reach their goals

Mere studies, research and advice on potential innovations in the future are excluded.

Please note that the maximum intensity rate under point 18 applies for the costs **directly supporting** the functioning of the 'innovative' equipment, innovative processes and/or the production of the innovative product/result.

Please note that it is the responsibility of the Managing Authority to assess the compliance of the operations with the point 18 of the EMFAF operations funded – including the innovative aspects claimed by the beneficiary for its operation. Close consideration should also be given to the national, commercial law.

Managing Authority should also ensure that 'innovative features' are not used to unduly take advantage of the more favourable intensity rate in the Annex III of the EMFF Regulation.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA729_EMFAF: INNOVATIVE FEATURES AT FIRM LEVEL

Relevant Article: Annex III, point 13, 14, 18 of the EMFAF regulation

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State: RO

Question:

Related to the innovative character according to the localization criterion, lines 13, 14 and 18 of the mentioned Annex refer to:

- *innovative features, where appropriate, at local level;*
- *innovative features (without further specification);*
- *innovative products, processes or equipment in fisheries, aquaculture and processing*

According to the Oslo Manual, innovation can be at the market level or at the firm level. Also, in the working document "FAMENET: CT5.1, working paper EMFAF MEF 2021-2027 update, October, 2023" it is stated, on the fiche for the result indicator CR 14 Innovations made possible, that **innovation activities include all development activities, financial and commercial undertaken by a firm with the intention of resulting in an innovation for the firm**. Considering the above, please let us know whether it can be considered that "innovative products, processes or equipment in the fishing, aquaculture and processing sector" **can be at firm level**, in the sense that line 18 of Annex III is applicable even if the products, processes or equipment of the operation are **significantly different from those before the implementation of the operation only at the firm level**.

Answer:

The term **"innovative" refers to innovation activities and should be used for the scope of points 13, 14 and 18 of Annex III of the EMFAF Reg.**

According to the OSLO manual:

- A *business innovation* is a new or improved product or business process (or combination thereof) that **differs significantly from the firm's previous products or business processes and that has been introduced on the market** or **brought into use by the firm.**
- A *product innovation* is a new or improved good or service that differs significantly from the firm's previous goods or services and that has been introduced on the market.
- A *business process innovation* is a new or improved business process for one or more business functions that differs significantly from the firm's previous business processes and that has been brought into use by the firm.

Thus the innovation is a new or improved product or business process (or combination thereof) that differs significantly from the firm's previous products or

business processes and that has been introduced on the market. Alternatively, the innovation has been brought into use by the firm itself.

In this respect, the "innovative products, processes or equipment in the fishing, aquaculture and processing sector" may take place at firm's level.

In the EMFAF context this may include:

- identification or application of innovations that are useful in finding marketing solutions;
- identification or application of new ideas that are useful in finding solutions to issues of business processes (e.g. more sustainable fishing);
- identification or application of new ideas that result in new products and services (e.g. environmental and social services);
- support for changes or improvements in a series of linked tasks or activities to better help businesses reach their goals

Mere studies, research and advice on potential innovations in the future are excluded.

Considering the aspects above, please note that it is the responsibility of the Managing Authority to assess the compliance of the operations with the point 18 of the EMFAF operations funded – including the innovative aspects claimed by the beneficiary for its operation. Close consideration should also be given to the national, commercial law.

Managing Authority should also ensure that 'innovative features' are not used to unduly take advantage of the more favourable intensity rate in the Annex III of the EMFF regulation.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA730_EMFAF_ARTICLE 26 EMFAF REGULATION

Relevant Article: Article 26 of the EMFAF Regulation

Member State: RO

Question:

One of the needs identified in our EMFAF programme is "Supporting the increase in the production of fish fry for the stocking carried out in fish farms", under specific objective 2.1, which will be address through investments in aquaculture for the establishment, expansion, and modernization of aquaculture farms. Is financial support for fish nurseries, and for facilities that produce stock material necessary for aquaculture, eligible under the EMFAF?

In order to be able to support the establishment/upgrading of capacities for the production of stocking material at various stages of development, is it necessary that these capacities be integrated into a facility that produces and sells aquaculture products, or can these capacities be established/upgraded separately from the farms that will sell the actual fish intended for human consumption?

Answer:

In accordance with Article 26(1)(a) of the EMFAF Regulation, the EMFAF may support interventions aiming at promoting sustainable aquaculture activities, especially strengthening the competitiveness of aquaculture production, while ensuring that the activities are environmentally sustainable in the long term.

The CFP regulation defines aquaculture as: "the rearing or cultivation of aquatic organisms using techniques designed to increase the production of the organisms in question beyond the natural capacity of the environment, where the organisms remain the property of a natural or legal person throughout the rearing and culture stage, up to and including harvesting;"

Fish nurseries and facilities that produce stock materials for aquaculture are directly supporting the aquaculture sector and *are not included in the list of 'ineligible operations/expenditures' in Article 13* of the EMFAF Regulation 2021/1139.

Nevertheless, Article 27 mentions that: "to achieve the specific objective referred to in point (a) of Article 26(1) of this Regulation as regards the promotion of aquaculture

activities, *support shall be consistent with the multiannual national strategic plans* for the development of aquaculture referred to in Article 34(2) of Regulation (EU) No 1380/2013."

Thus, we consider that, in the context of the Articles above of the EMFAF Regulation, ***financial support for fish nurseries and for facilities that produce stock material in various stages of development necessary for aquaculture activity, is eligible*** if consistent with your priorities included in the Multi-Annual National Strategic Plan for Aquaculture**.**

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA00331 - 'DO NO SIGNIFICANT HARM' (DNSH) PRINCIPLE IN THE CONTEXT OF FINANCIAL INSTRUMENTS

Relevant Article: Recital 10 CPR and Article 9(4) CPR

Member State: SK

Question 1 (including any relevant facts and information):

The CPR stipulates that Member States should control if support provided through the financial instrument is to be used for its intended purpose. This means that only ex ante control should be performed. Do we understand correctly that this rule applies to eligibility criteria that include the principle 'do no significant harm' (DNSH)? In other words, application of DNSH principle should be done only ex ante?

Answer 1:

DNSH is a horizontal principle provided for in Article 9(4) of Regulation (EU) 2021/1060 ('CPR') that must be taken into account in pursuing the policy objectives of the

programme. Member States are responsible for the implementation of this principle throughout the programming period. Therefore, application of the DNSH must be ensured during both programming (ex-ante) and programme implementation (ex post).

It follows from the above that the DNSH principle is operationalised at the level of the programme where managing authorities (MAs) ex-ante assess the compliance of each type of action with the principle, including ones that will be financed via financial instruments (FIs). Therefore, selected FI operations need to fall under the scope of the types of actions which have been assessed as DNSH compliant in the adopted programmes. There is no legal requirement to establish DNSH specific selection criteria for all operations.

The ex-post monitoring of the application of the DNSH principle in the process of implementation of FI operations and/or related investments will be needed in cases, where a programme and/or its DNSH assessment triggers/sets DNSH specific eligibility criteria/conditions for a specific type of action or related investments. Only in that case, it is recommended that the principle of DNSH be reflected or considered in the funding agreement between the MA and the bodies implementing FI.

The DNSH principle should also be reflected or considered in national eligibility rules regardless of the form of support (grant or FI), where applicable.

Question 2:

The DNSH principle will be part of the contract with the beneficiary as well as with financial intermediaries. The Managing Authority is obliged to check whether these institutions follow the DNSH rules using methodology drafted by our regulatory bodies. Do we understand correctly that at the level of final recipients the DNSH principle should not be checked and will not be audited by the European Court of Auditors or EC (since CPR stipulates that no audits shall be done on the level of final recipients)?

Answer 2:

According to Article 81(1) and Article 81(3) CPR, on-the-spot management verifications by managing authority (MA) and audits by audit authority (AA) shall be carried out at the level of bodies implementing FI (or bodies delivering underlying new loans).

The Commission audits cover the audit work done by AA and management verifications conducted by MA, and may be complemented by checks at the level of bodies implementing FI.

An appropriate audit trail according to Annex XIII CPR has to be maintained at all levels (AA, MA, bodies implementing FI), including on relevant documentation collected from/ concluded with final recipients (e.g. application forms, business plans or equivalent, contractual arrangements). All elements of the audit trail may be subject to audits by the AA and Commission.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

It follows from point (1)(d) of Annex X to the CPR that the funding agreement must set out rules for bodies implementing FI to monitor the implementation of the financial instrument

Question 3:

Most of the funding that will be used through financial instruments will go to support SMEs. Most of this support will be in the form of guarantees that will stimulate new leveraged loans. These loans will be used as working capital, which means the companies may use them in whatever way they need. This may include buying machinery, cars etc., but neither the banks, nor the Managing Authority will check this, as neither they nor SMEs will know beforehand on what exactly money will be used. Do we understand correctly that we do not need to control these operations or whether this working capital was used in line with the DNSH principle or DNSH is not applied at all on the level of final recipient in case of working capital?

Answer 3:

If working capital for SMEs was approved as DNSH compliant action in the programme, no further monitoring is needed, as described in the Answer 1.

Please note that normally cars and machinery are tangible assets, rather than current assets, therefore, they are not in the category of support provided to final recipients for working capital.

QA00330 - ALLOCATION OF EXPENDITURE FOR 'CROSS STATE CO-OPERATION PROJECTS' IN CASE PROJECT-PARTNERS ARE LOCATED IN DIFFERENT FEDERAL STATES WITH DIFFERENT CATEGORIES OF REGIONS AND DIFFERENT PROGRAMMES

Relevant Article: Article 2 and Article 63(3) of the CPR

Member State: DE

Background information:

The Managing Authority of Lower Saxony would like to enable more funding options for 'cross-state cooperation' projects in the Hamburg metropolitan region within Germany.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The Hamburg metropolitan region extends over the federal states of Hamburg, Mecklenburg-Western Pomerania, Schleswig-Holstein and Lower Saxony. The Lower Saxony part belonging to the Hamburg metropolitan region is located in the Lüneburg transition region. The state of Mecklenburg-Western Pomerania is also classified as a transition region, where-as Hamburg and Schleswig-Holstein are more developed regions. Apart from the Lüneburg transition region, Lower Saxony consists also of three more developed regions, the other states have only one category of region.

In order to facilitate the cross-state cooperation projects, managing authorities plan that ERDF funds for a project will come entirely from the federal state in which the project has the highest impact. The implementation of the project will be handled under the 'lead-partner principle'[1].

In accordance with Article 63 paragraph 3, *…"For the ERDF, expenditure related to operations covering more than one category of region as set out in Article 108(2) within a Member State shall be allocated to the categories of regions concerned on a pro rata basis, based on objective criteria"* ….

The Managing Authority of Lower Saxony wonders how it can comply with this Article in a situation in which:

- A lead-partner will apply for support for the entire project from the programme of the region in which the lead-partner is established;
- The project-partners are located in regions with different types of categories and in one or more other federal state(s) in Germany. The Managing Authority in the lead-partner's state has no jurisdiction in the other federal state(s).

Please see here two fictitious examples to illustrate the issue:

- For instance, the University of Lüneburg (located in the transition region in Lower Saxony) and a university from Hamburg (more developed region) want to jointly carry out a cooperation project. The lead partner is the Lüneburg University, who will apply in the capacity as lead-partner for the ERDF funding in Lower Saxony (the project will have the highest impact on the Lüneburg region). In accordance with Article 63(3), expenditure shall be allocated to the categories of regions concerned on a pro-rata basis. As a result, a proportion of the funds from the Lower Saxony more developed regions (located in the south and east part of the Land) would have to be used for a project that works on the border between the transition region Lüneburg and Hamburg. Alternatively, the project would have to be divided into two projects, one of which would then be funded in Hamburg and the other in Lower Saxony, or Hamburg funds would have to be reallocated to Lower Saxony.
- In another example, the lead-partner would be located in Hamburg, co-operating with a partner in Lüneburg, and funding for the entire project would be requested from the ERDF-programme in Hamburg (the project has the most impact on the Hamburg region), a similar situation would occur. Hamburg has no transition region and therefore cannot allocate a pro-rata part of the expenditure of the Lüneburg partner to the category transition region.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

It looks like that the CPR in Article 63 is setting rules where the funding is coming from one programme for a project crossing different types of regions.

The above-described situation relates to a programme, **funding not only a project crossing different types of regions, but also crossing other programme areas** (and outside the jurisdiction of the managing authority of the lead-partner).

The Lower Saxony Managing Authority is looking for a solution in which for a 'cross state co-operation project' only one application needs to be handled and that such a project does not need to be divided into sub-projects, each of them having to deal with an application.

[1] This principle should be understood as, in analogy with Article 13 of the ETC Regulation (EU) No 1299/2013), that the lead partner holds the formal link between the project and the managing authority and assumes responsibility for ensuring implementation of the entire operation. Through a project partnership agreement, other project partners are held responsible and liable for their part of the project implementation towards the lead partner.

Questions (including any relevant facts and information):

1. Can 'cross state cooperation projects' be implemented under a 'lead-partnership principle' while being able to respect Article 63(3) of the CPR?
2. What does the wording "*expenditure shall be allocated to the categories of regions concerned*" precisely mean? Does this refer to the recording of expenditure in the accounting systems? Does it mean that still one co-financing rate can be calculated for the ERDF support for the entire project, namely the ERDF co-financing rate applicable for the category of region of the programme that applied for the support for the entire project? Or, alternatively, has the ERDF co-financing rate to be differentiated, based on the allocation of expenditure to the different categories of regions?
3. What if expenditure is not only allocated to the different categories of region but also to different programmes, which are outside of the jurisdiction of the managing authority of the lead partner?

Answer to question 1:

It should be noted that the notions of 'partnership' or a 'lead partner' are not defined in the CPR. The latter is recognised by Article 33(2) of the CPR with regard to local action groups. The set-up of operation including several partners may differ in different Member States depending on national rules. It is therefore for the managing authority of the relevant programme(s) to identify the beneficiary (or beneficiaries) of the operation in accordance with the definition as set out in Article 2(9) of the CPR and ensure appropriate arrangements.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer to questions 2 and 3:

According to Article 63(3) of the CPR, expenditure under the ERDF related to operations covering more than one category of region - for instance transition and more developed regions - within the same Member State shall be allocated to the categories of region concerned by a programme on a *pro rata* basis.

The *pro-rata* method, based on objective criteria, agreed for a given type of operations or actions is to be applied consistently to all operations falling into this type of operations/actions and used for financial management, including declaring expenditure by category of region in payment applications to the Commission. To be able to reconcile data, the method should also be used for reporting, monitoring and data collection in electronic form– wherever a split by category is required by the CPR. The allocation of expenditure between categories of regions should be clearly recorded and traceable in the electronic system of the MA(s) as needed for monitoring, evaluation, financial management, verifications and audits (Art. 72(1)(e) CPR).

The pro-rata method agreed on the basis of Article 63(3) CPR does not impact the co-financing rate of the operation. At the level of an operation, the co-financing rate may differ from the co-financing rate relevant to the programme at level of priority and category of region under which the operation is selected. Therefore, yes, the managing authority may decide to apply the ERDF co-financing rate applicable for one of the categories of region of the programme for the support for the entire operation. The co-financing rate is to be set out in the document setting out the conditions for support.

According to Article 63(9) CPR, the managing authorities could support the same operation from several programmes. In such case, the amount of expenditure to be entered into a payment application of a programme may be calculated for each programme concerned on a pro-rata basis (in line with Article 63(3) CPR) in accordance with the document setting out the conditions for support. Attention should be paid in this case to appropriate coordination mechanisms preventing double declaration of an expenditure, in particular as laid down in Article 63(9)CPR.

It should be noted that the second sub-paragraph of Article 63(3) CPR sets different rules for the ESF+. It allows for managing authorities to allocate expenditure of an operation to any of the categories of region of the programme under the condition that the operation contributes to the achievement of the specific objectives of the programme. Therefore, the above replies are limited to the ERDF.

QA00332 - NEWLY CLASSIFIED TEN-T NETWORK INFRASTRUCTURE

Relevant Article: Article 63(7) of the CPR

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State: PT

Question 1 (including any relevant facts and information):

In the 2021-2027 regional programmes originally approved, a MS included some transport investments under SO 3.2, whenever these investments referred to infrastructure that was not part of the Trans-European Transport Network (TEN-T). However, in June 2024, that infrastructure was classified as being part of the TEN-T, as a result of the publication of the new Regulation (EU) 2024/1679, defining the network. We have the following questions:

1 - Should there be a programme amendment to move these investments from SO3.2 into SO3.1?

2 - Should new intervention fields that are targeted at the TEN-T be introduced?

For example, for investments in railways, this would mean moving investment from the existing intervention field *099 'Other newly built or upgraded railways electric/zero emission* to the intervention field to be introduced *097 'Newly built or upgraded railways – TEN-T comprehensive network'*.

3 – Since when would expenditure related to the newly introduced (TEN-T-related) intervention fields be eligible? Would the date of introduction of the official amendment request define the eligibility date of such investments, based on the CPR Eligibility rules (Art 63.7)?

Answer:

In accordance with Article 63(7) CPR, second subparagraph, as a rule, for the ERDF, the Cohesion Fund and the JTF, when a new type of intervention referred to in Table 1 of Annex I CPR is added in the programme, the expenditure that becomes eligible as a result of a programme amendment shall be eligible from the date of the submission of the corresponding programme amendment request.

However, we can understand that in the case at hand, investments covered by the description of actions in the initial programme that were targeting infrastructure outside the TEN-T network in accordance with Regulation (EU) No 1315/2013, are now identified as TEN-T network infrastructure due to the change of Regulation (EU) 2024/1679, which results in the application of a different type of intervention for these actions.

Therefore, indeed, a programme amendment becomes necessary. Through the amendment the programme would move these investments from specific objective 3.2 to specific objective 3.1 and introduce corresponding new types of intervention, which target specifically the TEN-T network infrastructure. However, it should not in itself affect the eligibility start date of these investments as they were covered by the description of actions already in the initial programme and therefore the programme amendment could be submitted to the Commission at a later stage.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

As a result of this, the answers to the above three questions are:

Answer 1: Yes.

Answer 2: Yes.

Answer 3: Expenditure related to investments in the newly identified TEN-T network infrastructure, carried out under the newly introduced specific objective and types of intervention, remains eligible as in the initially approved programmes.

QA00333 - EXCHANGE RATE FOR TRANSMISSION OF FINANCIAL DATA UNDER ARTICLE 42 CPR

Relevant Article: Art. 42 and 76 CPR

Member State: HU

Question 1 (including any relevant facts and information):

Following Article 42 CPR, the Member State or the managing authority is obliged to transmit several data to the Commission in accordance with the template set out in Annex VII CPR. Table 3 of this Annex asks for among others "Total eligible cost of selected operations (EUR)" data. However, the CPR does not indicate the applicable exchange rate for converting the amounts from national currency into EUR. Article 76 CPR refers to the usage of 'monthly accounting exchange rate of the Commission …' but only in relation to converting the amounts of incurred expenditure.

Could you please clarify what exchange rate should be used for the above conversion of the amounts of total eligible cost for selected operations?

Answer:

CPR does not set out what exchange rate should be used for the purpose of data transmission in line with Article 42 CPR. It is for the managing authority to decide on the conversion method and apply it consistently throughout the programming period.

When making its choice the managing authority may considered the below options:

- by analogy with the conversion of the amounts of expenditure incurred under Article 76(1)(c) CPR, the conversion into EUR could be made using the monthly accounting exchange rate of the Commission in the month during which the document setting out the conditions for support was signed or last amended.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- based on the experience of previous programming periods, the managing authority can calculate the EUR value of the commitments made by applying an appropriate exchange rate which best approximates the expected EUR value of the allocations made (i.e. historical average or other benchmark rate).

For the specific cases of additional allocations that are transferred from the components of the Thematic Facilities to the Member States' programmes supported by the AMIF, the BMVI and the ISF, the total eligible cost of selected operations should correspond to the total amount in EUR in the corresponding approved programme or its amendment.

QA00334 - USE OF INTEREST INCOME FROM PRE-FINANCING

Relevant Article: Art. 90(6) of the CPR

Member State: NL

Question 1 (including any relevant facts and information):

The 30% additional pre-financing for the JTF generates significant interest income. The Member State therefore wants to clarify for which purposes the interest-generated income be used. The following questions are raised:

1. Shall the interest income be used to finance projects?
2. Can the interest income be used for risk hedging? For instance in order to cover irrecoverable work advances or costs that do not comply with legislation and regulations.
3. Can the interest income be used for Technical Assistance?
4. What are the risks of not using the interest income?
5. How should the Member State provide insight into and account for interest income?

Answer:

1. Article 90(6) CPR states that interest generated by the pre-financing is to be used for the programme concerned in the same way as the Funds. This means that such interest is to be used to finance operations/expenditure that is eligible under the relevant programme and compliant with applicable law.
2. It follows from Article 90(6) CPR that interest generated by the pre-financing cannot be used to cover costs that do not comply with applicable law.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

3. As stipulated in Article 36(1) CPR, the Funds may be used to support actions necessary for the effective administration and use of those Funds. Interest generated by the pre-financing may be used for this purpose if the programme includes that type of actions.
4. The Member States are obliged by Article 90(6) CPR to use any interest generated by the pre-financing for the programme concerned in the same way as the Funds. This is a legal obligation conferred to the Member States by the applicable law.
5. As stipulated in Article 90(6) CPR, interest generated by the pre-financing is to be used for the programme concerned in the same way as the Funds, i.e., to cover eligible expenditure for operations implemented under the programme (as national contribution), which would be then included in the accounts for the final accounting year. The managing authority is invited to send a concise confirmation on the use of interest to the Commission together with the submission of the accounts for the final accounting year, e.g., via the documents' section in SFC2021.

QA00336 - DATA (RECORDING AND PUBLISHING) REQUIREMENTS ACCORDING TO THE CPR, LINKED TO PUBLIC PROCUREMENT – APPLICATION TO CASCADE PROJECTS

Relevant Articles:

- 72 (1) (e) of CPR (2021/1060)
- Annex XVII (fields 23 and 24) CPR
- 49 (3) (a) of CPR

Member State: LV

Question 1 (including any relevant facts and information):

The Managing Authority of Latvian programme has already sought clarification previously regarding certain data requirements stipulated by the CPR in Art. 49(3)(a) and 72(1)(e) in connection with Annex XVII (fields 23 and 24). The following is a follow-up question to these exchanges.

The LV authorities' focus lies on the beneficiaries or final recipients within **cascading projects**.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Cascading project schemes are sometimes used for purposes such as research grants or innovation vouchers. The cascading project implementation scheme involves the following steps:

- The intermediate body announces project selections. Project applicants (the beneficiaries of financing) then submit project applications, and the intermediate body enters into agreements for project implementation.
- During project execution, beneficiaries can allocate funding to universities or entrepreneurs through grants or vouchers. The specific criteria for awarding grants are outlined in the Cabinet of Ministers' regulations governing the implementation of the Specific Objective.
- For this type of cascade project, selected universities, considering the specifics of the granted grant and the materials required for the implementation of the research grant, may find themselves in a situation where a purchase is made for the needs of the grant project. The grant project uses materials purchased in the general procurement of the university, which exceed the specified thresholds (according to provisions of fields 23 and 24 of REGULATION - 2021/1060 Annex XVII). Grant funding is only a small part of the procurement involved.

1. The Latvian authorities ask the Commission whether they have understood correctly that the information collected under fields 23 and 24 must also be recorded at the level of cascade project grant recipients? In the context of cascade projects, is the university considered an 'other entity implementing the operation' as defined in field 23?
2. Does the term "other entities" under field 23 also mean those beneficiaries to whom funding is granted in cascade projects?
3. For example, a beneficiary of funding implements a project in which enterprises are selected to carry out activities. Do they have to collect information about these procurements under fields 23 and 24 when those selected enterprises make procurements?

According to the definition in Article 2(9) of Regulation No 2021/1060, the university in our cascade project scheme is not the beneficiary. This is because the beneficiary is the body granting the grants and vouchers (as specified in Article 2(9)(d)). Additionally, based on the definition provided in Article 2(18) of Regulation No 2021/1060, the university is not the final recipient. Therefore, it becomes crucial to grasp the meaning of "other entities implementing the operation".

Draft answer

As a reminder, the cases where a beneficiary may further cascade support without being appointed an intermediate body were defined in QA00132 - Cascade funding - RegioWiki Extranet - RegioWiki (europa.eu). Please refer to replies to QA00130, QA00133 and QA00199 for completeness. Cascade funding schemes should be in line with the conditions set out therein.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Our understanding is that the public support from the cascade scheme constitutes *de minimis aid* and that the body granting the aid is the beneficiary of the operation in accordance with Article 2(9)(d) CPR, while the recipients of aid are universities or enterprises that do not initiate the operation, but implement it.

As explained in recital 73 CPR, to ensure effective controls and audits, the collection of data is necessary on those ultimately benefiting, directly or indirectly, from Union funding under shared management, including data on beneficial owners of the recipients of Union funding. In accordance with Article 69(2) CPR, Member States should take all required actions to prevent, detect or correct and report on irregularities, and those actions should comprise the collection of information on the beneficial owners of the **recipients of Union funding** in accordance with Annex XVII.

Data field 25 of Annex XVII CPR requires collecting certain data on entities to which the beneficiary of the operation further cascades the grant (i.e. their name, VAT registration or tax identification number and certain information on agreements between them and the beneficiary).

The requirements listed in data field 23 apply not only to the beneficiary of the operation, but also to other entities implementing the operation. Recipients of aid under the scheme in question should be considered as 'other entities implementing the operation'. Where such entities implement the operation in accordance with Union procurement rules, they are subject to requirements to provide information on all contractors, beneficial owners of the contractor and contracts listed in data field 23.

In case simplified cost options are used please consult QA00270.

For completeness: as already explained in QA00270, under field 23, information on contractors, their beneficial owners and contracts only has to be recorded where the operation is implemented in accordance with Union public procurement rules (i.e., public procurement above the thresholds set out in Directive 2014/24/EU or Directive 2014/25/EU). Information on sub-contractors under field 24 has to be recorded at the first level of sub-contracting, only where information is recorded on a contractor under field 23, and only for sub-contracts above EUR 50 000 total value.

QA00335 - COLLECTION, STORAGE AND PUBLICATION OF DATA ON CONTRACTORS, THEIR BENEFICIAL OWNERS, CONTRACTS AND SUB-CONTRACTORS FOR FNLC SCHEMES

Relevant Articles: 49(3)(a), 69(2) and 72(1)(e) of the CPR, Annex XVII CPR

Member State: EE

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

In accordance with the Regulation (EU) 2021/1060 of the European Parliament and of the Council (CPR), ANNEX XVII DATA FIELDS 23 AND 24, information on the name of the contractor, their beneficial owners, contracts and sub-contractors need to be provided.

The European Commission said that ANNEX XVII DATA FIELDS 23 AND 24 apply to simplified costs (RegioWiki QA00270, QA00272) in the following way:

„For Funds covered by the CPR, managing authorities do not have to record and store electronically data on contractors, their beneficial owners, contracts and sub-contractors in fields 23 and 24 of Annex XVII CPR for indirect costs covered by any type of SCOs, i.e., unit cost, lump sum, flat rate under the CPR. For all the other situations (direct costs covered by SCOs, costs reimbursement based on other forms of reimbursement as specified in Article 53(1)(a) CPR), the data mentioned above is to be collected, according to Annex XVII CPR.

When a SCO covers both direct costs and indirect costs, the requirement to record and store data on contractors, their beneficial owners, contracts and sub-contractors applies only to the direct costs. Under field 23, information on contractors, their beneficial owners and contracts only has to be recorded where the operation is implemented in accordance with Union public procurement rules (i.e., public procurement above the thresholds set out in Directive 2014/24/EU or Directive 2014/25/EU). Information on sub-contractors under field 24 has to be recorded at the first level of sub-contracting, only where information is recorded on a contractor under field 23, and only for sub-contracts above EUR 50 000 total value."

Based on the Commission's explanation, **is it correct to conclude that the obligation set out in point (a) of Article 49(3) CPR and ANNEX XVII DATA FIELDS 23 AND 24 are not applicable to the FNLC referred to in Article 95 of the CPR?**

Answer:

According to Article 72(1)(e) CPR, the managing authority has to record and store electronically the data on each operation necessary for monitoring, evaluation, financial management, verifications and audits in accordance with Annex XVII. In field 23 of Annex XVII CPR, the managing authority has to provide information on contractors, their beneficial owners and contracts where beneficiaries or other entities implement the operation in accordance with Union public procurement rules (i.e., public procurement above the thresholds set out in the Union Directives on public procurement). In field 24 of Annex XVII CPR, the managing authority has to collect and store information on sub-contractors at the first level of sub-contracting, only where information is recorded on a contractor under field 23, and only for sub-contracts above 50 000 EUR.

The above rules apply also for operations covered by Article 95 CPR, i.e. for which the Union contribution is reimbursed on the basis of a financing not linked to cost (FNLC)

scheme, hence the managing authority has to record and store electronically data on contractors, their beneficial owners, contracts and sub-contractors in fields 23 and 24 of Annex XVII CPR. In the same sense, the managing authority has to provide the data under Article 49(3)(a) CPR.

QA00338 - ERDF/CF/JTF INVESTMENTS IN MACHINERY OR EQUIPMENT POWERED BY COMBUSTION OF FOSSIL FUELS

Relevant Articles:

Art.7(1)(h and i) ERDF/CF Regulation

Art. 9(d) JTF Regulation

Member State: n/a

Question 1 (including any relevant facts and information):

Can the ERDF, Cohesion Fund and JTF support operations which include as eligible expenditure machinery or equipment powered by combustion of fossil fuels, if these are needed for the operation to provide an effective contribution to the achievement of the specific objectives of the programme?

Answer:

Without prejudice to points (i) to (iii), paragraph 1(h), and paragraphs 2 to 4 of article 7 ERDF/CF regulation (which set specific conditions for support to gas-fired heating systems, gas networks and vehicles), support from the ERDF/CF/JTF for an investment in machinery/equipment powered by combustion of fossil fuels would be eligible only if there is no viable alternative technology.

Member States are responsible for ensuring this condition is met.

QA00300 - RETROACTIVE USE OF SCOS

Relevant Article: Article 53(2) of the CPR

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State: SK

Question 1 (including any relevant facts and information):

Section 4.1 of the COMMISSION NOTICE GUIDELINES ON THE USE OF SIMPLIFIED COST OPTIONS WITHIN THE EUROPEAN STRUCTURAL AND INVESTMENT FUNDS (ESI) – REVISED VERSION (2021/C 200/01), states that "…retroactive application for operations already being implemented on the basis of real costs should be avoided as equal treatment between beneficiaries may not be ensured." Does this prohibit the retroactive application of the SCO for expenditures incurred before the call was launched?

Such a restriction would cause us considerable difficulties in implementation, as many projects have been financed by own resources since the beginning of the programming period from 1.1.2021 until now. If projects have not been completed, we intend to finance them through the currently set calls under the Programme Slovakia 2021-2027. At the same time, we would like to use SCO, both off-the-shelf and own SCO methodologies, as much as possible.

Answer:

In accordance with Article 63(6) CPR, operations may be selected for support by the Funds if they have not been physically completed or fully implemented before the application for funding under the programme is submitted. Simplified cost options, covering also eligible expenditure incurred by beneficiaries before operations were selected, can be used in such operations and in some cases, their use is mandatory (see Article 53(2) CPR). Whether expenditure had already been incurred by beneficiaries before the call was launched is irrelevant for the use of the simplified cost options, as long as the actions constituting the basis for reimbursement are to be carried out within the eligibility period (see Article 63(2) CPR). Moreover, it should be ensured that such expenditure was not part of the expenditure included in the accounts for 2014-2020 programming period.

Note must be taken that according to Article 73(3) CPR, the managing authority has to ensure that the beneficiary is provided with a document setting out all the conditions for support for each operation including (where applicable) the method to be applied for determining the costs of the operation and the conditions for payment of the support. Therefore, if any simplified cost options are used for the operations in question, they must be defined in advance and included at the latest in the document setting out the conditions for support. Furthermore, the national authorities should ensure respect of the principle of transparency and equal treatment of all beneficiaries.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00289 - AMENDING THE FLEXIBILITY AMOUNT BEFORE MID-TERM REVIEW TAKES PLACE

Relevant Articles: 18, 22, 24, 36, 86 of the CPR

Member State: PL

Question 1 (including any relevant facts and information):

Is it possible, as it was the case with the performance reserve for 2014-2020, **that flexibility amount for 2021-2027 it is not evenly distributed among the priorities (in terms %)?**

Example from Kujawsko-Pomorskie 2021-2027 Programme, they have 3 priorities funded by the ESF+ as follows:

Priority	The EU contribution	Amount of flexibility	%
7 CLLD	52 602 730	8 472 398	16,1
8	436 364 088	70 282 483	16,1
10 Technical assistance	20 652 129	3 326 311	16,1
TOTAL	509 618 947	82 081 192	16,1

As can be seen from the table above, the amount of flexibility per priority represents 16.1 % of each priority. Is it possible to address the global amount of flexibility for the ESF+ i.e. EUR 82081192 to be distributed across priorities in a different, disproportionate way?

It would help them to solve two issues:

1. The Priority 7 with CLLD ESF+ measures has low allocation, it has only 4 types of projects and it would make the most sense to launch all 4 calls for projects covering the whole remaining 2021-2027 period at once – they would do it in mid-November 2023.
2. The Technical Assistance is financed by the ESF+, and they want to first use it ahead of the ERDF TA, so that they would like to allocate the entire amount of its flexibility amount to Priority 8, as follows:

Answer:

Article 86(1) CPR confirms that the flexibility amount is to be 'retained' and can only be '*definitively allocated to the programme after the adoption of the Commission decision following the mid-term review (MTR) in accordance with Article 18 CPR*'. Hence, it is based on the outcome of the MTR that the Member States propose to confirm the definitive allocation of the flexibility amount, thereby reaffirming the EU contribution to the programme as initially planned (Article 18(4) CPR), or propose a new distribution of the flexibility amount (Article 18(3) CPR), if new needs emerge based on the elements listed in Article 18(1).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

As explained in Recital 24 CPR, MTR should provide a fully-fledged adjustment of programmes based on programme performance, and an opportunity to take account of new challenges and relevant country-specific recommendations issued in 2024, as well as progress in implementing the integrated national energy and climate plans and the principles of the European Pillar of Social Rights. For this reason, the flexibility amount is not available for selection of operations (Article 18(5) CPR) and, in line with Table 11 of Annex V to CPR, spread across all priorities of the programme. Since the aim of the MTR is to assess the programme performance not only according to the progress in achieving milestones, but also based on other elements listed in Article 18(1) CPR, reshuffling the flexibility amount between priorities before the MTR would pre-empt its results and undermine its purpose.

In case the Member State wishes to select operations for a higher amount under a priority than the amount without the flexibility amount, this can be done either by using national funds or by increasing the amount without the flexibility amount through a request for a programme amendment or, even in a procedurally lighter way, through a non-substantial transfer between priorities in accordance with Article 24(5).

QA00297 - DEFINITION OF INFRASTRUCTURE UNDER ARTICLE 65 CPR

Relevant Article: Article 65 of the CPR

Member State: HU

Question 1 (including any relevant facts and information):

According to Article 65 of the CPR, the Member State has a duty to maintain infrastructure investments and productive investments. The Managing Authority interprets the concept of "infrastructure investment" as the following: construction of buildings and networks that serve to achieve the project goals, as well as the acquisition of the equipment necessary for their operation of the building or network. Is this interpretation correct? If not, could you please clarify the interpretation of "infrastructure investment" under Article 65 CPR?

Answer:

Firstly, it should be noted that the interpretation of the 'infrastructure' has remained the same as in the context of the CPR for the 2014-2020 programming period.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Also for the 2021-2027 programming period, the CPR does not provide a definition of "infrastructure". Consequently, the notion of "infrastructure" should be interpreted in accordance with the general principles of law and also taking into account definitions commonly used within the relevant policy.

In general, the investment in an infrastructure investment can generally be defined as an investment covering a tangible property of permanent nature which meets the following conditions**:**

- It has an immobile nature (it is either permanently attached to the ground or to a property that is permanently attached to the ground and, in this case, it loses its identity through the incorporation and becomes a part of the immobile property to which it is attached)
- Under normal conditions of use, including reasonable care and maintenance, it has an unlimited life period.
- It retains its original shape and appearance with use.

In light of the above, construction of networks and acquisition of equipment could be considered part of "infrastructure investment", provided that the abovementioned general conditions are respected, without prejudice to any other conditions provided by the relevant Fund specific rules.

QA00218 - DECOMMITMENT, THEMATIC CONCENTRATION

Relevant Articles:

Articles 107 of CPR

Article 4(11) of ERDF and CF Regulation

Article 7 of ESF+ Regulation

Article 4 of ESF+ Regulation

Member State: DK

Question 1 (including any relevant facts and information):

In the procedure for decommitment, "[…] the Member State shall submit to the Commission an amended financing plan reflecting, for the calendar year concerned, the reduced amount of support over one or more priorities of the programme" (Art. 107 CPR).

- Does the MS proposal need to take into account, as for ESF+, the thematic concentration requirements (Art. 7 ESF+ Regulation)?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

For example, could the proposal lead to lower amounts for the specific objectives for the social inclusion policy area, resulting in an overall percentage of the budget allocated to them lower than 25% of the MS resources of the ESF+ strand under shared management?

- Is the minimum amount to be programmed to comply with thematic concentration requirements re-calculated (i.e. lower) taking into account the reduced MS resources of the ESF+ strand under shared management following the decommitment?

Answer:

In accordance with Article 107 of CPR on the procedure linked to automatic decommitment, the Member State has to submit to the Commission an amended financing plan reflecting, for the calendar year concerned, the reduced amount of support over one or more priorities of the programme. In the absence of such a submission, the Commission will amend the financing plan by reducing the contribution from the Funds for the calendar year concerned. Article 107(4) CPR set out the deadline for the Commission to amend the decision approving the programme.

Article 7 of Regulation (EU) 2021/1057 on the ESF+ includes the provisions concerning consistency with thematic concentration. This Article remains silent whether in course of a decommitment procedure pursuant to Article 107 CPR the provisions of thematic concentration should be taken into account. In accordance with Article 107(4) CPR the revision of the financial plan due to decommitment is done through a programme amendment.

Although the question referred solely to the ESF+, it should be noted that Article 4(11) of Regulation (EU) 2021/1058 on the ERDF and Cohesion Fund explicitly sets out in the context of the ERDF that

"11. Where the ERDF allocation with regard to PO 1 or PO 2, or both, of a given programme is reduced following a decommitment under Article 105 of Regulation (EU) 2021/1060, or due to financial corrections by the Commission in accordance with Article 104 of that Regulation, compliance with ***the thematic concentration requirements*** *set out in paragraph 6 of this Article* ***shall not be re-assessed****."*

In line with the above, and in the absence of any similar derogation in the ESF+ regulation as for the ERDF, in case of any programme amendment affecting ESF+ financing, all aspects of the amendment, including compliance with thematic concentration rules, will be re-assessed.

As regards compliance with thematic concentration, in accordance with Article 7 of the ESF+ Regulation, thematic concentration is defined as a share of the national ESF+ allocation. Therefore, in case of an automatic decommitment, if the total national ESF+ allocation is decreased, the minimum requirements of thematic concentration will change proportionately.

There may be cases when compliance with thematic concentration rules is mathematically impossible. For instance, if the thematic concentration rule as set out

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

by Article 7(5) of the ESF+ Regulation (at least 3 % of their resources of the ESF+ strand under shared management to support the most deprived persons under the specific objective set out in Article 4(1), point (m) ESF+ Regulation) is fulfilled by establishing a separate programme for this purpose and this programme will be subject to the decommitment procedure in accordance with Article 107 CPR, it will be difficult to comply with the thematic concentration obligation after the deduction from the allocation of the programme. Such cases will be duly taken into account during the re-assessment.

QA00339 - SUPPORT PROVIDED THROUGH FINANCIAL INSTRUMENTS (FI) ONLY TO THE ELEMENTS OF INVESTMENT NOT PHYSICALLY COMPLETED OR FULLY IMPLEMENTED

Relevant Article: Article 58(2) CPR

Member State: n/a

Question 1 (including any relevant facts and information):

1) Italy interprets the rule of the second paragraph of Article 58(2) CPR in such a way that it is impossible to apply the 'de minimis' regulation for support to final recipients through FI under 2021-2027 programmes and it will not be possible to support the projects already started except for the part of them which have not been yet completed.

In this regard, the MS is asking how to carry out an effective verification of what the undertaking claims when submitting the application. Is it necessary to obtain additional information from the managing entity in order to demonstrate that the part of the project for which SF support is requested is the part not yet implemented? In the case of investments by 'private' entities how can it be distinguished between the parts of a unit investment that has already been completed and those which have not been completed? Is a financial criterion (e.g. paid investment elements) or a 'procedural' criterion (e.g. proof of delivery of a good, i.e. completed purchase, but not yet installed, can the goods be financed but not the installation service?)?

Italy points out that, in the case of the use of the GBER, the problem is not bridged, since the incentive effect provided for in Article 6 GBER prevails overall.

Answer to question 1)

We understand that the Member State is asking about the interpretation of Article 58(2) of Regulation (EU) 2021/1060 ('CPR') and in particular, in questions 1 and 3, what

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

constitutes the 'physical completion' or 'full implementation' of elements of investment referred to in the second paragraph of Article 58(2) CPR and how the body implementing financial instrument should verify that support is granted to only elements that are not physically completed or fully implemented.

When a final recipient seeks support from a financial instrument, the second subparagraph of Article 58(2) CPR specifies that "financial instruments shall provide support only for the elements of the investment which are not physically completed or fully implemented at the date of the investment decision".

It follows from the above that where the final recipient has already financed part of the investment, it cannot receive support for those elements of investments physically completed or fully implemented. This ensures that the support from financial instruments is not used to refinance activities, i.e. services provided, goods delivered and/or works carried out.

The provision allows investments to be regarded as a set of distinct elements. These elements are to be found in the information submitted by the final recipient during the application process, i.e., self-declarations by the final recipient that the project is not completed, identifying the elements that have been completed and received financing; or the business plan or equivalent documents indicating the part of work that have been completed and the part to be undertaken or, where applicable, the findings of appraisal processes and/or third-party reports (such as a survey or energy audit or certificates issued by independent engineers).

The body implementing the FI must ensure that only those elements of the investment that are not physically completed or fully implemented and that have not been financed by other sources at the time of the investment decision are supported by financial instruments.

2) Italy (Marche region) interprets the rule of the second paragraph of Article 58(2) CPR in such a way that makes the support for energy audit ineligible as part of the combined support with FI according to Article 58(5) CPR.

The energy audit must be carried out and concluded before the financial intermediary decides whether or not to grant the loan, including the one which specifically determines the size of the investments. The managing authority is considering using the results of the energy audit to determine the return on investment (IRR/return time) to determine the extent of a possible capital rebate (to favor more demanding investments) and as support to also establish the aid that could be granted under Articles 38 and 38a GBER.

The managing authority pointed out that the second paragraph of Article 58(2) of the CPR provides that "elements of investments... physically completed or fully implemented" are not eligible as it is not part of the investment. In the context of State aid, it is also a "preparatory expenditure" which does not render the investment irrevocable and can therefore be incurred even before applying without losing the incentive effect.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer to question 2)

We understand that the Member State is asking that when financial instruments are combined with programme support in the form of grants in a single financial instrument operation in accordance with Article 58(5) CPR, support may be granted from financial instruments for the costs of an 'energy audit' which is paid by the final recipient before the submission of its application for support from the financial instrument.

It should be recalled that pursuant to Article 58(5) CPR, when financial instruments are combined with programme support in the form of grants in a single financial instrument operation, both forms of support are to be provided by the body implementing the financial instrument and the rules applicable to financial instruments apply to that single financial instrument operation.

The cost for the energy audit is a preparatory cost and could be part of the grant component combined with FI in one operation or be a separate grant operation. In case the purpose is to have the energy audit as part of the FI operation, some conditions should be fulfilled:

- the ex-ante assessment or equivalent document defines the nature and the amount of grant support, as well as the justification that the grant should be directly linked and necessary according to Article 58(5) CPR.
- the grant should be part of the funding agreement. Funding agreement should specify how the technical support, i.e. grant will be provided for the energy audit.

Prior to carrying out the energy audit, the final recipient may ask, and receive a grant from the body implementing FI either: 1) as a cash payment (e.g. a lump sum amount defined in the funding agreement) to look for the energy audit provider, or 2) for its benefit if the energy audit service is organized by the body implementing FI for all potential final recipients (in both instances irrespective of whether subsequent loan is granted or not).

Under a separate grant operation, the beneficiary (in the meaning of Article (2(9)(a) CPR) carries out energy audit with its own resources (incurred and paid) and then the expenditure is reimbursed by the managing authority.

3) Lithuania considers that the elements of investments constitute the whole project which is going to be implemented according to the business plan by the final beneficiary and that the whole project should not be completed at the date of the investment decision.

The final recipient applies for the loan. None of the elements of the investments were started or completed before the submission of the application for the loan. After the submission of the application (but before the decision for the investment is taken) the final recipient makes some payments (for example, advance payment for the

machinery) at his own risk and from his own money (state aid rules are respected). After the decision to grant a loan to the final recipient projects is it possible to "compensate" from the loan these expenses? In other words - if the final recipient starts the project at this own risk and money after the submitting the application for the loan, is it possible to give the loan for all the investments which were foreseen in the business plan, even when some investments were started (bills paid) before the decision to grant a loan.

Answer to question 3)

Firstly, please see reply to questions 1).

Secondly, as concerns example in the question 3), advance payments to suppliers is a normal business practice and is advantageous for a business (especially small businesses) to secure, e.g., a better price, better delivery times etc.

The support from a financial instrument may also cover the advance payment, as the advance to a supplier is the guarantee of the price of the goods or the necessary cash flow to the supplier to start producing goods.

QA00340 - 100% CO-FINANCING OF STEP DEDICATED PRIORITIES AND EU AMOUNTS (TO BE) PAID TO THE BENEFICIARIES

Relevant Articles:

Article 93(5) CPR,

Article 3(1)(a) ERDF Regulation,

Article 10(4) JTF Regulation,

Article 12a(2) of ESF+ Regulation

Member State: n/a

Question 1 (including any relevant facts and information):

By way of derogation from Article 112 CPR, STEP Regulation introduced a possibility to increase the EU co-financing rate up to 100% for dedicated priorities established to support the STEP objectives. This is nevertheless the EU co-financing rate in the programme financing plan (Table 11) at the level of priority by Fund and category of region, while the co-financing rate might differ at project level. How can the Member State receive the full EU allocation for the STEP dedicated priority while complying

with the requirements of Article 93(5)(b) in cases where the level of EU support to the beneficiaries at project level is lower, e.g., due to state aid rules?

Reply to Question 1:

It is under the remit of the managing authority to decide, within the limits of State aid rules, in line with the respective rules in the calls of proposals (if relevant) and in respect of transparency, non-discrimination and equal treatment between beneficiaries, what would be the level of public support to specific operations, including support from the cohesion policy Funds.

According to Article 93(5)(a) and (b) CPR, the support from the Funds to a priority in the payment of the balance of the final accounting year is not to exceed the public contribution declared in payment applications and support from the Funds paid or to be paid to beneficiaries. In order to receive the full support from the Funds for the priority at the moment the Commission pays the balance of the final accounting year (and where the co-financing rate for that priority is 100%), the Member State would need to declare as much expenditure to the Commission as needed for both the public contribution declared in payment applications and the support from the Funds paid or to be paid to beneficiaries to be at least equal to the EU allocation to the priority.

Question 2 (including any relevant facts and information):

When and how to report the EU amounts paid to the beneficiaries to the Commission (as per Art. 93(5)(b) CPR), taking into account there is no such field in the payment application/accounts?

Reply to Question 2:

The 2021-2027 templates for payment applications/accounts do not include information on the amount of support from the Funds paid (or to be paid) to beneficiaries. However, in line with Annex XIII CPR "Elements for the audit trail", this information must be maintained by the programme authorities and it could be subject of verifications/audits by national and EU bodies.

Furthermore, as explained under QA00100, the legal requirement set out in Article 93(5)(b) CPR, according to which the support from the Funds to a priority is not to exceed support from the Funds paid or to be paid to beneficiaries, will need to be complied with at the moment of the payment of the balance of the final accounting year. The purpose of this provision is to ensure that the entire contribution the Member State received from the Funds has been passed on to beneficiaries. As per field 58 of Annex XVII CPR, the Member State is to record the amount of support from the Funds paid or to be paid for the operation.

Based on above, Member States should inform the Commission services about the amount of support from the Funds paid or to be paid to beneficiaries before the

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Commission pays the balance of the final accounting year. The transmission mode of this information will be communicated to the Member States later on.

QA00341 - How should the deadline of 28 February, as provided for in Article 91(1) CPR, be interpreted in a leap year?

Relevant Article: Article 91(1) CPR

Member State: PL

Question 1 (including any relevant facts and information):

How should the deadline of 28 February, as referred to in the first sub-paragraph of Article 91(1) CPR, be interpreted in a leap year when February has 29 days? Should the date of 28 February be read as reference to the last day of the month and therefore, in a leap year, it would be possible for the Member State to submit a payment application on 29 February instead of 28 and this payment application would still be counted as submitted during the first time period for submission in a year?

Answer:

Article 91(1) of the CPR establishes deadlines for the submission of payment application per programme, Fund and accounting year. The dates as set out in referred provision, should be interpreted as the deadlines and not as reference to the last day of the month. Therefore, also in a leap year, the deadline for the submission of payment applications would end on 28 February, at 23:59 (and not on the 29th).

QA00343 - Indicators for assessing programme implementation

Relevant Article: Art. 18 CPR

Member State: PL, SK, LV

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

Which indicators should be used to assess the progress of programme implementation? What about milestones with values of zero? Moreover, will the mid-term review take into account only the values achieved by the indicators, or also the values estimated on the basis of contracted contracts?

Answer:

The programme's performance framework determines which indicators are used to assess the progress of implementation. For the mid-term review, programmes will have to assess the progress in achieving milestones (Article 18(1)(f) CPR). 'Milestone' refers to those output indicators that have milestone values set to be achieved by 2024 in the adopted programme. The milestones to be assessed will vary by programme, and Member States should also reflect on any additional and unforeseen factors encountered that may have affected implementation.

Indicator values are reported twice a year to the Commission. The implemented milestone values available at the time of the mid-term review assessment should be used formally. It may also be relevant when looking at underachievement to refer to selection values as it can show the potential to catch up and still achieve the output target values set.

QA00344 - IMPACT OF DECOMMITMENTS ON THE 8% THRESHOLD FOR SUSTAINABLE URBAN DEVELOPMENT

Relevant Article: Article 11 of the ERDF/CF

Member State: HU

Question 1 (including any relevant facts and information):

In the 2021-2027 programming period, 8% of ERDF must be allocated for sustainable urban development (SUD). If part of ERDF funds is decommitted (e.g. due to the n+3 rule, or the Rule of Law Conditionality process) should the (8%) allocations planned for SUD cities be recalculated based on the reduced total ERDF allocation for the programme?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In accordance with Article 11(3) of the Regulation (EU) 2021/1058 (ERDF/CF Regulation), the percentage allocated to sustainable urban development (SUD) under paragraph 2 of the same Article shall be complied with throughout the entire programming period.

According to Article 11(4) ERDF/CF Regulation, where the ERDF allocation is reduced following a decommitment under Article 105 of Regulation (EU) 2021/1060 (CPR) […],compliance with paragraph 2 of the same Article shall not be re-assessed.

In the light of the latter, the MA is not obliged to revise ERDF amounts allocated to SUD in case the ERDF allocation is reduced following a decommitment under Art 105 CPR.

Therefore, if, due to the decommitment under Art 105 CPR, the total ERDF resources decrease under priorities not implemented by territorial tools, while the SUD allocation remains the same, the amount for SUD will *de facto* be higher than 8%, thus compliance is ensured. In such a case the MA may reduce respectively the amounts planned for SUD to bring it to the level of 8% of reduced total ERDF amount. Before taking such a decision, the MA shall assess the consequences of such changes at the level of beneficiaries, since it can be detrimental to the implementation of the territorial tools as per Article 28 of the CPR. Territorial tools are programmed at sub-national level, the budget and the project pipelines may be already in place at local/regional level and decreasing SUD allocations may undermine predictability of planning with territorial tools.

If ERDF resources for priorities under policy objective 5, which need to be implemented entirely by territorial tools, are reduced due to the decommitment under Art 105 CPR, the allocation for SUD does not have to be re-assessed (even if it falls below 8%).

The Commission will assess at the closure the exact compliance with Article 11(2) ERDF/CF, i.e. whether the 8% threshold of the ERDF resources at national level under the Investment for jobs and growth goal, other than for technical assistance, is respected, taking into account, as the case might be, Article 11(4) ERDF/CF.

QA00345 - JUSTIFICATION OF THE STAFF COSTS ON OFFICIAL STATISTICS WHEN THE APPLICANT IS A FOREIGN LEGAL PERSON

Relevant Articles:

Articles 2(9) and 63(4) of the CPR;

Article 16(4) of the ESF+

Member State: LT

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

Can the Commission clarify whether the term "beneficiary" in Article 16(4) of Regulation (EU) 2021/1057 refers exclusively to a legal person implementing the project after funding approval, or if it can also include an applicant intending to implement the project itself or through an established entity after funding approval? Is the same term applicable for ERDF?

Answer:

The general definition of 'beneficiary' as set out in Article 2(9) of Regulation (EU) 2021/1060 (the CPR) is *"a public or private body, an entity with or without legal personality, or a natural person, responsible for initiating or both initiating and implementing operations"*. 'Operation' is defined in Article 2(4) of the CPR as *"a project, contract, action or group of projects selected under the programmes concerned"*.

Following the above, a body/entity/person becomes a beneficiary after an operation is selected. The meaning of the term 'beneficiary' in Article 16 of Regulation (EU) 2021/1057 (the ESF+ Regulation) (or, for that matter, in any other provision in that Regulation or any other Fund-specific Regulation) is the same as defined in Article 2(9) of the CPR.

Having said that, it does not mean, however, that Article 16(4) of the ESF+ Regulation referring to 'the beneficiary's usual remuneration practice for the category of function concerned' should be understood as allowing to take account of such remuneration practice only from the moment a body/entity/person became a beneficiary. The relevant part of the provision should be read as stating that direct staff costs of the beneficiary in the operation are to be eligible if they are in line with that body's/entity's/person's usual remuneration practice for the category of function concerned.

Question 2 (including any relevant facts and information):

We kindly ask the Commission for its opinion if a **foreign (non-Lithuanian) legal person**, who is going to establish a company in Lithuania to implement a project, financed by ESF+ or/and ERDF, can base the future staff remuneration in the project **on its (a foreign legal person's) usual remuneration practice for the category of function concerned or on official foreign statistics?**

(Please note that the remuneration practice/statistics of foreign companies may differ from the remuneration practice/statistics of companies established in Lithuania, for example, the average hourly labour cost per person was EUR 13.6 in Lithuania in 2023, compared to ISK 7490 (EUR 49.13) in Iceland.)

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

According to Article 63(1) of the CPR, the eligibility of expenditure is to 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 Regulations.

In case of an operation supported by the ESF+, Article 16(4) of the ESF+ Regulation establishes a specific eligibility rule for direct staff costs. According to this provision, direct staff costs are to be eligible for a contribution from general support from the ESF+ strand under shared management if: (i) they are in line with the beneficiary's usual remuneration practice for the category of function concerned or (ii) in line with applicable national law, collective agreements or official statistics. Hence, the eligibility of direct staff costs under the ESF+ is subject to two above-mentioned alternative conditions.

We understand from the question asked that a foreign (non-Lithuanian) legal person is going to establish a company in Lithuania to implement an operation to be co-financed by ESF+ and/or ERDF. As the company will be established in Lithuania, it will be subject to Lithuanian law. We also understand that that foreign (non-Lithuanian) legal person has not previously acted as a company under the Lithuanian law, and it will be established in Lithuania for the first time. Therefore, as this company did not exist before, it cannot be considered that it has any usual remuneration practice in Lithuania for the category of function concerned as per Article 16(4) of the ESF+ Regulation. In such a case, direct staff costs would be eligible under ESF+ if they are in line with applicable national law, collective agreements or official statistics (which in this case means of the Member State where the company is established, i.e. Lithuania).

For operations co-financed by ERDF, as Regulation (EU) 2021/1058 (the ERDF/CF Regulation) does not provide any specific rules on direct staff costs, the applicable provisions in this regard are those of the CPR and applicable national rules, including national eligibility rules.

QA00346 - OBLIGATION TO SET UP AN INTERMEDIATE BODY UNDER ERDF PROGRAMME FOR THE USE OF CUMULATIVE FUNDING APPROACH FOR OPERATIONS SELECTED UNDER HORIZON EUROPE

Relevant Article:

Art. 71(5) and Art. 73(4) of the CPR;

Art. 10(1) Horizon Europe

Member State: RO

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Background: The managing authority (MA) of a regional programme is working on their methodology for a synergy call with Horizon Europe (HE). The call intends to provide ERDF support to companies from the respective region through a cumulative funding approach, by covering their portion of the co-financing in Horizon Europe projects selected through open calls managed by Joint Undertakings, EIT KICs or HE Missions. The MA inquired whether it would need to designate the body implementing the programme co-funded by Horizon Europe as an intermediate body.

Question 1 (including any relevant facts and information):

Having considered the provisions of Article 71(5) CPR in conjunction with Article 73(4) CPR, Article 10(1) Horizon Europe Regulation, as well as the Synergy notice between Horizon Europe and ERDF, is the managing authority for a cohesion policy programme obliged to designate the body implementing the programme co-funded by Horizon Europe as intermediate body in order to use the cumulative funding approach to co-finance operations selected under the Horizon Europe?

Answer:

Under Article 71(5) CPR, the obligation to identify the body implementing the programme co-funded by Horizon Europe as an intermediate body applies where the involvement of the Union in European Partnerships is through a Co-funded European Partnership, as referred to in Article 10(1)(b) of the Horizon Europe Regulation.

In the situation described, it seems that the involvement of the Union is through an Institutionalized European Partnership, as referred to in Article 10(1)(c) of the Horizon Europe Regulation. In this case, it is not required to identify the body implementing the programme co-funded by Horizon Europe as an intermediate body under Article 71(5) CPR.

In line with Article 71(3) CPR, the managing authority (MA) can select the operations itself or identify an intermediate body to carry out this task under its responsibility. This intermediate body does not have to be the same entity that selected the projects under Horizon Europe.

Furthermore, according to Article 73(4) CPR, MA may decide to grant support from the ERDF directly, provided that such operations meet the requirements set out in points (a), (b) and (g) of Article 73(2). In this context, the MA is not supporting the programme co-funded by Horizon Europe but instead relies on Horizon Europe's project assessment when deciding on granting the support to the operations under the ERDF programme.

In conclusion, the MA may co-finance operations **without designating the body implementing the programme co-funded by Horizon Europe as an intermediate body**. The MA would retain responsibility for ensuring compliance with the ERDF scope, regional programme objectives, and the regional smart specialisation strategy.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00352 - DATA AND REQUIREMENTS FOR ASSESSING ARTICLE 18(1)(c) CPR

Relevant Article: Art.18 CPR

Member State: DE, BG, IT

Question 1 (including any relevant facts and information):

What data should be used for assessing Article 18(1)(c) CPR? In the CPR expert group meet of May 2024 that compliance with the reports of the National Reform Programme should be taken into account, is this correct? How does the assessment of 18(1(c) apply to ERDF supported programmes?

Answer:

Please use the latest relevant data available for assessing Article 18(1)(c) CPR. Where NUTS 2 is not available, please use data collected at other levels, combined with any data or other type of evidence available at regional level or from the programme (e.g. findings in evaluations).

As it will be a highly qualitative exercise, the mid-term review assessments are expected to identify any new areas where investment should be directed on the basis of existing evidence, which may stem from various sources. If you encounter data availability limitations, you could mention them when explaining the analysis that led you to conclude on the allocation of the flexibility amounts.

The message in the Expert Group meeting was to stress the importance of ensuring coherence between the analysis regarding the EPSR element of the MTR and other documents, such as the national reform programmes. However, the two analyses are essentially different, as the MTR requires a programme level analysis, which is not included in national reform programmes.

The Social scoreboard analysis is also part of the analytical framework for the MTR, to which one could add any other relevant evidence you may have, allowing you to to assess the progress in implementing the principles of the EPSR. Please note that not all EPRS principles will be relevant to all programmes, so a full analysis of all the 20 EPSR principles should not be necessary.

Finally, for ERDF programmes: if the programmes include policy objective 4 investments, the MTR assessment should include an analysis of point (c) of Art. 18 (progress in implementing the principles of the EPSR). This should be limited to the

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

types of investments in the ERDF programme and the EPRS principles to which these are relevant.

In case no policy objective 4 investments are included in the ERDF programme, it is sufficient to include a short sentence pointing to this.

QA00351 - FORMAT OF MID-TERM REVIEW ASSESSMENT

Relevant Articles: Art. 6, 18, 24 CPR

Member State: DE, LV, PL, IT, BG

Question 1 (including any relevant facts and information):

Are there any expectations of formatting for the assessment of Article 18(1) CPR, such as in terms of structure or page count? How should the files be uploaded, including for additional documents e.g. related programme amendments?

Additionally, Should the report be prepared at the Member State level for all programmes, or should it be done at the level of the Managing Authorities for each individual programme? (And can the assessment be conducted by the MA directly?

Answer:

There is no fixed template or format for presenting the outcome of the mid-term review assessment. However, it should follow a clear structure that allows for the quick identification of the elements listed under Article 18(1) and 6(4) CPR that are relevant for the programme. The length of the assessment will depend on the scope of the programme, but it is estimated it should not exceed 25 pages. However, larger or smaller programmes could be assessed in a larger or smaller document, ensuring that the elements of Art. 18(1) and 6(4) are covered in sufficient detail to allow drawing a conclusion on the allocation of the flexibility amounts. Where MS concludes that a programme amendment is needed following the MTR in accordance with Article 18(3) CPR, the MTR assessment will have to be uploaded in SFC2021 as a compulsory document together with the amended programme. It will be possible for MS to upload also other MS documents (those can also be added manually after the MTR file is officially submitted in SFC2021), if needed. The MTR assessment needs to be submitted for each programme, except for those that have benefitted from the derogation under the last sentence of Art. 24(9) CPR, where the full flexibility amount has been allocated to the newly created STEP priorities by the end of August 2024. The

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

mid-term review assessment can be conducted by the MA; there is no need for functional independence.

QA00350 - THE MID-TERM REVIEW

Relevant Article: Art. 45 and Art. 18 of the CPR

Member State: HR, BG

Question 1 (including any relevant facts and information):

When are the evaluations under Article 45 of Regulation (EU) 2021/1060 expected to be produced? Will there be any specific recommendations that should be reflected in the amended programmes under Article 18(3) CPR?

Answer:

The timing of the mid-term review is not aligned with the mid-term evaluation. The mid-term evaluation of cohesion policy funds (ERDF, CF, and JTF) will have final results by February 2025, which does not give adequate time for informing the mid-term review assessments. Moreover, the mid-term evaluation is being carried out at the level of funds, while the mid-term review assessments will be carried out at the level of individual programmes. While mid-term evaluation could offer certain contextual information, there is no obligation to use their results and hence no need to wait for their publication.

QA00349 - AMENDING THE PROGRAMME STRATEGY AS PART OF THE MTR

Relevant Article: Art. 18 CPR

Member State: RO, FR

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

Is it necessary to amend the Programme Strategy section as a result of analysis stemming from the mid-term review assessment (e.g. from update to the socioeconomic context, new challenges identified, implementation status) even if the programme's priorities and actions remain unchanged? Additionally, does the data included in the strategy need to be updated?

Answer:

If the MTR concludes that the FA can be confirmed and no programme amendment is needed (Art. 18(4)(a)), no changes to the programme have to be done, including the sections mentioned in the question. However, if the MTR concludes that changes to the programme are needed ((Art. 18(3)), all relevant sections have to be amended, including the strategy, challenges etc., in line with the analysis of the socioeconomic situation and territorial needs of the MS or region included in the assessment of the MTR outcome pursuant to Article 18(1)(d) CPR.

QA00355 - CONSEQUENCES OF MILESTONE NON-ACHIEVEMENT

Relevant Article: Art. 18 CPR

Member State: BG, IT, RO

Question 1 (including any relevant facts and information):

Are there any automatic consequences of milestones not being met? And will the Commission define what constitutes "major difficulties encountered in the implementation of the programme" (Article 18(1)(f) CPR) for assessing milestone progress?

Answer:

The achievement of milestones is just one of the assessment elements for the mid-term review. The non-achievement of milestones has no automatic impact on the allocation of the flexibility amount; it is one component of a wider assessment of progress. According to Article 18(1)(f) CPR, Member States should assess the progress in achieving milestones while "taking into account major difficulties encountered in the implementation of the programme", which includes the contextual factors leading to the late adoption of programmes. Programmes that have made zero progress on

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

milestone targets should account for the reasons behind the non-progress, and whether that progress can be feasibly recuperated by the end of the programming period.

The performance framework is underlined by a methodology that, among other things, accounts for factors that may influence the achievement of milestones and how these factors were considered (Article 17(c) CPR). These factors are also relevant when assessing the achievement of milestones for the mid-term review. There are additional and unforeseen factors that will likely have affected implementation, that programmes may consider when reviewing the achievement of milestones.

QA00356 - AMENDING INDICATOR VALUES AS PART OF THE MID-TERM REVIEW

Relevant Article: Art.18 CPR

Member State: HU, PL, RO, BG

Question 1 (including any relevant facts and information):

If the milestone targets of the programme are not met, should they be amended within the scope of the mid-term review, e.g. already in 2024, or retrospectively in 2025?

Answer:

2024 milestone values are meant to provide a comparison point for the achievement values, as a way of measuring progress against expectations. As a result, with frequent changes, the utility of milestones for monitoring and reporting is undermined. Milestone revisions that aim to align target values with actual implementation are strongly discouraged. Moreover, milestones should not be amended retrospectively as 'milestone' specifically refers to those output indicators that have milestone values set to be achieved by 2024. However, the mid-term review is a good moment to correct target values (for 2029), in cases where they are no longer relevant following the proposed allocation of the flexibility amounts, or where mistakes were made in the initial assumptions/calculations.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00357 - ASSESSMENT OF ARTICLE 18(1)(D) FOR THE MID-TERM REVIEW

Relevant Article: Art. 18 CPR

Member State: IT, RO

Question 1 (including any relevant facts and information):

Regarding point d) of Article 18 of Regulation (EU) 2021/1060, will the Commission provide criteria to define what constitutes "any major negative financial, economic or social development"? Should the analysis be done at programme level?

Answer:

According to Article 18(1)(d) CPR, each programme should be reviewed in light of the "socioeconomic situation of the Member State or region concerned". It follows that the socio-economic analysis should reflect on the programme within a national/regional context. Any indicators assessed should therefore be viewed in the context of the programme's capacity to contribute to wider EU objectives, or how any observed emerging challenges relate to the programme.

Following the non-guidance approach, there are no set criteria provided by the Commission for defining "major negative financial, economic or social development". This will vary greatly by region and Member State, and it is up to programmes' individual assessments to define the relevant socioeconomic contexts that may have impacted programme performance. Many of the relevant emerging challenges are identified in the 2024 European Semester country reports, which could serve as a key resource for the assessment of this specific CPR element.

Some of the elements that could be considered in the assessment include:

- Impact on labour markets (shortage of skills/labour force);

- Impact on regions' attractiveness and development potential;

- Impact on the delivery of social services, spatial planning and public investments;

- Any other demographic developments of particular importance to the Member State or region.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00359 - SCOPE OF PROGRAMME AMENDMENTS IN RELATION TO ARTICLE 18(3) CPR

Relevant Article: Art. 18 CPR

Member State: BG

Question 1 (including any relevant facts and information):

Do the proposed programme amendments following the mid-term review assessment outcome need to conform to the elements listed under Article 18(3) CPR?

Answer:

The types of revisions listed in the second paragraph of Article 18(3) that must be included in a programme amendment submitted by MS following the outcome of the MTR are not exhaustive. If the required changes go beyond the reallocation of the financial priorities, the revision or inclusion of new targets or, wherever relevant, the amounts to be contributed to the InvestEU Programme, MS should reflect them adequately in the amendment unless some of these elements care indicative or their amendment does not need to be formally approved by a COM decision, e.g., the breakdown of resources in tables 4-8 of the programme which remain indicative etc.

In addition, the MTR-related programme amendment can include changes going beyond the MTR, but, in such cases, the accompanying cover note / reasoned request from MS should specify which changes are made as a result of the MTR and which are not.

QA00360 - TIMING OF MTR ASSESSMENT SUBMISSION

Relevant Article: Art. 42 CPR

Member State: IT

Question 1 (including any relevant facts and information):

Is it necessary for Managing Authorities to wait until March 31, 2025, for submitting the mid-term review assessment outcomes to the Commission for each programme, including the proposal for the final allocation of the flexibility amount?

Answer:

The mid-term review has a broad scope and therefore its preparation will take sufficient time. While the deadline for submission is March 31 2025, mid-term review assessments may be submitted in advance of this. However, there are some timing considerations stemming from the legislation. One major consideration is that

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

programmes should be assessed on their progress in achieving milestones, acknowledging also any major difficulties encountered in programme implementation. 'Milestones' refer to the forecasted end-2024 values for the relevant output indicators identified in the performance framework. Therefore, for an up-to-date assessment of the programme's progress in achieving the milestones, Member States should use the data transmitted to the Commission, in line with Article 42(1) CPR, by 31 January 2025 reflecting the indicator data at the end of 2024.

As for the timing for the flexibility amount proposal, please see QA00289 - Amending the flexibility amount before mid-term review takes place (https://webgate.ec.europa.eu/regiokm/display/2127QA/QA00289+-+Amending+the+flexibility+amount+before+mid-term+review+takes+place).

QA00361 - TIMING FOR THE INFORMAL DIALOGUE WITH COM

Relevant Article: Art. 18 CPR

Member State: RO, BG

Question 1 (including any relevant facts and information):

During the CPR expert group on 3 May 2024, it was communicated that informal consultations with the Commission services are strongly recommended prior to submission of MTR file. What is a reasonable timeline for the informal dialogue?

Answer:

The informal dialogue with the Commission should be initiated once the assessment of the MTR outcome, even partial, is available for the programme. The MS should envisage enough time for the informal dialogue to pre-agree with the COM the MTR procedure (18(3) or 18(4) CPR), and in the case of the MTR based on Article 18(3) CPR, the scope of changes in the programme before the official submission of the MTR assessment by the end of March 2025 (which is the final deadline - the exact timing of submission is up to the MA after upstream discussion with GUs). The length of the informal dialogue would vary from a programme to a programme, taking into account its size, the scope of the MTR assessment and the number of changes that might need to be incorporated into the programme.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00362 - ASSESSING ARTICLE 6(3) CPR AS PART OF THE MID-TERM REVIEW

Relevant Article: Art. 18 CPR

Member State: CZ, HR

Question 1 (including any relevant facts and information):

What progress towards reaching the climate contribution target will be considered as "insufficient" in the context of Article 6(4) CPR?

Answer:

Art. 6(3) CPR clarifies that the monitoring of the respect of the climate contribution targets are to be based on the total eligible expenditure declared by the beneficiaries to the managing authority as broken down by types of intervention in accordance with Article 42 and on data submitted by the Member State. Therefore, the latest available transmission of data by the Member State, as well as the most recent assessment by the Member State and the Commission of the climate contribution targets in the framework of the annual review meeting pursuant to Art. 6(3) – if available - shall be taken into account for the purposes of the mid-term review. Insufficient progress shall be determined by the Member State in the assessment of its different programme pursuant to Art. 18(1) and (2) CPR, based on the evolution of eligible expenditure declared by beneficiaries in types of interventions linked to climate contribution for each programme and its planned share of the overall Member State climate contribution target established in the Partnership Agreement. The Commission will check that this assessment has been conducted.

QA00363 - OVERBOOKING IN ADVANCE OF THE MID-TERM REVIEW

Relevant Article: Art.18 CPR

Member State: SK

Question 1 (including any relevant facts and information):

Is it possible to apply overbooking before the mid-term review, and if so, would this need to be reported before the definitive allocation of the flexibility amounts?

Answer:

As stipulated in Article 18(5) CPR, until the adoption of the Commission decision confirming the definitive allocation of the flexibility amount (FA), this amount is not

available for selection of operations. I.e., the MA can over contract allocations not including the FA at its own risk.

In the case of overbooking, there is no need for particular reporting. As in the past, overbooking can be reported, however, the MA has to bear in mind that the flexibility amounts are not available for selection of operations before the adoption of the Commission decision confirming the definitive allocation of the flexibility amounts.

QA00365 - TRANSFER OF FUNDS TO ESF+ IN THE CONTEXT OF THE MID-TERM REVIEW

Relevant Article: Art.111 CPR

Member State: BG

Question:

Is it possible to transfer additional funds to ESF+ programmes pursuant to the option foreseen in the second part of Art. 111, para 1, CPR, considering the provision of Art. 4, para 2 of the ESF+ regulation, according to which "… the ESF+ shall aim to contribute to the other policy objectives listed in Article 5 of Regulation (EU) 2021/1060, in particular the objectives related to: … [PO1 & PO2]"?

Answer:

The transfer between categories of region is possible in the context of the mid-term review according to Article 111 CPR. Such a decision, within the limits indicated in Art. 111, should nevertheless be underpinned by the MTR assessment and might be followed by a corresponding amendment of the partnership agreement.

QA00366 - PROGRAMME AMENDMENTS SUBMITTED IN ADVANCE OF THE MID-TERM REVIEW

Relevant Article: Art.18 CPR

Member State: HU

Question 1:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

If there is an OP amendment planned for 2024, is there a time constraint regarding such an exercise before the mid-term review?

Answer:

In general, the MS should strive to carry out the MTR based on a stable programme. I.e., treating a programme amendment simultaneously with the mid-term review should be avoided as it undermines the value of the assessment and complicates the adoption procedures.

If, exceptionally, a programme amendment is not adopted by the time of the MTR or the need of a programme amendment arises during the MTR, the possibility to amend the programme will depend on the MTR procedure, which should be followed by the MS following the MTR outcome:

- The request to confirm the FA, in accordance with Article 18(4) CPR, can be submitted in SFC2021 in parallel to an ongoing standard programme amendment (that was submitted in accordance with Article 24(1) CPR). Furthermore, if such a request (to confirm the FA in accordance with Article 18(4) CPR) is already submitted to the COM, it does not prevent the MS from submitting a parallel amendment of the programme in accordance with Article 24(1) CPR. However, in both cases, the MTR should be revisited as the changes in the amendment request could cause changes in the review.

- In case the MS considers it necessary to submit a programme amendment together with the MTR assessment, in accordance with Article 18(3) CPR, it has to be noted that a PRAM with MTR related and non MTR related parts should be presented in a single document as there has to be consistency beteen both amendments (also, SFC would not allow for two programme amendments to run in parallel). Therefore:

→ scenario 1: any other amendment of the programme planned by the MS that is not related to the MTR process could be merged with the MTR-related amendment under the same request. Such an amendment should be submitted in SFC2021 as an amendment following the MTR outcome.

→ scenario 2: if there is already an ongoing amendment in SFC, the MS will have to withdraw such a request from SFC to be able to submit an amendment following the MTR outcome, after which a new request (accomodating both, the previously requested changes and changes related to the MTR) will be submitted as a programme amendment following the MTR outcome.

Under both scenarios linked to the MTR-related programme amendment, in order to facilitate the COM assessment, the MS should explain in the acompanying cover note / reason request which changes are made as a result of the MTR and which changes go beyond it. In any case, the MS should consult any amendment planned in the near future with the COM to determine if it does not pre-empt the results of the MTR and if the request could still be submitted before the MTR request or merged with it in case the outcome of the MTR imposes to amend the programme.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00367 - ASSESSMENT OF INDICATOR DATA IN RELATION TO ARTICLE 63 CPR

Relevant Article: Art. 63 CPR

Member State: SK

Question 1 (including any relevant facts and information):

Will it be taken into account that within the framework of the ESF+, the support implemented in accordance with Article 63 of the CPR could be implemented mainly from the allocation of one category of the region? E.g. projects are funded from the allocation for a less developed region and accordingly the indicators are being fulfilled for a less developed region, but in reality activities are carried out both in a less and a more developed region. So the fulfilment of the performance framework is progressing more in one category of the region and less in the other?

Answer:

In case the Member State applies the flexibility provided by Article 63(3) CPR, values of common indicators should be counted to the specific objective and category of region under which it is supported (irrespective of the location of the implementation), i.e. the data on participants is fully reported under the category of region providing support to the operation even if there were participants in other categories of region.

QA00368 - MID-TERM REVIEW OF JTF SUPPORTED PROGRAMMES

Relevant Article: Art. 11, 18 CPR

Member State: PL, LT

Question 1 (including any relevant facts and information):

How should the mid-term review be applied to JTF supported programes? Point 1 (g) of Article 18, CPR states that the assessment for JTF will be carried out by the Commission. Does that reduce the scope of review of JTF investments by the Member State as part of the MTR?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The CPR provisions regarding the MTR assessment apply to the JTF in the same way as for the other Funds (ERDF, CF and ESF+). Therefore, the MTR assessment, to be performed by the MS separately for each programme and to be submitted to the COM by the end of March 2025. The MTR of JTF investments should cover all elements mentioned in point 1 (a, b, c, d, e, f) of Art. 18, CPR and in addition the assessment of the Commission under point 1 (g) of Article 18, CPR. JTF investments need to be considered also for all the elements mentioned under Art.18 CPR point 1. Concerning the assessment related to point 1 (g) of art 18 CPR, when reviewing a programme in the framework of the Mid-Term Review, the Member State should take into account the COM assessment of progress of the National Energy and Climate Plans.

Additionally, pursuant to Article 11(4) JTF Regulation, where an update of the NECP necessitates a revision of the TJTP, it shall be carried out as part of the MTR. Therefore, it should take into account the updated NECP as well as the Commission assessment and country-specific recommendations on its updated NECP. If the Member State has not yet submitted its final updated NECP, the draft updated NECP can serve this purpose together with the Commission assessment and country-specific recommendations issued for it. This is particularly relevant for EU Member States where cases of "backtracking" (i.e. mismatch of phase-out commitments between revised NECP and Territorial Just Transition Plans) have been detected, as in those cases the recommendations clearly state such misalignment.

Following the assessment of the MTR outcome, MS may decide either to confirm the FA without any changes in the programme (18(4) CPR) or to amend the programme (18(3) CPR), in which case the FA may be reallocated or other changes may be made in the programme. For the JTF specifically, this means that the FA may be reallocated between different JTF priorities within a programme or between programmes (if applicable) or, if the FA cannot be reallocated because the JTF is programmed under a single JTF priority, other relevant adjustments in the programme may be done, e.g. revision of targets (if necessary).

QA00369 - ASSESSMENT OF PROGRESS IN IMPLEMENTING NECPS

Relevant Article: Art. 14, 18 CPR

Member State: HR

Question 1 (including any relevant facts and information):

How should the progress in implementing the NECP be assessed with regard to a specific programme?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

MS shall take into account the progress in implementing the NECPs only if relevant to the programme being assessed in the framework of the MTR, that is, if the relevant Specific Objectives are activated in the programme. In doing so, MS should take into account available information on the progress accomplished towards reaching the objectives, targets and contributions set out in the NECPs which are relevant to the programme being assessed. As those objectives and targets are being currently reviewed by the MS in the framework of the update of the NECPs (pursuant to Article 14 of Regulation (EU) 2018/1999), MS should take this into account in their MTR of programmes and assess whether the contribution of the programme to the relevant updated NECP objectives and targets is adequate. Following the assessment of the MTR outcome, MS may decide either to confirm the flexibility amount without any changes in the programme (18(4) CPR) or to amend the programme (18(3) CPR), in which case the FA may be reallocated or other changes may be made in the programme.

QA00371 - COM REJECTION OF PROPOSAL FOR THE DEFINITIVE ALLOCATION OF THE FLEXIBILITY AMOUNT

Relevant Article: Art. 18 CPR

Member State: RO

Question 1 (including any relevant facts and information):

In what situations might the European Commission reject the proposals regarding the final allocation of the flexibility amount? Are there situations in which the European Commission would not "release" the flexibility amount?

Answer:

If the COM disagrees with the MS's request either to confirm the FA pursuant to Article 18(4) CPR or to reallocate the FA following Article 18(3) CPR, MS will be informed about it, and the underlying reasons for such a disagreement will be thoroughly explained in the COM observation letter. The COM may also refuse to release the FA where following the MS' request to confirm the FA pursuant to Article 18(4) CPR, it considers that the programme needs to undergo an amendment, including a possible reallocation of the FA. The FA will remain unavailable for commitments until the COM adopts the decision following the mid-term review in accordance with the second paragraph of Article 18(5) and 86(1) CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00370 - AMENDMENTS TO PRIORITIES IN THE CONTEXT OF THE MID-TERM REVIEW

Relevant Article: Art. 18 CPR

Member State: IT

Question 1 (including any relevant facts and information):

In the context of the mid-term review, is it possible to propose to the European Commission a reprogramming that could: a) Remove a specific priority originally included in the Program if its implementation no longer aligns with regional needs; b) consequently, Increase the allocation for another specific priority?

Answer:

If the outcome of the MTR conducted by MS in accordance with Article 18(1) CPR concludes that a specific priority (and thus investment included in such a priority) is no longer needed, e.g., due to other emerging investment needs or the need to support other investment areas (included under other priorities), MS may decide to remove the priority and reallocate the corresponding allocation. The scope of the request should be informally consulted with the Commission and corresponding changes will have to be approved by the monitoring committee before the amendment is officially submitted in SFC2021.

QA00347 - MTR - CRITERIA FOR ASSESSING PROGRESS

Relevant Article: Art.18 CPR

Member State: PL, SK, HU

Question 1 (including any relevant facts and information):

What criteria will be used to assess the progress of the programmes and their compliance with the objectives of cohesion policy? Does the fulfilment of goals stipulated within Partnership Agreements need to be assessed?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

The scope of the mid-term review assessment is outlined in Article 18 CPR. Member States will need to assess programmes along the elements listed in Article 18(1) and will have an opportunity to reflect on factors that may have hindered/delayed progress in their assessment. Member States are encouraged to make use of upstream consultations to discuss the assessment approach and programming decisions.

QA00348 - Role of the 2024 Country Reports in the MTR assessment

Relevant Article: Art.18 CPR

Member State: RO

Question 1 (including any relevant facts and information):

To what extent will the information presented in the 2024 Country Reports be incorporated into the mid-term review assessment prepared by each Managing Authority?

Answer:

The 2024 Country Reports were published by the European Commission in June 2024, as part of the 2024 European Semester Spring Package.

The Country Reports include a MS-tailored box, providing orientations on the MTR. The box outlines (1) the list of key priorities already included in programmes that should be implemented without backtracking; (2) if any, outstanding or pressing priorities that merit particular attention in the MTR; and (3) opportunities provided by STEP with hints at particular investment areas.

In addition, the Country Reports address, to an extent, additional elements to be considered in the MTR as per CPR Art. 18: the progress in implementing the integrated national energy and climate plan (NECP) and the principles of the European Pillar of Social Rights (EPSR), as well as the socioeconomic situation of the Member State or region concerned, with special emphasis on territorial needs, taking into account any major negative financial, economic, or social development. Many of these can be found in the annexes to the country reports.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00353 - ROLE OF THE MONITORING COMMITTEE IN THE MTR

Relevant Article: Art. 18, 39 CPR

Member State: CZ

Question 1 (including any relevant facts and information):

According to Article 39, paragraph 1 of the CPR, the monitoring committee is composed, in addition to the Member State authorities' representatives, also of representatives of partners independent of the Member State authorities (listed in Article 8, paragraph 1 of the CPR). According to Article 40 paragraph 2 letter d) of the CPR the monitoring committee approves any proposal of the governing body to amend the program. However, in relation to the mid-term review in terms of Article 18 CPR, the role of the monitoring committee is not explicitly described. In this context, we therefore ask whether the approval of a change in the program is required by the monitoring committee even in a situation where the European Commission requests an amendment in the sense of Article 18 paragraph 4 letter b). If so, how should one proceed in a situation where, according to Article 18 paragraph 4 letter b) of the CPR, the European Commission asked the Member State to submit an amended program based on the mid-term review, but the concerned monitoring committee would not agree with the requested program change (e.g., due to votes of members who do not represent Member State authorities)? Alternatively, what would be the procedure for a situation where a change proposed by the European Commission would concern several programs, while only one of the concerned monitoring committees would agree to the change?

Answer:

Where the MTR assessment concludes that an amendment of a programme is needed in accordance with Article 18(3) CPR or the COM disagrees with the MS' request to confirm the FA and requests it to submit a programme amendment pursuant to Article 18(4)(b), the MC has the role to approve corresponding amendment requests, as granted to it under Art. 24 CPR. To eliminate cases such as described in the question, the assessment of the MTR outcome should first be discussed with the COM before the file is sent to the MC for approval and subsequently submitted to the COM through SFC2021. The purpose of the informal dialogue is to reach an agreement on the MTR procedure to be followed (i.e.,18(3) or 18(4) CPR). If the COM assessment of the MTR file submitted in accordance with Article 18(4) concludes that a programme amendment is necessary, the corresponding letter from the COM will outline the scope of required changes. The MS and COM should then engage in an informal

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

dialogue to determine if all such changes can be implemented before the file is examined and approved by the MC. Should the MC subsequently:

→ scenario 1: disagree with the requested changes, the MS will submit an amendment request according to the vote of the monitoring committee. If COM has any observations, they must be communicated to the MS within two months of the submission of the request. National rules (i.e., rules of MC procedures) determine if the MC needs to be reconsulted by the MA. Technical meetings should be organised if divergent views persist. If no agreement can be found at the technical level, the matter should be brought up to the political level.

→ scenario 2: disagree with the need to amend a programme, as requested by the COM pursuant to Article 18(4)(b) CPR, the matter should be first discussed at the technical level. If no solution is found at this level, the matter should be brought up to the political level to resolve the conflict and find a way forward.

QA00354 - CHANGES IN SFC FOR THE MID-TERM REVIEW ENCODING

Relevant Article: Art. 18 CPR

Member State: LV

Question 1 (including any relevant facts and information):

When will necessary changes in SFC2021 will be available regarding the possibility to re-allocate the flexibility amount? For example, will there be a possibility for some priorities to have more than 50% of 2026 and 2027 funding and some to have none?

Answer:

SFC2021 is ready for the encoding of the MTR. The proposal for reallocation of the flexibility amount should be underpinned by the assessment of the MTR outcome. Thus, if justified by the MTR assessment and subsequently accepted by the COM, the MS may propose to reallocate the flexibility amount as relevant. In that respect, some priorities would have no FA allocated to them, while for some, the level would be higher than the initial 50% of the 2026 and 2027 allocation (i.e., cca 15% of the priority allocation).

If the FA is reallocated to other priorities in accordance with Article 18(3) CPR or if it is confirmed in accordance with Article 18(4) CPR, the FA should stay in the financial tables in the columns related to the FA, i.e. they should not be moved to columns with 'Union contribution less flexibility amounts'.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

If the FA is reallocated between the priorities of the same programme, it means that the levels in table 10 in the years 2026 and 2027 will remain the same as at adoption time. If the FA is reallocated to other programmes, the levels will differ from the initial 50% of 2026 and/or 2027.

QA00358 - TIMING FOR PROGRAMME AMENDMENTS STEMMING FROM MTR ASSESSMENT OUTCOME

Relevant Article: Art. 18 CPR

Member State: DE

Question 1 (including any relevant facts and information):

If the mid-term review assessment concludes that a programme amendment is needed, does the specific amendment also need to be submitted by the end of March 2025?

Answer:

In accordance with Article 18(3) CPR, if deemed necessary following the mid-term review of the programme or in the event that new challenges are identified under Article 18(1) CPR, the MS should submit to the Commission an assessment of the MTR together with the amended programme by the end of March 2025.The reasoned request for the amendment should explain the scope of changes made as a result of the mid-term review, e.g., reallocation of the flexibility amount between priorities, revision of milestones / targets etc. The MS are strongly encouraged to discuss the assessment of the MTR outcome, pre-agree the MTR procedure with the Commission and, in the case of an amendment, the scope of changes to be made in the programme during the informal dialogue before the official submission of the file in SFC2021.

QA00364 - TIMING AND PROCESS OF COM'S RESPONSE TO OP AMENDMENTS SUBMITTED AS OUTCOMES OF THE MID-TERM REVIEW

Relevant Article: Art.18, 24 CPR

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State: HU

Question:

How long does the Commission have to make a decision about the OP amendment (the communication so far states that the Commission has 3 months to approve and 2 months to request the Member State to modify, but the time for the modification process itself has not been specified), and after the request, how long does the Member State have to submit the modified amendment? What if there is disagreement on the proposed amendment?

Answer:

A thorough informal dialogue should be conducted between the MS and the COM before the official submission of the MTR file to ensure that both Parties pre-agree on the MTR procedure to be followed after the MTR assessment, thereby eliminating or at least reducing the number of instances where a programme amendment could be requested by the COM pursuant to Article 18(4)(b).

The request to amend the programme is sent by the MS following either a request by the COM under Article 18(4)(b) or on its own motion under Article 18(3) CPR together with the MTR assessment, after which the COM assessment is done in accordance with Article 24(2), i.e., COM has 2 months from the submission of the amendment to make observations. The MS should review the amended programme, taking into account the observations made by the COM.

Furthermore, we note that the deadlines mentioned in the question pertain to situations where following the assessment of the MTR outcome, MS wants to confirm the FA without any changes in the programme in accordance with Article 18(4)CPR. If the COM agrees with the request, the decision confirming the FA should be adopted within 3 months (18(4)(a) CPR). In the case of a disagreement, The request to submit a programme amendment needs to be made by the COM within 2 months (18(4)(b) CPR).

Finally, the CPR does not specify how quickly the MS should submit a programme amendment following the COM request. It is expected that the amendment will be submitted within a reasonable timeframe allowing MS for its preparation, an informal check with the Commission and the approval of the amendment by the MC. The COM letter requesting an amendment pursuant to Article 18(4)(b) CPR may also specify an indicative deadline. EMPL: It should be recalled that in accordance with Art. 86(1), the flexibility amounts are definitively allocated to the programme after the adoption of the MTR decision by the Commission. Therefore, is in the interest of the MS that the programme amendment be submitted shortly after the Commission request.

If MS submits an amendment of the programme following the MTR outcome and the COM objects it, an observation letter may be sent in accordance with Article 24(2) CPR, asking MS to withdraw the amendment or to modify the scope of the request wherever relevant. Should the MS wish so, a meeting can be organised to discuss the

observations in more details. In the event of a disagreement at the technical level, the matter will be brought to the political level to facilitate a compromise.

QA00372 - PERCENTAGE OF FLAT RATE IN A STATE AID RESEARCH PROJECT OF CPR FUNDS

Relevant Articles:

Article 53 of CPR

Articles 7 and 25 of Regulation No 651/2014 (GBER)

Member State: AT

This Q&A was updated on 27 November 2025. The changes are struck through and the added text is in blue and underlined.

Question 1 (including any relevant facts and information):

According to Article 25 (3) of the GBER, a 20% flat rate is applied to indirect costs. In contrast, a 25% flat rate applies under Horizon Europe. In this context, we would like to clarify whether the 25% flat rate used in Horizon Europe can also be applied to a state aid research project funded by CPR funds.

Answer:

~~From your question, it is unclear whether the support to the project at issue constitutes State aid and whether it is granted under an aid for research and development projects scheme under Article 25 of Regulation (EU) No 651/2014 ('GBER'). If this is the case, the aid must comply with both the "Common Provisions" (Chapter I) and the "Specific provisions for different categories of aid" (Chapter III) of the GBER (see in this respect Article 3 and 25(1) GBER).~~

The 25% flat rate to calculate indirect costs (overheads) set under Horizon Europe Regulation could be used by a Member State for operations co-financed by the Cohesion Policy Funds in accordance with Article 53(3)(c) CPR as a corresponding flat rate applicable in Union policies for a similar type of operation.

Article 7(1) GBER~~(in Chapter I "Common Provisions")~~, as last amended by Regulation (EU) 2023/1315, allows the calculation of the amount of eligible costs by using the SCOs that are set out in the relevant rules governing the Union fund, provided that:

- an operation is at least partly financed through a Union fund that allows the use of simplified cost options;

- the category of costs is eligible according to the relevant exemption provision.

Therefore, for research and development projects which fall under the GBER and co-financed by EU cohesion policy funds, the use of the 25% flat rate is allowed by Article 7(1) GBER because it is allowed by the CPR.

For research and development projects, Article 25(3)(e) GBER (in Chapter III "Specific provisions for different categories of aid") introduces a flat rate up to 20 % that can alternatively be applied~~in research and development projects~~ for calculating additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project, without prejudice to the above-mentioned Article 7(1) GBER. The flat rate is to be applied to total eligible research and development project costs referred to in Article 25(3)(a) to (d) GBER, regardless of whether the project is co-financed by the Union fund or not.

~~If the measure co-financed by EU Funds constitutes State aid within the meaning of Article 107 TFEU, the operation must comply with all relevant State aid rules. In this case, it means that, if the aid is granted as an "Aid for research and development projects" under Article 25 GBER, the maximum of 20% flat rate introduced by Article 25(3)(e) GBER applies to calculate overhead costs, thus cannot be increased up to 25% for these costs.~~

~~The 25% flat rate to calculate indirect costs (overheads) set under Horizon Europe Regulation could be used by a Member State for operations co-financed by the Cohesion Policy Funds in accordance with Article 53(3)(c) CPR as a corresponding flat rate applicable in Union policies for a similar type of operation, on the condition that it does not contradict other applicable Union law. If the support constitutes State aid exempted under Article 25 of the GBER, the maximum flat rate for overhead costs must be respected. If the support constitutes State aid, the possibility to apply the 25% rate must always be checked against the State aid rules that apply. When applying the methods used in other Union policies, the Member State has to ensure that the method is used in its entirety and does not contradict any other applicable Union law.~~

Based on the above provisions, for projects co-financed by EU cohesion policy funds which also fall under the GBER, Member States could use the flat rate under Article 7(1) GBER, which allows the 25% flat rate or, alternatively, the 20% flat rate under Article 25(3) GBER, provided that the respective cost category is recognised as eligible under Article 25 GBER.

QA00373 - COMPLETION DATE OF PROJECTS 2021-27

Relevant Articles: Article 2 (37), Article 43 (1) and Article 98 (8) of the CPR

Member State: DE

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

Does the CPR 2021/1060 require projects to be 'completed' within the meaning of Article 2(37) of the Regulation, i.e. registered as 'functioning' and in line with Art. 98 para. 8 in conjunction with Art. 43 para. 1, i.e. no later than 15 February 2031, at the time of submission of the closure documents (and not earlier)? We see no difference here compared to the provisions of Regulation 1303/2013 and therefore we assume that this is the case.

Answer:

Member States must ensure that all operations supported under the programme are functioning, i.e., have been completed within the meaning of Article 2(37) of the Regulation 2021/1060 (CPR) and are in use hence contributing to the objectives of the relevant specific objective, by 15 February 2031 which is the deadline to submit a final performance report as per Article 43(1) CPR.

QA737_EMFAF_CLARIFICATION REQUEST REGARDING INADMISSIBILITY OF OPERATIONS

Relevant Article: Article 11 and 17 of the EMFAF Regulation

Member State: HR

Question 1:

We are in the process of drafting a national ordinance which defines in details type of action under Article 17 of Regulation (EU) 2021/1139 for supporting young fishermen in the first purchase of fishing vessel and we would need a clarification in the context of the application of Article 11 of Regulation (EU) 2021/1139.

Article 11(1) of Regulation (EU) 2021/1139 provides that an application for support submitted by an operator shall be inadmissible if it has been determined by the competent authority that the operator concerned:

a) has committed serious infringements under Article 42 of Council Regulation (EC) No 1005/2008 or Article 90 of Regulation (EC) No 1224/2009 or under other legislation adopted by the European Parliament and the Council within the framework of the CFP

b) has been involved in the operation, management or ownership of a fishing vessel included in the Union IUU vessel list as set out in Article 40(3) of Regulation (EC) No

1005/2008, or of a vessel flying the flag of countries identified as non-cooperating third countries as set out in Article 33 of that Regulation.

In addition, paragraph 2 of the same Article stipulates that if any of the situations referred to in paragraph 1 occurs throughout the period between submitting the application for support and five years after the final payment, the support paid from EMFAF and related to that application shall be recovered from the operator.

According to Article 17(2) of Regulation (EU) 2021/1139, the beneficiary of this support does not necessarily have to be an operator within the meaning of Article 4(1)(30) of Regulation (EU) 1380/2013 at the time of submission of the application for support or even until the submission of the payment claim. Namely, the beneficiary (natural person) does not have to have work experience as a fisherman but can instead have an adequate qualification acquired. Furthermore, he/she must not have previously owned a fishing vessel. In other words, such a beneficiary becomes an operator by acquiring a fishing vessel and starting to perform actually commercial fishing with this support.

Furthermore, in our understanding, taking into account the provisions of Commission Delegated Regulation (EU) 2022/2181, compliance with Article 11(1)(a) and (b) of Regulation (EU) 2021/1139 is determined in relation to the fishing vessel that is the subject of application for support submitted by the operator, without prejudice to Article 8 of the same Commission Delegated Regulation (if the operator owns or has under its control more than one fishing vessel). In the context of the funding under Article 17 of Regulation (EU) 2021/1139, the beneficiary indicates in the application for support a fishing vessel which he/she is planning to purchase, i.e. the vessel that he/she does not yet own or control at the time of submission of the application for support.

We would therefore appreciate a clarification on how provisions of Article 11(1)(a) and (b) and Article 11(2) of Regulation (EU) 2021/1139 should be applied in case of such beneficiaries, in particular when assessing the eligibility of the application for support, i.e. when the Managing Authority is verifying the veracity of that beneficiary`s statement before approving the application in accordance with Article 11(6) of Regulation (EU) 2021/1139.

Answer:

In line with Article 11(1) of Regulation 2021/1139 (EMFAF Regulation) *an application for support submitted by an operator shall be inadmissible for an identified period of time laid down pursuant to paragraph 4 of this Article, if it has been determined by the competent authority that the operator concerned:*

(a)	*has committed serious infringements under Article 42 of Council Regulation (EC) No 1005/2008 or Article 90 of Regulation (EC) No 1224/2009 or under other legislation adopted by the European Parliament and the Council within the framework of the CFP;*

(b)	*has been involved in the operation, management or ownership of a fishing vessel included in the Union IUU vessel list as set out in Article 40(3) of Regulation (EC) No 1005/2008, or of a vessel flying the flag of countries identified as non-cooperating third countries as set out in Article 33 of that Regulation;*

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

2.If any of the situations referred to in paragraph 1 of this Article occurs throughout the period between submitting the application for support and five years after the final payment, the support paid from EMFAF and related to that application shall be recovered from the operator, in accordance with Article 44 of this Regulation and Article 103 of Regulation (EU) 2021/1060.

Commission Delegated Regulation 2022/2181 further details the EMFAF as regards the starting dates and time periods for the inadmissibility of applications for support. For the purposes of this Delegated Regulation, the definitions referred to in Article 4 of Regulation No 1380/2013 (CFP Regulation) apply. The term operator is defined in Article 4.1(30) of the CFP Regulation as "*the natural or legal person who operates or holds any undertaking carrying out any of the activities related to any stage of production, processing, marketing, distribution and retail chains of fisheries and aquaculture products*".

We understand that your question concerns the assessment of admissibility requirements in cases where applications under article 17 are submitted by "young fishers" which do not (yet) qualify as operators.

Taking into account the provisions of the EMFAF Regulation (which refer to "operator" and not to "fishing vessel") and several provisions of Commission Delegated Regulation 2022/2181 (notably Article 9(1)), compliance with Article 11(1)(a) and (b) of the EMFAF Regulation is assessed in relation the operator and not to the fishing vessel notably for reasons of fair treatment of operators who become new owners.

Any inadmissibility remains with the initial owner despite the sale or other type of transfer of ownership of a vessel 1) included in the Union IUU vessel list or 2) flagged to a non-cooperating third country. The same applies for any serious infringements committed under Article 42 of Council Regulation (EC) No 1005/2008 or Article 90 of Regulation (EC) No 1224/2009 or under other legislation within the framework of the CFP.

The vessel's history may be relevant in the context of Article 9(2) of Commission Delegated Regulation 2022/2181. Infringement points which are assigned for serious infringements committed prior to the change of ownership of the fishing vessel will be taken into account for the purposes of triggering the inadmissibility and calculating the duration of the inadmissibility period of the new operator when the new operator commits, after the change of ownership, a serious infringement.

Therefore, for young fishers, who at the moment of application would not qualify as operators, in the context of Article 17 of the EMFAF Regulation, the Managing Authority needs to check compliance with Article 11(1) of the EMFAF Regulation from the moment the "young fisher" becomes owner of the vessel and five years after the final payment. A verification as to infringement points assigned for serious infringements committed under Article 42(1)(a) of Regulation (EC) No 1005/2008 or Article 90(1)(a) and (c) of Regulation (EC) No 1224/2009 prior to the change of ownership of the fishing vessel would become relevant in case the young fisher were to commit after the change of ownership, a serious infringement under Article 42(1)(a)

of Regulation (EC) No 1005/2008 or Article 90(1)(a) and (c) of Regulation (EC) No 1224/2009.

In accordance with the general principles of Union support for the EU Funds, the MA should not only rely on the declaration by the beneficiaries, but it should put in place appropriate mechanisms to check the compliance of the operator with Article 11 of the EMFAF Regulation.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA739_EMFAF_CLARIFICATION REGARDING THE COMPENSATIONS FOR NETS REPLACEMENT DAMAGED BY MARINE MAMMALS

Relevant Article: Article 25 of the EMFAF Regulation

Member State: CY

Question 1:

We would appreciate a Commission interpretation if according to the current EMFAF provisions, the compensation scheme to fishermen to compensate for damage caused to catches by protected species such as marine mammals, we can include not only the cost and income forgone due to the damages caused by the protected species to the catches but also the cost related to the damages and replacement of the gear/nets used.

Answer:

Under Article 25(1) the EMFAF may support actions that contribute to the protection and restoration of aquatic biodiversity and ecosystems.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Paragraph 2 of Article 25 includes a non-exhaustive list of possible actions, such as actions to achieve or maintain a good environmental status in the marine environment, as set out in Article 1(1) of Directive 2008/56/EC (Art. 25.2(c) of the EMFAF, and actions for the protection of species under Directives 92/43/EEC and 2009/147/EC, taking into account the prioritised action frameworks established pursuant to Article 8 of Directive 92/43/EEC (Art. 25.2(f) of the EMFAF).

Given the non-exhaustive list of possible actions, costs relating to damages and replacement of gears/nets are not excluded in principle. However, under Article 25(1), the EMFAF may finance the cost related to the damages and replacement of the gear/nets caused by protected species such as marine mammals, only to the extent that this contributes to protection and restoration of aquatic biodiversity and ecosystems.

However, since such type of action is not included in the Cypriot EMFAF programme, it will only be eligible if a programme amendment is submitted to the Commission.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA00342 - CUMULATIVE FINANCING BETWEEN THE INNOVATION FUND PROJECTS AWARDED STEP SEAL AND USING LUMP SUMS FINANCING AND COHESION POLICY

Relevant Articles: Articles 53, 63 and 73 of the CPR

Member State: n/a

Question 1 (including any relevant facts and information):

Taking into account the possibility in the last subparagraph of Article 63(9) CPR, can a pro-rata approach be used also in combination with another Union instrument when the other Union instrument's financing is based on lump sums, and the cohesion policy

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

funding on expenditure based on real cost? Can double financing be prevented in such a case?

Answer:

According to Article 63(9) CPR, an operation may receive support from one or more Funds or from one or more programmes and other Union instruments. In such cases, expenditure declared in a payment application for one of the Funds cannot be declared for support from another Union instrument.

In addition, the amount of expenditure to be entered into a payment application of a Fund may be calculated for each Fund and for the programme or programmes concerned on a pro rata basis, in accordance with the document setting out the conditions for support.

The granting authorities need to ensure that the respective State aid rules are observed. The managing authorities under cohesion policy also need to ensure that the co-financed operation is selected under the relevant programme following Article 73 CPR requirements.

We understand that, under the planned pro rata approach the beneficiary would receive a lump sum from the directly managed Union instrument linked to the achievement of pre-defined activities/outputs, and based on the submission by the beneficiary of a technical report outlining the progress towards the achievement. At the same time, it is planned that complementary cohesion policy funding would be implemented on the basis of expenditure based on real cost.

In accordance with Article 125(1)(d) of the Financial Regulation, lump sums cover in global terms all or certain specific categories of eligible costs which are clearly identified in advance. Therefore, lump sums should not be declared to the cohesion policy funds if they have already been reimbursed under another fund or programme.

In such a set-up, there would be no practical way for the managing authority to verify if the same underlying expenditure as already covered by the lump sum under the directly managed Union instrument is declared in a payment application for cohesion policy funding. Therefore, in view of the prohibition of the double declaration of expenditure pursuant to Article 63(9) CPR as well as that of double funding embedded in Article 191(3) of the Financial Regulation, a pro rata cumulative funding between a directly managed Union instrument using lump sums and cohesion policy Funds using expenditure based on real cost is not possible.

In view of the above, the managing authority might consider another type of split of expenditure of an operation besides the pro-rata, which would ensure exclusion of double-funding – e.g., a split based on pre-agreed division of deliverables between the directly managed instrument and cohesion policy, thus ensuring that expenditure declared for support from directly managed instrument are not declared in payment applications under cohesion policy to ensure compliance with Art 63(9)CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 2 (including any relevant facts and information):

How can cohesion policy programmes provide complementary financing on a pro-rata basis to directly managed instrument financing using lump sums?

Answer:

According to Article 53(1)(c) CPR, grants provided by Member States to beneficiaries under cohesion policy may also take the form of a lump sum. In this case, all eligible expenditure or part of eligible expenditure of an operation are calculated on the basis of an amount established and duly justified in advance and are reimbursed if predefined activities and/or outputs are completed. A pro-rata approach in an operation combining cohesion policy funding with a directly managed Union instrument funding could be envisaged whereby the respective managing authority under cohesion policy takes over the lump sum defined by the Commission service responsible for the directly managed Union instrument in the grant agreement, where this lump sum covers all expenditure to be declared to the Commission to receive Union support. The managing authority would have to ensure that the methodology used to establish the lump sum and its amount need to comply with the requirements set out in Article 53(3) CPR. In addition, all documents required for the audit trail as set out in Annex XIII CPR are to be kept according to Article 69(6) CPR.

During the implementation of the project, before paying the agreed part of the lump sum, the managing authority should contact the Commission (via the service in charge of the directly managed instrument) and agree on a common position concerning the achievement of the pre-defined activities/outputs based on the submission by the beneficiary of a technical report outlining the progress towards the achievement. Following this common position, in line with the rules set in the respective document setting out the conditions for support (e.g. grant agreement), the managing authority would be able to include the agreed pro-rata part of the lump sum amount related to the achieved activities/outputs as expenditure in a payment application under cohesion policy in accordance with Article 63(9) CPR.

Similarly to the case under the first question, the granting authorities need to ensure that the respective State aid rules are observed. The managing authorities under cohesion policy also need to ensure that the co-financed operation is selected under the relevant programme following Article 73 CPR requirements.

QA00375 - CAN THE ERDF SUPPORT RESEARCH AND DEVELOPMENT OF NEW TECHNOLOGIES IN THE AREA OF NUCLEAR FUSION ENERGY?

Relevant Article: Art. 7 ERDF

Member State: ES

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

During the informal dialogue of an upcoming programme modification, the region of Andalusia informed the Commission about its intention to support with the ERDF 2021-2027 Programme the following two projects under the scope of Regulation 2024/795 (STEP Regulation):

- IFMIF DONES Project: to build a Research infrastructure to develop materials able to resist high temperatures necessary to put in place fusion processes;
- TOKAMAK Project: to construct a Small Aspect Ratio Tokamak, a new technology that should generate higher power for the production of energy from nuclear fusion.

The aim of these projects is not to produce nuclear energy in itself since they both focus on research in the field of nuclear fusion energy.

In 2014-2020, the ERDF supported a Tokamak research project in the region of Andalusia and in other countries (Italy and Romania). The new Romanian programme for Smart growth also supports the construction of an experimental reactor in 2021-2027.

Can the ERDF support research and development of new technologies in the area of nuclear fusion energy?

Answer:

Art. 7 of the ERDF regulation indicates that the ERDF shall not support the decommissioning or the construction of nuclear power stations.

Support to projects in the area of research for nuclear fusion energy do not fall under the exclusion listed in Art. 7 ERDF.

Moreover, under Article 2(1), point (a) number (ii) of the STEP Regulation, the ERDF can support clean and resource efficient technologies, including net-zero technologies as defined in the Net-Zero Industry Act ("NZIA") (Regulation (EU) 2024/1735 of 13/06/2024); its Article 4(1) lists the net-zero technologies falling under the scope of the NZIA. Among those technologies, point (i) of Article 4(1) relates to "nuclear fission energy technologies, including nuclear fuel cycle technologies" and point (s) refers to "nuclear technologies not covered under previous categories". As nuclear fusion fundamentally diverges from nuclear fission, support to nuclear fusion technologies can be granted under point (s). The ERDF could support nuclear-related operations, such as applied research and development of new technologies in the field of nuclear fusion.

Whether the two specific projects referenced above could and should be supported by the ERDF programme for Andalusia needs to be determined on a case-to-case basis, in line with the established processes for the assessment and selection of operations.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00376 - INFORMATION ON THE BENEFICIAL OWNERS

Relevant Article: Articles 69(2) and 72(1)(e) and Annex XVII to Regulation (EU) 2021/1060

Member State: SI

Questions (including any relevant facts and information):

1. Given that the Regulation requires the managing authority (MA) to establish a system enabling the digital tracking of beneficial owners, is it appropriate for beneficiaries (e.g., national employment service, SID Bank for Financial Instruments (financial intermediary), or SPS as a beneficiary) to manage and maintain these records independently in cases where they issue calls for potential "final beneficiaries" to apply, while the MA retains oversight
2. How to proceed when the beneficial owner is from a foreign country (is a legal entity registered in a foreign country) and the MA cannot obtain all the necessary data required under the Regulation (e.g. date of birth)? Could these cases be considered as exceptions, with justification and relevant audit trail that the data could not be collected?

Answer:

Question 1

In accordance with Article 69(2) CPR, the collection of information on the beneficial owners of the recipients of Union funding in accordance with Annex XVII is the responsibility of the Member State. Article 72(1)(e) CPR states that recording and storing electronically the data on each operation in accordance with Annex XVII, and ensuring the security, integrity and confidentiality of data and the authentication of users, is one of the functions of the managing authority. While the managing authority may identify an intermediate body to carry out this function under its responsibility, it cannot delegate it to the beneficiary. The Managing authority needs to ensure the security, integrity and confidentiality of data and the authentication of users. When more than one system or register are used to comply with the requirements of Articles 69(2) and 72(1)(e) CPR interoperability between systems/registers as well as unique identification of beneficiaries and operations is recommended.

Question 2

The obligation to collect data on beneficial owners of beneficiaries or contractors in line with the requirements set out in Annex XVII CPR applies equally to all beneficial owners, irrespective of their country of origin/registration and there are no exceptions. The managing authority is to ensure that data are collected, recorded, and stored electronically. Member states may comply with this requirement [among other things, to collect dates(s) of birth of beneficial owners] by using the data stored in the

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

registers as referred to in Article 30 of Directive (EU) 2015/849, provided a unique identification number is included.

QA00377 - APPLICATION OF STATE AID RULES IN REG. (EU) NO. 651/2014 VS. REG. (EU) 2021/1058

Relevant Articles:

Article 7(d) of the ERDF/CF

Article 2(18) and Article 1(4)(c) of *GBER (EU) 651/2014*

Member State: SK

Question 1 (including any relevant facts and information):

The Managing Authority/Intermediate Body intends to support environmental burdens remediation projects from the European Regional Development Fund/Cohesion Fund. The remediation works are carried out by ministries designated by the Government of SK in relation to a specific environmental burden (e.g. the Ministry of the Environment, the Ministry of Economy, the Ministry of Defence, etc.). These ministries are beneficiaries of ERDF/CF funds.

Environmental burdens remediation projects are usually implemented on numerous land/parcels, where some of the land/parcels could be privately owned, whether by individuals or legal entities. In case that remediation would be carried out also on a privately owned land/parcel, the designated ministries (as ERDF/CF beneficiaries) could become providers of indirect State aid; in that case, they would be obliged to proceed in accordance with the relevant provisions of the state aid regulations. In this specific case, the designated ministries would be both beneficiaries under the ERDF/CF Regulation (EU) 2021/1058 and at the same time providers of state aid under the GBER Regulation (EU) 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty. Therefore, a state aid scheme is under preparation, where intermediate body is defined as provider of state aid and designated ministries are defined as authorities granting the state aid.

The purpose of the state aid provided under the said scheme is to provide the remediation of environmental burdens also located on land/parcels owned by enterprises in the form of indirect aid – the implementation of remediation works on the land/parcels of the enterprise (i.e. enterprises are the beneficiary of the state aid according to the State aid rules).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Regarding the rules applying to the undertakings in difficulty, there are slight differences in respective wording of both regulations (State aid vs. ERDF/CF):

Firstly, under the State aid rules of GBER Regulation (EU) No. 651/2014, it is possible to provide state aid also to an undertaking in difficulty, if the enterprise, in accordance with Article 1(4)(c) of Regulation (EU) No. 651/2014 falls under the following exception: "*However, this Regulation shall apply, by derogation, to undertakings which were not in difficulty on 31 December 2019 but became undertakings in difficulty during the period from 1 January 2020 to 31 December 2021.*"

Secondly, ERDF/CF Regulation (EU) 2021/1058 defines the possibility or impossibility of providing support to an undertaking in difficulty in Article 7(d) as follows: "*The ERDF and the Cohesion Fund shall not support: d) an undertaking in difficulty, as defined in point (18) of Article 2 of GBER Regulation (EU) No 651/2014, unless authorised under de minimis aid or temporary State aid rules established to address exceptional circumstances*".

In the view of the above, we are looking for a clarification, whether in this specific case only the rules of providing state aid to undertakings in difficulty under the relevant state aid scheme are to be considered (point (4)(c) of Article 1of GBER Regulation (EU) 651/2014) or it is necessary to also apply the above mentioned rules concerning undertakings in difficulty as per ERDF/CF Regulation (EU) 2021/1058.

Answer:

The SK authorities intend to finance the remediation of the environmental burdens' projects mentioned above from ERDF/CF support, hence ERDF/CF rules shall apply accordingly.

Article 7(d) of the ERDF/CF Regulation (EU) 2021/1058 excludes undertakings in difficulty from the scope of the ERDF/CF support, unless such support is specifically authorised under the *de minimis* aid or temporary State aid rules established to address exceptional circumstances.

Article 1(4)(c) of Regulation (EU) No. 651/2014 provides that GBER rules shall apply to undertakings in difficulty which were not in difficulty on 31 December 2019 but became undertakings in difficulty during the period from 1 January 2020 to 31 December 2021. This provision was introduced by Commission Regulation (EU) No. 2020/972 of 2 July 2020, and further reconfirmed in Regulation (EU) 2021/1237 of 23 July 2021, in view of the economic and financial consequences of the COVID-19 pandemic. The GBER applies until 31 December 2026.

Article 1(4)(c) of Regulation (EU) No. 651/2014 is a temporary State aid rule established to address an exceptional circumstance, within the meaning of Article 7(d) of the ERDF Regulation. Therefore, provided that the support is granted under the GBER, ERDF support can be granted to undertakings which were not in difficulty on 31 December 2019 but became undertakings in difficulty during the period from 1 January 2020 to 31 December 2021.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00378 - QUESTION ON RISK FINANCE, GBER, UNDERTAKINGS IN DIFFICULTY

Relevant Articles:

Article 7(1)(d) of the ERDF Regulation;

Articles 1(4)(c), 2(18), 21(3), 21(4), 22 of GBER

Member State: LT

Question 1 (including any relevant facts and information):

The Lithuanian authorities (Ministry of Finance) are contacting the European Commission to clarify the eligibility requirement of undertakings in difficulty when aid is provided under ERDF funding within the framework of Regulation (EU) No. 651/2014 (GBER).

It is planned to implement a risk capital measure from ERDF funding according to Article 21 and Article 22 of GBER. Final beneficiaries will be enterprises, as outlined in the relevant articles of GBER:

1. micro and small enterprises (including startups) that meet the requirements set out in Article 22(2) of GBER;
2. unlisted SMEs that meet at least one condition specified in Article 21(3) of GBER;
3. follow-on investments to SMEs according to Article 21(4) of GBER.

Based on Article 7(1)(d) of the ERDF Regulation, undertakings in difficulty as they are defined in Article 2(18) of GBER are generally excluded from the scope of the ERDF and the Cohesion Fund, unless authorized under de minimis aid or under temporary State aid rules addressing exceptional circumstances. GBER Article 2(18) defines "undertakings in difficulty" and provides exceptions, particularly for SMEs that have been operating for less than three years or those eligible for risk finance aid under GBER Article 21(3)(b).

According to Article 1(4)(c) of GBER, the Regulation does not apply to undertakings in difficulty, except in specific cases, such as start-up aid schemes. This means that when implementing measures under GBER Article 22, it is not necessary to assess whether the aid recipient is experiencing financial difficulties. The Lithuanian authorities ask the Commission to clarify whether the ERDF Regulation narrows down the GBER concept, as in ERDF there is no reference to Articles indicated in 1(4)(c) of GBER.

In this context, the Commission is asked to confirm whether the Lithuanian authorities understand correctly that the requirement not to be an 'undertaking in difficulty' is not

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

to be taken into account for the purposes of granting ERDF funding under Article 22 of GBER.

Answer:

According to Article 7(1)(d) Regulation 2021/1058 "*The ERDF and the Cohesion Fund shall not support: (…) an undertaking in difficulty, as defined in point (18) of Article 2 of Regulation (EU) No 651/2014, unless authorised under de minimis aid or temporary State aid rules established to address exceptional circumstances;*"

This means that in principle ERDF/CF cannot support undertakings in difficulty as defined according to Article 2(18) GBER.

Article 2(18) of GBER defines an undertaking in difficulty as *"a limited liability company (other than an SME that has been in existence for less than 3 years or, for the purposes of eligibility for risk finance aid, an SME that fulfils the condition in Article 21(3), point (b), and qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, 'limited liability company' refers in particular to the types of company mentioned in Annex I to Directive 2013/34/EU of the European Parliament and of the Council (7) and 'share capital' includes, where relevant, any share premium*."

Under the definition of Article 2(18) GBER, the following are not considered as falling under the definition of 'undertaking in difficulty':

- SMEs that have been in existence for less than 3 years;

- in case of risk finance aid (financial instrument), SMEs that fulfil the condition in Article 21(3), point (b), and qualifies for risk finance investments following due diligence by the selected financial intermediary.

Therefore, if the support is granted under the form of risk finance aid, as we understand is the case here, ERDF support can be granted to SMEs provided they fulfil the condition in Article 21(3), point (b) of the GBER and qualify for risk finance investments following due diligence by the selected financial intermediary.

Following this, SMEs (including startups) receiving aid under the form of risk finance under Article 22(2) of GBER do not fall under the definition of undertakings in difficulty, and therefore can benefit from ERDF support, if they are SMEs fulfilling the conditions of Article 21(3), point (b) of the GBER and qualify for risk finance investments following due diligence by the selected financial intermediary.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00379 - TRANSFERING BACK REMAINING RESOURCES FROM THE TRANSITION REGION TO LESS DEVELOPED REGIONS

Relevant Article: Art. 111 of the CPR

Member State: BG

Question 1 (including any relevant facts and information):

In the context of mid-term review and under Article 111 of the CPR, BG wishes to request an additional transfer of up to 10% of the total allocations for less developed regions to the transition region.

In the event of unspent transferred resources in the future, is it possible to transfer back the remaining resources from the transition region to the less developed regions?

Answer:

If the transfer of resources from the allocation for less developed regions to the transition region is accepted by the Commission services, it is possible later to transfer back all or part of those resources to the less developed regions. Transfers back may be done at the latest in 2027, so the request for a programme amendment requesting such a transfer would need to be submitted in due time to allow for its assessment and adoption pursuant to the procedure set out in Article 24(1)-(4) CPR as well as to make related decommitment and re-commitment of resources.

In accordance with Art. 111 CPR, the Commission has a right to decide if it will accept a proposal by a Member State related to a transfer (and a transfer back) between the categories of region.

QA00381 - APPLICATION OF THE CONDITIONALITY REGULATION TO THE COHESION POLICY PROGRAMMES

Relevant Article: Article 26 of the CPR

Member State: HU

Question 1 (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Hungary lost EUR 1.04 bn at the end of 2024 due to the Rule of Law Conditionality mechanism. Do the financial tables of the three concerned programmes need to be modified to reflect the loss? If yes, when and how?

Answer:

The legal and budgetary effects of the Council Implementing Decision (EU) 2022/2506 (CID) based on the Regulation (EU, Euratom) 2020/2029 (Conditionality Regulation), do not depend on the amendment of the financial plans of the concerned programmes. In effect, the 2022 suspended commitments by the CID have been effectively cancelled as of 1 January 2025 and the overall resources of the three programmes have been consequently reduced.

However, the financial plans of the three concerned programmes should be aligned with the actual legal commitments. The financial plans could be adjusted together with the programme amendment submitted by the Member State in accordance with Article 24 CPR or due to a de-commitment in accordance with Article 107(3) CPR. In the absence of a programme amendment or de-commitment, Article 107(3) CPR should be applied by analogy including the deadlines set out therein.

Question 2:

As the total allocation decreased for the MS, does the ceiling of the TA allocation decrease as well, and in case the original allocation was higher for a certain fund than the new ceiling (this would be the case for CF and JTF), does Hungary need to reallocate the extra amount from the TA programme to non-TA programmes? If yes, when and how? Is it possible to modify the financial tables of programmes (transfer of resources of the same fund and category of region to another programme) for past and current calendar years?

Answer:

Yes, the regulatory ceilings for the TA need to be respected throughout the whole programming period and therefore in case of the cancellation of part of the support, the TA allocation must be adjusted (reduced) accordingly. Based on this and taking into account that Hungary has a dedicated TA programme, the Hungarian authorities should submit the programme amendment to reduce the TA allocation through reallocating part of the TA to other programmes.

In case of transfer within one Fund and within the same category of region, transfer of resources of the current calendar year is possible. Such transfers may be done either through a programme amendment or, in case of a transfer within the same programme, a procedure pursuant to Article 24(5) CPR on non-substantial transfers.

Member State should be advised to submit the request for programme amendment related to such a transfer timely in order to proceed with the adoption of amendment

in line with the procedure set out in Article 24(1)-(4) CPR as well as corresponding decommitment and re-commitment before the end of the year.

In case of transfer between two programmes where the 2025 allocations are modified, the amendment of the two programmes concerned (together with corresponding decommitments and re-commitments) would need to be completed in 2025.

For completeness:

- in case the adjustment of the TA allocation requires a transfer between the cohesion policy funds, only resources from future calendar years can be transferred in line with Article 26(5) CPR;
- in case the adjustment of the TA allocation requires a transfer between categories of region transferring resources of the current calendar year is possible, however such transfer may only be requested during the mid-term review (also in this case amendment of the programmes concerned, together with corresponding decommitments and re-commitments, would need to be completed in 2025).

Transfers, contributions or allocations in accordance with Articles 14(2), 24(5) 4th subparagraph and 26(5) and 111 CPR, shall not affect previous calendar years.

Question 3

As the total allocation decreased for the MS, does the allocation for the thematic concentration and sustainable urban development needs to be reassessed? Article 4(11) and 11(4) ERDF/CF refer to the procedure under Article 105 CPR and to the decommitment rules under the other EU legal acts.

In accordance with Articles 4(10) and 11(3) of the Regulation (EU) 2021/1058 (ERDF/CF Regulation), the thematic concentration requirements as well as the percentage allocated to sustainable urban development (SUD) need to be complied with throughout the entire programming period.

However, in accordance with Article 4(11) and 11(4) ERDF/CF, where the ERDF allocation is reduced following automatic decommitment pursuant Article 105 CPR the thematic concentration requirements as well as the percentage allocated to sustainable urban development do not need to be re-assessed.

The cancellation of part of the support in accordance with the CID can be considered as a decommitment under Article 105 CPR and the same approach should be applied i.e. the thematic concentration requirements as well as the percentage allocated to the SUD do not need to be re-assessed

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00382 - WHICH CONTRACT VALUE TO TAKE INTO ACCOUNT IN CASE A FRAMEWORK CONTRACT IS USED TO PROCURE SERVICES/SUPPLIES FOR AN OPERATION?

Relevant Article: Art. 55(1) of the CPR

Member State: NL

Question 1 (including any relevant facts and information):

Does the term 'value' in Article 55.1 of Regulation 2021/1060 refer to the value of the public contract(s) awarded within the context of the operation, and therefore – when a public body awards contracts under an existing framework agreement - to the value of the individual supply or service contract(s) awarded in the context of the operation?

Or does 'value' refer to the value of the framework agreement under which the public contract(s) of the operation is awarded, i.e. the maximum estimated value of all the contracts envisaged for the total term of the framework agreement?

Example

An educational institution wants to submit a grant application under a JTF call for proposals. The project focuses on renewing and expanding educational programmes on chemical recycling and provide on-the-job training for students, job seekers and employees. The eligible project activities include several communication activities to raise awareness and share project results targeting companies, schools and local citizens. The educational institution will hire a communications specialist to perform part of these activities. The estimated contract value is € 40.000. They will award the contract under a framework agreement for communication consulting services.

The educational institution is a public body. In January 2022, it established a framework agreement for communication consulting services with a duration of four years. The value of the framework agreement exceeds the threshold set out in Article 4 of Directive 2014/24/EU and was awarded via the appropriate European procurement procedure.

This framework agreement is the procurement tool for the award of subsequent individual contracts for communication consulting services.

In this example, the value of the contract for communication consulting services to be awarded as part of the operation does not exceed the thresholds in Article 4 of Directive 2014/24/EU, whereas the value of the framework agreement under which it will be awarded does.

Can the educational institution apply the simplified cost option in CPR Article 55.1 - i.e. a flat rate of up to 20% - to calculate the direct staff costs of the operation?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

According to Article 55 (1) CPR, the direct staff costs of an operation can be calculated at a flat rate of up to 20 % of the direct costs other than the direct staff costs of that operation. Member States can apply this flat rate without performing any calculation to determine the applicable rate provided that the direct costs of the operation do not include public works contracts or supply or service contracts which exceed in value the thresholds set out in Article 4 of Directive 2014/24/EU of the European Parliament and of the Council or in Article 15 of Directive 2014/25/EU of the European Parliament and of the Council.

In case the direct costs[1] of the operation contain costs stemming from a specific contract concluded under a framework contract and the value of this specific contract does not exceed the thresholds referred to above[2], the managing authority can use the flat rate of up to 20% set out in Article 55 (1) CPR without performing any calculation to determine the applicable rate.[3]

---

[1] As regards the AMIF, the BMVI and the ISF specifically, any costs subject to public procurement (i.e., the subcontracted/externalised costs) have to be excluded from the basis for the calculation of the flat rate, see second sub-paragraph of Article 55(1) CPR.

[2] Article 4 of Directive 2014/24/EU of the European Parliament and of the Council or in Article 15 of Directive 2014/25/EU of the European Parliament and of the Council

[3] See also Commission Notice – Guidelines on the use of simplified cost options within the Funds covered by Regulation (EU) 2021/1060 (Common Provisions Regulation) C/2024/8849, OJ C, C/2024/7467, 20.12.2024.

QA00383 - ELIGIBILITY OF EXPENDITURE FOR NEW INTERVENTION FIELDS (IFS) IN POLICY OBJECTIVE 5 AFTER THE INTEGRATED TERRITORIAL STRATEGIES ARE APPROVED

Relevant Article: Art. 29 and Art. 63.7 of the CPR

Member State: ES

Background:

Operations supported in the context of Policy Objective 5 (PO5) require an integrated and participatory planning based on the needs of each territory, as per art. 29 of the Common Provisions Regulation[1]. The preparation and development of these strategies require extensive consultation with the relevant stakeholders, collection of data and analysis. Therefore, until the integrated and participatory territorial

strategies are defined, it is not possible to indicate the exact Intervention Fields (IFs) and Indicators to reflect the actions that will be implemented under PO5.

For example, the programme Cataluña ERDF 2021-2027 includes an allocation of 27 MEUR under specific objective (SO) 5.2 to support integrated territorial strategies, to tackle population decline from an integrated perspective, with a view to retain talents in the region in line with the Communication on Harnessing talents. These strategies and investments are considered as a pilot in the context of Spanish programmes. The programme includes the description of the challenges for rural areas within the region, and identifies certain needs/deficits in terms of potential investments, pending the development of the territorial strategies The following intervention fields were originally selected:

1. Government ICT solutions, E-services, applications (13.365.000 EUR)
2. Housing infrastructure (other than for migrants, refugees and persons under or applying for international protection) (13.365.000 EUR)
3. Territorial development initiatives, including preparation of territorial strategies (270.000 EUR)

IF 169 -*Territorial development initiatives, including preparation of territorial strategies* was considered as a possible IF when the programme was approved to be used temporarily to cover IFs emerging after the finalisation of the territorial strategies. This IF has been extensively used by the managing authorities from various Member States.

Once the territorial strategies have been developed, after programme's adoption, it confirmed that, inter alia, improving broadband connection in certain areas needs to be supported. Thus, the Spanish managing authority plans so submit an amendment to describe more precisely the types of actions to be supported and to select the relevant indicators. However, the programme of Cataluña does not contain the IF for broadband infrastructure.

In accordance with Article 63(7) CPR, second subparagraph, as a rule, for the ERDF, the Cohesion Fund and the JTF, when a new type of intervention referred to in Table 1 of Annex I CPR is added in the programme, the expenditure that becomes eligible as a result of a programme amendment shall be eligible from the date of the submission of the corresponding programme amendment request.

The Spanish authorities pointed out that the broadband is an essential requirement to invest in ICT services that are a necessary to support economic development and service provision in depopulated areas. In this respect, it is to be noted that IF 016. "*Government ICT solutions, E-services, applications*" that was originally included in the programme cannot be supported in the absence of broadband infrastructure. They also claim that IF 169 is broad enough to cover the implementation of the actions defined through integrated territorial strategies and could cover the entire allocation of SO 5.2 since the detail on the operations supported can be seen in the selected indicators.

Question 1:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

1. **What is the scope of IF 169? Can IF 169 cover all actions to be supported through territorial strategies under the policy objective 5, without a need to introduce new codes and potentially new eligibility date?**
2. **Can code 169 temporary cover expenditure related potentially to other IF? So, if new codes are later introduced to reflect more accurately the actions to be supported under the territorial strategies, this does not affect the eligibility start date which is from the inclusion of the IF 169.**

Question 2:

In case the original programme identified a need and mentioned certain investments (such as improvement for connectivity for rural areas and roll out of necessary infrastructure) without selecting the corresponding intervention field, can these investments be considered eligible in PO5 since the beginning of the 2021-2027 period?

Answer:

As explained in footnote 3 to table 1 of annex I CPR the intervention fields are grouped by policy objectives, but their use is not limited to them. Any intervention field can be used under any policy objective. Especially for policy objective 5 all dimension codes under policy objectives 1 to 4 may be chosen in addition to those listed under policy objective 5.

Chosen intervention fields (IF) should strive to represent as accurately as possible the nature of actions supported under PO5.

The code 169 *Territorial development initiatives, including preparation of territorial strategies* should be used to cover community-led or other small scale local initiatives and innovative and integrated projects, where it is not always easy to categorise the interventions due to their fully bottom-up and/or innovative nature. It is possible to use this IF mainly for preparatory support, and for truly integrated innovative urban projects, e.g. in the context of the New European Bauhaus, where it would be difficult to categorise them under one particular IF. It may be used to cover preparatory steps related to the development of territorial strategies. The code does not cover the implementation of territorial strategies and the thematic areas it supports, for which other relevant intervention field codes should be used instead.

The needs of the territories covered by territorial strategies should have been specified in the programmes, hence the thematic areas of interventions should have been known to the managing authorities and tentative allocations to thematic intervention fields might have been defined in the programmes. However, where programmes opted for temporary allocation to IF 169, once the integrated territorial strategies have been selected for support under specific objectives 5.1 and 5.2 the intervention fields should be updated to reflect the type of interventions supported by selected strategies.

When newly introduced intervention field for specific objectives under PO5 during such an update correspond to the description of the actions or territorial strategies in

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

the programme, the introduction of the new intervention field(s) will not result in the new starting date of eligibility (please see QA00305, QA00332 and QA00057). This should be examined on a case by case basis and it should be established that the actions described in the text of the programme correspond to the scope of the new intervention field codes.

In relation to the example presented in question 2, since the programme refers to the need to improve connectivity and develop the necessary infrastructure, expenditure related to investments in ICT infrastructure, carried out in line with the territorial strategies, should be deemed eligible since the start of the period.

---

[1] Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021

QA00384 - Application of Article 9(d) of Regulation (EU) 2021/1056 (JTF)

Relevant Article:

Article 9(d) of Regulation (EU) 2021/1056 (JTF), recital 6 of Regulation (EU) 2021/1056

Member State: LT

Question 1 (including any relevant facts and information):

1. Does Article 9(d) of Regulation (EU) 2021/1056, which states that JTF funds do not support "*investments related to the production, processing, transportation, distribution, storage, or combustion of fossil fuels*" cover cases where a product obtained from fossil fuel processing (e.g., 70/100 grade base road bitumen conforming to EN 12591:2009) is used in the production of the final product? We also kindly ask for an explanation of whether, in accordance with the provisions of Regulation (EU) 2021/1056, investments aimed at producing a new product by mixing two different products—one of which is derived from oil refining (processing)—would be eligible for financing. For example, would the production of modified bitumen by mixing base road bitumen with a rubber polymer in order to reduce the amount of bitumen in the final product, be considered compatible within Art. 9(d) of Regulation (EU) 2021/1056?
2. In the case of a project financed by JTF funds, where it is planned to produce modified bitumen by mixing rubber polymer (obtained via extrusion from secondary raw materials such as end-of-life tire rubber and secondary plastics)

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

with 70/100 grade base road bitumen conforming to EN 12591:2009, would such production comply with the requirement set out in recital 6 of Regulation (EU) 2021/1056? This recital states that "*the JTF should support activities that respect the climate and environmental standards and priorities of the Union and do no significant harm to the environmental objectives within the meaning of Article 17 of Regulation (EU) 2020/852 of the European Parliament and of the Council, and that ensure the transition towards a low carbon economy in the pathway to achieving a climate-neutral Union by 2050*."

Example: The Member State has planned investments to promote the production of sustainable products by creating sustainable jobs, and one of the projects aims to produce modified bitumen by partially replacing petroleum bitumen with a rubber polymer.

It is planned to commence the production of modified bitumen (the investment envisaged in accordance with Regulation (EU) No 651/2014 would comply with the definition of an initial investment set out in Article 2(49) of Regulation (EU) No 651/2014). The modified bitumen would be produced by mixing rubber polymer with 70/100 grade base road bitumen conforming to EN 12591:2009 standard, resulting in an improved road-modified bitumen for road construction. The rubber polymer would be obtained via extrusion from secondary raw materials, specifically end-of-life tire rubber and secondary plastics. This rubber polymer would replace the currently used SBS (styrene-butadiene-styrene) polymer, which is directly derived from fossil fuel fractions. The resulting rubber polymer would be mixed with base road bitumen (reducing the proportion of the latter in the final product by 10–20%) as a result producing modified bitumen suitable for road construction and asphalt pavement production.

The Member State seeks clarification on whether JTF investments in the production of a final product containing a by-product of fossil fuel processing would be in no conflict with Article 9(d) of Regulation (EU) 2021/1056.

Answer:

Investments into production that entails the processing of an input derived from a fossil fuel that is technically inseparable from the ongoing production of the fossil fuel (e.g. bitumen as a by-product of crude-oil refining) are to be considered as related to the production, processing and/or combustion of fossil fuels. By consequence, the support of such production would fall under the exclusion from the scope of support as laid down in Art. 9(d) of the Regulation (EU) 2021/1056.

In that context, while the use of rubber polymer will reduce the petroleum bitumen in base road bitumen, it does not change the fact that still part of the mixed bitumen will directly come from the processing and/or combustion of fossil fuels. Thus, the use of JTF funding would anyway translate in an incentive for the use of fossil fuels.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00385 - ELIGIBILITY OF EXPENSES INCURRED ON FIXED ASSETS

Relevant Article:

Art 67 (2) (d) of the CPR, Art. 2(4)(a) of the CPR, Art. 14 and Art. 25(3)(b) GBER (Reg. 651/2014)

Member State: PL

Background

The question is linked to the issue of funding for pilot lines. ECA audits (13509 and 14194) in the context of the OP Smart Growth (2014-2020) pointed that, according to State aid regulations, the total costs of pilot production lines were wrongly classified as operating costs. On the contrary, only the depreciation costs for the duration of the activity (duration of the project or the research the equipment is used for) should have been eligible. The Polish Authorities are now trying to clarify how to fund the costs of equipment purchased in the framework of the modular projects selected under the European Funds for Smart Economy Programme (2021-2027, successor of the OP Smart Growth).

Guidelines for applicants should include adequate instructions to allow applicants to properly include in the application the information about the use of assets in both phases and to allow evaluators to assess eligibility of the assets, especially on those cases where the second phase depends on the success of the first one.

Context/description of the action

This question is raised in the context of modular research, development & innovation projects. This type of project is implemented under the European Funds for Smart Economy (FENG) programme and under some regional programmes in Poland.

Beneficiaries are SMEs or large enterprises cooperating with a SME or research organisation. Most of projects are implemented by a single beneficiary, but some calls for proposals are dedicated to consortia. These are bottom-up projects where applicants have the possibility to apply for a combination of various modules. SMEs have to include at least the R&D module or the implementation of innovation module. Large enterprises must include at least the R&D module. Other modules are optional (R&D infrastructures, digitalisation, greening, internationalisation, skills).

It is common that beneficiaries implement the R&D module and the implementation of innovation module. Often fixed assets are bought to be used in the two modules (this is notably the case when pilot lines are established). Under the R&D module, expenditures are financed under Article 25 of the GBER, therefore for equipment, depreciation costs are eligible. Expenditures under the implementation of innovation module are financed under article 14 of the GBER.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question (including any relevant facts and information):

In the context of an operation which is divided in two modules and for which some fixed assets are acquired at the beginning of the operation, would Article 67.2 letter d) of the CPR allow the following:

- Finance the depreciation costs of fixed assets in the R&D module
- Consider eligible for acquisition covered by a grant the non-depreciated part of the same asset under the implementation of innovation module.

It is provided that the project encompassed the two modules and has been submitted before any start of works or acquisition of considered assets.

This solution would enable 100% of the costs of the fixed assets to qualify for support and be treated as eligible.

Answer:

Pursuant to Article 63 CPR, the eligibility of expenditure shall be determined on the basis of national rules, except where specific rules are laid down in the CPR or in other applicable Fund-specific Regulations.

Depreciation costs for which no payment supported by invoices has been made may be considered eligible only if all conditions in points (a) to (d) of Article 67(2) CPR are cumulatively met, including the requirement under point (d) that public grants have not contributed towards the acquisition of the depreciated assets.

As explained in QA00003, for the purposes of this provision, a 'public grant' should be understood as any public contribution within the meaning of point 28 of Article 2 CPR, provided **in the form of a grant**.

Our understanding is that the fixed assets (such as equipment) eligible under the programme would be purchased without a public grant for the phase 1 of the operation, which is related to research and development. These assets would be depreciated over the duration of the research activity in phase 1 and entered in the beneficiary's accounts at the beginning of the operation, based on invoices.

However, in phase 2 of the operation, the acquisition of these assets by the beneficiary, even if reduced by depreciation cost, could not be considered eligible in line with Article 67(2)(d) CPR, as depreciation costs cannot be funded for assets which have received public grants for their acquisition – either before or after the depreciation costs have been calculated.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00386 - PAYMENT OF 30% ONE-OFF PRE-FINANCING TO STEP DEDICATED PRIORITIES

Relevant Article: Article 3(1a) of ERDF/CF Regulation, Article 12a(2) of ESF+ Regulation

Member State: N/A

Question 1 (including any relevant facts and information):

The STEP Regulation introduced a one-off pre-financing of 30% for STEP dedicated priorities financed by ERDF, CF and ESF+. If a programme amendment including such a priority is adopted and the pre-financing is paid by the Commission upon the programme adoption is followed by a subsequent programme amendment increasing the amount of the said STEP dedicated priority, would additional pre-financing of 30% be paid by the Commission on the increased amount?

Answer:

Articles 3(1a) of the ERDF/CF Regulation and 12a(2) of the ESF+ Regulation provide for exceptional one-off pre-financing where the Commission approves an amendment of a programme **including one or more STEP dedicated priorities**, in addition to the yearly pre-financing for the programme provided for in Article 90(1) and (2) CPR. This exceptional pre-financing must comply with the rules applicable to pre-financing provided for in the CPR. In case a programme amendment increases the allocation to a STEP dedicated priority, the Commission will not pay additional pre-financing beyond the exceptional pre-financing already paid to the Member State. Likewise, if the allocation is decreased, the Member State will not be required to repay any previously received pre-financing.

QA00387 - COMBINING -EIC FUND AND ERDF - EQUITY SUPPORT

Relevant Article: Article 58.4, 6 and 7 of the Regulation (EU) 2021/1060

Member State: (FR / Île-de-France Region)

Question (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

As early as 2024, the Île-de-France region set up a financial instrument called "Fonds Île-de-France Réindustrialisation" (FIR), the purpose of which is to acquire equity participation in businesses from Île-de-France. This project is financed by the ERDF through the STEP priority.

The managing authority has noted in several rounds of discussions between investors that the European Innovation Council, through the EIC Fund (European fund of the Horizon-Europe programme), is involved in these investments.

In accordance with the applicable rules, except in the special cases referred to below, assistance from European funds is subject to the prohibition of double financing of the same item of expenditure. It therefore seems useful to us to ask your opinion in order to secure the investments of the FIR in relation to CIE investments.

On reading Article 58 (4), (6) and (7) of the Common Provisions Regulation - EU 2021/1060, we understand that two funds could finance the same company. We understand that since this is an investment and not a grant, it is possible that the equity participation can be made simultaneously by the FIR and the EIC.

Under the FR setup, the French authorities have already taken the necessary steps to avoid that the European public participation would lead to the public investors taking over control of that company.

The Managing Authority hereby wishes to obtain confirmation from the European Commission services on the correct interpretation of this Article.

Answer:

According to the submitted information, we understand that the EU support for the present operation is not in the form of grants, but through two simultaneous acquisitions of equity participation in the capital of a single company: one by means of a financial instrument supported by the ERDF, the other by means of a financial instrument supported by an EIC Fund.

From the cohesion policy perspective, the two equity instruments, respectively co-funded by the EIC and co-financed by the ERDF, can be implemented simultaneously under two distinct operations for financial instruments in accordance with Article 58(4) CPR for the purpose of acquiring two separate equity participations in the same company. We understand that the combination of both financial instruments is done at the level of the financial recipient. In this case, in accordance with Article 58(4), the participation co-financed by the ERDF and the one funded by the EIC should be clearly distinguished, and the support under the ERDF financial instrument shall not be declared to the Commission for support under the EIC and vice versa.

It should be noted that the managing authority bears the responsibility to assess the operations against the State aid legislation to ensure compliance with the relevant criteria, including the State aid rules on cumulation (see notably Article 8 of the GBER if the equity participation financed by the ERDF constitutes State aid).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00388 - CLARIFICATION REGARDING ARTICLE 55(2)(B)

Relevant Article: Article 55 CPR

Member State: HR

Question (including any relevant facts and information):

In one of our call for proposals we have opted for the calculation of the staff costs based on the Article 55(2)b of the CPR 21-27. For the purpose of calculating the monthly hourly rate we have used an average monthly working hours of 154. We have done so by using only the number of official working hours per month over a 12-month period (i.e., without official holidays and minimum national days of paid annual leave) to come to the average monthly number of working hours. We don't have any national rules that regulate this (except for Labor law that says that full-time working hours cannot exceed forty hours a week and that regulates annual leave as minimum of 20 days a year) and we don't have any special eligibility rules adopted for the programme.

During the application phase, our beneficiaries complained about the following: during the collective summer break they cannot report any working hours. These working hours would be compensated in the remaining months, in which the staff of the beneficiary would work more than 154 hours.

The interpretation of the managing authority of the CPR Article 55(2)(b) is that beneficiaries can only report working hours up to the ceiling of 154 hours per month.

Our beneficiaries interpret this Article slightly differently. They consider that over the period of one year they can report 1 848 hours (i.e. 154 multiplied by 12).

We would like to have a Commission opinion on the following: can a ceiling of 154 be applied on a yearly basis, i.e. as a yearly ceiling of 1 848 (154*12)?

Answer:

When using Article 55(2)(b) CPR, it is for the Member State(s) to establish the average monthly working time, in accordance with applicable national rules referred to in the employment document, as clarified in the Guidelines on the use of simplified cost options within the Funds covered by Regulation (EU) 2021/1060. Please refer also to QA00293 - Inclusion of paid holidays for direct staff costs under Article 55(2)(b) CPR - RegioWiki Extranet - RegioWiki

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

While the average monthly number of hours is used to calculate the hourly rate, the maximum number of hours to be declared can be calculated on a yearly basis, in line with Article 55(3) CPR which determines that *the total number of hours declared per person* ***for a given year or month should not exceed the number of hours used for the calculation of that hourly rate***. In the specific case, beneficiaries may declare a total number of hours for a given year which does not exceed the yearly equivalent of the monthly reference used to calculate the hourly rate (in the present example, this represents 1 848 hours = 154 hours*12 months).

QA00389 - INFORMATION ON BENEFICIAL OWNER - DATA FIELD 23 OF ANNEX XVII CPR

Relevant Article: Article 74(1)(a)(i) and Article 63(9) of Regulation (EU) 2021/2060 (CPR)

Member State: n/a

Question

Article 74(1)(a)(i) CPR requires that beneficiaries maintain separate accounting records or use appropriate accounting codes for all transactions relating to the operation. Could you please clarify how should this requirement be applied in case of an operation supported by more Funds in line with Article 63(9) CPR (i.e. cases of cumulative funding)? Can a beneficiary in such cases use a single code for the entire operation supported by different Funds or should there be a separate codes per Fund (for the same operation)?

Answer:

In line with Article 74(1)(a) CPR the beneficiaries need to maintain separate accounting records or use appropriate accounting codes for all transactions relating to the operation. The provision does not refer to maintaining accounting records or codes by Fund. The prohibition in Article 63(9) CPR of double declaration in payment applications also does not impose such an obligation.

It is for the programme authorities to ensure that there is no double declaration of expenditure in the payment applications to the Commission, to carry out management verifications as well as to maintain adequate audit trail for the expenditure of each of the concerned Fund.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00390 - SIMPLIFIED COST OPTIONS – NATIONAL RATES

Relevant Article: Article 53 CPR

Member State: LV

Question (including any relevant facts and information):

Where national legislation provides for an hourly rate to be paid to unemployed persons who participate in training, can this national rate be re-used in ESF + schemes for unemployed people who take part in a training? If yes, should this national rate be treated as a unit cost in accordance with Article 53 CPR?

Answer:

Where an hourly rate is provided for under national legislation for unemployed persons undergoing training experience, that hourly rate can be re-used for ESF + operations. Where such an hourly rate is to be used in ESF + operations for a similar type of operation, it could be regarded as a unit cost in accordance with Article 53(3)(d) CPR. In this specific case, as also clarified by the Guidelines on the use of simplified cost options within the Funds covered by Regulation (EU) 2021/1060, *simplified cost options used under national support schemes can be used without additional calculations, **if the national schemes are in force at the time of the design of the methodology***. Moreover, where this is not the case (i.e. the type of operation is not similar), it could still be regarded as a unit cost in accordance with Article 53(3)(a)(i) CPR where the 'objective information' required for it to be considered as 'fair, equitable and verifiable' would be the corresponding amount provided for in national legislation.

QA00391 - THE CHANGE OF DEFINITION OF ZERO-EMISSIONS (CLEAN) VEHICLES AND ITS IMPACT ON SELECTION OF PROJECTS

Relevant Article: Article 7, ERDF/CF Regulation (EU) 2021/1058

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State: CZ

Question (including any relevant facts and information):

In the Czech Republic, conditions for purchasing the zero-emissions (clean) vehicles within the public procurement procedure are set out in the Act No 360/2022 Coll. (act on the promotion of low-emission vehicles through the award of public contracts and public passenger transport services = transposition of the Directive 2009/33/EC into Czech law).

As stipulated in the Directive 2009/33/EC, until 31/12/2025, applicable threshold is no more than 50g/km CO_2. (i.e. low-emission vehicles). As of 1/1/2026, only zero-emission vehicles can be supported (<1g/km CO_2).

The core of the query is concerning the determination of the relevant moment when the application of the new definition of clean vehicles should become in force in the context of the ERDF support.

The CZ Coordinating Authority believes the key moment is when the public procurement procedure concludes, in line with the Directive. However, there is uncertainty regarding public procurement processes that begin in 2025 but conclude with a contract signing in 2026. In such cases, what definition of clean vehicles should apply? Beyond early 2026, what marks the procedural limit for adopting the new clean vehicle definition? Should it be when the public procurement process begins or when the contract is signed?

Notably, at the national level, public procurement often starts before a grant agreement is signed due to lengthy PP procedures.

Internal discussions at national level have revealed two potential options:

- The date the project proposal is submitted, which initiates the public procurement selection process.
- The date the public procurement outcome is published in the Official Journal for above-threshold procurement, or in the Register of Contracts for below-threshold procurement.

Two scenarios illustrate the question:

- If the project submission occurs in 2025 but the PP outcome is published in 2026, the managing authority will support clean vehicles as defined for 2026, i.e., zero-emission vehicles.
- Conversely, if both events occur in 2025, the managing authority will support clean vehicles according to the 2025 definition, with a CO_2 emission limit of 50 g/km.

We would like to ask for your stance on correctly interpreting Article 7(1)(h)(iii) of the ERDF/CF Regulation 2021/1058, regarding the change in the definition of zero-

emission vehicles and when CZ Managing Authorities should align with the new definition effective in 2026.

Answer:

Article 7, ERDF/CF Regulation (EU) 2021/1058 applies the definition of "clean vehicles" set out in the Clean Vehicle Directive 2009/33/EC (CVD). The CVD, as amended in 2019, provides that emission thresholds for light duty vehicles are changing as of 1 January 2026. (All relevant stakeholders had a period of over five years to prepare for this change in the definition.)

The CVD states in Article 5: *"[…] the date of the public procurement to be taken into account is the date of completion of the public procurement procedure, by way of awarding of the contract"*..

Thus, to comply with the rules on the scope of ERDF under Art. 7(3)(h)(iii) the MA can still choose vehicles other that non-zero-emissions where the contract following a procurement procedure will be awarded before the 1 January 2026. Conversely, for contracts to be awarded later than that date, even if the procurement procedure has started before 1 January 2026, only zero-emission vehicles are eligible.

QA00392 - APPLICATION OF THE FLAT RATE OF ARTICLE 56 CPR IN COLLABORATIVE OPERATIONS WITH SEVERAL BENEFICIARIES

Relevant Article: Article 56 CPR

Member State: FR

Question (including any relevant facts and information):

References:; QA00246 - Question concerning flat-rate financing at the level of beneficiaries - QA 21-27 - RegioWiki (europa.eu); QA00298 - Using SCOs in the light of Article 56(1) CPR - QA 21-27 - RegioWiki (europa.eu) ; QA00042 - Flat rate for direct and indirect costs - RegioWiki Extranet - RegioWiki

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

According to QA00298 - Using SCOs in the light of Article 56(1) CPR - RegioWiki Extranet - RegioWiki (europa.eu), when using the flat rate of Article 56(1) CPR for all remaining costs of an operation, no other costs may be declared on top of direct staff costs and the costs covered by the up to 40% flat rate.

However, we wonder whether this also applies in the case of a collaborative project, which is an operation co-carried out by a lead partner and other partners (at least one). This type of operation is created for simplification and efficiency purposes, it allows the MA to have a single contact (the lead partner or coordinating beneficiary) and to award a single grant for the entire operation, reducing management costs. In a collaborative project, the global budget of the operation is divided into smaller and separate budgets managed by each partner, with separate expenditure and activities.

The table below represents the example of the overall budget of a collaborative project carried out by two partners using each a different flat rate, together with the specific budgets by partner.

Expense item	**Amount**	**Budget of partner 1 (lead partner)**	**Budget of partner 2**
Staff costs	119 952,55 €	103 851,8 €	16 100,75 €
Other costs (40% of staff costs flat rate)	41 540,72 €	41 540,72 €	/
Indirect costs (15% staff costs flat rate)	2 415,11 €	/	2 415,11 €
Total	163 908,38 €	145 392,52 €	18 515,86 €

In line with QA00246 - Question concerning flat-rate financing at the level of beneficiaries - RegioWiki Extranet - RegioWiki (europa.eu), programme authorities may decide to offer several forms of grants for the same category of costs at the level of an Interreg operation as long as each form is used for different partner's budgets.

Therefore, we inquire:

- Can the possibility for Interreg operations also apply to operations outside Interreg (ERDF mainstream programme)?
- At what level should the regulatory impossibility of combining two flat rates be understood (in the present case the rate of 40 % and the rate of 15 %)? Should this impossibility be understood at operational level (which would not allow in our example to combine these two SCOs even if the expenditure is borne by two separate partners in the same operation) or at beneficiary/partner level?

Answer:

According to Article 2, point (4)(a) CPR, 'operation' means a project, contract, action or group of projects selected under the programmes concerned. It is up to the managing authority to define the scope of the operation.

Article 53(1)(e) CPR, allows a combination of different simplified costs options (SCOs), provided that each form covers different categories of costs or where they are used for

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

different projects forming a part of an operation or for successive phases of an operation.

As explained in the QA00042 and QA000298, the up to 40% flat rate set out in Article 56 (1) CPR covers the remaining eligible costs of the operation (which include indirect costs) and therefore, cannot be combined with the off-the-shelf flat rate for indirect costs set out in Article 54 CPR.

QA681_EMFAF_ELIGIBILITY OF INVESTMENT ON VESSELS

Relevant Article: Article 13 of the EMFAF Regulation

Member State: FI

Question (including any relevant facts and information):

Paragraph (l) states that "investments on board fishing vessels that have carried out fishing activities for less than 60 days in the two calendar years preceding the year of submission of the application for support" are ineligible. In this respect, an interpretation is needed regarding passive fishing gear used in small-scale coastal and inland fishing. Passive fishing gear (such as fyke nets) is not fixed to a fishing vessel and fisherman can use this type of gear with two or more different fishing boats. The passive fishing gear can also be used in ice fishing (fishing without vessels).

Investments in passive fishing gear are important from the point of view of the Finnish EMFAF OP in several ways. Firstly, to protect fishing gear and catches from the damages caused by seals (seal-proof fishing gear). Secondly, to improve selectivity of fishing by changing gill nets to selective fyke nets. Thirdly, to encourage young fishermen to start professional small-scale fishing. Seal-proof fishing gear and selective fyke nets are expensive investments and therefore it would be important that these kinds of investments could be supported for new fishermen. In our opinion investments in passive fishing gear are not on board investments and therefore the 60 days activity limit should not be applied to these kinds of investments. We would like to get a confirmation on this.

Answer:

Investments on board should be understood as any equipment, device, system or facility installed on a fishing vessel or used by a fishing vessel during its fishing activity. This includes *inter alia* control equipment, gear, engines, accommodation facilities, safety equipment and devices installed on gear.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

If a gear is not physically fixed to a fishing vessel and is used without the intervention of a fishing vessel (e.g. ice fishing, fishing on foot, beach seine), it is not an investment on board, thus is not subject to paragraphs (k) and (l) of Article 13 of the EMFAF Regulation.

If a gear is not physically fixed to a fishing vessel but is used by a fishing vessel at any stage of its operation, it is an investment on board, thus is subject to paragraphs (k) and (l) of Article 13 of the EMFAF Regulation.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA733_EMFAF_SUPPORT FOR PERMANENT CESSATION OF FISHING ACTIVITIES

Relevant Article: Article 20 of the EMFAF Regulation

Member State: PL

Question 1:

Having regard to the Article 20(2) and (3) of the EMFAF Regulation, how to calculate the period confirming work at sea for the crew of the scrapped fishing vessel if the application for support was submitted first by the owner of the fishing vessel and then, in consecutive calendar year, by its crew?

Background:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

At the turn of 2023 and 2024, two calls for permanent cessation of fishing activities were organized, the first one from 1 to 29 December 2023 and the second from 3 to 31 January 2024. As part of both calls, applications could be submitted by fishing vessel owners for scrapping and by fishers working on those fishing vessels for job loss.

The case requiring interpretation concerns a situation where the owner of the scrapped fishing vessel submitted its application for support in the first call (in 2023) for scrapping and the crew working on that vessel submitted applications for support for job loss in the second call (in 2024).

In accordance with Article 20 paragraph (2)(c) and (3)(b) of the EMFAF Regulation, the fishing activity (at least 90 days per year) should be confirmed for the last two calendar years preceding the date of submission of the application for support. It means that in case of the owner of the scrapped fishing vessel, the fishing activity should be confirmed for 2021 and 2022 while the crew working on that vessel should confirm their activity on that vessel for 2022 and 2023 – which can be problematic if the vessel had no or insufficient activity in 2023.

It should be noted that the owner of the fishing vessel attached to the application a list of the entire crew members and fishers working on the scrapped fishing vessel attached to their applications documents confirming that they worked there for the required period of 90 days in 2021 and 2022 (same period as for the scrapped vessel).

Answer:

Article 20 of the EMFAF Regulation lays out the rules governing the support for permanent cessation of fishing activities. Paragraph 2 of this Article sets the necessary conditions for granting the support, including the condition that a fishing vessel declared for scrapping has to be registered as active and has carried out fishing activities at sea for at least 90 days per year during the last two calendar years preceding the date of submission of the application for support. According to paragraph 3 of the same Article, support may be granted to fishers if they have worked at sea on board a fishing vessel concerned by permanent cessation for at least 90 days per year during the last two calendar years preceding the year of submission of the application for support.

The EMFAF regulation provides that for both types of beneficiaries, vessel owners and fishers, the date for calculating the 90 days per year for the prior two calendar years is the date of application for support. Nothing in the article prevents this calculation to be based on the date of submission of the application for support of the owner of the fishing vessels for both types of beneficiaries However when applications for support can be submitted and by which beneficiaries are matters for the Member States authorities to decide on in accordance with national law and taking into account the provisions of the regulation.

NB.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner and should not duplicate or crowd out private financing or distort competition in the internal market.

QA742_EMFAF_IMPLEMENTING ARTICLE 18 THROUGH SO 1.1

Relevant Article: Article 18 of the EMFAF Regulation

Member State: LV

Question 1 (including any relevant facts and information):

We would like to clarify the following question - whether the EMFAF Regulation No 2021/1139 provisions legally restrict or ban a Member State from choosing under which specific objective to support respective projects if they contribute at the same time to several specific objectives of the Regulation. For example, do the provisions of the Regulation clearly state that the replacement of engines in small-scale fishing, if it for justified reasons is not the main objective of the measure and there is no separate funding allocated for it in the Programme for specific objective 1.2. "Increasing energy efficiency and reducing CO2 emissions through the replacement or modernisation of engines of fishing vessels", can be supported under another specific objective, respectively, under specific objective 1.1. "Strengthening economically, socially and environmentally sustainable fishing activities".

Our situation.

Support for small-scale coastal fisheries for all possible small development needs we provide under specific objective 1.1. "Strengthening economically, socially and environmentally sustainable fishing activities" and in our case it contains the general aim of providing support for the implementation of development plans in coastal fisheries. Fishermen's development plans include various types of activities in small projects within the amount of up to EUR 30 thousand. We support this by using the simplified cost option – as lump sum with a budget project calculation method. To strengthen economic and environmental sustainability in small-scale coastal fisheries

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

within the framework of the aforementioned plan, we also want to allow the replacement of engines on coastal vessels. By including all the investments necessary in one development plan, the administrative burden is highly reduced for both fishermen and administrative institutions. Separation of the different type of applications for small-scale fisherman would be return to previous bureaucratic and heavy administrative proceedings which hesitate most coastal fishermen to apply for funding.

Although support for engine replacement has been similarly included in national legislation already in the previous programming period, and two calls of project submissions have already taken place in this programming period. However, no one project for engine replacement has been received so far, although more than 80 projects have been approved in total. Unfortunately, fishers are not encouraged to make such investments because of too restrictive conditions of the EMFAF Regulation. It contains the low aid intensity and the high administrative burden for carrying out physical verification even for extremely minor power of engines used in small- scale coastal fishery. Nevertheless, from political and strategic perspective we are trying to do our best to provide these possibilities to our coastal fishers with quite small feasibility to get real applications. Even if some projects could be submitted in the future, which seems quite doubtful, the support spendings, if any occur, would be very small. Therefore, the simplest approach in providing such support is out most important.

Our justification that engine replacement can be included also in specific objective 1.1. without setting separate targets and providing separate funding for it in specific objective 1.2.

The main justification for including support for the replacement of engines for small scale fishing in Specific Objective 1.1 "Strengthening economically, socially and environmentally sustainable fishing activities" stems from Paragraph 1 of Article 14 and Annex 2 of EMFAF Regulation. The paragraph 1 of Article 14 of the Regulation clearly indicates that "Support under this Chapter shall cover interventions that contribute to the achievement of the objectives of the CFP as set out in Article 2 of Regulation (EU) No 1380/2013, through one or more of the following specific objectives". Similarly, Annex 2 of the Regulation clearly states that the Specific Objective nomenclature 1.1.1. includes "all operations except those supported under Articles 17 and 19". Since Article 18 "Replacement or modernisation of a main or ancillary engine" is not mentioned as an exception in this nomenclature, the support referred to in Article 18 may accordingly be included and eligible under the nomenclature of this Specific Objective 1.1. This is similar, for example, to previous programming periods, where Specific Objective 1 included articles that provided support for the processing of fishery products done by fishermen themselves for their own catches. Although there was at the same time a separate Specific Objective for the processing of fishery products. A similar example is related to the inclusion of

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

support for fisheries projects in Community-led local development measures and other similar cases within the whole Programme.

In addition we would like to note that, for example, in every Article (from Article 17 to Article 25) falling under Priority 1 has a reference to only one specific objective mentioned in Article 14, which we see as an explanation of what the main purpose of this support is, but according to paragraph 1 of Article 14 which allows for a choice between different Specific Objectives, it is not stipulated that, based solely on this references, funding should be provided in the Programme only under single Specific Objective terms without allowance to use more than one listed objective within Article 14.

Further we recognize that the Specific Objective 1.2. states:" Increasing energy efficiency and reducing CO2 emission through the replacement or modernisation of engines of fishing vessels". As we understand the provisions on CO2 reduction and the restriction for new engine to use 20 % less fuel than the engine being replaced in Article 18 directly applies to the replacement of engines for vessels of other offshore fleet segments not the coastal fishing.

Therefore, creating a separate specific objective for engine replacement would not be rational from the point of view of our conditions and strategic planning principles which setting important and serious but not at all minor intervention measures. Also, it is not appropriate from point of view of introduction of additional bureaucratic procedures with unnecessary amendments or adjustments of planning documents and legal acts, introduction of specific implementation targets, result indicators, reporting systems etc. for almost non-existent issue as it stands in our country.

Answer:

The EMFAF Regulation does not foresee an exhaustive list of eligible interventions; it gives broad eligibility criteria (Article 12) and it provides a list of ineligible operations or expenditure (Article 13) with certain derogations thereto (Articles 17 to 21, 22(2) and 26(2)).
Article 13(m) of the EMFAF Regulation excludes support for the replacement or modernisation of a main or ancillary engine of a fishing vessel, unless otherwise provided for in Article 18 of the same Regulation. The replacement or modernization of a main or ancillary engine is therefore exclusively regulated by the provisions of Article 18.

Article 8(2) of the EMFAF Regulation provides that support under shared management shall be organised along the priorities and specific objectives as set out in Annex II to the Regulation. The specific objectives related to priority (1) referred to in Article 3 are provided in Article 14(1) and they organise the support under shared management under different headings per column and nomenclature as provided in Annex II. Article 22(3)(d)(i) of Regulation (EU) 2021/2060 equally provides that for each

specific objective the related types of actions and their expected contribution to those specific objectives must be set out.

Article 18(1) stipulates that support for the replacement or modernisation of a main or ancillary engine of a fishing vessel up to 24m shall contribute to the specific objective referred to in point (b) of Article 14(1) EMFAF Regulation - *Increasing energy efficiency and reducing CO2 emissions through the replacement or modernisation of engines of fishing vessels*. The article does not refer to any other specific objective to which this type of action shall contribute. Furthermore, the wording "through one or more of the following specific objectives" in Article 14(1) cannot be construed in such a way as to mean that operations can be placed under any specific objective when for certain operations (e.g. the replacement or modernisation of engines of fishing vessels) the regulation explicitly prescribes to which specific objective support operations shall contribute. Otherwise, the wording of, in this case Article 18(1) and the structure of national programs as set out in Annex II would be devoid of meaning.

Based on the above, EMFAF support for the replacement or modernisation of a main or ancillary engine of a fishing vessel can only be co-financed from the Fund if SO 1.2 is included in the EMFAF programme of a Member State. This type of action is therefore not eligible under SO 1.1.1 of the EMFAF programme of a Member State.

The co-legislators have recognized that the specific objective 1.1 cannot be limited only to derogation cases referred to in Articles 17 and 19 and that there could be other types of operations which strengthen economically, socially and environmentally sustainable fishing activities in line with specific objective 1.1 of Article 14(1)a. Therefore, two nomenclatures (1.1.1 and 1.1.2) are established for specific objective 1.1 in Annex II. This helps to distinguish other types of actions from the types of actions linked to otherwise ineligible operations/expenditure, under article 13(a) and (c), which are made eligible by way of derogation and under strict conditions under Articles 17 and 19. However, this underscores the point that under the EMFAF for specific types of actions the nomenclature to be used in the national program is prescribed in the regulation.

As regards the argument that the CO-2 reduction referred to in Article 18 does not apply to small-scale coastal fishing, it should be noted that Article 18(2) of the EMFAF Regulation outlines four conditions with the last two being applicable only to the vessels referred in the respective provision, namely – Article 18(2)(c) is relevant only for small-scale coastal fishing vessels and Article 18(2)(d) is applicable to other vessels up to 24 m in overall length. Small-scale coastal fishing is therefore not exempt from Article 18.

The requirement that the new or modernized engine emits at least 20% less CO2 compared to the current engine is not applicable to the small-scale coastal fishing vessels. This does not mean that more energy efficient engines for small-scale coastal fishing vessels would not contribute to CO2 reduction, it only means that there are no binding minimum requirements for the percentage of emission reduction.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA746_EMFAF_ARTICLE 26 EMFAF REGULATION WITH REGARDS TO ARTICLE 54 OF EMFF REGULATION

Relevant Article: Article 26 of EMFAF Regulation

Member State: Poland

Question 1 (including any relevant facts and information):

Having regard that the EMFAF Regulation currently does not contain the previous provisions from Article 54 of Regulation (EU) No 508/2014 (EMFF Regulation) that financial support for aquaculture activities compatible with specific environmental needs and requirements takes the form of compensation paid annually for additional costs incurred or income foregone (...):

Please confirm that there are currently no legal limitation to the payment of funds under environmental aquaculture compensation in the form of one-off compensation paid to beneficiaries for the entire 5 years period of their commitments (*one-off advance payment*), which will allow the Managing Authority to accelerate the disbursement of funds under the EMFAF programme and to comply with the n+ 3 rule for this year and next.

Answer:

Article 54 of the EMFF Regulation included provisions with regard to the form of the support and the periodicity of payments for support to aquaculture activities compatible with specific environmental needs and requirements.

The EMFAF Regulation under Article 26(1)(a) and Article 26(3) cover interventions which promote sustainable aquaculture activities. The provisions do not contain a similar condition of annual reimbursement similar to that of Article 54 EMFF regarding the financial support for aquaculture activities compatible with specific environmental needs and requirements.

Furthermore, the Regulation 2021/1060 (CPR) does not prohibit Member States from paying the entire amount of support to the beneficiary upfront and the EMFAF Regulation does not impose limits on the type and periodicity of payments for support to environmental aquaculture services. Thus, the payment may be provided once or annually to beneficiaries who commit to environmental aquaculture services for a multiannual period depending on the method used for reimbursing the eligible costs of an operation.

However, the related expenditure can be certified to the Commission only after the necessary management verifications have been carried out, confirming that the co-financed products and services have been delivered, that the operation complies with the applicable law, the programme and the conditions for support of the operation, and that the conditions for reimbursement of expenditure to the beneficiary have been met., in accordance with Article 74(1)(a) CPR.

NB:

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA751_EMFAF_REQUEST FOR OPINION ON THE DECOMMITMENT PROCEDURE REGARDING OUTERMOST REGIONS

Relevant Article: Article 5 EMFAF and article 107 CPR

Member State: France

Question 1:

France wishes to consult MARE on the N+3 automatic decommitment rules and procedure regarding the minimal budget allocation to the outermost regions (OR).

In particular, FR asks clarification on the articulation between the provisions of Article 107(3) CPR and article 5 EMFAF regarding the minimum budget to be allocated to the ORs and the impact of the N+3 automatic decommitment thereon. The question arises in particular whether the lack of absorption capacity can justify a deviation from the minimum budget allocation provided under Article 5 EMFAF.

According to article 5 of the EMFAF regulation, a minimum amount to be allocated to each Outermost Region is defined. However, in the same article, paragraph 3 states

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

that a maximum of 60% (or 70% under special circumstances) of the minimum amounts allocated to OR can be used for the compensation of additional costs according to article 24 EMFAF.

In the hypothetical situation, where only compensation of additional costs would be actually implemented in a given OR, it means that 100% of the implemented budget would be for compensation of additional costs. Is it legally possible to have more than 60% (or 70%) for compensation of additional costs for a given OR or for all OR in a MS?

The question bears a particular importance after the cyclone that has severely impacted Mayotte as it may impact implementation of EMFAF structural measures in this OR.

Answer:

According to Article 107 (3) CPR, in case of N+3 automatic decommitment procedure on the basis of Article 105 CPR: " *By 30 June, the Member State shall submit to the Commission an amended financing plan reflecting, for the calendar year concerned, the reduced amount of support over one or more priorities of the programme. […]*

In the absence of such a submission, the Commission shall amend the financing plan by reducing the contribution from the Funds for the calendar year concerned. That reduction shall be allocated to each priority proportionately to the amounts concerned by the decommitment that had not been used in the calendar year concerned."

With regard to the first question of FR on the relationship between Article 107(3) CPR and the minimum amounts set in Article 5(2) EMFAF, it is considered that the minimum allocation for OR applies only to the initial programme financial allocation. Also, the margin of discretion granted to the Member State in Article 107(3) to decide how to distribute the amounts to be decommitted among the priorities of the programme, does in principle also apply with regard to the initial allocations to the OR. **Therefore, in case of N+3 automatic decommitment, the MS (or the Commission if a MS does not submit a programme amendment) can reduce the allocation to ORs below the minimum amount set in Article 5(2) EMFAF.**

Nevertheless, it is important to underline that Article 5(2) EMFAF reflects the intention of the co-legislators to ringfence a minimum amount of the respective budget for the ORs. Therefore, **any reduction of the OR allocation due to a N+3 decommitment**

needs to be duly justified and should normally not be higher than the amount of N+3 decommitment attributable to the concerned OR(s) in the given year.

With regard to the application of the maximum percentages (60 or 70%) for the compensation of additional costs as set in Article 5(3) EMFAF, we would first like to note that these apply to the amounts allocated in Article 5(2) (i.e. **at the level of the MS concerned and not to each individual OR**). Thus, if a given OR spends more than this maximum percentage on compensation of additional costs, the conditions of Article 5(3) would still be respected as long as at national level the maximum amount is respected (the amounts would have to be correspondingly lower in other ORs for the national threshold to be respected).

Second, the maximum of 60% (or 70%) for compensation of additional costs, as set out in Article 5(3) EMFAF, only applies to the minimum ringfenced amount set in Article 5(2) EMFAF and not to the final implementation of that amount. In other words, **if the final implementation for OR is lower than the ringfenced amount set in Article5(2) EMFAF as a result of decommitment(s), the MS would not be subject to sanctions or budget cuts should the actual implementation of compensation of additional costs by OR represent at the end of the EMFAF period more than 60% (or 70%) of the amount implemented for OR as a whole, as long as the compensation of additional costs remains within the max 60% (70%) of the amount set in Article 5(2) EMFAF**.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA752_EMFAF_ INTERPRETATION OF ARTICLE 21(2)(A) OF REGULATION (EU) 2021/1139 AND ARTICLE 7(1)(B) OF REGULATION (EU) 1380/2013

Relevant Article: Article 21 of the EMFAF regulation

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State: Sweden

The Swedish Agency for Marine and Water Management is conducting a scientific project which entails a time-limited ban on trawling for pelagic species within an area in the central Baltic Sea, inside the territorial sea boundary from northern Öland up to the border with the Bothnian Sea. The area has been designed based on how trawling for pelagic species has been carried out over the past decade and the presence of important habitats for herring/sprat throughout their life cycle. The area therefore includes both spawning areas near the coast and deeper sea areas where herring stay during the winter months. The aim is to evaluate the effects on the biomass of the stocks as well as their size, population, and age structure.

The trawling ban area for pelagic species will provide the agency with important knowledge about the significance of the management measure for herring stocks, but also for several other parts of the ecosystem and the significance for the development of fishing in areas where trawling for pelagic species continues.

The ban has been preceded by extensive consultations with the concerned member states, the EU Commission, and representatives of various stakeholder groups around the Baltic Sea. The consultations have been conducted both nationally and internationally in accordance with the provisions of the Common Fisheries Policy.

The ban will primarily have significant consequences for a small number of small-scale trawlers that previously fished for pelagic species within the area. Larger vessels that previously conducted trawling for pelagic species within the area are expected to continue their fishing outside of the prohibition area. The ban came into effect on February 1, 2025, and will be in force until April 30, 2027.

Question 1:

The Swedish Board of Agriculture is looking into the possibility of granting aid within the measure Temporary cessation of fishing activities (Art. 21 regulation (EU) 2021/1139) to the small-scale trawlers that currently do not have the possibility to continue their fishing outside of the prohibition area. We therefore ask the Commission whether this would be allowed under Article 21(2)(a) of regulation (EU) 2021/1139 and Article 7(1)(b) of regulation (EU) 1380/2013.

Our understanding is that it should be possible as Article 6 of regulation (EU) 1380/2013 describes general provisions for conservation measures, where Article 6.4 specifies national conservation measures with a requirement for consultation according to Article 20(2) of the same regulation. Article 7 of the same regulation describes types of conservation measures, where Article 7(b) specifies "conservation and sustainable exploitation of stocks and related measures to minimise the impact of fishing on the marine environment". The right to compensation under Article 21 of regulation (EU) 2021/1139 specifies a conservation measure according to Article 7(b) of regulation (EU) 1380/2013, which then refers to a national conservation measure according to Article 20 of the latter regulation for the conservation and sustainable exploitation of stocks and related measures to minimise the impact of fishing on the marine environment.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 2:

Additionally, we would like to receive a general interpretation of Article 21 of regulation (EU) 2021/1139 and Article 7 of regulation (EU) 1380/2013:

Support for temporary cessation of fishing activities (i.e. support under Article 21 of regulation (EU) 2021/1139) may be granted only in the case of i.e., conservation measures, as referred to in points (a), (b), (c), (i) and (j) of Article 7(1) of regulation (EU) No 1380/2013 or, where applicable to the Union, equivalent conservation measures adopted by RFMOs.

Article 6.1 of regulation (EU) 1380/2013 stipulates that for the purpose of achieving the objectives of the CFP in respect of the conservation and sustainable exploitation of marine biological resources as set out in Article 2, the Union shall adopt conservation measures as set out in Article 7.

a) Does this provision mean that only EU can adopt the conservation measures set out in Article 7 of regulation 1380/2013? Or could member state measures which are taken in accordance with Article 20 of regulation (EU) 1380/2013 also be considered conservation measures under Article 7?

b) If member state measures which are taken in accordance with Article 20 of regulation (EU) 1380/2013 could be considered conservation measures under Article 7 of the same regulation, would it be possible for the member state to grant support under Article 21(2)(a) of regulation 2021/1139?

Answer:

With regard to the questions posed, we would first like to recall that it is the responsibility of the Managing Authority to assess the compliance of operations with the requirements and conditions of the EMFAF regulation. Therefore, the Commission services cannot advice on concrete cases.

Regarding the interpretation of Article 21 of Regulation (EU) 2021/1139 (EMFAF Regulation) on Temporary Cessation (TC) support, specifically support that may be granted with regard to 21(2)(a) we would like to note the following:

Under Article 21(2)(a) of the EMFAF Regulation, TC support may be provided in the case of conservation measures as referred to in points (a), (b), (c), (i) and (j) of Article 7(1) of Regulation (EU) No 1380/2013 (CFP Regulation). Article 7 CFP Regulation lists "types of conservation measures". Therefore, the reference in Article 21(2)(a) EMFAF Regulation should be read a to referring to these types of conservation measures. By reference to Article 7(1) (j) CFP Regulation, this includes technical measures as listed in paragraph 2 of set Article, including spatial-temporal closures as referred to in Article 7(2)(d).

Consequently, as far as Member States may adopt such measures under the CFP Regulation, the adoption of such measures can be a case in which TC support may be provided to owners or operators of fishing vessels and fishers impacted by the

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

measures, provided all the other conditions of Article 21 paragraphs 3 to 7 EMFAF Regulation are equally fulfilled.

In case of Article 21(2)(a) EMFAF Regulation, this includes specifically the requirement of Article 21(4), according to which TC support may only be granted where, based on scientific advice, a reduction of fishing effort is needed in order to achieve the objectives referred to in Article 2(2) and point (a) of Article 2(5) of Regulation (EU) No 1380/2013.

Such a need may be demonstrated with scientific advice recommending the closure of certain fisheries. However, with regard to the precautionary approach, to be applied in line with Article 2(2) CFP Regulation, in the absence of scientific advice pointing towards a specific conservation measure, such a need may also be considered where based on scientific advice e.g. as to the spawning stock biomass and spawning areas, closures of spawning and nursing areas are implemented to collect further scientific evidence on the effectiveness of such conservation measures on the biomass of the stocks with the aim to keep the stocks above levels which can produce MSY.

Furthermore, as per Article 21 (6) EMFAF Regulation, TC support may be granted for a maximum of 12 months per vessel and per fisher throughout the programming period. Additionally, Article 21 (5) EMFAF Regulation requires vessels and fishers to have engaged in fishing activities at sea for at least 120 days in the two calendar years before submission of the grant application. In line with Article 21 (7) and (3) EMFAF Regulation all fishing activities carried out by the vessels or the fishers concerned shall be effectively suspended during the period concerned and support may only be granted if the fishing activities are stopped during at least 30 days in a given calendar year.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA754_EMFAF_WORDING OF CUMULATIVE CONDITIONS FOR HIGHER AID INTENSITY UNDER ANNEX III, POINT 17

Relevant Article: Annex III of the EMFAF Regulation 2021/1139

Member State: Hungary

Question 1:

According to the 2139/2021/EU Regulation, ANNEX III, raw no 17. the **MAXIMUM AID INTENSITY RATE** for Operations supporting sustainable aquaculture implemented by **SMEs is 60%.**

According to the SME Act, Section 3 (4) **An enterprise in which the direct or indirect ownership stake of the state or local government** – based on capital or voting rights – individually or jointly reaches or exceeds 25% **is not considered an SME.**

We have **two state owned potential beneficiaries** (Balaton Fish Farming Nonprofit Ltd., Hortobágy Fish Farm Ltd.), and some other, who are legally not SME (Fishing associations, civil society organizations, and interest representation bodies), but they are involved in aquaculture production and meet the SME requirements in terms of number of employees and sales revenue, but are not classified as such under the law.

What aid intensity can be applied to the two state-owned fish farms, and the other, non-SME beneficiaries?

Answer:

Article 41(1) of the EMFAF Regulation (Regulation EU 2021/1139) provides that Member States shall apply a maximum aid intensity rate of 50% of the total eligible expenditure of the operation. Article 41(2) provides for a possible derogation to this default rule in accordance with Annex III of the Regulation. Annex III Row 17 provides for a maximum aid intensity rate of 60% for operations supporting sustainable aquaculture implemented by SMEs.

Article 2(1) of the EMFAF Regulation provides that without prejudice to Article 2(2) of the Regulation, the definitions referred to in i.a. Regulation (EU) 2021/523 apply. Article 2(21) of Regulation 2021/523 gives the following definition of SMEs: "(21), 'small and medium-sized enterprise' or 'SME' means a micro, small or medium-sized enterprise within the meaning of the Annex to Commission Recommendation 2003/361/EC".

Entities that do not fall under the definition of SME under the Commission Recommendation of 6 May 2003 are therefore not eligible for 60% aid-intensity.

It is the responsibility of the Managing Authority to assess the compliance of the operations with the requirements and conditions of the EMFAF regulation, including

the condition that the 60% aid intensity rate of Annex III Row 17 is applied only to operations supporting sustainable aquaculture implemented by SMEs.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA755_EMFAF_FINANCIAL INSTRUMENTS AND STATE AID

Relevant Article: Article 10 EMFAF Regulation

Member State: FI

Question 1 (including any relevant facts and information):

We seek clarification on the interpretation of Article 10, paragraph 2 of the EMFAF regulation concerning financial instruments and State aid.

Our understanding is that financial instruments under the EMFAF regulation are exempt from state aid rules. Unlike traditional EMFAF grant-funded projects where EU funding is disbursed based on verified payments, funding for financial instruments is based on approved financing (e.g. loans and guarantees) for final recipients. Paragraph 2 of article 10 of the EMFAF regulation, says that state aid rules shall not apply to payments made by Member States pursuant to EMFAF regulation. Are financial instruments for the final recipient also included in this definition of payments?

This state aid exemption for FI's under EMFAF, we believe stems from the facts that 1) Use of EMFAF financial instruments are identified for specific objectives outlined in our national programme which has received Commission approval and 2) for financial instruments the payment request from the member state is made on the basis when the financial instrument (e.g. guarantee) is granted for the final recipient.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Could you confirm if our interpretation is correct?

Answer:

Article 10(2) of the EMFAF Regulation states that Articles 107, 108 and 109 TFEU shall not apply to payments made by Member States pursuant to this Regulation and falling within the scope of Article 42 TFEU.

Given the intention of the legislator when creating this exemption, which was to speed up payment of EU funding and to reduce administrative burden, the wording payments should be understood broadly. Therefore, it does not only refer to payments of grants but also support in any other form that may be provided for in line with Article 55 EMFAF Regulation including financial instruments. Restricting the scope of Article 10(2) to specific forms of support, e.g. to payments of grants, would run counter to the intention of simplification.

Furthermore, the term "payment" is also understood broadly in comparable clauses in other regulations, e.g. Article 13 of Regulation 1307/2013, as evidenced by recital 16 of the same regulation.

In line with Article 10(2) EMFAF Regulation, the payment must fall, however, within the scope of Article 42 TFEU. Article 42 TFEU provides that the application of the rules of competition may be restricted by the legislator with regard to production and trade in agriculture products, whereby agriculture products should be understood as also referring to fisheries and aquaculture products in line with Article 38 (1) TFEU. Therefore, the financial instrument in question must be provided to a beneficiary for operations concerning the production, processing or marketing of fisheries or aquaculture products. It must also be provided "pursuant", thus in line with the EMFAF Regulation, i.e. it must contribute towards one of the EMFAF Priorities and one of the CPR Thematic Objectives.

NB:

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA758_EMFAF_ ENGINE REPLACEMENT OPERATIONS - REPORTING

Relevant Article: Article 18 of the EMFAF Regulation

Member State: Portugal

Question 1:

As PT has mainly small coastal vessels, when we compare the energy consumption between the old and the replaced engines, we are not finding any reductions under the selected operations.

Therefore, are we correct to conclude that the decision for the replacement of the engine is not, in most cases, motivated by energy efficiency objectives, and therefore engine replacement not leading to a reduction of energy consumption should be supported under SO 1.1 rather than SO 1.2? Or can the Commission provide a standard for the targets to be set for result indicator 18.2 (energy consumption leading to CO2 emissions reduction) according to the types of engines?

Answer:

The EMFAF Regulation does not include an exhaustive list of eligible interventions; it gives broad eligibility criteria (Article 12) and it provides a list of ineligible operations or expenditure (Article 13) with certain derogations thereto (Articles 17 to 21, 22(2) and 26(2)).

Article 13(m) of the EMFAF Regulation excludes support for the replacement or modernisation of a main or ancillary engine of a fishing vessel, unless otherwise provided for in Article 18 of the same Regulation. The replacement or modernization of a main or ancillary engine is therefore exclusively regulated by the provisions of Article 18. For small-scale coastal fishing vessels, Article 18(2)(c) of the EMFAF regulation specifies that new or modernised engines shall 'not have more power in kW than that of the current engine'.

Article 8(2) of the EMFAF Regulation provides that support under shared management shall be organised along the priorities and specific objectives as set out in Annex II to the Regulation. The specific objectives related to priority (1) referred to in Article 3 are provided in Article 14(1) and they organise the support under shared management under different headings per column and nomenclature as provided in Annex II. Article 22(3)(d)(i) of Regulation (EU) 2021/2060 equally provides that for each specific objective the related types of actions and their expected contribution to those specific objectives must be set out.

Article 18(1) of the EMFAF Regulation stipulates that support for the replacement or modernisation of a main or ancillary engine of a fishing vessel up to 24m shall contribute to the specific objective referred to in point (b) of Article 14(1) EMFAF Regulation - *Increasing energy efficiency and reducing CO2 emissions through the*

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

replacement or modernisation of engines of fishing vessels. The article does not refer to any other specific objective to which this type of action shall contribute. Furthermore, the wording "through one or more of the following specific objectives" in Article 14(1) cannot be construed in such a way as to mean that operations can be placed under any specific objective when for certain operations (e.g. the replacement or modernisation of engines of fishing vessels) the regulation explicitly prescribes to which specific objective support operations shall contribute. Otherwise, the wording of in this case Article 18(1) and the structure of national programs as set out in Annex II would be devoid of meaning.

Based on the above, EMFAF support for the replacement or modernisation of a main or ancillary engine of a fishing vessel can only be co-financed from the Fund under SO 1.2 of Annex II to the Regulation. This type of action is therefore not eligible under SO 1.1.

Regarding a standardised approach for setting targets and reporting values for CR18.2, FAMENET has an FAQ published on their FAQ webpage which explains the methodology in detail (under section 8. 'Calculating EMFAF result indicators'). However, there is no distinction in the methodology to be used for different sizes/types of vessels.

The target/actual values for CR18.2 should be reported in litres/hour and should come from the specifications of the engine manufacturer and not actual consumption, since actual consumption will be affected by many external factors and is thus less reliable/comparable.

It is very likely that most new engines will be more efficient in fuel consumption in litres/hr than older engines, when comparing the specifications from the engine manufacturer, meaning that the same engine output/work should be able to be delivered with less power and less litres consumed. Thus, if comparing consumption in litres/hour of old and new engines across many vessels, a reduction in litres/hr should most likely be observed.

N.B.

Pursuant to Article 63(1) of Regulation (EU) 2021/1060 (the Common Provisions Regulation), the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in the Common Provisions Regulation or in the Fund-specific Regulations.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA759_EMFAF_ARTICLE 22 SUPPORT INVESTMENTS IN PORTS

Relevant Article: Article 22 of the EMFAF Regulation

Member State: Latvia

Question:

In the fisheries control measure we plan to include aid for equipping ports so that they can be approved by the Commission pursuant to Commission Regulation 2024/1474. Since public authorities cannot make investments in the properties of private owners, appropriate investments in control facilities and equipment should be made either by fisheries producer organisations or by fishing operators.

The EMFAF Regulation (and also articles of the CFP Regulation to which it refers) does not specify whether private organisations (e.g. fishermen's operators, associations or POs) can receive support for investments in ports under control measures to ensure fisheries control processes. Article 22 of the EMFAF Regulation specifies only that investments on fishing vessels may be made and it does not mention anything about investments elsewhere.

Answer:

At the outset, it is worth noting that such investments in existing ports are not excluded from EMFAF eligible expenditure pursuant to Article 13 of Regulation (EU) 2017/1004 (hereafter EMFAF Regulation). Article 13(i) EMFAF Regulation declares ineligible for support merely the construction of new ports. Therefore, where conditions of Article 12 and 22 of EMFAF the Regulation are met, they may be eligible.

Article 22 of EMFAF Regulation does not set any limitation regarding potential beneficiaries, hence both public and private bodies could benefit from support under this Article provided that other relevant conditions are met.

Support under Article 22(1) of EMFAF Regulation may be granted for operations:

(1) falling under the scope of the development and implementation of the Union fisheries control system as provided in Article 36 of Regulation (EU) No 1380/2013 (hereafter CFP Regulation), and further specified in Regulations (EC) No 1224/2009 and (EC) No 1005/2008 and

(2) contributing to the specific objective 1.4 – *fostering efficient fisheries control and enforcement, including fighting against IUU fishing, as well as reliable data for knowledge-based decision making*.

It should be recalled that it is the responsibility of the Managing Authority to assess the compliance of operations with the requirements and conditions of the EMFAF regulation.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA00396 - CALCULATION OF THE THRESHOLD FOR NON-SUBSTANTIAL TRANSFERS

Relevant Article: Art 24(5) of the CPR

Member State: n/a

Question (including any relevant facts and information):

The CPR allows the Member State under the paragraph 5 of Article 24 CPR to transfer 8 % of the **initial** allocation of a priority to another priority of the same Fund and of the same category of region of the same programme.

The reallocations made through a standard programme amendment thus far from one specific priority to other priorities under a national programme in Poland amount to ca. 470 Mio, which accounts for more than 58 % of the initial EU allocation of that priority, i.e., 800 Mio.

Is it still possible to transfer the amount of EUR 64 million (as 8 % of EUR 800 million) from that priority to another one of the same programme following the procedure of Article 24(5) CPR?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

In accordance with Article 24(5) CPR, the Member State may transfer during the programming period an amount up to the limits and under the conditions set out in this Article, without a need for a Commission decision. [i.e. for the specific case in question, an amount of up to 8 % of the initial allocation of a priority and no more than 4 % of the programme budget to another priority of the same Fund and of the same category of region of the same programme.] Transfers which require a Commission decision, shall not be counted towards the limits set out in Article 24(5).

Thus, even where more than half of the initial EU allocation has already been transferred from the priority concerned to other priorities within the programme through an amendment approved by a COM decision, the Member State may still carry out a non-substantial transfer under Article 24(5) CPR from that priority, provided that the limits set out there have not been reached.

The non-substantial transfer cannot reduce the total allocation for the priority to an amount that is less than the amount already paid by the Commission to the MS.

QA761_EMFAF_ARTICLE 20_SCRAPPING OF VESSELS

Relevant Article: Article 20 of the EMFAF Regulation

Member State: Italy

Question:

In the context of the national call for permanent cessation launched in July 2024, the Managing Authority (MA) intends to adopt a procedure to pay beneficiaries in stages, by analogy with Art. 95 CPR, as follows:

- an initial payment ranging from 50% to 80% of the total compensation, to be made after the withdrawal of the fishing licence/permits by the competent authorities, within 15 days from the notification to the beneficiary of the concession.
- a final payment of the balance issued after the scrapping of the vessel and its removal from the EU Fleet Register. The scrapping needs to be carried out in the presence of the Port Authorities.

The MA has submitted the proposed procedure to the Certifying Authority.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

The EMFAF can support compensation for the permanent cessation of fishing activities only if all conditions of Article 20 of the EMFAF Regulation 2021/1139 are complied with.

In accordance with Article 20 (2) (b) and (d) of Regulation 2021/1139, support for permanent cessation may especially be granted only under the conditions that:

- the cessation is achieved through the scrapping of the fishing vessel or through its decommissioning and retrofitting for activities other than commercial fishing
- the equivalent fishing capacity is permanently removed from the Union fishing fleet register and the fishing licences, and the fishing authorisations are permanently withdrawn, in accordance with Article 22(5) and (6) of Regulation (EU) No. 1380/2013

It is the managing authority`s responsibility to ensure that all these conditions are complied with and to recover any support unduly paid, if the beneficiary should not comply with the conditions.

In view of Article 20 (2) (d) it must therefore not only be ensured that the licence and the fishing authorisation are withdrawn, but also that the equivalent fishing capacity is permanently removed from the Union fishing fleet register and the fishing licences.

Article 20 does not contain specific rules as to the time of payment of the support. It does especially not explicitly require the scrapping, or decommissioning and retrofitting, of the vessel before the grant, or part of the grant, is paid. The payment may therefore in principle also be granted in instalments.

It is the responsibility of the managing authority to determine the timeline and amount of the instalments, taking into account its responsibility to ensure that support unduly paid can be effectively recovered and that the operation is implemented timely.

It should also be noted that to ensure that, the scrapping of the vessel or its decommissioning and retrofitting for activities other than commercial fishing, has indeed occurred as planned as per Article 20(2)(b) of Regulation 2021/1139 the MA needs to ensure that there is an adequate audit trail.

The retained evidence needs to be sufficient (in terms of quantity), adequate (in terms of relevance), reliable (in terms of the underlying source) and in line with the relevant legal requirements on audit trail. The purpose of the evidence is to assure the MA that the vessel is unable to be used again, or, in case of decommissioning and retrofitting, used for purposes of commercial fishing, also by preventing any possible fraudulent action at sea with the remains of the vessel.

If the MA is satisfied that with such system in place there is absolutely no possibility for the vessel to be used , or, in case of decommissioning and retrofitting, used for purposes of commercial fishing, and the MA ensures that an adequate audit trail in relation to the actual scrapping or decommissioning and retrofitting of the vessel

subject to permanent cessation is maintained, then it is acceptable that under the MA's responsibility part of the grant is paid without waiting for a physical evidence of the scrapping or decommissioning and retrofitting..

To ensure a timely implementation the MA should also set up a procedure to ensure that if the scrapping or decommissioning and retrofitting does not occur within a specified period, the expenditure of a first payment phase can eventually be declared ineligible and recovered from the beneficiary. Such provision should be included in the granting contract with the beneficiaries.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA762_EMFAF_POs, INTERBRANCH ORGANISATIONS AND SMEs PARTICIPATION AT COMMERCIAL FAIRS AND AID INTENSITY FOR ACTIVITIES CARRIED OUT BY MUNICIPALITIES

Relevant Article: Article 41 and Annex III of the EMFAF Regulation

Member State: Bulgaria

Question 1:

The planned call for proposals is for marketing and communication activities, i.e. participation at commercial fairs of producer organisations, associations of producer organisations or interbranch organisations on one side and entities (SMEs) on other side. At the first glance it was all clear that POs can receive 75% and SMEs 50%. But in Annex III there is also a 100% intensity rate under point 14 "Operations other than those covered in row 13 which fulfil all of the following criteria:

- they are of collective interest;
- they have a collective beneficiary;
- they have innovative features or ensure public access to their results".

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Does this give us the opportunity to grant POs with 100% funding, if they ensure public access to the results of their campaign, in accordance with Art. 41, par. 3?

Question 2:

The other case is related with port infrastructure modernisation, performed by municipalities. Regarding Annex III, we can grant 75% but under point 8 we may consider 100% because the beneficiary is a public body and support is granted for an operation of services of general economic interest (point 8 of the Annex).

Answer to question 1:

According to Annex III row 14 of the EMFAF Regulation there are 3 conditions to be fulfilled for a beneficiary to get 100% maximum aid-intensity rate:

(i) they are of collective interest;

(ii) they have a collective beneficiary;

(iii) they have innovative features or ensure public access to their results.

- The term "*collective beneficiary*" should be understood as referring to an organisation recognised by the responsible authority as representing the interest of its members, of a group of stakeholders, or of the public at large. The beneficiary should be the collective organisation itself and not its members.

- To be eligible to the preferential treatment defined by this annex, the actions undertaken by this organisation also need to be in the "*collective interest"* of its members, of a group of stakeholders or of the general public. Such actions should thus encompass more than the sum of the individual interests of the members of this collective beneficiary. They have therefore a broader scope than those normally undertaken by private enterprises.

- The meaning of the "*public access"* to the results of a project funded under EMFAF refers to the fact that the general public should have access to the results of the operation. Merely informing the public of the operation as such is therefore not sufficient, but access to the overall results of the project for the public needs to be granted.

The Managing Authority should ensure that collective actions are not used to unduly take advantage of the more favourable provisions in the EMFAF regulation for collective beneficiaries.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The rationale behind the condition (iii) in Annex III row 14 is to ensure that also the public (including similar operators) can eventually benefit from the outcome of the operation, which is the reason for the possibility to grant full support. If participation in a commercial fair is supported, it cannot be argued that access to the results is given to the public within the meaning of Annex III row 14 (iii). In the case of participation at commercial fairs, the ultimate beneficiaries will be the members of producer organisations, associations of producer organisations or interbranch organisations, and the benefit/result of the operation is this participation in the fair. It does not produce a result to which the public could be given access (as it could be the case if a PO carries out a pilot test of a more selective gear and the results of the test are made public).

Answer to question 2:

Article 2(2)(12) of the EMFAF Regulation defines 'public body' as 'the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or by one or more of such bodies, governed by public law'. If the beneficiary falls under that definition it is eligible to the 100% aid intensity rate referred to in row 8 of Annex III to the EMFAF Regulation.

Managing Authorities should ensure that beneficiaries do not unduly take advantage of the more favourable aid intensity rate granted to public bodies.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA766_EMFAF_COMPENSATION OF AQUACULTURE PRODUCERS

Relevant Article: Article 21(5) of the EMFAF Regulation and Chapter 3.5. of the State aid guidelines for fisheries and aquaculture

Member State: PT

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question:

Article 21(5) of the EMFAF Regulation determines that EMFAF may support compensation for the temporary cessation of fishing activities as long as (among other conditions):

« a) owners or operators of Union fishing vessels which are registered as active and which have carried out fishing activities at sea for at least 120 days during the last two calendar years preceding the year of submission of the application for support;»

In fact, according to the Commission Communication setting out the Guidelines for State aid in the fishery and aquaculture sector (2023/C 107/01) :

1. the EMFAF Regulation allows the granting of support to interventions that contribute to the achievement of the objectives of the CFP, as set out in Article 2 of Regulation (EU) No 1380/2013 and sets out a list of ineligible operations and strict conditions to ensure that investments and compensation for the fleet are consistent with those objectives.
2. The Commission considers that there should be consistency and coherence between its policy of State aid control and the support which is granted under the CFP through the EMFAF. In applying and interpreting these Guidelines, the Commission takes into account the rules of the CFP and those governing the EMFAF.

In coherence, under Chapter 3 3. AID FOR FLEET MEASURES AND CESSATION OF FISHING ACTIVITIES, Point 3.5. Aid for temporary cessation of fishing activities, we find the same conditions as the ones detailed under Article 21 of the EMFAF Regulation, with the following exception:

(296) If the fishing activity in question is of a nature that it cannot be carried out throughout the whole calendar year, the period of 120 days set out in point (295)(a), (b) and (c) may be reduced as long as the ratio between the number of days of activity and the number of fishable days is the same as the ratio between the number of days of activity and the number of calendar days per year for beneficiary undertakings which fish throughout the year.

The question is, may a scheme supported by EMFAF also take into account this exceptional condition, if the fishing activity, in question, is of a nature that it cannot be carried out throughout the whole calendar year?

It is sound to admit that under a national State Aid scheme different conditions may be applied, compared to EMFAF conditions, as long as those conditions are provided in these Guidelines, as stated in the same Section of Chapter 3 as follows:

«3. In order to ensure consistency and coherence between the Union's State aid policy and the CFP, the conditions applicable to these measures funded purely from national resources must reflect the requirements set out under the EMFAF for equivalent EU co-financed measures, namely the measures laid down in Articles 17 to 21 of Regulation (EU) 2021/1139, unless otherwise provided for in this Section.»

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Furthermore, according to Chapter 2 point 2.1.1:

«(8) These Guidelines apply to all aid granted to the fishery and aquaculture sector. This includes the components of regional aid that relate to the fishery and aquaculture sector. They also apply to all other aid that is granted to the fishery and aquaculture sector within the framework of the Union funds.»

Thus, in our view, when applying for the relevant intervention in the EMFAF programme it is acceptable to apply all the conditions provided in these Guidelines and it should, accordingly, be possible to consider the exceptional situation pointed under (296) point of the guidelines, as already described.

The conservation measures, provided that a reduction of fishing effort is needed, based on scientific advice, are designed to achieve the objectives of the CFP. Therefore, under a fishing activity that cannot be carried out throughout the whole calendar year, if temporary cessations occurred during the last two calendar years preceding the year of submission of the application for support, it is very probable that it cannot assure the feasibility of at least 120 days of fishing during the last two calendar years.

Answer:

Under the EMFAF Regulation ((EU) 2021/1139), the temporary cessation of fishing activities is in principle not eligible for support, unless otherwise provided for in Article 21. Therefore, temporary cessation support under the EMFAF may be granted only under the conditions laid down in Article 21. Article 21(5) of the EMFAF Regulation requires vessels and fishers to have engaged in fishing activities at sea for at least 120 days in the two calendar years before submission of the grant application. Consequently, EMFAF support for the temporary cessation of fishing activities cannot be granted unless this specific condition is met, regardless of the specific circumstances in a given fishery.

The conditions set out in the EMFAF regulation cannot be interpreted or modified on the basis of the conditions provided for a similar type of support provided in the Guidelines for State aid in the fishery and aquaculture sector (2023/C 107/01). A modification of the provisions of the EMFAF regulation is possible only by way of an amendment to the regulation, to be adopted under the ordinary legislative procedure by the Council and the European Parliament, upon a proposal from the Commission.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA763_EMFAF_ARTICLE 13 ELIGIBILITY OF INVESTMENTS ON BOARD FISHING VESSELS

Relevant Article: Article 13 of the EMFAF Regulation

Member State: Croatia

Please note that answer to this question is superseded by IQ 779.

Question:

We would like clarification/confirmation regarding the eligibility of investments on board fishing vessels, primarily regarding the purchase of equipment intended to improve safety and working conditions, in the context of Article 13 point b) of Regulation (EU) 2021/1139, which stipulates that purchase of equipment that increases the ability of fishing vessels to find fish is not eligible for support under the EMFAF.

Specifically, we are interested in the eligibility of equipment such as GPS (navigation) device, radar device and GPS plotter. The GPS device (navigation) is part of the "MEO" (Medium earth orbit) satellite communication system and is an eligible cost, if it only has the functionality of precise positioning (determining the location, speed and providing time information) based on satellite signals, and the associated navigation functionality, which directly contributes to improving navigation safety.

Likewise, navigation safety is also improved by ship navigation radar, as a radio communication device, which transmits fixed-frequency electromagnetic waves and detects echo signals, and combines data obtained from other navigation equipment in order to achieve navigation assistance and collision avoidance.

In our understanding, the purchase of the aforementioned equipment is in line with the provisions of Article 13 point b) of Regulation (EU) 2021/1139, since such equipment does not imply equipment that increases the vessel's ability to find fish, but rather it represents equipment for navigation and navigation safety (radio and satellite communication).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

However, we have doubts about multifunctional devices, such as a GPS plotter, which according to the technical specifications implies a combination of different functions, more precisely, has the ability to be used for navigation purposes (as a GPS device) and the ability to be used as a so-called "fish-finder", but provided that the vessel also has a probe installed. According to available information from communication with WWF Adria, the GPS plotter, if it does not have a probe installed, can be used to display data from radar, GPS devices (navigation) as well as some autopilots.

Accordingly, we kindly ask for confirmation of our understanding of the eligibility of devices that have only navigation-related functionality (as described above – GPS device and radar), as well as an interpretation of whether a multi-functional device, such as a GPS plotter, can be eligible if it is purchased without a probe. If yes, is it necessary to additionally ensure that it will not be used for the purpose of finding fish (e.g. by a statement from the beneficiary or similar)? These questions are without prejudice of Article 13(k), i.e. the equipment that is obligatory for vessels is not financed/not to be financed under the EMFAF Programme.

Answer:

Pursuant to Article 12 of the EMFAF Regulation (EU) 2021/1139, the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

It is the responsibility of the Managing Authority to evaluate and establish which type of investments to improve safety on board fishing vessels fulfils the eligibility requirements of Article 12 and do not fall under the ineligible operations set out under Article 13. It is also important that the necessary type of action to support investments improving safety on board fishing vessels is included in the programme.

Article 13(b) of the EMFAF Regulations stipulates that the acquisition of equipment that increases the ability of a fishing vessel to find fish is ineligible, independently of whether the equipment in question increases the "catching capacity". This refers in particular to fish finding technologies and equipment, for example sonar or fish aggregating devices, other than those used for research purposes.

Please note that radar, GPS and cartographer on fishing vessels are considered not eligible pursuant to Article 13(b) because they are equipment that increase the ability to find fish. This applies to both GPS devices and radar systems with only navigation-related functionality, as well as multi-functional devices like GPS plotters. Even if the GPS device is purchased and installed without a probe, it may still increase the ability of a fishing vessel to find fish, for instance by allowing the tracking of previous fishing trips.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market

QA765_EMFAF_ELIGIBILITY OF NEW GEARBOX AS AN ANCILLARY ITEM WITH THE REPLACEMENT OF ENGINE

Relevant Article: Article 18 of the EMFAF Regulation

Member State: MT

Question 1:

Is an ancillary item such as the gearbox eligible under article 18 of EMFAF, bearing in mind that a new engine needs to have a new gearbox in order to retain an active warranty? Installation is also usually included in the price.

Would these costs be eligible under the replacement or modernisation of engines call please?

Answer:

Article 18 of Regulation (EU) 2021/1139 (the EMFAF Regulation), which in view of Article 13 EMFAF Regulation exclusively sets the conditions for operations concerning replacement or modernization of a main or ancillary engine of a fishing vessel, does not contain any specific provisions as to the eligible expenditure for such operations. Article 18(1) provides in general that "the EMFAF may support the replacement or modernization of a main or ancilary engine of a fishing vessel". Article 18(2)(c) and (d) set restrictions/minimum conditions as to CO2 reductions for the new engine, with Article 18(5) further defining when these conditions are considered to be met. However, neither Articles 18(2) nor 18(5) do limit the eligible costs to the cost of the engine itself.

In line with Article 63 (2) Regulation (EU) 2021/1060 (CPR), eligible expenditure would be all expenditure necessary for the implementation of the operation. Therefore, ancillary elements, such as a new gearbox can be eligible expenditure under Article 18 EMFAF Regulation, as far as they constitute an integral part of the replacement or modernisation of main or ancillary engines.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In absence of any specific rules in the EMFAF Regulation the eligibility of expenditure shall be determined by national rules, in line with Article 63(1) CPR.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA00397 - INTERPRETATION OF THE TERM "SUBJECT TO AVAILABILITY OF FUNDING" IN ARTICLE 74(1)(B) OF THE CPR

Relevant Article: Article 74 (1) (b) of Regulation (EU) 2021/1060 (CPR)

Member State: DE

Origin of the question: DAC audit in Germany

During a compliance audit carried out by DAC on the work of the audit authority (focusing on key requirement 11), the AA explained their interpretation on how they verify compliance with Article 74(1)(b) of the CPR concerning the payment deadline of 80 days to the beneficiary.

The programme authorities consider that the Article 74(1)(b) of the CPR only applies as long as the advance and interim payments of the Commission to the programme authorities exceed the payments made by the programme authorities to beneficiaries. In other words, this means that, if the funds obtained from the Commission have been exhausted in payments to beneficiaries, and there is a shortfall while awaiting additional Commission payments, the programme authorities consider that they do not need to verify the 80 days deadline, resuming payments to beneficiaries once new Commission funds are received. This interpretation relates to term "subject to the availability of funding" set out in the provision at stake.

Article: Article 74 (1) (b) of Regulation (EU) 2021/1060 (CPR):

"[The managing authority shall ensure,] subject to the availability of funding, that a beneficiary receives the amount due in full and no later than 80 days from the date of submission of the payment claim by the beneficiary; the deadline may be interrupted if

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

information submitted by the beneficiary does not allow the managing authority to establish whether the amount is due."

Question (including any relevant facts and information):

Is the payment deadline of 80 days set out Article 74 (1) (b) CPR to be respected only if payments of the Commission to the Member State for a given programme exceed the payments made by the programme authorities to beneficiaries?

Answer:

From a financial management perspective, it is worth highlighting that the support from the Funds under the CPR is a contribution from the Union budget to the Member State's programme, rather than a direct financial contribution to projects or beneficiaries. Thus, payments by the Commission to Member States are independent from payments by national authorities to beneficiaries.

Article 74(1)(b) CPR requires the managing authority to pay a beneficiary the amount due in full and no later than 80 days from the date of submission of the payment claim, subject to the availability of funding.

Article 74(1)(b) CPR should be interpreted taking into account:

- the supplementary nature of the resources from Union budget as regards the resources from the national (or regional) budget that Member State needs to make available in order to cover the national co-financing of the programme and,
- the general independence between the payments by the Commission to the Member State from the payments by the Member State to the beneficiary.

The notion of availability of funding under Article 74(1)(b) CPR should be limited to cases of significant imbalance between the total amount paid by the Union budget to the Member State's programme and the total amount which has been included by the beneficiaries in the payment claims submitted to the managing authority. The Member State should be able to demonstrate this imbalance to invoke it as a justification not to comply with its payment obligations vis-a-vis beneficiaries.

QA757_EMFAF_ENERGY TRANSITION IN RESEARCH AND PILOT PROJECTS

Relevant Article: Article 18 & 19 of the EMFAF Regulation

Member State: Finland

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1:

We would like to clarify the interpretation of rules concerning the financing of research and pilot projects related to the energy transition of fishing vessels.

As regards to research and pilot projects related to the energy transition, it should first be noted that new zero- and low-emission propulsion technologies require greater storage space onboard. For example, the energy content of hydrogen is five times lower than that of diesel, and therefore, the corresponding amount of energy requires five times more space. Hybrid power solutions require the storage of the conventional engine and its fuel, as well as the installation of an electric engine propulsion system and related batteries. Carbon capture and storage systems, for example, will also increase the tonnage of the vessel if a separate space has to be built on the deck.

In our view, there are no exceptions to the rules of the EMFAF regulation for the funding of research and pilot projects relating to fishing vessels. If our interpretation is correct, it means that all the rules relating to fishing vessel-related projects must be followed in private and public research and pilot projects if the operations are directed at the fishing vessel.

In practice, this means that a fishing vessel participating in a research or pilot project must fulfil, for example, the 60-day activity condition (Article 13(l)) and also the detailed conditions of Articles 18 and 19.

Article 18 (replacement of engines for fishing vessels) requires that the fishing vessel must belong to a segment of vessels that has been shown to be in balance with fishing opportunities, the vessel must have been registered for at least 5 years in the fishing vessel register, the engine power of the vessel must not increase from the previous one, and the project cannot concern fishing vessels longer than 24 m.

If the project would increase the tonnage of a fishing vessel, an additional requirement under Article 19 states that the vessel must be registered for at least 10 years in the fishing vessel register and that the increase in tonnage must be compensated by the removal of the corresponding capacity without public support. Compensation of capacity especially in public research and pilot projects is particularly challenging. This requires that the fisherman participating in the project should not only make the vessel available to the research project but also purchase another fishing vessel and remove it from the fishing vessel register without public support.

New low-emission or renewable energy projects are essentially linked to the need to increase the tonnage of the vessel, as new energy sources require more storage space. This makes it very challenging or almost impossible to carry out research and pilot projects on existing fishing vessels.

If the research and piloting are carried out on a vessel other than a registered fishing vessel, we believe that there is no need to comply with the detailed rules concerning the financing of operations related to fishing vessels. However, such projects are challenging from the point of view of the efficient use of public funding, since they practically limit the project owners to public research institutions. This means that a

non-fishing vessel has to be first purchased and then equipped with new zero- or low-emission propulsion technology and also be equipped for fishing. In addition, project funding must cover not only the research effort but also the operating costs regarding the concrete testing of the vessel in real fishing activity, since the catch may not be commercially exploitable. This is particularly challenging in trawl fisheries, where the largest reductions of emissions are needed.

Furthermore, we are uncertain about what happens after the implementation of such a project. A public research institute normally has no interest in keeping such an investment after the project since maintaining such a vessel requires financing. This would mean that they should sell the investment by means of a public auction. However, there is a potential challenge from the point of view of rules concerning the durability of operations (Article 65 in the CPR). According to it: "The Member State shall repay the contribution from the Funds to an operation comprising investment in infrastructure or productive investment, if within 5 years of the final payment to the beneficiary or within the period of time set out in State aid rules, where applicable, that operation is subject to any of the following:

(a) a cessation or transfer of a productive activity outside the NUTS level 2 region in which it received support;

(b) a change in ownership of an item of infrastructure which gives to a firm or a public body an undue advantage;

(c) a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives."

We consider that there is a risk that pilot vessel investments would be interpreted as productive investments. If such an investment, which is carried out by the public body for collective purposes, is sold to a private beneficiary that uses it for commercial fishery, we consider that it could be interpreted as a substantial change that affects the EMFAF project's nature, objectives, and especially the implementation conditions.

There are hence substantial difficulties in the planning and execution of research and pilot projects, which are much needed in order to find the best solutions for the energy transition of the fishing fleet. We hope you can clarify whether we have interpreted the rules above correctly and if there are other pathways for the funding of such activities.

Answer:

The EMFAF Regulation does not contain specific rules as to the financing of pilot or research projects. At the same time, the types of investments or projects contributing to improving energy efficiency of fishing vessels that can receive support from the fund is not limited to the specific investments.

Therefore, in principle the EMFAF can cover the costs of pilot projects related to the energy transition of fishing vessels, under Chapter II of the EMFAF Regulation as far as

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

these projects fall under the scope of the priorities and specific objectives set out in Article 8 (2) EMFAF Regulation, i.e. Article 5 (1) (b) Regulation (EU) 2021/1060 (CPR Regulation) and contribute to the objectives of the CFP through one of the specific objectives as listed in Article 14 (1) EMFAF Regulation. However, if the project concerns a replacement or modernisation of a main or ancillary engine of a fishing vessel, with regard to Article 13 (m) EMFAF Regulation co-financing of this type of action is allowed only under the specific conditions defined in Article 18 of the EMFAF Regulation. Equally, in case the project would lead to an increase in the gross tonnage of the fishing vessel, the conditions of Article 19 of the EMFAF Regulation need to be fulfilled, with regard to Article 13 (a) EMFAF Regulation.

In line with Article 19.2(d) EMFAF Regulation, the entry into the fishing fleet of new fishing capacity generated by the operation needs to be compensated for by a prior withdrawal of at least the same amount of fishing capacity without public aid from the same fleet segment or from a fleet segment where the fishing capacity is not in balance with the fishing opportunities for that segment. For that purpose, the capacity to be withdrawn does not have to come from the fisher on whose vessel the operation is impelmented. Member States can also use any other non-allocated fishing capacity they have in reserve from previous withdrawals made without public support.

If the pilot project is implemented on a vessel other than a registered fishing vessel, these restrictions would not apply. With regard to Article 14 and 12 EMFAF Regulation, actions contributing to improving energy efficiency of fishing activities could be financed, such as testing vessel's energy savings, safety, environmental performance, alternative propulsion and onboard systems, sea trials and etc. However, with regard to Article 13 (c) EMFAF Regulation, operations involving the construction of a fishing vessel are not eligible for support from the EMFAF. This includes the transformation of a non-fishing vessel into a vessel equipped for commercial fishing.

Finally, with regard to pilot projects, Member States can also look beyond EMFAF support to finance pilot projects contributing to energy transition (e.g. Horizon Europe, LIFE etc.). Further details supporting the energy transition in fisheries and aquaculture through EU funding opportunities under the 2021-2027 multiannual financial framework are available in the Guide on Financing opportunities for the Green Energy Transition of Fisheries and Aquaculture.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA00398 - MTR - HORIZONTAL QUESTIONS AND QUESTIONS RELATED TO PROGRAMMING

Relevant Article:

Member State: N/A

BENEFITS AND THEIR APPLICABILITY

Question 1:

Do the flexibilities offered by the MTR package apply only in the context of the MTR reallocations, with a programme amendment submission deadline of 31 December 2025?

Answer:

As explained in recital (3) ERDF/CF/JTF MTR Regulation, the legal framework of cohesion policy programmes provides for a mid-term review (…) which offers a timely and unique opportunity to refocus programmes on addressing new challenges and opportunities (…). Recital (9) ESF+ MTR Regulation explains that the mid-term review serves as an opportunity to address emerging social aspects of strategic challenges and new opportunities (…). The MTR package provides incentives and flexibilities against this background. Consequently, those incentives and flexibilities should be understood to apply in the MTR context, though some of them will continue to apply also beyond the MTR deadline of 31/12/2025.

PROGRAMMING

Question 3:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 7a(11) ERDF/CF Regulation and Article 5a(9) ESF+ Regulation provide that the Member States "*may resubmit to the Commission a complementary assessment as well as related requests for programme amendments*". Please confirm that the submission of the complementary assessment is voluntary, and it is possible to submit only a request for programme amendment.

Answer:

Article 7a(11) ERDF/CF Regulation sets out that, in addition to the assessment on the outcome of the mid-term review to be submitted pursuant to Article 18(2) CPR, Member States may resubmit by 31 December 2025 a complementary MTR assessment as well as related requests for programme amendments to the Commission taking into account the specific objectives listed in that Article. The use of "*may*" in that provision reflects that making use of such additional option (i.e. the submission of a complementary assessment and related requests for programme amendments) in the context of the MTR is voluntary. If, however, the Member State decides to submit an MTR programme amendment request in line with the provisions of Article 7a(11), an MTR assessment / complementary assessment should also be sent. (See Q7 in the Q&A on pre-financing for submission requirements in cases where the reallocation threshold has already been met.)

The same interpretation applies to Article 5a(9) ESF+ Regulation.

Question 4:

What would be the situation of the programmes that were exempted from performing the MTR under the STEP Regulation, but which now want to present a reprogramming of new priorities? Is the submission of any kind of mid-term review document via SFC necessary?

Answer:

As also elaborated in the reply to Q1, the MTR package is meant to provide flexibilities in the context of the mid-term review. Some programmes were exempted from the mid-term review pursuant to Article 24(9) CPR as they had programmed STEP priorities by 31/08/2024 and allocated the totality of their flexibility amounts to such priorities. If such programmes allocate additional funding to MTR priorities by the end of 2025, they will need to attach to their amendment a short MTR assessment in order to justify the amendments to the programme towards the MRT priorities. This is also referred in the context of the replies concerning the applicability of exceptional one-off pre-financing (see Q1 in the Q&A on pre-financing). Further information on the format of the assessment is provided in the reply to Q13.

Question 5:

Can you confirm that the second mid-term review will have a different submission date than the first mid-term review (for instance 31 March 2025)? How will eligibility start date be established?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

In case the Member State reassessed its amendments submitted by 31 March and re-submitted a revised amendment request following the Commission's observations, the first submission date would count as the one relevant for considering the eligibility of expenditure. In accordance with Article 63(7) CPR (see QA00057), if expenditure becomes eligible as a result of a programme amendment, eligibility counts from the date of the submission of the corresponding request to the Commission. For the ERDF, the Cohesion Fund and the JTF this is notably the case when a new type of intervention referred to in Table 1 of Annex I of the CPR is added to the programme (unless the investment/type of action had been explicitly excluded from the programme's text by the MA in the past).

With regard to the ESF+, as explained in QA00305 (for STEP), the start date for eligibility depends on whether the types of actions covered by the amendment were *already included in the programme* (notably, for the same specific objectives) or not. As elaborated in this reply, provided that operations contributing to the new dedicated priorities under Article 12a, 12c or 12d also fit into the related types of actions listed under the relevant specific objectives set out in the programme, then these operations are considered eligible from the moment they were firstly introduced in the programme (the earliest would be as from 1 January 2021 or the submission of the programme in case they were included in the first submission of the programme). If these conditions are not met (i.e. the operation does not fit any of the types of actions identified for the specific objectives set out in the programme), then the eligibility date of the expenditure will be the date of submission of the request for amendment, in accordance with the first subparagraph of Article 63(7) CPR.

Question 6:

With reference to the amendment of the programmes to be submitted by 31/12/2025, should these be related exclusively to the MTRs or will it be possible to make changes that concern elements other than those defined by the regulatory amendments linked to the MTR?

Answer:

Programme amendments should be submitted by 31/12/2025 to benefit from the flexibilities and incentives described in the Regulation where applicable. Nothing prevents the managing authority to include in the same amendments other changes not linked to the MTR or to the corresponding flexibilities and incentives. As regards the scope of programme amendments in the context of the MTR, please refer to QA00359.

Question 7:

What is the legal basis to create new dedicated priorities for housing in JTF multi-fund programmes, as the amended JTF Regulation does not include any reference to such a

possibility except for the JTF dedicated (mono-fund) programmes under Article 10(6), first subparagraph?

Answer:

There is no legal obligation for Member States to establish JTF dedicated priorities for housing under the JTF Regulation (for JTF in multi-fund programmes). However, to take full advantage of the relevant incentives linked to the 7/10% reallocation threshold for multi-fund programmes (as per Article 7a (2)(b) ERDF/CF Regulation), Member States should establish such priorities at the mid-term review (under multi-fund programmes).

Question 8:

The dedicated priorities will be available only for ERDF priorities or also the bundled ones (Interreg Funds, IPA) will be considered? For STEP, the bundled dedicated priorities were allowed.

Answer:

The ERDF/CF/JTF MTR Regulation does not provide for this matter, thus the normal programming approach should apply, and bundled dedicated priorities would be allowed for Interreg and external financing instruments. Member States may decide to reallocate external financing instruments to the dedicated priorities. If so, those resources may also count towards the reallocation threshold as ERDF resources.

Question 9:

The creation of new priorities in the programme requires conducting a strategic environmental assessment screening, which might be a time-consuming process. Given the tight timeline for this amendment and the urgency to submit the proposal as soon as possible, would derogations or simplification measures be provided? Would it, for instance, be possible to provide the SEA documentation later than the programme amendment request itself?

Answer:

The MTR Regulation does not establish a derogation in terms of the requirement to carry out a strategic environmental assessment, therefore such obligation will continue to apply without change. In case of delays with final versions of the strategic environmental assessment, Member States may submit the programme amendment request, however, the Commission will have to return it with corresponding observations as it cannot adopt the amendment without the relevant final assessment.

Question 10:

According to recital (21) ERDF/CF/JTF MTR Regulation and recital (15) ESF+ MTR Regulation, "*To support Member States in the swift and correct reprogramming, the Commission should provide timely and clear technical clarifications and support to*

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

managing authorities, including through a structured system, by answering technical, legal and procedural questions, in particular with regard to measures introduced by this regulation." What "structured system" is referred here?

Answer:

Structured system means the system already in place for the Commission to communicate with MAs. Therefore, RegioWiki will be used to publish the Q&A related to this proposal. Furthermore, the Commission has organised a dedicated webinar, similarly to other regulatory amendments in the past (e.g. STEP).

Question 11:

Does the introduction of a new specific objective, which has not yet been included in the programme, require the addition of a chapter on the enabling conditions for the new specific objective?

Answer:

The MTR Regulation does not introduce any changes to the system of enabling conditions. In practice, for the ERDF, this will concern the continued applicability of horizontal enabling conditions to all specific objectives, and the existing thematic enabling condition linked to SO 2.5 (water), which also continues to apply and should be fulfilled.

Question 12:

Do each of the new SOs have to be included in a single priority or, conversely, may more than one specific objective under one political objective be grouped in one single priority?

Answer:

Article 3(1c) ERDF/CF Regulation specifies that the individual MTR specific objectives have to be programmed in separate dedicated priorities. SFC will also not allow combinations of multiple MTR, or non-MTR specific objectives within the same dedicated priority.

QUESTIONS ON FORMAT

Question 13:

What form should the complementary MTR assessment pursuant to Article 7a(11) ERDF/CF Regulation / Article 5a(9) ESF+ Regulation have? We assume we do not need to repeat assessment according to specific elements of Article 18 CPR. Would a programme amendment request with a cover note be sufficient?

Answer:

Member States should use the additional time for reprogramming granted by the MTR Regulation to build upon and enhance the existing MTR assessment, which was originally based on the elements outlined in Article 18(1) CPR. As according to Article 7a (11) ERDF/CF Regulation the complementary assessment may be submitted "*in addition to the assessment for each programme on the outcome of the mid-term review to be submitted pursuant to Article 18(2) of Regulation (EU) 2021/1060*", the specific elements listed in the first paragraph of Article 18 CPR do not need to be reassessed.

Nevertheless, this complementary assessment should include a brief reflection on the changes introduced by the MTR package, such as how the new MTR priorities (e.g. – in case of the ERDF/CF – water, housing, energy, etc.) align with national and regional investment needs, and how these can be integrated into the current programmes. The complementary assessment does not need to be a detailed or contain exhaustive analysis. A short, well-substantiated analysis that outlines the key findings and necessary adjustments in light of the MTR outcome will be sufficient.

The Commission will assess the complementary assessment and the revised programme in accordance with Article 24 CPR.

A simple cover note accompanying a request for a programme amendment will therefore not be accepted. SFC will also not allow the submission of any MTR programme amendment without the corresponding MTR assessment.

The same applies to Article 5a(9) ESF+ Regulation.

Question 14:

Article 12d(2) ESF+ allows Member States to notify the Commission in case of programmes which include one or more priorities fulfilling the conditions set out in paragraph 1 of Article 12d, i.e. priorities supporting the adaptation of worker to change linked to decarbonisation. In such cases, the Member State is required to submit a request to the Commission to consider the priorities concerned as dedicated priorities for the purposes of paragraph 1 of Article 12d. What form does this notification take? Is it a programme amendment request and if not should be accompanied by the programme? And what is the deadline for submission of this notification?

Answer:

The request referred to in this provision does not constitute a request for amendment of the programme within the meaning set out in Article 24 CPR and therefore does not follow the procedure for amendment of programmes. Nonetheless, the request should be submitted through SFC and the programme should be resubmitted with the identification of the priorities concerned by ticking a specific box in SFC. This request, similar to the cases where the Member State submits a request for amendment of the programme, should be submitted by the Member by 31 December 2025.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

THEMATIC CONCENTRATION AND CLIMATE CONTRIBUTION

Question 15:

Will the creation of a new STEP priority or further reallocations to an existing STEP priority and the transfer of funds in the programme for this purpose from policy objective 2 to policy objective 1 make it possible to benefit from the flexibility of thematic concentration arrangements introduced under Article 4(10) ERDF/CF Regulation?

Answer:

The thematic concentration flexibilities introduced in the first and second subparagraph of Article 4(10) ERDF/CF Regulation also cover the STEP specific objectives (*"(…) amounts programmed for the specific objectives referred to in Article 3(1), first subparagraph, points (a)(vi) and (b)(ix), (…)"*). Those flexibilities therefore will apply also to amounts reallocated to or between those specific objectives.

Question 16:

Does the flexibility offered by Article 4(10) ERDF/CF Regulation apply to the Cohesion Fund?

Answer:

No. Article 4 ERDF/CF Regulation sets out the rules for the thematic concentration for the ERDF and, unless specifically regulated, it applies to ERDF resources. Possibility to use the contribution of the Cohesion Fund to fulfil the ERDF thematic concentration requirements is regulated in paragraph 4(7) ERDF/CF Regulation, which was not amended. As such, any contribution of the Cohesion Fund to the MTR priorities under policy objective 2 can be taken into account to fulfil the minimum requirements for policy objective 2 in line with the rules set out in Art 4(7) ERDF/CF Regulation. Therefore, Cohesion Fund resources cannot be used in accordance with the flexibility proposed in Article 4(10) ERDF/CF Regulation – they cannot be counted towards fulfilment of the minimum requirement for policy objective 1 or divided between policy objective 1 and 2.

Question 17:

How to interpret the last sentence of Article 4(10) ERDF/CF Regulation: "*This paragraph should apply solely when transferring allocations for the specific objectives referred herein from more developed or transition regions to less developed regions and from more developed regions to transition regions*." Does it apply to the first sub-paragraph of Article 4(10) ERDF/CF Regulation? Can it be applied without transferring the resources between categories of region in accordance with Article 111 CPR? Can it be applied outside the mid-term review?

Answer:

The sentence in the third subparagraph of Article 4(10) ERDF/CF Regulation applies to the second subparagraph of the same paragraph, so only to the additional flexibility offered for Members States that comply with the thematic concentration requirement at the level of category of region.

The flexibility offered in the second subparagraph of Article 4(10) ERDF/CF Regulation can only be applied when the Member State asks for a transfer in accordance with Article 111(1)(b) CPR (towards transition or less developed regions). In accordance with that Article, and at this stage of the implementation, such transfer may only be requested during the mid-term review. The flexibility offered in the first subparagraph of Article 4(10) ERDF/CF Regulation applies to thematic concentration calculations both at national or regional level and is not conditioned by the last sentence.

Question 18:

Do we understand correctly that the 30% ERDF climate contribution target can be partly replaced by the MTR dedicated priorities and what intervention types are allowed for that?

Answer:

No. Article 7a(12) ERDF/CF Regulation specifies that where the climate contribution of the Cohesion Fund would exceed the target of 37 % of its total allocation, the amount exceeding that target may be taken into account when calculating the climate contribution of the ERDF for the purpose of reaching the target of 30 % of its total allocation (and vice-versa in case the climate contribution of ERDF exceeds the target, it can compensate the CF contribution).

Question 19:

Reallocations to EUI and 3Is: based on Article 7a(8) ERDF/CF Regulation, '*such reallocations shall not constitute transfers within the meaning of Article 26 of Regulation (EU) 2021/1060*'. What does this mean? Where should such reallocations be encoded in the SFC programme template, as there are no changes made to Annex V CPR?

Answer:

Such reallocations can be considered as transfers to instruments under direct / indirect management, yet they do not count towards the 5% limit for such transfers and contributions to InvestEU as laid down in Article 26 CPR. Such reallocations should consequently be included in the SFC programme template under table 16A and 16B.

Question 20:

Contributions to InvestEU: Article 5(10) ERDF/CF Regulation allows the Member States to opt for the ceilings while contributing to the InvestEU at programme amendment – either the ceilings set out in Article 14 CPR, i.e., 3% of the initial national allocation of

the Fund, or max. EUR 50 million. Under Article 26 CPR, however, contributions to InvestEU share the joint ceiling with transfers to instruments under direct/indirect management, i.e., 5% of the initial national allocation of each Fund. As Article 26(1) remains unchanged, does it mean that the sum of contributions to InvestEU and transfers to instruments under direct/indirect management made throughout the programming period should not exceed 5% of the Fund allocation regardless of the chosen calculation method for the InvestEU contributions' limit (3% of the Fund allocation or EUR 50 Mio cumulatively)?

Answer:

Yes, as per Article 26(1) CPR, the joint limit for contributions to the InvestEU and transfers to instruments under direct/indirect management made throughout the programming period should not exceed 5% of the initial allocation of each Fund. This is regardless of the calculation method for the InvestEU contributions' limit chosen by the Member State, i.e., 3% of the Fund allocation or EUR 50 Mio cumulatively at programme amendment.

QA00399 - MTR - QUESTIONS ON THE CALCULATION OF THE REALLOCATION THRESHOLD AND CORRESPONDING LIMITATIONS

Relevant Article: Article 7a(2) ERDF/CF Regulation, Article 10(6) JTF Regulation, Article 5a(2) ESF+ Regulation; Article 3 ERDF/CF MTR Regulation / Article 2 ESF+ MTR Regulation

Member State: N/A

Question 1:

Article 7a(2) ERDF/CF Regulation / Article 10(6) JTF Regulation / Article 5a(2) ESF+ Regulation refer to a '*10% threshold*', requiring reallocations of at least 10% of the '*financial resources of the programme*' to one or more dedicated priorities as one of the conditions to benefit from the additional one-off pre-financing at the programme level. Does the term '*financial resources of the programme*' refer to the EU contribution or the total allocation of the programme, including the national co-financing?

Answer:

The term '*financial resources of the programme*', as included in Article 7a(2) ERDF/CF Regulation / Article 10(6) JTF Regulation / Article 5a(2) ESF+ Regulation, as well as in other paragraphs of the MTR Regulations where a reallocation threshold is set, refers to the EU contribution as included in the latest adopted version of the programme.

National co-financing is therefore excluded from the calculation basis (i.e. not counted for the basis of determining the 10% of the financial resources of the programme, nor for contributing towards this threshold).

Question 2:

What is meant by financial resources '*of the programme*' in the case of ERDF/JTF multi-funds?

Answer:

Article 7a(2) ERDF/CF Regulation (and Article 5a(2) ESF+ Regulation) determine that the additional one-off pre-financing will only apply where at least "*10% of the financial resources of the programme*" have been reallocated. '*Financial resources of the programme*' means all Union resources of the programme. This is also explained by recital (17) ERDF/CF/JTF MTR Regulation, "*[i]n order to accelerate the implementation of cohesion policy programmes more generally and inject the necessary liquidity for key investments to be implemented, additional one-off pre-financing for the ERDF and the Cohesion Fund should be paid for programmes under both the Investment for jobs and growth goal and under Interreg when the reprogramming concerns a substantial share of the overall programme.*" The same approach is set out in recital (10) ESF+ MTR Regulation. In case of multi-fund programmes, this means the resources of all Funds together except for what has been excluded under Article 7a(3) ERDF/CF Regulation and under Article 5a(3) ESF+ Regulation (NGEU, OMR, RESTORE).

Question 3:

In accordance with Article 7a(3) ERDF/CF Regulation and Article 5a(3) ESF+ Regulation, NGEU resources, the resources from the additional funding for outermost regions, and the resources reallocated to RESTORE dedicated priorities should not be taken into account for the calculation of the amount equivalent to the 10% of the financial resources of the programme. The JTF Regulation sets out similar exceptions. Should these resources be deducted only from the denominator (programme budget) or also from the numerator (reallocated amounts)?

Answer:

The resources indicated under Article 7a(3) ERDF/CF Regulation should be deducted only from the denominator, i.e., programme budget (7/10% should be calculated based on the adjusted programme budget). The same interpretation applies to Article 5a(3) ESF+ Regulation. The same approach also applies to the JTF both in multi-fund and dedicated programmes (Article 10(5) JTF Regulation refers to Article 7a(1) ERDF/CF Regulation, while Article 10(6) JTF Regulation excludes NGEU resources from the calculation).

Question 4:

Should flat rate technical assistance, or programme resources allocated to technical assistance in general, be excluded from the amounts reallocated to the dedicated

priorities for the purpose of calculating the 7/10 % threshold? Including flat rate technical assistance in particular gives disadvantage to the programmes using the real cost technical assistance.

Answer:

The wording of Article 7a(2) and (3) ERDF/CF Regulation does not exclude the technical assistance (flat rate or not) from the amounts reallocated to the dedicated priorities when calculating the threshold. The same interpretation applies to Article 5a(3) ESF+ Regulation.

However, practically speaking, only flat rate TA is part of the allocation of the dedicated priorities which count towards the 7/10% calculation. Real cost TA priorities cannot be programmed under specific objectives and, therefore, also not under the new MTR specific objectives and dedicated priorities. Therefore, they would not count towards the threshold calculation.

Question 5:

If the flexibility amount has already been definitively allocated following the first MTR submission under Article 18(3) or (4) CPR and the Member State submits to the Commission a complementary MTR amendment request (second submission), can the flexibility amount be reprogrammed/transferred to the new dedicated priorities (if not done yet) to count for purpose of calculating the 10% threshold?

Answer:

Once the flexibility amount has been definitively allocated within the context of the mid-term review (or through an earlier amendment reallocating the full or partial flexibility amount to STEP dedicated priorities and submitted by the end of August 2024), the flexibility amount ceases to be regarded as flexibility amount under the second subparagraph of Article 86(1) CPR. It then becomes a "normal allocation" subject to the standard rules and conditions applicable to allocated resources. Therefore, it can be reallocated to the new dedicated priorities under the second MTR submission.

On a technical note, it is reminded to keep what used to be flexibility amounts in separate columns in SFC for better traceability, while they can be moved between priorities and programmes as the managing authority finds it necessary.

Question 6:

Would the JTF amount dedicated to affordable housing count for the calculation of the reallocation threshold needed for access to benefits?

Answer:

Yes, new housing investments will count towards the 7/10% reallocation threshold if the amounts are programmed under a dedicated JTF investment priority.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

LIMITATIONS LINKED TO RULE OF LAW AND ENABLING CONDITIONS

Question 7:

According to Article 3 ERDF/CF/JTF MTR Regulation / Article 2 ESF+ MTR Regulation, amounts corresponding to commitments suspended by measures adopted in the context of Regulation (EU) 2020/2092 and amounts exceeding the flexibility amount corresponding to the specific objectives subject to a negative assessment by the Commission based on the application of horizontal enabling conditions pursuant to Article 15 of Regulation (EU) 2021/1060 should not be subject to a programme amendment or transfer pursuant to the provisions of the MTR Regulation. Is it possible to transfer the flexibility amount under SOs affected by the negative assessment of the enabling condition fulfilment by the Commission?

Answer:

Article 3 ERDF/CF/JTF MTR Regulation / Article 2 ESF+ MTR Regulation states that amounts exceeding the flexibility amount corresponding to specific objectives subject to a negative assessment on the basis of the application of horizontal enabling conditions cannot be transferred for the purposes of those Regulations (i.e. the amending Regulations to the ERDF and ESF+ Regulation). Therefore, in case the Member States submit a request for amendment under the new provisions established by Regulation (EU) 2025/1913 and Regulation (EU) 2025/1914, only the flexibility amount itself can be transferred to the newly created dedicated priorities from such specific objectives.

If the flexibility amount has already been definitively allocated (i.e. it is no longer subject to the restrictions under the second subparagraph of Article 86(1) CPR) and is attached to a specific objective subject to a negative assessment on the basis of the application of horizontal enabling conditions, it cannot be transferred due to the provision above based on which only transfer of amounts corresponding to the flexibility amount would be possible. Therefore, no reallocations from this specific objective to new priorities are possible, as the flexibility amount has become part of the "regular allocation".

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00400 - MTR - QUESTIONS ON PRE-FINANCING

Relevant Article: Article 3(1a) and (1c) ERDF/CF Regulation/Articles 12c(3), 12d(4) ESF + Regulation, Article 7a(1) ERDF/CF Regulation, Article 10(5) and (6) JTF Regulation, Article 5a(1) ESF+ Regulation

Member State: N/A

20% EXCEPTIONAL ONE-OFF PRE-FINANCING AT THE LEVEL OF THE PRIORITY (ARTICLE 3(1A) AND (1C) ERDF/CF REGULATION, ARTICLES 12C(3) AND 12D(4) ESF + REGULATION)

Question 1:

According to Article 3(1c) ERDF/CF Regulation/Article 12c and Article 12d ESF+ Regulation, where a programme amendment is submitted to the Commission by 31 December 2025 (to introduce new SOs in the corresponding dedicated priorities), the Commission should pay 20% of the allocation to such dedicated priorities as pre-financing. Similarly to the flexibility for increasing the co-financing rate by 10 percentage points, there seems to be no requirement to have the programme amendment linked to the MTR as such. Does the Member State need to link it and thus prepare a MTR assessment in accordance with Article 18 CPR, or a complementary assessment in case the MTR has already been approved before?

Answer:

The whole MTR package is meant to provide flexibilities in the context of the MTR, as highlighted by recital (3) of the ERDF/CF MTR Regulation and recital (9) ESF+ MTR Regulation (see also reply to Q1 in the Q&A on programming). The flexibilities in the Regulations were meant to provide benefits to the Member States in their mid-term review and facilitate re-focussing their programmes towards the political priorities through new specific objectives/new dedicated priorities introduced by the MTR package. Therefore, although Article 3(1c) ERDF/CF Regulation does not explicitly refer to the mid-term review, and nor do Articles 12c(3) and 12d(4) ESF+ Regulation, it is important to provide a justification for the changes in the programme in the form of a complementary MTR assessment. Such an assessment would be explaining the reasoning behind the MA's reprogramming choices.

Some programmes were exempted from the MTR pursuant to Article 24(9) CPR as they had programmed STEP priorities by 31/08/2024 and allocated the totality of their flexibility amounts to such priorities. If such programmes allocate additional funding to MTR priorities by the end of 2025, they will need to attach to their amendment a short MTR assessment in order to justify the amendments to the programme towards the MTR priorities. (See also reply to Q4 in the Q&A related to programming.)

By contrast, the Regulations do not set a time limit for the 10-percentage point maximum co-financing rate increase for MTR dedicated priorities (ref. Article 3(1c) ERDF/CF Regulation/Article 12c(5) and 12d(6) ESF+ Regulation), which may

consequently apply to relevant priorities established outside the context of the MTR, and even beyond the MTR deadline of 31 December 2025.

Question 2

Please clarify the treatment of the 20% exceptional one-off pre-financing under Article 3(1c) and 3(1a) ERDF/CF Regulation / Articles 12c(3) and 12d(4) of the ESF+ Regulation from the decommitment perspective. Will these amounts, similarly to the programme-level pre-financing pursuant to Article 7a(1) ERDF/CF Regulation / Article 5a(1) ESF+ Regulation, count towards the 2025 decommitment target?

Answer:

For the 1.5/9.5% programme-level pre-financing, the ERDF/CF Regulation / ESF+ Regulation exceptionally provide that while the pre-financing is paid in 2026, it should be counted as payment made in 2025 for the purpose of decommitment calculations provided that certain conditions are met (ref. Article 7a(1) and (4) ERDF/CF Regulation, Article 5a(1) and (4) ESF+ Regulation). No such derogation is provided for the 20% pre-financing pursuant to Article 3(1c) (or Article 3(1a)) ERDF/CF Regulation, nor to Articles 12c and 12d ESF+ Regulation. Consequently, in line with general rules on the calculation of decommitment as set out in Article 105 CPR, these pre-financing amounts will count against the decommitment target of the year in which they are actually paid. The amounts must be paid within 60 days of the Commission's decision approving the programme amendment. Therefore, the date of adoption may have an impact on the year in which the payment can be made.

Question 3:

Is it necessary to create new STEP dedicated priorities in order to benefit from the 20/30% exceptional one-off pre-financing?

Answer:

QA00386 already explains that in case a programme amendment increases the allocation to a STEP dedicated priority, the Commission will not pay further pre-financing beyond the exceptional pre-financing already paid to the Member State. Likewise, if the allocation is decreased, the Member State will not be required to repay any previously received pre-financing.

Furthermore, pursuant to Article 3(1a) ERDF/CF Regulation / Article 12a(2) ESF+ Regulation, STEP dedicated priorities established by programme amendments after 31 March 2025 (until 31 December 2025) will receive 20% one-off pre-financing - as opposed to 30% that applies for STEP dedicated priorities established via programme amendments submitted by 31 March 2025.

To benefit from the 20% pre-financing therefore new STEP dedicated priorities have to be created, with the corresponding option selected in SFC ('MTR priority dedicated to STEP').

Question 4:

Take the following scenario: the MA sent an MTR programme amendment request by 31/03/2025 without STEP. The Commission sent observations asking to reconsider

MTR priorities. The MA then resubmits the amendment request by including STEP. Would the new STEP priority be eligible for 30% or only 20% pre-financing? Would it make a difference if the MA resubmits before the MTR package is in force?

Answer:

In case the programme amendment procedure based on Article 24 initiated by the submission by the 31 March 2025 deadline has not yet been concluded (no adoption by Commission decision) and the resubmission including newly STEP dedicated priorities takes place as a result of negotiations with the Commission, the 31 March 2025 submission date would be considered, and the 30% pre-financing would apply.

1.5/9.5% ADDITIONAL ONE-OFF PRE-FINANCING AT THE LEVEL OF THE PROGRAMME (ARTICLE 7A(1) ERDF/CF REGULATION, ARTICLE 10(5) AND (6) JTF REGULATION, ARTICLE 5A(1) ESF+ REGULATION)

Question 5:

Does the 1.5%/9.5% additional one-off pre-financing under Article 7a(1) ERDF/CF Regulation / Article 10(5) and (6) JTF Regulation / Article 5a(1) ESF+ Regulation apply to the entire programme if the required conditions are complied with (e.g. reaching the reallocation threshold)?

Answer:

Yes, if the relevant threshold is reached and all required conditions are met, the 1.5%/9.5% additional one-off prefinancing will apply at the level of the programme.

Question 6:

To benefit from the additional 1.5% pre-financing at the programme level, does the amendment proposing reallocations to relevant dedicated priorities need to be done in the context of the mid-term review? Is this the case also for JTF mono-fund programmes?

Answer:

Yes. Article 7a ERDF/CF Regulation and Article 5a ESF+ Regulation explicitly refer that the additional one-off pre-financing is paid provided that the financial reallocations to the dedicated priorities are approved in the context of the mid-term review. This is also explained in recital (3) to the ERDF/CF/JTF MTR Regulation, according to which "*the legal framework of cohesion policy programmes provides for a mid-term review (…) which offers a timely and unique opportunity to refocus programmes on addressing new challenges and opportunities (…)*", as well as in recital 9 to the ESF+ MTR Regulation.(See also Q1 in the Q&A on programming.)

The 1.5% pre-financing offered to JTF dedicated programmes is aligned with the similar provisions applicable to ERDF/CF programmes as well as to multi-fund programmes comprising JTF resources. It will only be granted where at least 10% of the financial

resources of the programme is reallocated to one or more dedicated priorities in the context of the mid-term review. STEP reallocations prior to the mid-term review also count towards the threshold. NGEU resources are excluded when calculating the amount equivalent to the 10% of the financial resources of the programme.

Question 7:

The first subparagraph of Article 7a(2) ERDF/CF Regulation/Article 5a(2) ESF+ Regulation establishes several conditions to benefitting from the additional one-off pre-financing at the programme level (10% reallocation threshold, in the context of the mid-term review, request for programme amendment by end 2025). According to the second subparagraph of the same Article, certain reallocations should also be counted towards the 10% threshold. Do the conditions laid down in the first subparagraph need to be cumulatively met? Can programmes that have reached the 10% threshold via reprogramming in accordance with the STEP approach by 31 August 2024 and 31 March 2025 benefit from the programme-level pre-financing?

Answer:

All conditions outlined in the first subparagraph of Article 7a(2) ERDF/CF Regulation and in the first subparagraph of Article 5a(1) ESF+ Regulation apply cumulatively. However, if the reallocation threshold has already been reached under the programme either through amendments made prior to the mid-term review as set out in the second subparagraph of Article 7a(2) or in the context of the mid-term review related programme amendments submitted by end March 2025, there is no need for the Member State to submit a new programme amendment as part of the mid-term review for the higher pre-financing to apply.

In accordance with Article 7a(1) ERDF/CF Regulation/Article 5a(1) ESF+ Regulation, the programme level 1.5%/9.5% additional one-off pre-financing should be paid pursuant to the decision approving the programme amendment. The Regulation does not establish an obligation to submit a complementary assessment/amended programme, but only gives Member States the possibility to do so (see Article 7a(11) ERDF/CF Regulation/Article 5a(9) ESF + Regulation *"[…] Member States may, by 31 December 2025, resubmit…"*). This is in particular relevant for cases where Member States want to carry out additional reallocations to new specific objectives to reach the threshold, following the entry into force of the MTR Regulation. Therefore, in case the set threshold has already been reached through prior programme amendment(s) approving the reallocations to the STEP priorities, or in the context of the mid-term review, the Commission should pay to the programme(s) concerned the additional one-off pre-financing in 2026. In this case, there is no obligation for the Member State to resubmit the complementary assessment and related programme amendments in accordance with Article 7a(11) ERDF/CF Regulation. The 10% threshold is already met and the incentives apply, without the need for additional changes to the programmes.

Question 8:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In relation to Article 7a(1) ERDF/CF Regulation/Article 5a(4) ESF+ Regulation, could you please clarify whether the decommitment derogation applicable to the programme-level additional one-off pre-financing (i.e. that the amounts will be considered as payments in 2025) will also apply to the NGEU commitments (Article 4 of Regulation (EU) 2021/1056) under the JTF?

Answer:

According to Article 7a(4) ERDF/CF Regulation/Article 5a(4) ESF+ Regulation, this pre-financing will be treated as payments made in 2025 for the purpose of the decommitment calculations, provided that the MTR programme amendment is submitted by the end of 2025. As a result, this pre-financing will be factored into the calculation of the decommitment target for 2025 (for the 2022 commitments), including any NGEU resources under the JTF.

QA00403 - COHESION POLICY FUNDING FOR MILITARY AND DEFENCE INDUSTRIES

Relevant Article: Article 7(1)(d) of the ERDF Regulation

Member State: LV

Question (including any relevant facts and information):

Do we correctly understand that the ERDF regulation requirement in Article 7(1)(d) — stating that a company must not be an undertaking in difficulty according to the GBER — will still apply to defence industry projects implemented under Article 346 of the Treaty on the Functioning of the European Union (TFEU), thus, excluding undertakings in difficulty , as defined in Article 2(18) of Regulation (EU) No 651/2014, from financing under ERDF?

Or is there an intention to expand the exception currently applicable for support provided under the de minimis and Temporary Framework rules? And could such an exception potentially be included in the new MTR regulation specific Objective ('(vii) enhancing industrial capacities to foster defence capabilities, prioritising capabilities of a dual-use nature)?

Article 7(1)(d) of the ERDF Regulation: Support from the ERDF and the Cohesion Fund shall not be granted to: d) undertakings in difficulty, as defined in Article 2(18) of Regulation (EU) No 651/2014, unless permitted under de minimis aid or temporary state aid rules established in response to exceptional circumstances.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

Article 7(1)(d) on undertakings in difficultly applies as there is no derogation for defence industry projects in the MTR package. The only exceptions are made for the de minimis aid and temporary frameworks in response to exceptional circumstances.

Regulation (EU) 2025/1914 (the MTR Regulation) has entered into force and has not modified Article 7(1)(d). There is no intent to expand the exception currently applicable for support provided under the de minimis and Temporary Framework rules.

QA00401 - MTR - QUESTIONS ON THE INCREASED MAXIMUM CO-FINANCING RATE AT PROGRAMME AND PRIORITY LEVEL

Relevant Article: **Increased maximum co-financing rate at priority level:** Article 3(1a) and (1c) ERDF/CF Regulation, Article 12a, 12c and 12d of the ESF+ Regulation**.** **Increased maximum co-financing rate at programme level:** Article 7a(10) ERDF/CF Regulation, Article 5a(8) ESF+ Regulation**.**

Member State: N/A

INCREASED MAXIMUM CO-FINANCING RATE AT PRIORITY LEVEL (ARTICLE 3(1A) AND (1C) ERDF/CF REGULATION, ARTICLE 12 A, 12 C AND 12 D OF THE ESF+ REGULATION)

Question 1:

Can the co-financing rate for the dedicated priorities pursuant to Article 3(1c) ERDF/CF Regulation be increased by 10 percentage points only within the amendment related to the mid-term review?

Answer:

The higher maximum co-financing rate pursuant to Article 3(1c) ERDF/CF Regulation may apply at any time during the whole programming period when dedicated priorities are introduced into the programme through its amendment. This specific provision is not related to the mid-term review amendments only.

The same interpretation applies to Article 12c and 12 d ESF+ Regulation.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 2:

Please clarify whether the 10 percentage point increase pursuant to Article 3(1c) ERDF/CF Regulation should be calculated compared to the co-financing rate applied to the priorities of the programme as set out in the relevant approval decision in force, or compared to the maximum rate potentially applicable on the basis of Article 112(3) CPR, even if this rate was not adopted during the initial programming or approval.

Answer:

The provision set out in the seventh subparagraph of Article 3(1c) ERDF/CF Regulation and Articles 12c(5) ESF+ and 12d(6) ESF+ Regulation increases the maximum possible co-financing rate, as set out in Article 112(3) and (4) CPR, by 10 percentage points – not the actual co-financing rate already applied in the priority.

Question 3:

What is the co-financing rate of existing STEP priorities to which additional resources are allocated during the MTR reprogramming, and of new STEP priorities created in the context of the MTR, after the entry into force of the MTR Regulation?

Answer:

The MTR Regulation does not modify the maximum co-financing rate applicable to STEP dedicated priorities. Pursuant to the seventh subparagraph of Article 3(1a) ERDF/CF Regulation and to the sixth subparagraph of Article 12a(2) ESF+ Regulation, the maximum co-financing rate for STEP dedicated priorities (both those established in the past or yet to be established) is 100%.

Question 4:

Does the MTR Regulation allow the co-financing rates for the JTF dedicated priorities (housing/STEP) to be increased by 10 percentage points when such priorities are added in a programme in the context of the MTR?

Answer:

By way of derogation from Article 112 CPR, the maximum co-financing rates for dedicated priorities established to support the STEP objectives under the JTF should be 100% (see the sixth subparagraph of Article 10(4) JTF).

However, an increased co-financing rate does not apply to JTF dedicated priorities for housing, and such co-financing rates should be determined in accordance with Article 112 CPR. Except for Eastern border programmes with JTF dedicated priorities where the relevant threshold of reallocations is achieved through a mid-term review related programme amendment submitted by 31 December 2025, in accordance with Article 7a(10) ERDF/CF Regulation. If this threshold is met, the maximum co-financing rate for all priorities in the programme, including JTF priorities, is increased by 10 percentage points above the co-financing rate applicable, not exceeding 100%. The higher co-financing rate should not apply to programmes covering the entire territory of the Member State concerned, unless those regions are included only in programmes covering the entire territory of that Member State.

Question 5:

Do we understand correctly that in case higher co-financing rate is used in the new MTR dedicated priorities, the managing authority has to compensate due to the fact that the total ERDF/ESF + contribution will not be increased?

Answer:

Indeed, the total ERDF/ESF+ contribution will not be increased by the higher co-financing rate. As the co-financing rate will be determined at the level of the priority, in case the average EU co-financing rate at the level of the operation is lower than the one at priority level, the managing authority would need to select further operations in order to comply with the provision set out under Article 93(5)(b) CPR. That provision requires that the support from the Funds paid or to be paid to beneficiaries cannot be lower than the support from the Funds paid by the Commission to the priority (at closure).

INCREASED MAXIMUM CO-FINANCING RATE AT PROGRAMME LEVEL (ARTICLE 7A(10) ERDF/CF REGULATION, ARTICLE 5A(8) ESF+ REGULATION)

Question 6:

Does the increased maximum co-financing rate under Article 7a(10) ERDF/CF Regulation / Article 5a(8) ESF+ Regulation apply to the entire programme or only to the new priorities if the required conditions are complied with (e.g. reaching the reallocation threshold)?

Answer:

If the 10% reallocation threshold is reached and all required conditions are met, for the programmes under the Investment for jobs and growth goal covering one or more NUTS2 regions bordering Russia, Belarus or Ukraine – the increase by 10 percentage points above the applicable co-financing rate applies at the level of the programme and not only to the new dedicated priorit(ies).

Question 7:

According to Article 7a(10) ERDF/CF Regulation / Article 5a(8) ESF+ Regulation, the maximum co-financing rate for priorities in specific Eastern border region programmes under the investment for jobs and growth goal should be increased by 10 percentage points above the co-financing rate applicable, subject to certain conditions. Is this increase cumulative for MTR dedicated priorities already benefitting from a 10 percentage point increase pursuant to Article 3(1c) ERDF/CF Regulation/Article 12c and Article 12d ESF+ Regulation?

Answer:

No, the two incentives are not cumulative. "Co-financing rate applicable" refers to the maximum possible co-financing rates as set out in Article 112(3) and (4) CPR. Dedicated priorities already benefit from a 10 percentage point increase to the maximum co-financing rate pursuant to the seventh subparagraph of Article 3(1c) ERDF/CF Regulation / Article 12c(5) and 12d(6) ESF+ Regulation. Consequently, through the incentive under Article 7a(10) ERDF/CF Regulation / Article 5a(8) ESF+

Regulation, the 10 percentage point maximum co-financing rate increase (not exceeding 100%) will be extended to all priorities in programmes under the IJG goal covering one or more NUTS2 level regions bordering Russia, Belarus or Ukraine, provided that the relevant conditions set out in that Article are met, but this provision would not increase the applicable co-financing rate to the dedicated priorities by 20 percentage points.

QA00407 - VARIOUS QUESTIONS ON STARTING DATE OF ELIGIBILITY IN THE MTR / STEP DEFENCE CONTEXT

Relevant Article: Article 118 (a) CPR, Article 73 CPR, Article 63 CPR

Member State: N/A

Question 1:

What should be considered as the starting date of eligibility of expenditure in programme amendments that use new specific objectives and intervention fields which required the entry into force of the DA? Can the date of the first formal submission by 31 March 2025 be considered as the starting date for both existing intervention fields (e.g. STEP intervention fields) added on 31 of March 2025, and new intervention fields stemming from the DA introduced on 27 October 2025 in the updated version of the programme amendment request?

Answer:

With regard to the starting date of eligibility of expenditure related to the specific objectives introduced by Regulation (EU) 2025/1914 and/or new related intervention fields as set out in the DA, the following approach is taken:

Expenditure corresponding to actions[1] that were not eligible under the CPR and the Fund-specific Regulations or under the ERDF/CF/JTF programme before the entry into force of Regulation (EU) 2025/1914 will become eligible from the date of resubmission[2] to the Commission of a request for a programme amendment introducing to the programme a new dedicated priority corresponding to a new specific objective following the entry into force of that Regulation, and of the DA for the use of the new intervention fields.

Expenditure pertaining to types of actions under the new dedicated priorities corresponding to an MTR specific objective, that are already described in the

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

programme as they are covered by existing intervention fields in the latest adopted version of the programme, will continue to be eligible either as of 1 January 2021 in the event the action had been covered from the first adopted version of the programme, or from the submission date of a request for a programme amendment introducing the actions/intervention fields concerned. The latter does not apply to investments/types of actions that had been explicitly excluded from the programme's text by the managing authority in the past.

Please also see QA00057, the reply to question 1 of QA00305, and the reply to question 6 of MTR QA00398.

Question 2:

In particular, if an adopted programme's wording is general on the support to the STEP sectors (i.e., the programme does not explicitly exclude the STEP defence sector) and there is no need for a new intervention field to be introduced to finance defence operations after the defence mini-omnibus is in force, is a new programme amendment needed, even if no changes to the programme would be introduced, in order to ensure the eligibility start date? Or would the entry into force of the defence mini-omnibus mark the eligibility start date?

Answer:

STEP investments in the defence sector in ERDF/CF/JTF programmes were not eligible before the entry into force of the Regulation incentivising defence-related investments in the EU. Consequently, the Member State must submit a programme amendment including new actions or investments in defence technologies to be financed under STEP (as referred to under point (iv) of Article 2(1)(a) of the STEP Regulation). Expenditure corresponding to such actions and investments will become eligible from the date of the submission of the programme amendment request.

[1] Including new types of enterprises implementing productive investments which were enabled by the MTR Regulation.

[2] Or from the date of submission of the programme amendment for newly submitted amendment requests after the MTR Regulation entered into force.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00402 - MTR - QUESTIONS ON THE EXTENDED FINAL DATE FOR THE ELIGIBILITY OF EXPENDITURE AND DECOMMITMENT

Relevant Article: Article 7a(5), (6) ERDF/CF Regulation, Article 10(6) JTF Regulation, Article 5a(5), (6) ESF+ Regulation

Member State: N/A

Question 1:

Does the extension of the final date for eligibility and decommitment until 31 December 2030 apply to the whole programme if the required conditions are met?

Answer:

Yes. As also explained in recital (15) ERDF/CF/JTF MTR Regulation / recital (11) ESF+ MTR Regulation, this flexibility applies at the programme level ("*(…) to take account of the time needed to refocus investments in the context of the mid-term review and allow best use of available resources, the final date for the eligibility of expenditure as well as decommitment rules should be adjusted for programmes carrying out a reallocation of resources to strategic priorities in the context of the mid-term review exercise*").

Question 2:

Will the extension of the final date for eligibility until 31 December 2030 be granted to programmes that have made reallocations to STEP priorities by 31 August 2024 and 31 March 2025, provided that the reallocation threshold is met in line with the requirements?

Answer:

According to Article 7a(5) ERDF/CF Regulation/Article 5a(5) ESF+ Regulation, the final date for the eligibility of expenditure and decommitment will be 31 December 2030 for programmes where programme amendments reallocating at least 10% of the financial resources of the programme to one or more of the dedicated priorities referred to in paragraph 2 of that Article have been approved. As paragraph 2 refers also to the STEP priorities added before the MTR exercise, this means that reallocations to STEP priorities before the MTR (i.e. by 31 August 2024) are also taken into account for calculating the 10% threshold.

Question 3:

The MTR Regulation creates a derogation from Article 105(2) CPR that stipulates that amounts still open at 31 December 2029 will be decommitted if the closure documents are not submitted on time. It seems that no exceptions are envisaged from Article 105(1) CPR that lays down the N+3 rule. Could you confirm if the commitments up to

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

2026 still need to be covered by pre-financing or declared expenditure by 31 December 2029?

Answer:

Yes, this is correct. Article 7a(5) ERDF/CF Regulation / Article 5a(5) ESF+ Regulation derogate from Article 105(2) CPR. There is no derogation from Article 105(1) CPR, and therefore pursuant to that Article, commitments up to 2026 still need to be covered by prefinancing or payment applications submitted to the Commission by 31 December 2029. Amounts not covered will be decommitted.

The derogation from Article 105(2), together with the extension of the final date for eligibility and other applicable deadlines, impacts 2027 commitments and provides an additional year for the programme to incur, pay and declare expenditure, reducing decommitment risk by closure.

Question 4:

According to Article 7a(6) ERDF/CF Regulation / Article 5a(6) ESF+ Regulation, "*where a Member State has only one programme covering its entire territory and that programme is financed from the ERDF, the Cohesion Fund, the ESF+ and the JTF*", the reallocation threshold for the derogation concerning the decommitment and eligibility deadlines is 7%. If a Member State has only one multi-fund programme covering the entirety of its territory, but also has, for instance, a mono-fund ESF+ programme (e.g programme dedicated to support to specific objective set out in Article 4(1)(m) ESF+ "addressing material deprivation for the most deprived", ex FEAD), would the 10% or the 7% threshold apply?

Answer:

The 7% threshold pursuant to Article 7a(6) ERDF/CF Regulation and Article 5a(6) ESF+ Regulation only applies in case the totality of the cohesion policy allocation (ERDF, ESF+, CF, and JTF resources) of the Member State is programmed into a single multi-fund programme covering its entire territory. The purpose of this derogation is to take into account the specific situation of these Member States which would, in practice, have to reallocate 10% of their entire national allocation to meet the threshold.

If a Member State has one national multi-fund programme, but also has additional mono-fund programmes financed by the ERDF/CF/ESF+/JTF, it does not benefit from this increased flexibility, and should meet the 10% threshold for access to the extended final dates.

It is important to note that the co-legislators only provided for the possibility of this lower, 7% threshold for the access to the extended final dates (decommitment, eligibility, etc). For access to the other flexibilities, the 10% threshold will have to be met.

Question 5:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Do the new rules regarding the extended final date for eligibility have an impact on the NGEU deadline for payment execution?

Answer:

No, there is no impact on the deadline for NGEU payments, which remains set to the end of 2026 (Council Regulation (EU) 2020/2094 was not amended with the MTR package).

QA764_EMFAF_COMPENSATION OF AQUACULTURE PRODUCERS

Relevant Article: Article 26 of the EMFAF Regulation

Member State: IE

Question 1:

Annex IV of the EMFAF Regulation references compensation for unexpected environmental, climatic or public health events. The Irish aquaculture operators have been affected by such events and we consider to compensate them under EMFAF.

The only relevant articles appear to be Article 26(1)(a) firstly, and then Article 27 – which requires measures under 26(1)(a) to be consistent with our National Strategic Plan for Sustainable Aquaculture (NSPSA). While the NSPSA does not have an action to put a compensation scheme in place to mitigate significant environmental/climatic events, these are recognised in the NSPSA as significant challenges for the sector, and challenges that the sector needs support in relation to. So from that perspective we have recognised the need to support the sector with these challenges in our NSPSA.

We would be interested in looking at the establishment of a scheme under the EMFAF programme to provide compensation where for example an oyster farm loses a high percentage of its trestles as a result of a storm, or where a salmon farm loses a high percentage of stock due to a jellyfish or algal bloom.

We need your opinion on whether such compensation schemes could be implemented under Article 26(1)(a) of the EMFAF regulation.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Answer:

Support under Article 26(1)(a) of the EMFAF Regulation covers interventions that contribute to the achievement of the objectives of the CFP as set out in Article 2 of Regulation (EU) No 1380/2013, in particular ensuring that aquaculture activities are environmentally sustainable in the long-term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies.

All types of support provided to operators under the EMFAF, must fall under the scope of the priorities and specific objectives set out in Article 8(2) of the EMFAF Regulation. Based on the information received from the IE EMFAF MA, the proposed types of actions seem to fall under the scope of the specific objective *"promoting sustainable aquaculture activities, especially strengthening the competitiveness of aquaculture production, while ensuring that the activities are environmentally sustainable in the long term"* referred to in Article 26(1)(a) EMFAF.

It is recalled that any support to the aquaculture sector shall be consistent with the multiannual national strategic plans for the development of aquaculture referred to in Article 34(2) of Regulation (EU) No 1380/2013.

Given that aquaculture operators are exposed to increasing economic and environmental risks, inter alia due to climate change and price volatility, the managing authority is encouraged to consider using the EMFAF to support also actions that strengthen the resilience of the sector e.g. through mutual funds, insurance instruments or other (collective) schemes that enhance the capacity of the sector on the prevention and management of risks to better respond to adverse events.

Overcompensation or creating incentive for compensations should be avoided during the measure design, selection criteria and implementation.

According to the EMFAF Regulation, compensation shall be granted under any of the forms referred to in points (b) to (e) of Article 53(1) of Regulation (EU) 2021/1060.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA00405 - COMMON RULES FOR PAYMENT APPLICATIONS

Relevant Article: Articles 63, 74, 91 of the CPR 2021-2027

Member State: BG

Question (including any relevant facts and information):

I am writing to you regarding the EMFAF payment application to be submitted to the COM by the end of 2025.

In the past programming periods, the Certifying Authority has included in the payment applications expenditure, for which MA/IB has made 100% verification of the expenditures. MA/IB has verified that the co-financed products and services have been delivered and the amount of expenditure claimed by the beneficiaries has been paid and also has been paid by the MS to the beneficiaries, before submitting them to the COM.

We have the following questions regarding the upcoming EMFAF payment application:

- What level of verification needs to be done and what kind of expenditure can Bulgaria include in the payment application under EMFAF?
- Can we include in the payment claim expenditure paid and claimed by the beneficiaries, but for which the verification at MA/IB level and payment to the beneficiary will be performed later? If such an option is possible, the MA could verify such expenditure regarding the rules of Art. 74 of CPR by the end of the accounting year (30 June). During these checks if there appears an expenditure which is ineligible, it will be excluded in the next payment claim.

Answer:

As stated in Article 63(2) of the CPR 2021-2027, 'expenditure shall be eligible for a contribution from the Funds if it has been incurred by a beneficiary or the private partner of a PPP operation and paid in implementing operations, between the date of submission of the programme to the Commission or from 1 January 2021, whichever date is earlier, and 31 December 2029'.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In accordance with Article 91(3) of the CPR 2021-2027, 'payment applications shall be submitted to the Commission in accordance with the template set out in Annex XXIII and include, for each priority:

(a) the total amount of **eligible expenditure incurred by beneficiaries and paid in implementing operations…, as entered in the system of the body carrying out the accounting function;**

(c) the total amount of **public contribution made or to be made…, as entered in the system of the body carrying out the accounting function**'.

As stated in Article 74(1)(b) of the CPR 2021-2027, the reimbursement of the beneficiary must take place within 80 days from the date of submission of the payment claim by the beneficiary but not necessarily before submitting the payment application to the Commission and this is the purpose of the 'to be made', to allow that public contribution still to be made by the accounting function to a beneficiary may be included in a payment application even if not yet "made" (i.e. paid)[1].

Regarding the verification rules, Article 74(1) of the CPR 2021-2027 establishes that the managing authority shall 'carry out management verifications to verify that the co-financed products and services have been delivered, that the operation complies with applicable law, the programme and the conditions for support of the operation'.

Article 74(2) of the CPR 2021-2027 states that management verifications shall be 'risk-based and proportionate to the risks identified ex ante and in writing. Management verifications shall include administrative verifications in respect of payment claims made by beneficiaries and on-the-spot verifications of operations. Those verifications shall be carried out before the submission of the accounts in accordance with Article 98.'

Based on the above, payment applications submitted to the Commission may include expenditure incurred by beneficiaries and paid in implementing operations and submitted to the Managing Authority, but which have either not been subject to management verifications or for which the management verifications are still pending.

The national authorities may refer to the reflection paper "Risk based management verifications Article 74(2) CPR 2021-2027", reference CPRE_23-0005-01 of 24/05/2023.

Texts below added by MARE D3

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

[1] With exception in the case of aid schemes under Article 107 TFEU, where the public contribution corresponding to the expenditure included in a payment application shall have been paid to the beneficiaries by the body granting the aid (Article 91(6) of the CPR 2021-2027).

QA00406 - PRODUCTIVE INVESTMENTS

Relevant Article: Articles 65 of CPR (EU) 2021/1060

Member State: NL

Question (including any relevant facts and information):

Article 65(1)(a) Reg 2021/1060: Exchanging vessels and transferring production activity to another NUTS-2 region.

1. How should the provision 'termination of a production activity or its transfer outside the NUTS level 2 region where it received aid' be read with regard to the transfer of the production activity? Does it mean that in the case of an investment on board: a beneficiary may only transfer a vessel to a beneficiary whose enterprise is registered in the same NUTS-2 region or does it refer to the place where the production activity takes place (e.g. the North Sea) or the NUTS-2 region where the vessel is registered?

2. In the previous fund period, the production activity was not allowed to be moved to a location outside the programme area (Article 71(1)(a) Reg. 1303/2013. Why was it chosen to restrict this further?

Article 65 para 1 para 2 Reg 2021/1060: the shortened period for SMEs

The condition for when the conservation period can be shortened to three years is worded ambiguously in the Dutch and English versions of the regulation: 'The Member State may shorten the period mentioned in the first paragraph to three years in cases concerning the maintenance of investments or jobs created by SMEs.'

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

3. Can you confirm that the provision 'in the case of preservation of investment' also only applies to SMEs? The text as it stands now seems to refer to SMEs only in the case of jobs created.

4. Furthermore, it is unclear what exactly is meant by 'maintenance of investment'. The conservation obligation is about preserving investments, does this concern a broad exemption ground?

Answer:

1. Article 65(1)(a) Reg 2021/1060 refers to termination of a production activity or its transfer outside the NUTS level 2. In this context, the term 'transfer' should not be understood as transfer/sale to another company/entity, but moving the activity to another region **by the same beneficiary**.QA00180 established that for the coastal fisheries scheme, the durability condition would be linked to the vessel's fishing activities. The article refers to the production activity as such; where the enterprise is registered is irrelevant.

As explained in QA00180, in principle, an assessment of transfer outside that NUTS 2 region should depend on the location of an operation as selected by the MA to contribute to the achievement of the objectives of the programme. Where, due to the specificities of an operation, establishment of its location is not straightforward, other justified parameters may be applied by the MA and under its responsibility to set the location of the operation, for example by taking into account the purpose of durability provisions.

2. This question is outside the scope of an interpretation question.

3. Article 65.1 of Regulation No 2021/1060 applies to operations comprising investment in infrastructure or productive investment, irrespective of the size of the enterprise which implemented the operation. Consequently, the requirement to maintain of investments or jobs created for the durability period, mentioned in the said article, applies to all enterprises. The durability period of five years from the final payment to the beneficiary, as stated in Article 65.1, can be reduced to 3 years only in cases concerning the maintenance of investments by SMEs or the maintenance of jobs created by SMEs

4. Article 65(1) requires that the investments or jobs created are maintained for the durability period thus ensuring that they remain in the region where the aid was granted and continue to fulfil its original purpose. In other words, maintenance of investment means that the operation complies with the conditions set in Article 65(1)(a), (b) and (c).

Texts below added by MARE D3

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA771_EMFAF_NATIONAL CONTRIBUTION UNDER EMFAF

Relevant Article: Article 10 of the EMFAF Regulation and 91(5) of CPR

Member State: PT

Question:

We notice some difficulties, from the beneficiaries, to upload their part of the investments not having in advance any payment of part of the public grant approved. Therefore, we have established the possibility to pay an advance of 10% (or more but not higher than 40%) of the public grant approved, when the amount paid is supported with a guarantee provided by a bank or other financial institution.

What we would like to confirm is that the following CPR dispositions also apply to EMFAF.

According to Article 91 (5) of the CPR, with no exceptions for the EMFAF, *«by way of derogation from paragraph 3, in the case of State aid, the payment application may include advances paid to the beneficiary by the body granting the aid under the following cumulative conditions:*

(a) those advances are subject to a guarantee provided by a bank or other financial institution established in the Member State or be covered by a facility provided as a guarantee by a public entity or by the Member State;

(b) those advances do not exceed 40 % of the total amount of the aid to be granted to a beneficiary for a given operation;

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

(c) those advances are covered by expenditure paid by beneficiaries in implementing the operation and supported by receipted invoices or accounting documents of equivalent probative value at the latest within 3 years following the year of the payment of the advance or on 31 December 2029, whichever is earlier, failing which the next payment application shall be corrected accordingly.

Each payment application which includes advances of this type shall separately disclose the total amount paid from the programme as advances, the amount which has been covered by expenditure paid by beneficiaries within 3 years of the payment of the advance in accordance with point (c), and the amount which has not been covered by expenditure paid by beneficiaries and for which the 3-year period has not yet elapsed.».

Complementary, according to **article 10 State aid** of EMFAF Regulation, articles 107, 108 and 109 TFEU should not apply to payments made by Member States pursuant to this Regulation and falling within the scope of Article 42 TFEU.

In our view this EMFAF disposition, doesn't prejudice the application of Article 91 (5) of the CPR, as we are in presence of state aid, as aid granted by a Member State, through State resources, cofinanced by the EMFAF, which, in principle, distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, and where those grants/state aids/payments made by Member States pursuant to this Regulation and falling within the scope of Article 42 TFEU are considered compatible with the internal market.

In conclusion, our interpretation considering that:

1. We have state aid cofinanced by the EMFAF to undertakings in the fishery, aquaculture and processing sector, under SO 1.1.1, 1.1.2, 1.2; 2.1, 2.2 and 3.1, and also state aid granted to other undertakings under SO 3.1.;
2. In those cases, if an advance of 40% of the grant approved is paid to the beneficiary subject to a guarantee provided by a bank or other financial institution;

The payment application may include those advances paid to the beneficiary by the body granting the aid.

When that advance is not covered by expenditure paid by the beneficiary in implementing the operation and supported by receipted invoices or accounting documents of equivalent probative value at the latest within 3 years following the year of the payment of the advance or on 31 December 2029, whichever is earlier, the next payment application shall be corrected accordingly withdrawing that specific amount of the expenditure paid as an advance.

Does the EC confirm this interpretation?

Answer:

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

According to article 42 of the Treaty on the Functioning of the European Union (TFEU) the fishery and aquaculture sector is subject to competition rules (which include State aid) only to the extent determined by the legislator in the framework of Article 43(2) TFEU, which includes the Common Fisheries Policy.

Article 42 TFEU refers to the production and trade of agriculture products (which covers the production, processing and marketing of fishery and aquaculture products). The legal bases for the EMFAF regulation include article 42 and 43(2) of the TFEU.

Article 10(2) of the EMFAF Regulation ((EU) 2021/1139) states that State aid rules do not apply to payments made by Member States pursuant to the EMFAF Regulation and falling within the scope of Article 42 TFEU. Consequently, financial support granted pursuant to the EMFAF Regulation and falling within the scope of Article 42 TFEU does not constitute State aid and therefore article 91(5) of the CPR Regulation does not apply to such support measures.

However, when aid is granted outside of the EMFAF Regulation (i.e. just national funding), State aid rules always apply. Consequently, aid concerning the products listed in Annex I TFEU are not exempted from the State aid rules if granted outside of the EMFAF Regulation. In addition State aid rules always apply to aid granted within or outside of the EMFAF Regulation, when the aid falls outside the scope of Article 42 TFEU. Where State aid rules are applicable Article 91(5) of the CPR Regulation will be as well where its conditions are met.

It is the responsibility of the Managing Authority to assess the compliance of an operation with all applicable provisions of the EMFAF regulation, including whether an operation is made pursuant to the regulation and falls under the scope of Article 42 TFEU.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA774_EMFAF_METHODOLOGY TO REPORT ON INDICATOR CR 18.2 - ENERGY CONSUMPTION LEADING TO CO2 EMISSIONS REDUCTION (LITRES/H)

Relevant Article: EMFAF Art 18(5) and implementing Regulation (EU) 2021/1139

Member State: PT

Question 1 (including any relevant facts and information):

The FAMENET Working paper EMFAF MEF 2021-2027- FINAL- October 2023, for indicator «18.2 Energy consumption (on board a vessel/aquaculture/ processing) leading to CO2 emissions reduction (litres/h) » establishes:

- ***Definition:*** *Engine modernization and replacements, and other measures to reduce CO2 emissions. CO2 emissions are estimated based on the characteristics of the engine or the new equipment installed- energy consumption of new or modernized engines in fishing vessels (expressed in liters of fuel per hour of operation according to the specification of the manufacturer)*
- ***Operation level:***
- ***Inputs from the Beneficiary:*** *calculation based on energy consumption in liters/h before and after the operation: standardized values based on the energy specifications of the equipment can be used; the result indicator value should be as close as possible to the unit or location implementing the operation.*
- ***Inputs from other sources****: fuel consumption per hour on board of a vessel as per technical specifications of the engine manufacturer.*
- ***Baseline for the single operation****: liters/h per engine before investment.*
- ***Target value:*** *ex-ante assumption of the target value.*
- ***Achieved value****: liters/h (new or modernized engine) at completion of the operation.*
- ***Example at the operation level****: A fishing company upgrades its vessels with more fuel-efficient engines using EMFAF funding. To provide a reliable indicator for the effectiveness of this operation, the beneficiaries decide to choose CR18.2: "Energy consumption leading to CO2 emissions reduction liters/h". To provide data for this indicator, the company would need to report data on the liters/h per engine of its vessels before the EMFAF investment, as well as the liters/h per engine of the new or modernized engines at completion of the operation. The values can be based on the engine manufacturers' specifications.*

To standardize the reporting of all operations and assess the achievement of the Program's target, the consumption value before and after the investment should be

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

obtained by collecting data of the engine (the one to be replaced and the new engine being financed in the operation) in accordance with the respective technical specifications certified by the manufacturer.

- ***Baseline:*** *The consumption value (litres/h) is declared by the beneficiary, considering the technical specifications of the engine to be replaced (provided by the representative or supplier).*
- ***Target value:*** *The consumption value (litres/h) is declared by the beneficiary, considering the technical specifications of the new engine (provided by the representative or supplier).*
- ***Achieved value:*** *If the operation has been carried out in full compliance with the project, it is equivalent to the target value.*

In many cases, for the small fishing vessels, the technical documentation/specifications of engines do not provide information on energy consumption therefore PT cannot use the methodology proposed by Famenet and suggests the following methodology:

PROPOSAL:

In principle, it is reasonable to assume that a newer engine consumes less energy than an older engine, either due to technological advances or by natural deterioration of an older engine's components, which contributes to a loss of efficiency, increasing fuel consumption and emissions.

Hence, by analogy with the principles established in Regulation (UE) 2021/1139 of the European Parliament and of the Council of 7 July 2021, Article 18 (5), when the difference between the age of the new engine and the engine to be replaced is at least seven years, it is reasonable to estimate that the new engine consumes 20% less fuel than the replaced engine.

In this case, to record the consumption value of the engine to be replaced – baseline – it will correspond to the "Target value" increased by 20% and the beneficiary must have information from the manufacturer certifying the fuel consumption (litres/h) of the engine he intends to purchase, and this information is recorded as "Target value".

Replacement of engines that are 7 years old or older than the engine to be purchase

- Baseline: The consumption value in litres/h is declared by the beneficiary as a result of the 20% increase in consumption of the engine to be purchased (target value).
- Target value: The estimate consumption value (litres/h) of the new engine is declared by the beneficiary based on information from the manufacturer.
- Achieved value: If the operation has been carried out in full compliance with the project, it is equivalent to the target value.

Other situations - replacement of engines that are less than 7 years older than the engine to be purchase

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- Baseline: The real consumption of the engine to be replaced (litres/h) is declared by the beneficiary based on the actual average consumption.
- Target value: The estimate consumption value (litres/h) of the new engine is declared by the beneficiary based on information from the manufacturer.
- Achieved value: If the operation has been carried out in full compliance with the project, it is equivalent to the target value.

In all cases, if the beneficiary cannot collect the information from the manufacturer, this information may be completed by the analyst within the decision-making process.

Answer:

Article 18(2)(d) of Regulation (EU) 2021/1139 (EMFAF Regulation) sets as a condition for the replacement or modernisation of a main or ancillary engine for vessels up to 24 metres in overall length, other than small-scale coastal fishing vessels, that the new or modernised engine does not have more power in kW than that of the current engine and emits at least 20 % less CO2 compared to the current engine. In cases where the relevant information certified by the manufacturer of the engine to assess compliance with the requirement of CO2 reduction does not permit a comparison of the CO2 emission or fuel consumption, the reduction of CO2 emission required under point (d) of paragraph 2 can be considered to be met in three scenarios set out under Article 18(5):

" Where the relevant information certified by the manufacturer of the engine concerned as part of a type approval or product certificate for one or both of the engines does not permit a comparison of the CO2 emission or fuel consumption, the reduction of CO2 emission required under point (d) of paragraph 2 shall be considered to be met in any of the following cases:

(a) the new engine uses an energy-efficient technology and the age difference between the new engine and the engine being replaced is at least seven years;

(b) the new engine uses a type of fuel or a propulsion system which is considered to emit less CO2 than the engine being replaced;

(c) the Member State measures that the new engine emits 20 % less CO2 or uses 20 % less fuel than the engine being replaced under the normal fishing effort of the vessel concerned."

Under point a above, it is assumed that the 20% reduction of CO2 emission is fulfilled in cases where engines are at least seven years older than the engine to be purchased and use energy-efficient technology. Article 1 of Commission Implementing Regulation (EU) 2022/46 sets out what are to be considered energy efficient technologies.

In cases where engines are not at least seven years older the management authorities should verify whether the conditions under either point b or point c are met.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 2 of Commission Implementing Regulation sets out what criteria the Member State base their decision on when determining the 'normal fishing effort of the vessel concerned' as referred to in Article 18(5)(c), taking into account the great variety of fishing vessels, their fishing techniques, travel distances and load factors which vary over time and all have an impact on CO2 emissions and fuel consumption. In accordance with this, MS have to base their decision on the following:

(1) the characteristics and fishing pattern of the fishing vessel concerned;

(2) the average of ten representative fishing trips carried out during the three calendar years preceding the application for support; and

(3) the fishing techniques used and the time spent at sea by the fishing vessel concerned during the representative fishing trips.

Consequently, the managing authorities can base their assessment of the required CO2 reduction under Article 18(2)(d), on points (a), (b), (c) as contained in Article 18(5) of the EMFAF Regulation in conjunction with the provisions of Commission Implementing Regulation (EU) 2022/46.

N.B.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA00408 - DIRECT SUPPORT OF IPCEI PROJECTS

Relevant Article: Article 5(11) of the ERDF/CF Regulation

Member State: HU

Pursuant to Article 5(11) of the ERDF Regulation, the Managing Authority may directly support IPCEI projects as long as they comply with the requirements set out in Article 73(2)(a), (b) and (g) of the CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

What exactly does the Regulation mean by the term 'directly': is it sufficient for the Monitoring Committee to approve a simplified selection criteria system containing only these narrower requirements under the CPR provisions above? That is, e.g. a cost-benefit analysis, or an examination of a realistic budget, compliance with the Charter of Fundamental Rights, etc., are not expected during the selection? In this case, is it even possible to bypass the approval of the selection criteria by the Monitoring Committee?

Answer:

The provision in Article 5(11) of the ERDF/CF Regulation supplements the one for the Seal of Excellence in Article 73(4) CPR. In line also with recital 61 of the CPR, Q&A00211 explains that "following Art. 73(4) CPR, managing authority may grant support from the ERDF or the ESF+ directly, provided the operation in question complies with Art. 73(2) (a), (b), (g). As far as support from the funds is concerned, these are the only elements that need to be checked".

Analogically to the procedure for the Seal of excellence, as explained in the Commission Notice on Synergies between Horizon Europe and ERDF programmes (2022/C 421/03), the IPCEI projects which the Commission has found to be compatible with the internal market pursuant to Article 107(3)(b) TFEU do not have to go through a full ERDF project selection process. They must nevertheless undergo at least a simplified assessment under the selection criteria approved by the Monitoring Committee (compliance with the programme objectives together with applicable EU State aid rules, with applicable enabling conditions and with the scope of the fund) to ensure that the operations meet the requirements set out in points (a), (b) and (g) of Article 73(2) CPR, as set out by Article 5(11) ERDF/CF.

Question 2 (including any relevant facts and information):

Do we understand correctly that the above is only a simplification of the selection procedure, but during the implementation and durability period of the projects, the Managing Authority has to check that the rules laid down in the CPR and ERDF/CF Regulations are fully complied with? E.g. compliance with the Charter of Fundamental Rights during the project, compliance with environmental regulations, efficient and effective use of funds etc.?

Answer:

Yes, these directly selected IPCEI projects must be implemented in accordance with the CPR and fund-specific regulations.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00409 - EX ANTE ASSESSMENT OBLIGATION FOR SUPPORT PROVIDED THROUGH FINANCIAL INSTRUMENTS

Relevant Article: art 58(3) CPR

Member State: PL

Question (including any relevant facts and information):

When a managing authority launches a new financial instrument and use in this context one of the financial instrument models developed by DG REGIO and fi-compass, does it constitute a sufficient condition for fulfilling the obligation to prepare an *ex ante* assessment as referred to in Article 58, paragraph 3 of the CPR?

Answer:

Ex ante assessments aim at ensuring the justification and optimal design of financial instruments, with article 58(3) CPR detailing the corresponding mandatory content:

1. the proposed amount of programme contribution to a financial instrument and the estimated leverage effect accompanied by a short justification;
2. the proposed financial products to be offered, including the possible need for differentiated treatment of investors;
3. the proposed target group of final recipients;
4. the expected contribution of the financial instrument to the achievement of specific objectives.

In this regard, the models developed by DG REGIO and fi-compass largely contribute to achieve the objectives pursued by *ex ante* assessments, notably by suggesting financial products, compatible with the CPR, which have been designed to meet specific financing conditions of different sectors (housing, innovation, energy efficiency). Financial instruments implemented through these models also directly contribute, by design, to the achievement of the corresponding specific objectives.

In such situations, the preparation of the *ex ante* assessment, still formally required, can be substantially facilitated, by referring to the envisaged models, as regards both the proposed financial products and their contribution to the achievement of the specific objectives.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA772_EMFAF_REQUEST FOR OPINION ON THE MAXIMUM AID INTENSITY RATE – PUBLIC ACCESS TO THE RESULTS

Relevant Article: Annex III and article 30 EMFAF Regulation

Member State: France

Question 1 (including any relevant facts and information):

France wishes to consult MARE on the EMFAF rules concerning the public access to the results of an operation implemented under article 30 EMFAF Regulation (operations for Community-led local development, CLLD) allowing for a higher aid intensity.

In particular, FR asks clarification on the rules to respect in order for a CLLD operation to benefit from an increased aid intensity of 100% under the condition of public access to the results of the operation (row 13 of Annex III of EMFAF).

The point under discussion is whether the public access to the results of an operation must be free of charges, or if the beneficiary can fix a price for the public to get access to the results of the EMFAF supported operation.

Answer:

In line with Annex III row 13 of the EMFAF Regulation, operations supported under Article 30 of the same regulation may benefit from an increased aid intensity rate of 100% if they fulfil at least one of the following criteria: (i) they are of collective interest; (ii) they have a collective beneficiary; or (iii) they have innovative features, where appropriate, at local level, **and** ensure public access to their result. As a derogation from Article 41 on the intensity of public aid, the provisions set out in Annex III should be interpreted restrictively.

The criterion of ensuring public access to project results should be fulfilled **cumulatively** with the criterion of having an innovative feature. It is the responsibility of the Managing Authority to assess the compliance of an operation with all applicable provisions of the EMFAF regulation, incl. with those included in Annex III row 13.

The EMFAF Regulation does not provide a definition of the criterion "public access to project results". In the Commission's opinion, providing access free of charge fulfils this criterion and justifies the increased aid intensity and should be, as a general rule, required by the managing authority when approving the project. If access free of charge cannot be granted by the beneficiary, the managing authority should reconsider whether the project still qualifies for an increased aid intensity, ensuring also **equal treatment** between beneficiaries who were not initially qualified for higher aid intensity. It should also be noted also that charging market rates drastically limits the public access and could potentially lead to overcompensation

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In the case you describe, the managing authority should take into consideration the fact that charging market rates for the access to project results by a beneficiary limits the public access, increases the risk of overcompensation, may go against the principle of equal treatment and therefore does not follow the requirements or the rationale of the aforementioned provision.

NB:

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA00410 - QUESTION ON CLARIFICATION OF DEFINITION OF "GUARANTEE BY THE MEMBERS STATE"

Relevant Article: Article 91(5) of the Common Provisions Regulation (EU) 2021/1060 (CPR), Directive 2014/24/EU (Article 2(1)(4))

Member State: CZ

Question 1 (including any relevant facts and information):

Regarding the clarification of Article 91(5) of the Common Provisions Regulation (EU) 2021/1060 (CRP). This regulation permits the inclusion of advances paid to beneficiaries in payment applications, provided they are, among other things, secured by a guarantee from a bank or financial institution established within the Member State, or by a safeguard facility offered by a public entity or by the Member State.

Unlike bank guarantee, the term 'facility offered by a public entity or by the Member State' needs explanation. CZ authorities seek confirmation that the implicit liability of the Member State for unrecovered irregularities (ensuring reimbursement of any irregular advances to the EU budget when it fails to recover them from beneficiaries) satisfies the guarantee requirement from the Member State as outlined in the provision. If this assumption is incorrect, CZ requests a detailed explanation from the

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

EC regarding this particular stipulation of a guarantee in the regulation, potentially with examples from other Member States.

The Regulation provides that a mechanism similar to a bank guarantee may be provided by a public entity or by the Member State. FR authorities seek confirmation that the managing authority itself can provide such a mechanism to the beneficiary, and under what conditions? Does that possibility also exist where the managing authority is itself a beneficiary? Besides the conditions specified in Article 91(5), are there other existing legal conditions at the EU level for implementing advances? For instance, maturity of projects (completion of public procurement), State aid etc.?

Answer to question 1:

Article 91(5)(a) CPR allows, in the case of State aid, to include in the payment application advances paid to the beneficiary by the body granting the aid in two cases:

- where those advances are subject to a guarantee provided by a bank or other financial institutions established in Member States, or

- where those advances are covered by a facility provided as a guarantee by a public entity or by the Member State.

The provisions of Article 91(5) CPR outline conditions applicable in cases of State aid that allow for a derogation from Article 91(3) CPR.

In case of private guarantees, in accordance with the CPR, it could only be issued for the specific operation by a bank or a financial institution established in a Member State (and not, for example, a private pledge made by the beneficiary on his/her own assets). This would mean that a bank or a financial institution would guarantee that any advances will be returned in case of a default or failure to fulfil contractual obligations.

Similarly, where a public entity is involved, the public entity is to guarantee repayment of an advance. The CPR does not define a "public entity". The term can cover various forms of public bodies or authorities, including managing authorities, as long as they are recognised as such under the national legal framework of the Member State. Therefore, if the managing authority qualifies as a public entity according to the national law, it can provide a facility as a guarantee for the purposes of covering advances. The CPR does not specify what should be understood by "a facility provided as a guarantee" by a public entity or by the Member State. A "facility" is deemed sufficient provided it can be considered as a guarantee for the specific operation in accordance with the national legal system

It is possible for the managing authority to provide such a facility also in case where (part of) it is a beneficiary provided that there is a separation of functions within the managing authority as well as separation of accounts.

The referred "implicit liability of the Member state for unrecovered irregularities" does not fulfill the requirements of Article 91(5) CPR.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

As the presence of State aid is a prerequisite to trigger the derogation under Article 91(5) CPR, applicable State aid rules must be respected. When Commission Regulation (EU) No 651/2014 - the General Block Exemption Regulation applies, it is important to take the advance into account for the calculation of the maximum aid thresholds under Article 4 GBER, as the advance itself is State aid. For notified aid, it is important to note that the Member State has a standstill obligation under Article 108(3) TFEU. This means advances cannot be paid before the Commission approves the aid measure; the aid can only be implemented after State aid clearance.

Question 2:

Article 91(5)(b) indicates that advances must not exceed 40% of the total aid to be granted to a beneficiary for a given operation.

The Regulation refers to the aid granted or to be granted and not to the subsidy paid. Could you please clarify on what basis the ceiling of 40 % of the advance paid, which can be declared in a payment request, should be calculated? Should account be taken of:

- all State aid,
- only State aid granted by the managing authority, or
- only the share of EU funds?

Answer to question 2:

As stipulated in point b) of Article 91(5) CPR, advances should not exceed 40 % the total amount of the aid to be granted to a beneficiary for a given operation. The maximum amount of the advance is to be calculated in relation to the aid amount granted by the body granting aid.

Question 3:

Can the MA gradually (until 31/12/2026) both reimburse the beneficiary for the advances and the real costs (e.g. up to 30% EU support) and submit both in payment applications?

Can advances be paid during implementation, after part of the real costs have been reimbursed to the beneficiary? We want to apply the advances also to more advanced projects.

Answer to question 3:

Based on the information provided we understand that the MS is asking if

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- the MA can declare in payment applications to the Commission both advances paid to the beneficiary and (at the same time or separately) expenditure incurred for the same operation.
- the MA can both pay advances to the beneficiary and reimburse the expenditure incurred by the beneficiary for the same operation.

Article 91(5) CPR allows the declaration of advances in a payment application to the Commission as a derogation for declaring expenditure incurred by beneficiaries and paid in implementing operations. Declaring both advances (in line with Article 91(5) CPR) and incurred eligible expenditure (in line with Article 91(3) CPR) for the same beneficiary for a given operation is possible.

Therefore, paying the advance and reimbursing expenditure incurred by the beneficiary for the same operation is also possible. As such, an advance can be paid after part of the expenditure incurred by the beneficiary for the operation was already reimbursed.

In this context, it should be noted that:

- In accordance with Article 91(5)(c) CPR, the advance paid to beneficiary must be settled at the latest within 3 years following the year of payment of the advance or on 31 December 2029 (2030 in case this date has been changed in accordance with Article 7a(11) of the ERDF/CF Regulation or Article 10(5) or (6) of the JTF Regulation), whichever is the earlier.
- The restriction laid down by Article 91(5)(b) CPR must be respected (see question 3).
- Double declaration in payment application must be avoided. Advances declared in Appendix 4 of the payment application (Annex XXIII CPR) are already included in the main part of the payment application (table 1, column B 'Total amount of eligible expenditure incurred by beneficiaries and paid in implementing operations'). Expenditure corresponding to the same advances cannot be anymore included in the main part of the payment applications but only reported in column B of Appendix 4.
- MSs need to ensure that double funding of the same expenditure at the level of the operation is avoided.

QA00411 - THE USE OF REFLOWS FROM FINANCIAL INSTRUMENTS IMPLEMENTED IN THE PROGRAMMING PERIOD 2014–2020 FOR

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

FINANCING PROJECTS AWARDED WITH A SEAL OF EXCELLENCE OR STEP (SOVEREIGNTY) SEAL 2021-2027

Relevant Article: Article 45, CPR Regulation (EU) 2013/1303

Member State: CZ

Question (including any relevant facts and information):

The Czech Ministry of Industry and Trade, Managing Authority for Operational Programme Enterprise and Innovation for Competitiveness (2014-2020), and Programme Technologies and Applications for Competitiveness (2021-2027), which focuses on support in the area research, innovation and entrepreneurship, would like to use reflows from financial instruments (from 2014-2020 programming period) to support projects awarded with a Seal of Excellence or STEP (Sovereignty) Seal, in form of grants. The MA believes that this approach could enable an efficient use of reflows to support high-quality projects already evaluated under EU programmes, which could not be funded due to limited budget availability.

In this specific case, the funds would be reallocated and managed by the Technology Agency of the Czech Republic (TA CR), an implementing body with the technical expertise, previous experience and capacity to administer this type of projects, which was not part of the implementing structure within 2014-2020 or 2021-2027 programming period. The support will be carried out in the national framework.

The Czech authorities would like to know whether such a mechanism would be considered compliant with the CPR rules, and if so, under what conditions it could be implemented.

Answer:

The use of reflows generated after the end of eligibility period is regulated under Article 45 of Regulation (EU) 2013/1303 ('CPR 2014-2020') which requires that resources paid back to financial instruments ('reflows')are reused in accordance with the aim of the (initial) programme, either within the same financial instrument, if still operated, or in other financial instrument, provided in both cases that there are continuing investment needs, or in other forms of support (grants).

In this regard, the fact that projects have been awarded the Seal of Excellence as defined in Article 2(45) Regulation (EU) 2021/1060, does not suffice to demonstrate the contribution to the objectives of the programme, which must be ensured in accordance with Article 45 CPR 2014-2020.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00412 - VERIFICATIONS CONCERNING PP CARRIED OUT BY MA AT SELECTION

Relevant Article: Articles 73 of the CPR 2021-2027

Member State: n/a

Question (including any relevant facts and information):

According to article 73(2)(f) CPR, in selecting operations, the MA shall "*verify that where the operations have started before the submission of an application for funding to the managing authority, applicable law has been complied with*".

In case there were public procurement procedures launched before the submission of an application for funding, is the MA expected to check the legality and regularity of all of the public procurement procedures at selection?

Answer:

In case where the operation has started before the submission of the application for funding the managing authority will need to verify that the procurement rules and procedures related to that operation have been complied with. This verification can be carried out, based on the MA risk assessment at selection, or as part of the management verifications, by the latest before the submission of the accounts in accordance with Article 98.

QA00413 - DECLARATION OF STATE AID ADVANCES IN APPLICATIONS FOR PAYMENT

Relevant Article:

- CPR - ANNEX XXIII - TEMPLATE FOR PAYMENT APPLICATIONS
- CPR ARTICLE 91(3)
- CPR ARTICLE 93(5)
- CPR ARTICLE 98(6)(b)

Member State: NL

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

Annex XXIII, Appendix 4 of Regulation 2021/1060 includes the following footnote to column A:

(1) This amount is included in the Total amount of eligible expenditure incurred by beneficiaries and paid in implementing operations as mentioned in the payment application. As state aid is by nature public expenditure, this total amount is equal to public expenditure.

We interpret the above as meaning that when a project has received an advance under State aid, we can declare both the advances and the project costs for this project. The offsetting of any overpayment of support from the Funds shall take place in the last accounting year on the basis of Article 93(5), which states that the support from the Funds for a priority in the payment of the balance of the last accounting year shall not exceed support from the Funds paid or to be paid to beneficiaries. An example of the method of declaring by means of applications for payment is given below.

Can you confirm the correctness of this methodology or, if this is not the correct methodology, indicate what the correct methodology is?

Example question 1:

A project has a total cost of EUR 2,000,000 with a subsidy of EUR 1,000,000. The project received an advance under State aid of €400,000. The advance will be declared in the application for payment.

EXPENDITURE
The expenditure table in the payment application includes € 400,000 in accordance with column A. The expenditure declared is € 200,000 (50% co-financing rate).
Appendix 4:

Total amount paid in advance (A)	Amount used for expenditure by beneficiaries within three years of the year of payment of advances (B)	Amount not used for expenditure by beneficiaries and for which the three-year period has not yet expired (C)
400.000	0	400.000

In a subsequent payment application, the project costs are declared.

EXPENDITURE
The expenditure table in the payment application includes the EUR 2,000,000 total costs of the project. The expenditure declared is € 1,000,000 (50% cofinancing rate).
Appendix 4:

Total amount paid in advance (A)	Amount used for expenditure by beneficiaries within three years of the year of payment of advances (B)	Amount not used for expenditure by beneficiaries and for which the three-year period has not yet expired (C)
400.000	400.000	

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The total expenditure declared is EUR 200,000 (advance) in the first payment application and EUR 1,000,000 (project costs) in the subsequent payment application (total: EUR 1,200,000). A grant of €1,000,000 has been paid to the beneficiary.

The support from the Funds for a priority on the payment of the balance of the last accounting year shall not exceed the support from the Funds paid or payable to the beneficiaries (Article 93(5)(b)). This ensures that any overpayment of support from the Funds (in case the support disbursed has not been fully repaid to beneficiaries at the overall level of the priority) is offset.

Answer:

The example provided is not clear and contains a number of errors. The expenditure declared for the advance is EUR 400,000 and not EUR 200,000 (which is the EU contribution paid based on the declaration of the EUR 400,000 assuming that the co-financing rate for the EU contribution for the respective priority is 50%).

The expenditure declared in the subsequent payment application should be EUR 1,600,000 on which the balance of the EU contribution due will be calculated and paid i.e. EUR 800,000. The EUR 400,000 should be reported in column B of appendix 4.

The methodology described – declaring both State aid advances and project costs for a project that has received an advance, with any necessary offsetting of the advance – is not correct as it would lead to an over-declaration of expenditure which in turn would lead to an over-payment of funds which would later need to be recovered, at the latest in the last accounting year in line with Article 93(5)... As already clarified in QA00410 - Question on clarification of definition of "Guarantee by the Members State" - RegioWiki Extranet - RegioWiki, in the case where the State aid advance is declared in a payment application, the actual costs for the same project declared in a payment application have to be lowered by the amount of the State aid advance declared earlier. The amount corresponding to the already declared advance should be included only in column B of Appendix 4.

Question 2 (including any relevant facts and information):

How do we account for the results of question 1 in the annual accounts taking into account Article 98(6)(b)? It states that expenditure the legality and regularity of which has not yet been checked must be deducted from the accounts.

Answer:

Advances declared to the EC are generally not subject to Article 98(6)(b). The ongoing assessment mentioned in this Article could however concern the advances in case they are subject to an ongoing assessment of their legality and regularity.

The advances are part of the sampling population and subject to verification by the AA during its audits of operations where eligibility of the selected advances are checked. Even if at the stage of advance verification the AA cannot see incurred expenditure, it

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

can confirm eligibility of an advance itself (in particular such aspects as eligibility of beneficiary or fulfilling conditions for advance payments).

QA00414 - NOTION OF COOPERATION BETWEEN SMES AND ENTERPRISES OTHER THAN SMES IN RESEARCH AND INNOVATION ACTIVITIES UNDER ART. 5(2)(A) OF THE ERDF/CF REGULATION

Relevant Article: Recital (37), Article 3, 5 ERDF/CF Regulation

Member State: HU

Question (including any relevant facts and information):

The ERDF may support productive investments in enterprises other than SMEs only in cases defined in Article 5(2) ERDF/CF Regulation.

As regards the possibilities to support productive investments in enterprises other than SMEs, the second paragraph of Article 5 ERDF/CF Regulation lists four specific types of productive investments in enterprises other than SMEs that can be supported by the ERDF that are assigned to different categories of non-SMEs. The first one is:

"2. Productive investments in enterprises other than SMEs may be supported:

- ***when they involve cooperation with SMEs** in research and innovation activities supported under point (a)(i) of the first subparagraph of Article 3(1);"*

We would like to clarify what form of cooperation is acceptable according to Article 5(2) ERDF/CF Regulation.

- Under the above provision where aid is granted for productive investments in enterprises other than SMEs (e.g. large enterprises), only cooperation with an SME carried out in the form of a consortium with the large enterprise shall be accepted, or the cooperation can be realized through other way? See 2. point.
- Can the cited provision be interpreted as allowing cooperation in a form other than a consortium, based on another type of cooperation arrangement/agreement between the large enterprise and the SME? In the case of such types of cooperation the SME would not receive aid, however, the cooperation agreement would set out the exact conditions as well as the tangible effects and result of the joint implementation of the project. Only those cooperation forms/agreements would be acceptable which:
- ensure that the cooperation has direct benefits for the SME,

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

- clearly defines the SME's added value to the project (e.g. knowledge transfer),
- SME gains their fair share from the results,
- The cooperation should be carried out during the project implementation period.

Answer:

As a rule, the ERDF supports productive investment in SMEs (Article 5(1)(d) ERDF/CF Regulation). Recital (37) of the ERDF/CF Regulation also clarifies that '*in order to concentrate the use of limited resources in the most efficient way, the support by the ERDF given to productive investments under the relevant specific objective should be limited to micro, small and medium-sized enterprises (…), except for specific investments set out in this Regulation*'.

The ERDF may support productive investment in enterprises other than SMEs only in cases defined in Article 5(2) ERDF/CF Regulation. In particular, points (a) and (d) of this provision set out the conditions for investment of enterprises other than SMEs in '*research and innovation activities*' under the specific objective '*developing and enhancing research and innovation capacities and the uptake of advanced technologies*'. Of these, point (a) requires the involvement of cooperation with SMEs.

The ERDF/CF Regulation does not define any particular form of cooperation between SMEs and enterprises other than SMEs. Thus, the managing authority remains free to shape that involvement in the form it considers best for the purpose of the cooperation. However, as the support regarding productive investments to undertakings other than SMEs is an exception from the general rule set out in Article 5(1)(d) ERDF/CF Regulation (i.e. that ERDF supports productive investments only in SMEs), Article 5(2)(a) should apply in a restrictive way.

The cooperation in research and innovation activities, as provided by Article 5(2)(a) ERDF/CF Regulation, should directly involve SMEs, but not necessarily as beneficiaries. It is the managing authority's responsibility to ensure that a) a meaningful and direct cooperation between SMEs and enterprises other than SMEs is established in operations falling under Article 5(2)(a) ERDF/CF Regulation and b) that the exception is not applied broadly, i.e. the benefits arising for the SMEs from the cooperation are such that an exceptional support for productive investments in larger enterprises is warranted.

The cooperation requirement must be verified at the level of each operation. For verifying the quality of cooperation between SMEs and enterprises other than SMEs, the conditions proposed in the question are a good starting point, which, however, need to be further specified for any operation. These conditions need to reflect that the support received by larger enterprises must be justified by the benefits arising from this support to the SMEs involved in the cooperation. This means, among others that indeed, SMEs should get a "fair share" of the benefits of the investment, in particular regarding the development and enhancement of research and innovation

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

capacities, and the uptake of advanced technologies, to comply with the purpose set out in Article 3(1)(a)(i) ERDF/CF Regulation (SO 1).

In order to ensure a level playing field amongst potential beneficiaries, this should be verified already during the selection procedure.

QA776_EMFAF_REQUEST FOR OPINION ON THE MODALITY OF THE YOUNG FISHERS ACQUIRING A FIRST VESSEL

Relevant Article: Article 13 and 17 EMFAF Regulation

Member State: France

Question 1 (including any relevant facts and information):

France wishes to consult MARE on the EMFAF rules concerning the support provided to young fishers for their acquisition of a first vessel. They come with a general question and 3 concrete examples to illustrate the reasoning.

General question: is it possible for a young fisher to acquire shares of an already existing company that owns a vessel?

Case 1: A young fisher wants to acquire shares of a society that owns 100% of a fishing vessel. Is he entitled to receive EMFAF support? How does it articulate with article 13g?

Case 2: A young fisher will inherit from his father 50% of a fishing company (the other owner is his uncle). This company then intends to buy a fishing vessel. Is it entitled to receive EMFAF support? Who should receive it: the young fisher or the company?

Case 3: a young fisher already owns 60% of a company. This company wants to buy a vessel. Is it entitled to receive EMFAF support? Who should receive it: the young fisher of the company?

Answer:

On the general question:

Art. 17(1) of the EMFAF regulation stipulates: *"By way of derogation from point (c) of Article 13, the EMFAF may support the first acquisition of a fishing vessel or the acquisition of partial ownership thereof*". Article 17(5) states that "*support under this Article may also be granted for the acquisition of partial ownership of a fishing vessel by a natural person who fulfils the conditions set out in paragraph 2 and who shall be*

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

deemed to have controlling rights on that vessel through ownership of at least of 33 % of the vessel or of the shares in the vessel".

Therefore, provided that the relevant eligibility conditions, in particular those set out in Article 17(2) of the EMFAF, are fulfilled, a young fisher is eligible for EMFAF support for the acquisition of a vessel or acquiring partial ownership, provided this results in the young fisher **having controlling rights over the fishing vessel in question either through ownership of at least 33% of the vessel or of the shares in the vessel**.

On the case number 1: as stated above, the young fisher is eligible to receive EMFAF support, only where this results in the young fisher acquiring the vessel or partial ownership of the vessel, resulting in having controlling rights of the vessel either through ownership of at least 33% of the vessel or of the shares in the vessel. All other relevant eligibility criteria must be complied with as well. We note that in line with Article 17(5) of the EMFAF Regulation only the acquiring of shares in a vessel is eligible for support, not the mere acquisition of shares of a company who is the owner of vessel. A first acquisition of a fishing vessel complying with the conditions of Article 17 of the EMFAF Regulation is not considered a "transfer of ownership" in the meaning of Article 13(g) of the EMFAF Regulation in line with Article 17(7) EMFAF Regulation.

On the case number 2:

Article 17(2) of the EMFAF regulation stipulates the conditions a young fisher needs to fulfil to be eligible for support for the first acquisition of a fishing vessel. Article 17(3) states that *"Support under paragraph 1 may also be granted to legal entities wholly owned by one or more natural persons who each fulfil the conditions set out in paragraph 2*". Therefore, the first acquisition of a fishing vessel by a company could be eligible for EMFAF support if **all shareholders** meet the eligibility criteria. The MA should therefore verify if the other owner (the uncle) is also considered as a "young fisher" as per article 17(2) If the company is acquiring the vessel and not the young fisher himself, only the company would be eligible for support, provided that all the conditions of Article 17 are fulfilled as well.

On the case number 3: as explained above, the company could be eligible for EMFAF support for the first acquisition of a fishing vessel, **if all owners** of the company meet the eligibility criteria (age, experience etc.). If the company is acquiring the vessel and not the young fisher himself, only the company would be eligible for support, provided that all the conditions of Article 17 EMFAF are fulfilled.

NB

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA00415 - ARTICLE 58(2) OF REGULATION (EU) 2021/1060 – 'ELEMENTS OF INVESTMENT' IN CONSTRUCTION PROJECTS

Relevant Article: Article 58(2) of Regulation (EU) No. 2021/1060

Member State: CZ

Question (including any relevant facts and information):

Could you provide methodological clarification regarding the interpretation of the term "investment element" as used in Article 58(2) of Regulation (EU) No 2021/1060 (the Common Provisions Regulation)? More specifically:

Can the term "investment element" be understood as referring to the construction project as a whole, or does it relate to a particular component of the project's investment costs, meaning that the "investment element" should be treated as a narrower concept than the project or operation itself?

If it should be treated as a narrower concept that the project / operation itself, then how to financially separate the individual investment elements in case the whole investment is part of the single public procurement?

Is it possible for the managing authority itself to define, for the purposes of a call for proposals, what constitutes "investment elements"?

Context:

The term 'investment element' is a new concept applicable to the 2021–2027 programming period; in the 2014–2020 programming period, the term 'investment' was used (see Article 37(5) CPR of the period 2014-2020) which is in the given context unambiguous.

The Article 58(2) states that 'financial instruments shall provide support to final recipients only for investments in tangible and intangible assets, as well as working capital, which are expected to be financially viable, and which cannot obtain sufficient financing from market sources. Such support must comply with the applicable Union State aid rules. The support may only be provided for those elements of investments

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

that are not physically completed or fully implemented on the date of the investment decision.'

In the context of preparing a financial instrument in the area of construction projects (specifically for affordable housing), uncertainties have arisen as to how this term should be interpreted, in particular with regard to assessing which specific part of a project (construction work) may constitute an "investment element" within the meaning of the above-mentioned provision.

We are aware of RegioWiki QA00339 – Support provided through financial instruments (FI) only to the elements of investment not physically completed or fully implemented, however, this source does not provide a definition of the term "investment element".

Answer:

The second subparagraph of Article 58(2) CPR specifies that financial instruments shall provide support "only for the elements of the investment which are not physically completed or fully implemented at the date of the investment decision".

It follows from the above that where the final recipient has already financed part of the investment, it cannot receive support for those elements of investments physically completed or fully implemented. This ensures that the support from financial instruments is not used to refinance activities, i.e. services provided, goods delivered and/or works carried out.

The term "elements of investment" is not defined in the CPR. However, it should be understood as a narrower concept than the project or operation itself. It refers to the different components of an operation, to be identified on a case-by-case basis.

In case the investment to be (co-)financed by financial instruments is a construction project, the question is what part of the construction project needs financing. For example, in the case that the construction project includes several buildings (e.g. housing units), and one or more buildings were already completed, then only the buildings that are not completed or for which the construction has not started can be supported. The support from FI should be given only to those elements that have not yet started or have not been finished.

A managing authority should clearly define in a call for applications the scope of the investment/project and ensure that it excludes any part of the investment that is already physically completed or fully implemented at the date of the investment decision.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA779_EMFAF_DEVICES FOR HEALTH AND SAFETY PURPOSES

Relevant Article: EMFAF Regulation, Article 13(b)

Member State: Slovenia

Question:

Radar or active sensors use electromagnetic waves to record, which they emit in the direction of the observed objects (on the surface) and record the intensity of the reflected waves from the detected object. A significant advantage of radar systems is their independence from time and weather. Since radar only monitor objects above the water, they are not aid that would allow increased fishing effort but is aid for the safety of fishermen.

Article 13(b) of the EMFAF Regulation states that the acquisition of equipment that increases the ability of a fishing vessel to find fish is not eligible, regardless of whether the equipment in question increases the "catch capacity". This applies in particular to technologies and equipment for finding fish, such as sonars or fish aggregating devices, except for those used for research purposes.

It is understandable and clear that sonar (sound navigation and ranging) is not allowed, as it is intended primarily for use underwater, which could affect the increased possibility of increasing the ability of a fishing vessel to find fish. For radar, which operates above the water surface and is intended primarily to monitor the status of other maritime vessels or devices and to monitor approaching weather, this does not affect the ability of a fishing vessel to find fish.

The MOB (man overboard) function is also very important for safety at sea. Same as AIS. How can we ensure the operation of this very important measure without the use of GPS?

The answer to QA763_EMFAF is not clear:

- whether only a radar device connected to a multifunctional display is prohibited,
- whether an entire stand-alone radar navigation control system consisting of a radar device and a display is prohibited,
- or whether the radar device and a multifunctional display together is prohibited.

The same applies to autopilots, AIS (Automatic Identification System), MARPA (Mini Automatic Radar Planning Aid), MOB (man overboard), these can be stand-alone or connected to a multifunctional display.

Answer:

Please note that this reply supersedes the answers provided in IQ 640 (question 3 only) and IQ 659, IQ 763.

Article 13(b) of the EMFAF Regulation stipulates that the acquisition of equipment that increases the ability of a fishing vessel to find fish is ineligible for support. This refers in particular to fish-finding technologies and equipment, for example sonar.

Where the installed equipment has no impact on the ability of the fishing vessel to find fish, which could be the case for radar or GPS investments when these devices are purchased as stand-alone equipment without multi-functional features Article 13(b) does not apply.

It is the responsibility of the Managing Authority to evaluate and establish which type of investments to improve safety on board fishing vessels fulfils the eligibility requirements of Article 12 EMFAF Regulation and do not fall under the ineligible operations set out under Article 13 of the same Regulation.

Furthermore, pursuant to Articles 73(3) and 74(1)(a) of the Common Provisions Regulation (EU) 2021/1060, the Managing Authority should provide the beneficiary with a document setting out all the conditions for support and carry out management verifications to verify operations comply with applicable law, the programme and the conditions for support.

NB

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA00416 - USE OF FNLC UNDER ARTICLE 95 CPR FOR OPERATIONS WHERE EXPENDITURE HAS ALREADY BEEN DECLARED TO THE COMMISSION

Relevant Article: Article 2, 74, 76, 95, 98 CPR

Member State: n/a

Question (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Some Member States envisage the use of Article 95 CPR in all or parts of a priority where implementation has started and part of the expenditure has already been declared to the Commission in the form of eligible costs actually incurred by the beneficiary, and/or simplified cost options (SCOs). Member States ask for guidance on how to address this situation and in particular: (1) whether it is possible to de-certify expenditure declared under real costs or SCOs and re-certify the amounts linked to the same operation(s) under Article 95 CPR; and (2) confirmation that such de-certified expenditure would not be considered irregular expenditure as per Article 98(6) CPR.

Answer:

(1) First of all, it should be recalled that Member States have to ensure compliance with applicable law, respect of the principle of sound financial management, and that the risk of double funding is avoided at any moment in time.

Moreover, it is necessary to underline that, when applying the provisions of Article 95 CPR, Member States are advised to make use of FNLC for new operations and/or where expenditure has not been declared to the Commission yet.

Having said that, pursuant to Articles 74 and 76 CPR, decisions on declaring expenditure in a payment application and subsequently in the accounts lie within the responsibilities of the managing authorities / accounting function. There are no provisions in the CPR that exclude the possibility of withdrawing the expenditure declared under real costs or SCOs from a payment application or deduct it from the accounts and declare the amounts again under Article 95 CPR in line with the FNLC scheme. The need for a respective programme amendment pursuant to Article 95(1) must be justified, and assessed by the Commission.

In relation to the expenditure which has already been declared to the Commission in the form of eligible costs actually incurred by the beneficiary and/or SCOs, withdrawal from a payment application or deduction from the accounts can be carried out irrespective of when the expenditure was declared.

i. Expenditure declared and withdrawn in payment applications of the same accounting year

Where expenditure was declared in an ongoing accounting year (accounting year N), the managing authority may withdraw the expenditure in question in an upcoming payment application to the Commission and declare the expenditure linked to the intermediate deliverables under Article 95 CPR in line with the conditions/results as per the given FNLC scheme in a payment application submitted in the ongoing or future accounting years. To be noted that the withdrawal of the expenditure which has already been declared to the Commission in the form of eligible costs actually incurred by the beneficiary and/or SCOs should be done before declaring the expenditure in line with Article 95 CPR, in order to avoid double declaration of expenditure.

ii.Expenditure declared in payment applications but deducted in the accounts of the same accounting year

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Where expenditure was declared during an accounting year for which the accounts have not been submitted, the managing authority may deduct the expenditure in question in the accounts of the same accounting year. The managing authority may subsequently declare the expenditure linked to the intermediate deliverables under Article 95 CPR in line with the conditions/results as per the given FNLC scheme in a payment application submitted in the ongoing or future accounting years.

iii. Expenditure declared in previous accounting years

Where expenditure was declared during an accounting year for which the accounts have been already submitted (accounting year N-1 if accounts have already been submitted or accounting year N-2, N-3, etc.), taking into consideration the payment schedule of the intermediate deliverables in the relevant FNLC scheme, the managing authority may withdraw the expenditure in question in an upcoming payment application to the Commission. The managing authority may subsequently declare the expenditure linked to the intermediate deliverables under Article 95 CPR in line with the conditions/results as per the given FNLC scheme in a payment application submitted in the ongoing or future accounting years. To be noted that the withdrawal of the expenditure which has already been declared to the Commission in the form of eligible costs actually incurred by the beneficiary and/or SCOs should be done before declaring the expenditure in line with Article 95 CPR, in order to avoid double declaration of expenditure.

(2) Such expenditure withdrawn from the payment application or deducted from the accounts is not considered irregular expenditure as per the definition of an irregularity in Article 2(31) CPR.

QA00417 - SUPPORT BY THE ERDF FOR THE PURCHASE OF COMPANY SHARES THROUGH FINANCIAL INSTRUMENTS

Relevant Article:

Article 58(2) of Regulation (EU) 1060/2021

Member State: ES

Question (including any relevant facts and information):

In the framework of an existing financial instrument, Spain would like to know if it is possible to provide loans to SMEs for the acquisition of company shares, in view of

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

supporting SMEs' expansion, consolidation and growth projects and enhancing their competitiveness. To support this approach, one possible argument is that the company acquired through the purchase of shares possesses tangible and intangible assets, and the borrower will have access to these assets and will be able to use them to generate value. Furthermore, the value of a company's shares is directly related to its tangible and intangible assets. Finally, acquiring shares in another company can generate synergies that would result in improved productivity and competitiveness, for example, if the acquired company is part of the production chain and/or belongs to the same sector.

Answer:

According to Article 58(2) of Regulation (EU) 1060/2021, "financial instruments shall provide support to final recipients only for investments in both tangible and intangible assets as well as working capital expected to be financially viable and which do not find sufficient funding from market sources".

This means that the costs incurred by the final recipient for the acquisition of company shares could be eligible insofar as it would constitute a financially viable investment corresponding to tangible assets (which include fixed and current assets) or intangible assets.

Therefore, the managing authority should establish if the acquisition constitutes such an investment by ensuring that it is in line with the funding agreement or strategy document, in particular the investment strategy and the business plan referred to in Annex X of Regulation (EU) 2021/1060.

QA00418 - EXCHANGE RATE TO BE USED FOR THE TRANSACTIONS WITHIN THE FINANCIAL INSTRUMENTS

Relevant Article: 59(2)**,** 68(1)(a), 69(c), 76(1)(c), 87, 92(2) of Regulation (EU) 2021/1060 ('CPR')

Member State: RO

Question (including any relevant facts and information):

For a loan financial instrument, what exchange rate needs to be applied when requesting reimbursement of expenditure for a 'subsequent payment application' which includes the eligible expenditure as referred to in Article 68(1)? The financing

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

contract between the beneficiary (EIB) and the managing authorities is denominated in euro, while the loans are denominated in the local currency (RON).

Background: Under the proposed mechanism, EIB would set up an account in EUR and it would have all financial flows with the financial intermediaries (commercial banks) in EUR. The financial intermediaries would be required to use the EUR-denominated account in EIB. When the loan contract is signed between the bank and the final recipient, it would be paid directly from the EUR-denominated account to the RON-denominated account of the final recipient.

The MAs and the EIB consider that since in line with Article 68 CPR the eligible expenditure is "*the total amount of programme contribution paid to[…]* ***by*** *the financial instrument, where this amount* ***corresponds to*** *[…] payments made to final recipients*", the eligible expenditure is the financial **outflow** from the financial intermediary, which is denominated in EUR and therefore there is no need to use any exchange rate. In their opinion this is justified in particular because the provision does not refer to amounts received by the final recipients, but only to the amounts which "correspond to" them.

The alternative would be to treat the **amount received** by the final recipient (denominated in the local currency, RON) as the eligible expenditure. In such a case, the monthly exchange rate of the Commission would have to be applied in line with Article 76(1)(c) for each subsequent payment claim.

Answer:

Article 87 CPR states that '*amounts set out in programmes, reported or declared to the Commission by Member States shall be denominated in euro*.'

Pursuant to Article 92(2)(b) CPR, where financial instruments are implemented in accordance with Article 59(2) CPR '*the amount included in subsequent payment applications submitted during the eligibility period shall include the eligible expenditure as referred to in Article 68(1)*'.

According to Article 68(1)(a) CPR, eligible expenditure for loans '*corresponds to … payments to final recipients*'.

In Annex XVII to the CPR laying out data to be recorded and stored electronically on each operation and under 'financial data specific to financial instruments operations (in the currency applicable to the operation)', point 69(c) refers to 'amount of support received (grant, loan, guaranteed loan, equity)'.

It follows from the above that where the loans received by the final recipients are denominated in the national currency (RON), the amount of the loans will need to be converted to EUR for the purposes of the payment application in accordance with Article 87 CPR.

In accordance with Article 76(1)(c) CPR, for converting the amounts of expenditure incurred in another currency into EUR, the monthly accounting exchange rate of the

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Commission in the month during which the expenditure is registered in the accounting system of the body responsible for carrying out the tasks set out in that Article must be used.

In Article 68(1) CPR '*where that amount **corresponds to'*** is used to create a grammatical link between the first subparagraph of the provision and point (a), referring to loans, and point (b) referring to guarantees. Such a formulation therefore cannot be used to interpret that provision as considering eligible expenditure to be denominated in EUR where payments to final recipient are received in a national currency.

QA778_EMFAF_PET-FOOD BASED ON LOW-ADDED BYPRODUCTS RESULTING FROM PROCESSING FISH

Relevant Article: Article 26 of EMFAF Regulation and chapter 23 of the TFEU

Member State: Hungary

Question 1 (including any relevant facts and information):

A recently arrived grant application for the call for proposal *Fishprocessing* aims to process and valorise by-products generated during the main fish-processing activity. In an existing fish-processing facility, a significant amount of fish skin and fish trimmings is produced, which are currently classified as low value-added by-products or waste. The objective of the application is to establish a circular and resource-efficient processing model in which these by-products are converted into high value-added, premium-quality dog treats using an innovative freeze-drying (lyophilisation) technology.

Both the National Aquaculture Strategic Plan and the MAHOP Plus programme strategy identify as key objectives the development of new products, as well as the minimisation and recycling of processing waste. MAHOP Plus supports the processing of by-products generated during the main fish-processing activities in order to reduce food loss and food waste.

In accordance with Article 38(1) of the Treaty on the Functioning of the European Union (TFEU), the internal market extends to agriculture and fisheries, as well as to trade in agricultural products. "Agricultural products" are the products of the soil, of livestock farming and of fisheries, and products of first-stage processing directly related to these products.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The animal feed production planned under the grant application can be classified under commodity group 23 listed in Annex I to the TFEU, namely by-products of the food industry; prepared animal feed. The customs tariff code of the final product is 230910. Since the entirety of Chapter 23 falls under Annex I of the TFEU, the State aid provisions under Article 107 of the TFEU do not need to be applied to products classified under CN code 230910.

REGULATION (EC) No 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety explains the definition of „feed" as follows: Art.3. (Other definitions) 4. 'feed' (or 'feedingstuff') means any substance or product, including additives, whether processed, partially processed or unprocessed, intended to be used for oral feeding to animals.

In our view, the above activity (premium-quality, made from 100% fish skin dog-feed product) can be aligned with the activity listed in Annex I, chapter 23 of the TFEU.

Unfortunately, we were unable to find a precise definition or legal provision regarding what constitutes the primary level of processing. Is there any interpretative guidance available on this issue?

We kindly request your confirmation as to whether the production of a product (animal feed) falling under product group 23 listed in Annex I to the TFEU can be considered as falling within the scope of the internal market, even in cases where the product is not the result of first-stage (primary) processing.

Answer:

We understand the Hungary inquiry to be about the possibility to fund the operation in question, i.e. converting fishery by-products such as fish skin and fish trimmings into high value-added, premium-quality dog treats using an innovative freeze-drying (lyophilisation) technology under the EMFAF, and specifically Article 26(1)b of the EMFAF Regulation (EU) 2021/1139).

Eligibility of the operation under EMFAF Regulation:

In line with Article 8(2) EMFAF Regulation, support under Title II of this Regulation shall pursue the policy objectives set out in Article 5 of Regulation (EU) 2021/1060 (CPR Regulation) as specified in the EMFAF priorities and specific objectives laid down in Annex II of the EMFAF Regulation.

In line with Article 5(1)(b) of Regulation (EU) 2021/1060 (CPR Regulation) reflected in Annex II of the EMFAF Regulation , the EMFAF shall support as a policy objective: "a greener, low-carbon transitioning towards a net zero carbon economy and resilient Europe by promoting clean and fair energy transition, green and blue investment, the ***circular economy***, climate change mitigation and adaptation, risk prevention and management, and sustainable urban mobility".

Support under Article 26(1)(b) of the EMFAF Regulation shall cover interventions that contribute to the achievement of the objectives of the

CFP, through the following specific objective: ***(b) promoting marketing, quality and added value of fishery and aquaculture products, as well as processing of those products.*"**

Fish skin and fish trimmings can be considered fishery products in line with Article 5 and in conjunction with Annex I (CN code 0511 91 10) of Regulation (EU) 1379/2013 on the common organisation of the markets in fishery and aquaculture products. Article 2(1) of the EMFAF Regulation provides that the definitions of Regulation (EU) 1379/2013 shall also apply to the EMFAF Regulation.

On the specific HU case, utilizing fish skin and fish trimmings (low value-added by-products/fish-processing waste) to be processed into (high value-added/premium-quality) dog treats using an innovative freeze-drying (lyophilisation) technology ***may be regarded as a process of adding-value/valorisation of fishery by-products, resulting directly and exclusively from the beneficiary' main activity of fish processing which is a priority for sustainability and circularity.***

As such it fits into the scope of Article 26(1)(b) of the EMFAF Regulation, and it may be considered eligible for funding under this Article.

It is ultimately the task of the EMFAF MA in Hungary to assess if all the eligibility conditions are met by the potential beneficiaries and decide on the EMFAF funding of specific projects.

NB

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA00419 - FINANCIAL INSTRUMENTS - LOAN RECOVERY

Relevant Article: Articles 58 and 59 CPR Regulation

Member State: FI

Question (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

We are currently setting up a guarantee financial instrument that we the managing authority (MA) are directly implementing. We seek interpretation advice for cases where a loan enabled by a guarantee is not paid back by the final recipient (e.g. SME bankruptcy) or the guarantee enabled loan is found not to have been used by the final recipient for its declared intended purpose. Specifically:

1. If the final recipient has repaid the loan in full, is anything to be recovered?

2.Should the potential recovery be the guaranteed amount, or the calculated gross grant equivalent (GGE) of the guarantee?

1. If the financial instrument is combined with a grant in a single operation, is the grant portion also to be recovered as the combined operation is under financial instrument applicable rules (CPR article 58(5))?
2. In the event of payout of the guarantee (e.g. the SME has gone bankrupt resulting in a loan default and the guarantee is paid by the MA to the lending bank), should the recovered amount be claimed directly from the final recipient, or is the guarantee payout considered a realised risk, where no further action is needed?

Answer:

We understand from the question that the MA set up a guarantee financial instrument co-financed with shared management EU Fund.

The Member State is asking in essence if and to which extent a loan enabled by the co-financed guarantee is to be recovered by the financial intermediary and/or the managing authority according to Regulation (EU) 2021/1060 ('21-27 CPR') where:

(a) the loan is found not to have been used by the final recipients for its intended purpose (and the loan was either paid back by the final recipient to the bank or not), and

(b) the final recipient did not pay back the loan due to bankruptcy.

Regulation (EU) 2021/1060 applicable to the 2021-2027 programming period does not impose an obligation on Member States and managing authorities to pursue recoveries. The protection of the Union budget is to be done by means of financial corrections where expenditure declared to the Commission is found to be irregular, which may or not be applicable in this case.

Recoveries of the loans at the final recipient level are subject to national law and contractual terms between the final recipient and the financial intermediary (commercial banks). Recoveries of the guarantee amount paid out to the financial intermediary by the MA are subject to the strategy document referred to in Article

59(1) CPR and to the contractual terms between the managing authority and the bank as regards the implementation of the guarantee contract.

1. In a situation where a loan enabled by the co-financed guarantee is found *not to have been used by the final recipient for its intended declared purpose,* we understand it to mean that the underlying loan does not respect the terms and conditions of the programme objectives (laid down in the strategy document referred to in Article 59(1) CPR), contractual terms or other eligibility rules.

Since the underlying loan was repaid in full by the final recipient there is no recovery of the loan to be done.

Under the CPR, there would be consequences on the guarantee instrument if the underlying loan did not respect the investment strategy or policy of the guarantee instrument set out in the strategy document, notably the target recipients and actions to be supported (Article 59(1) and Annex X CPR). In this case, the loan should not be included as part as the amount set aside for the guarantee and declared in a payment application to the Commission.

1. We understand that the question is about the amount of the guarantee to be recovered in case the loan was not used for its intended purpose and was not paid back by the final recipient. In such a case, the guarantee would not be called upon by the financial intermediary to cover its losses, subject to the terms of the contract and the strategy document. Any amount to be recovered from the final recipient by the financial intermediary (loan) or from the financial intermediary by MA (guarantee amount unduly paid out) would be subject to national law, the strategy document and contractual terms.
2. We understand that the question is about the situation where the MA provides a grant, in addition to the guarantee in a single operation (i.e. in the form of interest rate subsidies, technical assistance or capital rebate).

As a general rule under Article 58(5) CPR, the financial instrument may be combined with a grant in a single operation where *"both distinct forms of support shall be provided by the body implementing the financial instrument"*. Here, we understand that the MA is planning to implement the guarantee instrument directly according to Article 59(1) CPR. However where the MA is directly implementing a FI, it should not be considered a "body implementing a financial instrument" as defined in Article 2(22) CPR because the MA would not fulfill functions of a Holding Fund or Specific Fund. Therefore, in that case the financial instrument should not be combined with a grant in a single operation according to Article 58(5)CPR.

By contrast, the grant may be combined with FI support at the level of the final recipient in two separate operations (in accordance with Article 58(4) CPR). In that case, the eligibility of the grant will be assessed separately in accordance with the eligibility rules applying to grants.

1. In the event of payout of the guarantee (e.g. the SME has gone bankrupt resulting in a loan default and the guarantee is paid by the MA to the lending

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

bank), the guarantee payout is generally considered a realised risk. In this case the guarantor (i.e the body(ies) providing the underlying loan) will be able to call upon the guarantee and recover their loss at the guarantee rate, provided that the loan comply with the terms and conditions of the guarantee instrument (i.e. set out notably in the strategy documents referred in Annex X.

[***Texts below added by MARE D3 - manually uploaded on the REGIOWIKI pages***]:

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA00421 - THE USE OF 2021-2027 TA FOR PREPARATION OF THE NEXT PROGRAMMING PERIOD (SALARIES FOR STAFF RELATED TO THE COMPETITIVENESS FUND)

Relevant Article: Article 36 CPR

Member State: CZ

Question 1 (including any relevant facts and information):

Can salaries of administrative capacities, linked to negotiations and preparations of the future programming period 2028-34, namely related to programming actions under future European Competitiveness Fund (ECF), be eligible from the Technical Assistance of the current programming period 2021-27?

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Since the European Competitiveness Fund will be a new fund, which falls outside the scope of the funds regulated by CPR Regulation (EU) 2021/1060, but yet its preparation is an "action which concerns subsequent programming period", the question is raised if TA 2021-27 can cover costs related to salaries of people engaged in preparation of the new programming period, including European Competitiveness Fund. Moreover, preparation for the MFF 2028-34, future NRPPs and ECF are closely interconnected activities, the same administrative capacities might be involved in preparation of NRPPs and ECF, especially since all actions should be programmed respecting synergies and complementarities.

Answer:

Article 36(1) CPR provides that "*[a]t the initiative of a Member State, the Funds may support actions, which may concern previous and subsequent programming periods, necessary for the effective administration and use of those Funds, including for the capacity building of the partners referred to in Article 8(1), as well as to provide financing for carrying out, inter alia, functions such as preparation, training, management, monitoring, evaluation, visibility and communication."* Article 36(2) furthermore sets out that "*[e]ach Fund may support technical assistance actions eligible under any of the other Funds.*"

It follows from the above that technical assistance at the initiative of the Member State under Article 36 CPR is limited to such actions that are necessary for the effective administration and use of the *Funds under the CPR as defined in its Article 1(a)*. For the subsequent (2028-2034) programming period, this would in principle mean actions which concern the *European Fund for economic, social and territorial cohesion, agricultural and rural, fisheries and maritime, prosperity and security* – with the exception of agricultural and rural actions, as such actions are not covered by the Funds defined under Article 1(a) CPR.

The ECF is a separate new instrument proposed for the 2028-2034 Multi-annual Financial Framework and therefore falls outside the scope of the provision in Article 36 CPR. Consequently, salaries for administrative capacities engaged in the preparation related to the European Competitiveness Fund are not eligible under Article 36(1) CPR.

In cases, where administrative capacities in the Member State serving the preparation of the NRPPs elements listed above and the ECF overlap (e.g. the same staff is working on their preparation; the activities concern common preparation focusing on synergies and complementarities; the development of a common IT solution is carried out, etc.), a pro rata attribution of costs to 2021-2027 technical assistance and other resources could be sustained, as long as it is based on objective criteria and is duly justified by the Member State.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA777_EMFAF_INVESTMENTS ONBOARD

Relevant Article: Art 13(k) (l) EMFAF

Member State: Germany

Question 1 (including any relevant facts and information):

The German coastal states (Schleswig-Holstein, Mecklenburg-Vorpommern and Lower-Saxony) intend to support the implementation of the new control regulation (Regulation (EU) 2023/2842) with funds from the EMFAF.

In particular, they plan to promote the acquisition of the weighing systems that will be mandatory from 10 January 2027.

The question is whether such weighing systems constitute an "on-board investment" according to Article 13 (k) and (l) of the EMFAF Regulation, implying that funding support is only permissible under the conditions specified therein.

Germany has taken note of the Commission's answer to a question from Finland, which raised the question of whether the funding of mobile fishing gear constituted an "on-board investment" (QA681). However, the answer to this question does not fully address the issue from Germany's perspective with regard to weighing systems.

According to the draft of the corresponding implementing regulation (DVO), weighing of catches both upon landing and on board will be required. Therefore, at least for smaller fishing operations and vessels, it can be assumed that the acquisition of mobile scales will be necessary, which can be used both on board and after landing. Larger operations and vessels are expected to install fixed weighing systems on board and operate with additional weighing systems on land.

The German authorities assume that, at least, the acquisition of permanently installed or mobile scales and weighing systems that are used exclusively on land by the fishing operations does not constitute an "investment on board" within the meaning of Article 13(k) and (l).

The question is:

Do Article 13 k) and l) of the EMFAF Regulation apply if the mobile scales/ weighing systems are used by fishers both on board and on land to comply with their obligations under the Control Regulation?

Answer:

Article 13 (k) stipulates that investments on board fishing vessels necessary to comply with the requirements under Union law in force at the time of submission of the application for support, including requirements under the Union's obligations in the context of RFMOs, unless otherwise provided for in Article 22 are not eligible for support from the EMFAF.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Investments on board should be understood as any equipment, device, system or facility installed on a fishing vessel or used by a fishing vessel during its fishing activity. This includes *inter alia* control equipment, gear, engines, accommodation facilities, safety equipment and devices installed on gear.

Article 13(k) does allow for investments on board when provided for in Art. 22 which provides that "*The EMFAF may support the development and implementation of a Union fisheries control system as provided for in Article 36 of Regulation (EU) No 1380/2013 and further specified in Regulations (EC) No 1224/2009 and (EC) No 1005/2008".*

Art 22 (2): By way of derogation from point (k) of Article 13, the support referred to in paragraph 1 of this Article may cover:

(b) the purchase, installation and management on board of the necessary components for compulsory remote electronic monitoring systems used for controlling the implementation of the landing obligation referred to in Article 15 of Regulation (EU) No 1380/2013;

This is an explicit derogation to the ineligibility of investments on board that do not go beyond EU requirements. Consequently Article 13 (k) does not apply to weighing systems on board.

Furthermore, permanently installed or mobile scales and weighing systems that are used exclusively on land by the fishing operations do not constitute an "investment on board" within the meaning of Article 13(k) and (l).

NB

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA780_EMFAF_EMFAF SUPPORT UNDER DATA COLLECTION MEASURE

Relevant Article: Article 14 and 23 of EMFAF Regulation

Member State: Poland

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Question 1 (including any relevant facts and information):

Having regard to Article 23(1) of Regulation (EU) 2021/1139 (EMFAF Regulation), according to which '(…) *the EMFAF may also support research and innovation programmes in fisheries and aquaculture as referred to in Article 27 of Regulation (EU) No 1380/2013*", we ask for an opinion on support under data collection measure for two operations. Specifically, we ask for a confirmation whether the scope of the operations set out below will contribute to the specific objective referred to in point (d) of Article 14(1) of the EMFAF Regulation, i.e. whether the implementation of these two operations may sufficiently support effective fisheries control and enforcement, including reliable data for knowledge-based decision-making.

1) Research project for data acquisition on marine aquaculture in purchased cages

A project will involve the collection and analysis of biological, environmental, technical and operational data related to marine aquaculture in cages in open sea conditions.

Project activities would include, inter alia, a purchase/construction of cages, fry purchase and its rearing, testing technological solutions, monitoring the marine environment, assessing the growth and condition of fish and developing data for further scientific and planning analyses.

A biomass (pre-farmed fish), as result of the process, will be redistributed (e.g. through disposal or free transfer to nursing homes or public benefit organizations).

The project will have an innovative character, will not be a commercial undertaking and does not involve production activities in the market sense. It will be implemented by the National Research Institute i.e. the entity designated to collect fisheries data.

(2) Purchase of a research vessel for fisheries data collection.

The research vessel will be purchased and used by the Maritime Fisheries Institute – National Research Institute, i.e. the entity designated by law to collect fishing data. The research vessel will be used to implement the National Fisheries Data Collection Plan.

Answer:

EMFAF support under shared management is designed in a very open manner, allowing Member States (MS) to decide on the types of actions in their national programme according to their needs, taking into account specific rules laid down in the CPR 2021-2027 , the CFP and the EMFAF Regulation.

The EMFAF Regulation does not contain specific rules as to the financing of innovative research projects, but can cover their costs if they comply with the eligibility rules set at the national level, the scope of the priorities and specific objectives set out in Article 8 (2) EMFAF Regulation and contribute to CFP objectives as listed in Article 14 (1) of the EMFAF Regulation.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Article 23 of the EMFAF Regulation enables MS to support data collection, management, use and processing in the fisheries sector, as outlined in Article 25 (1) and (2) of the CFP Regulation and specified in the DCF Regulation, and fisheries and aquaculture research and innovation programmes specified in Article 27 of CFP Regulation. Support shall contribute to the specific objective referred to in point (d) of Article 14(1) of the EMFAF Regulation, i.e. *"fostering efficient fisheries control and enforcement, including fighting against IUU fishing, as well as reliable data for knowledge-based decision making"*.

Regarding the part of Article 23 EMFAF referring to Article 27 of the CFP Regulation (CFP), MS shall use EU funds for fisheries and aquaculture research and innovation programmes that are coordinated with other MS and implemented in close cooperation with the Commission in the context of the Union research and innovation framework.

Both operations described above could potentially contribute to the specific objective referred to in point (d) of Article 14(1) of the EMFAF Regulation. However, the information provided by the Polish authorities is not sufficient to take a position on their compliance with Article 23 EMFAF Regulation in the context of Article 27 CFP mentioned above.

MS may also consider implementing these operations under Article 23 EMFAF in conjunction with Article 25 CFP. In any case, it is responsibility of the Member State to assess whether the operation to be selected for co-financing under the EMFAF complies with all relevant EU and national provisions.

Activation of EMFAF funding must align with the objectives of the respective MS programmes as agreed with the Commission.

NB

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner and should not duplicate or crowd out private financing or distort competition in the internal market.

QA00422 - LEVERAGE EFFECT CALCULATION

Relevant Article: Article 2(23) CPR

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State: LT

Question (including any relevant facts and information):

Article 2(23) of the Common Provisions Regulation, defines leverage effect as "the amount of reimbursable financing provided to final recipients divided by the amount of the contribution from the Funds". Similarly, in the "Guidance for Member States on Article 46 - reporting on financial instruments and on Article 37(2)(c) - leverage effect", the following calculation formula is provided:

$$\text{Expected leverage effect} = \frac{\text{Total expected amount of finance to eligible final recipients}}{\text{ESI Funds amount committed to the financial instrument}}$$

We are seeking for clarification if we understand the calculation of leverage effect correctly in regards to the numerator of the formula – "Total expected amount of finance to eligible final recipients". Can you confirm whether or not this amount includes reflows that are reused for financing final recipients? We would also appreciate it if you could indicate the relevant guidance or basis for this interpretation.

In our opinion, only the first cycle investments shall be included in leverage calculation. Thus, the "Total expected amount of finance to eligible final recipients" when calculating leverage effect should not include the investments into Final Recipients' projects made with reflows.

We would welcome your perspective on this matter and kindly ask you to confirm whether this approach to calculating the leverage effect is appropriate. Should this not be the case, we would be grateful for any further clarification you could provide.

Answer:

In accordance with Article 2(23) of the CPR, the leverage effect is defined as "the amount of reimbursable financing provided to final recipients divided by the amount of the contribution from the Funds".

We understand that the question is whether reflows should be taken into account in "the amount of reimbursable financing provided to final recipients", i.e. the numerator of the formula.

Although the definition of leverage does not specify what can be included in the "reimbursable financing provided to final recipients", the aim of the CPR is to assess the leverage of programme resources and thus to take into account only the first cycle of investments.

By calculating the leverage associated with the first cycle, it is possible to compare financial instruments and leverage across Member States and instruments, while also taking into account that they are implemented at different speeds and have different

characteristics (e.g. short-term instruments with faster returns and long-term investments, with reflows that can only be repaid after the eligibility period). Without this approach, leverage effects across the EU would not be comparable.

Therefore, reflows reused within financial instruments should not be included in the calculation of leverage, neither in the numerator nor in the denominator of the formula.

QA00424 - INTERPRETATION OF ARTICLE 7(1) OF REGULATION (EU) 2021/1058 WITHIN AUTOMOTIVE SUPPLY CHAINS.

Relevant Article: Article 7(1)(h) of the Regulation (EU) 2021/1058

Member State: CZ

Question (including any relevant facts and information):

In the context of a financial instrument scheme for SMEs supported from EU funds, the Czech National Coordination Authority is seeking, for the sake of practical application, "clear, comprehensible, and consistent" interpretation of the Article 7(1)(h) of the Regulation (EU) 2021/1058 within automotive supply chains:

„The ERDF and the Cohesion Fund shall not support:

(h) investments related to the production, processing, transport, distribution, storage, or combustion of fossil fuels, with the exception of: (iii) investments in:

- *clean vehicles as defined in Directive 2009/33/EC of the European Parliament and of the Council for public purposes; and*
- *vehicles, aircraft, and vessels designed and manufactured or adapted for use by civil protection and firefighting services*.

Description of the situation:

The Czech Republic has a highly developed automotive supply chain, including both companies assembling final vehicles for customers and Tier 1 suppliers (dashboard systems, car seats, air conditioning systems, brakes), as well as Tier 2 and Tier 3 suppliers (basic components and semi-finished products — typically cables, bearings, sensors, screws, headlights, i.e. parts usually supplied to Tier 1 manufacturers).

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In many cases, these are small and medium-sized enterprises. Tier 2 and Tier 3 suppliers often provide the same types of products (plastic parts, metal components, electronics, wiring, air conditioning systems, lighting technology) not only within automotive supply chains (for both fossil-fuel and zero-emission vehicles), but also for other end products in sectors such as mechanical engineering and construction.

Question 1: To what extent or at what level within the automotive supply chain can the supply of a specific product be considered an investment related to the combustion of fossil fuels (e.g. wiring harnesses, car seats, or brakes)?

Question 2: How should cases of mixed production be approached, i.e. situations where a manufacturer produces components for both emission-producing and zero-emission vehicles (for example, where a project intends to purchase technology enabling the production of components usable in both emission-producing and zero-emission vehicles — typically CNC machines)?

Question 3: What specific assessment criteria would you recommend as appropriate for identifying when an investment is related to the combustion of fossil fuels and when it is not?

When considering the interpretation of Article 7(1) of Regulation (EU) 2021/1058, the authors of the question contemplated an approach whereby investments cannot be supported if the product has a direct connection to the combustion process (engine-related components). Conversely, investments in components whose function is independent of combustion could potentially be eligible. However, in attempting to apply this approach, we encounter the requirement to clearly distinguish specific automotive components that are directly related to the fossil-fuel combustion process from those that are not. We assume this may lead to additional ambiguities in individual cases.

Answer:

1: Article 7(1)(h) of Regulation (EU) 2021/1058 excludes investments related to the production, processing, transport, distribution, storage, or combustion of fossil fuels. In the automotive sector, this includes, among others, support for investments in components or processes related to fossil-fuel combustion, such as fuel injectors, exhaust systems, or other components specific to vehicles powered by internal combustion engines (ICE).

2: ERDF support to automotive suppliers for the production of generic components that can be used in both ICE and zero-emission vehicles (such as wiring harnesses, car seats, or brakes) is not excluded solely because they may also form part of ICE vehicles, as their function is not directly related to the combustion of fossil fuels.

3: Cohesion policy support for an investment as described in the question depends on demonstrating on a case-by-case basis that it does not perpetuate fossil-fuel dependence.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA00423 - TREATMENT OF COSTS RELATED TO TREASURY MANAGEMENT ACTIVITIES

Relevant Article: Article 60 (2) CPR

Member State: n/a

Question 1 (including any relevant facts and information):

We would like to seek clarification regarding a specific provision of the CPR, namely Article 60(2), which refers to how interest and other gains generated by support from the Funds paid to financial instruments should be used.

More specifically, the body implementing financial instrument received the first tranche from the Managing Authorities, which was subsequently placed in accounts within a financial institution and managed in line with active treasury management practices and the principle of sound financial management, in accordance with Article 60(1) CPR. These actions have also generated certain administrative costs; however, the CPR does not appear to provide sufficient clarity on how such costs should be treated in this context.

We would like to clarify whether costs incurred related to treasury management activities may be covered by the interest and other gains generated, and if so, under what conditions or limitations?

Answer:

In accordance with Article 60 (2) CPR, interest and other gains attributable to support from the Funds paid to financial instruments shall be used under the same objective or objectives, as the initial support from the Funds, including for the payments of management fees and the reimbursement of management costs incurred by the bodies implementing the financial instrument.

A treasury management fee or costs incurred by the body implementing financial instruments for carrying out the treasury management activities according to the sound financial management may be paid from the interest and gains generated from treasury management according to Article 60(2) CPR. Treasury management fees or costs paid from interest and other gains shall not be declared as eligible expenditure.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

QA784_EMFAF_ELIGIBILITY OF A PROJECT IMPLEMENTED BY AN INTERBRANCH ORGANISATION FOR MARKET ORGANISATION PURPOSES

Relevant Article: Annex III and article 40 of the EMFAF Regulation

Member State: Hungary

Question 1:

Due to the obligation concerning the organisation of joint sales activity, the Hungarian aquaculture sector is not necessarily planning to establish Producer organisations, and so far the Managing Authority has not received any sectoral enquiries in this regard.

However, in order to improve food security and achieve the objectives of the operational programme, it would be essential to establish efficient and well-organised markets that enhance transparency, stability, quality, supply chain diversity, and consumer information.

To this end, **we consider it useful to support an interbranch organisation** that possesses the professional experience and competences necessary for the development of production and marketing plans. Besides these activities, they could provide development of skills to meet the demands arising from new business opportunities (e.g. professional training, lifelong learning, and the sharing of knowledge and experience).

According to the Annex III. of the 1139/2021/EU regulation, point 15., **the maximum aid intensity is for operations implemented by** producer organisations, associations of producer organisations or **interbranch organisations** is 75%.

With reference to Annex III, point 15 of Regulation (EU) 2021/1139, we would like to ask whether a project implemented by an interbranch organisation for market organisation purposes could be considered eligible for support, even if it does not necessarily meet the criteria applicable to producer organisations.

The Managing Authority intends to launch the call for proposals as soon as possible. Your response is crucial for the preparation of the content of the call for proposals to be launched in the near future.

Answer:

We understand your question as to seek clarification on the potential eligibility of a project implemented by an interbranch organization for market organization purposes.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Recital 40 of the EMFAF Regulation states that *food security relies on efficient and well-organised markets, which improve the transparency, stability, quality and diversity of the supply chain, as well as consumer information. For that purpose, it should be possible for the EMFAF to support the marketing of fishery and aquaculture products, in line with the objectives set out in Regulation (EU) No 1379/2013 of the European Parliament and of the Council. In particular, support should be available for the creation of producer organisations, the implementation of production and marketing plans, the promotion of new market outlets and the development and dissemination of market intelligence*.

Support for interbranch organisations can be thus considered consistent with the EMFAF objective of funding marketing of fishery and aquaculture products in line with the Regulation (EU) No 1379/2013, since these organizations may contribute to the promotion of new market outlets and the development and dissemination of market intelligence.

The priority/objective in the EMFAF is implemented under Chapter III of the EMFAF Regulation: "Priority 2: Fostering sustainable aquaculture activities and processing and marketing of fishery and aquaculture products, thus contributing to food security in the Union", Section 1 'Scope of support', Article 26.1.b: "promoting marketing, quality and added value of fishery and aquaculture products, as well as processing of those products." and Article 26.4: "Support under point (b) of paragraph 1 of this Article may also contribute to the achievement of the objectives of common organisation of the markets in fishery and aquaculture products as provided for in Article 35 of Regulation (EU) No 1380/2013, including the production and marketing plans as described in Article 28 of Regulation (EU) No 1379/2013."

HU also included in the EMFAF Programme, Priority 2, SO 2.2 'Promoting marketing, quality and added value of fisheries and aquaculture products, as well as processing of those products' a specific objective of setting up one Producer Organization – which will probably not happen.

On this basis, a project implemented by an interbranch organisation for market organisation purposes could in principle be considered eligible for support provided that the following conditions are met.

First of all, compliance is ensured with the conditions for the Member States' recognition of interbranch organisations as stated under Article 16 of the Regulation (EU) No 1379/2013.

Second, the eligibility or support requires the recognised interbranch organisation to **perform an activity** which is **in line with the 'Objectives of inter-branch organisation' as described in Article 12 of CMO Regulation**: "*Inter-branch organisations shall improve the coordination of, and the conditions for, making fishery and aquaculture products available on the Union market.*"

Provided that the above conditions are met, Annex III EMFAF Regulation, row 15, explicitly allows for an aid intensity of 75% for recognized producer organizations, associations of producer organizations and interbranch organizations. HU should

specify in the rules for beneficiaries the types of entities entitled to submit applications for support under the measure in question and the type of eligible activities funded.

Nevertheless, it is ultimately the task of the EMFAF MA in Hungary to assess if all the eligibility conditions are met by the potential beneficiaries and decide on the EMFAF funding of specific projects.

NB

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA783_EMFAF_DIRECT RESTOCKING

Relevant Article: Article 13 EMFAF Regulation

Member State: Estonia

Question 1:

Pursuant to the Estonian Fish Farm Reproduction Action Plan, it is planned to increase the reproduction capacity here (Coregonus lavaretus) in Estonia, the aim of which is to improve the natural population. Previous experimental restocking has shown a positive effect and, as a result, there is a need to invest in the expansion of the Põlula fish farm of the State Forest Management Centre.

Article 13 of Regulation (EU) 2021/1139 of the European Parliament and of the Council provides for ineligible operations or expenditure under the European Maritime, Fisheries and Aquaculture Fund (EMFAF). Under point (h) of that article, direct restocking is not to be financed unless expressly provided for in a Union act as a reintroduction measure or other conservation measure or in the case of experimental restocking.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

In our view, 'direct restocking' is the release of farmed fish into a water body and costs directly related to this activity, such as the acquisition of fish, transport, labour costs, etc. are not eligible. We also consider that investments in fish farm infrastructure cannot be considered as 'direct restocking', even if the fish farm is farmed for the purpose of restocking.

We would also like to hear your views on how the 'other conservation measure explicitly provided for in a Union act' referred to in Article 13, point (h), of Regulation (EU) 2021/1139 of the European Parliament and of the Council is to be understood. European/common whitefish (Coregonus lavaretus) is a protected species under Annex V to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Coregonus spp). Can the abovementioned directive be regarded as 'an act of Union law providing for another conservation measure'? Is direct restocking of this species eligible for support under the EMFAF?

Please express your views and interpretation on the application of Article 13(h) of Regulation (EU) 2021/1139 of the European Parliament and of the Council.

Answer:

Regulation (EU) 2021/1139 (EMFAF) does not provide a specific definition of the concept of direct restocking. However, the definition in Article 6 (46) of the Regulation (EU) 2019/1241 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures can be applied: "'*direct restocking' means the activity of releasing live wild animals of selected species into waters where they occur naturally, in order to use the natural production of the aquatic environment to increase the number of individuals available for fisheries and/or to increase natural recruitment*".

Article 13(h) of EMFAF Regulation lists direct restocking as an ineligible operation for support. This includes all operations, investments and expenditure incurred therein, which aim to contribute to direct restocking.

Article 13(h) of EMFAF Regulation also provides for an exception, that direct restocking is eligible if is explicitly provided for as a reintroduction measure or other conservation measures in a Union legal act.

As you correctly mentioned, the European/common whitefish (Coregonus lavaretus / Coregonus spp) is a protected species under Annex V of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora. However, the directive does not explicitly provide for direct restocking as a conservation measure and cannot therefore serve as a basis for an exception from the ineligibility provided for under Article 13(h) EMFAF Regulation.

NB

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA785_EMFAF_CRISIS SUPPORT

Relevant Article: Article 26 and 28 of EMFAF Regulation

Member State: Estonia

Question 1 (including any relevant facts and information):

We are considering the use of crisis measure and have a question about large enterprises. The Article 28 of 2021/1139 establishes that the support under specific objective referred to in point (b) of Article 26(1) to large enterprises should be granted only in via financial instruments. However, the scope of Art 26 (2) is much wider than processing and marketing and covers the whole fisheries and aquaculture sector, which is defined in the Article 5 (d) of Regulation 1379/2013.

Does this mean that crisis aid may be granted for large enterprises, whose economic activity is fishing, aquaculture and marketing of fishery or aquaculture products, but not to the large enterprises processing fishery and aquaculture products?

Can the compensation be granted to the large enterprises who are involved in both activities – fishing and processing of fish or are they excluded?

How to deal with factory vessels that are both fishing and processing and who belong to large enterprise?

Answer:

Article 26(2) of the EMFAF Regulation establishes that, in case of exceptional events causing a significant disruption of markets, compensation may be granted to operators of the fishery and aquaculture sector for their income foregone or additional costs.

The Commission Implementing Decision (EU) 2026/889 establishes the situation in the Middle East as of 28 February 2026 as the occurrence of an exceptional event causing a significant disruption of markets. The term "fishery and aquaculture sector" is

defined in Article 5(d) of Regulation (EU) No 1379/2013 as "the sector of the economy which comprises all activities of production, processing and marketing of fishery or aquaculture products".

Consequently, compensation under the crisis mechanism in Article 26(2)(a) of the EMFAF Regulation may be granted to all sector operators (production, processing and marketing of fishery and aquaculture products).

However, Article 28 of the EMFAF Regulation establishes the specific condition that to achieve the specific objective in point (b) of Article 26(1), **as regards the processing of fishery and aquaculture products**, support to enterprises **other than SMEs** shall only be granted through the financial instruments provided for in Article 58 Regulation (EU) 2021/1060 or through InvestEU. This condition also applies to compensation for additional costs and income foregone provided for under Article 26(2) of the EMFAF Regulation, as this support is implementing the specific objective of Article 26(1)(b) of the EMFAF Regulation as also clarified in Recital 4 of the above-mentioned Commission Decision. Therefore, **such enterprises could not receive support under Article 26(2) for processing** of fishery and aquaculture products, given that in line with Article 39 of the EMFAF Regulation, such support would take the forms as referred to in Article 53(1)(b) to (d) of Regulation (EU) 2021/1060.

Based on the above, support referred to in article 26(2) of the EMFAF regulation and based on the above-mentioned Commission Decision, may be granted to operators of the fishery and aquaculture sector, including enterprises other than SMEs. However, this is explicitly excluded for enterprises other than SMEs with activity in the processing of fishery and aquaculture products.

Concerning your second question, if a large enterprise is active in several sectors of fishery and aquaculture, including processing of fishery and aquaculture products, it may receive support in the form of compensation as provided for under Article 26(2)(a) of the EMFAF Regulation, except for activities regarding the processing of fishery and aquaculture products to which the provisions of Article 28 EMFAF Regulation apply.

Finally, as regards your last question, in case of factory vessels that are both fishing and processing and who belong to large enterprise, Article 28 of the EMFAF applies and therefore compensation cannot be granted for the part of their activities involving processing.

NB

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

investment situations in a proportionate manner, and should not duplicate or crowd out private financing or distort competition in the internal market.

QA00425 - QUESTIONS ON FINANCIAL CORRECTIONS BY THE MEMBER STATE

Relevant Article: Article 63, 69, 73, 74, 98, 103, 104 CPR

Member State: DK

Question 1 (including any relevant facts and information):

Does the Commission agree with our interpretation that only amounts subject to financial corrections of Audit Authorities (or other control layers) are prohibited from being reused in the same project under Article 103(3), as opposed costs discovered by the Managing Authority?

Answer:

According to Article 103(1) CPR, Member States are obliged to protect the Union budget and apply financial corrections by cancelling all or part of the support from the Funds to an operation or programme where expenditure declared to the Commission is found to be irregular. It follows from this provision that corrections which Member States undertake after identifying irregular expenditure that was declared to the Commission are financial corrections within the meaning of Article 103(1).

This provision applies for financial corrections resulting from irregularities discovered by any body, including both audit authorities and managing authorities.

However, it is important to note that corrections made by the managing authority before including expenditure in a payment application to the Commission are not financial corrections within the meaning of Article 103(1) CPR, i.e. Article 103 does not apply in such cases. This is an incentive for the managing authority to carry out its verifications and apply corrections at an early stage i.e. prior to the declaration of the corresponding expenditure to the Commission.

According to Article 103(3) CPR, if the support from the Funds is cancelled pursuant to Article 103(1), it cannot be reused for an operation that was subject of the correction or, where a financial correction is made for a systemic irregularity, for any operation affected by the systemic irregularity.

Question 2 (including any relevant facts and information):

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Regarding the timing of eventual corrections to the projects - can these be done at the moment of project closure?

Answer:

The responsibilities of the Member State include taking all required actions to prevent, detect, correct and report on irregularities including fraud (Articles 69(2) and 74(1)(d) CPR). The moment when the irregular expenditure that has been declared to the Commission has to be corrected is linked to the detection of the irregularity / decision to cancel the support from the Funds to an operation. According to Article 103(2) CPR, financial corrections have to be recorded in the accounts for the accounting year in which the cancellation is decided. Pursuant to Article 98(7) CPR, the Member State may correct irregular amounts which it has detected after the submission of the accounts in which the amounts were included by making the corresponding adjustments for the accounting year in which the irregularity is detected, without prejudice to Article 104.

Question 3 (including any relevant facts and information):

In the 2014-2020 programming period, there was a triviality limit of 250 EUR Funds contribution, under which the MS could decide not to recover amounts unduly paid to the beneficiary. Given that the general principle of proportionality applies to corrective measures, are MAs in the 2021-2027 period required to recover very small amounts (e.g. 10 cents) from beneficiaries?

Answer:

As also explained in QA00157, unlike in the 2014-2020 programming period, the 2021-2027 CPR does not contain any provision with regard to the recovery of amounts unduly paid[1]. As long as expenditure is withdrawn from the accounts, it is up to the Member States to set out the approach towards recoveries. For instance, to avoid excessive burden, the Member State could decide in its national rules not to recover small amounts from the beneficiaries.

[1] Article 52(2) ETC, for Interreg programmes, indicates that amounts below 250 EUR do not need to be recovered from the project partners to avoid cumbersome recovery procedures between countries for smaller amounts.

QA786_EMFAF_ARTICLE 10 REQUEST FOR INTERPRETIVE GUIDANCE

Relevant Article: Art. 10 EMFAF

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

Member State: Italy

Question 1 (including any relevant facts and information):

On the basis of the analysis provided in a letter on 30 June 2026 (Ares(2026)6570646), the Managing Authority requests the Commission to confirm or correct the following positions:

1. National **top-ups in line with regulatory ceilings.** If the MA correctly interprets Article 10(3) [of the EMFAF Regulation], in considering that additional national resources, incorporated in the financial plan by means of an amendment approved by the Commission, which keep the individual operations within the ceilings of Article 41 and the co-financing rate of the specific objective within the ceiling of Article 40, do not constitute funding exceeding the provisions of the Regulation and therefore do not activate the scheme of paragraph 3.
2. **Cases of activation of paragraph 3.** If the MA correctly interprets Article 10 in finding that they fall under paragraph 3, with the consequent application of Articles 107 to 109 TFEU: (a) payments to undertakings made exclusively from national resources, following the exhaustion of the EU envelope of the specific objective; and (b) national top-ups that bring the intensity of support on the individual operation above the Article 41 ceiling.

Answer:

IT's interpretation is deemed correct.

As clarified in IQ 771, State aid rules apply: (a) in the context of Regulation (EU) 2021/1139 to (i) any public financing that goes beyond the provisions of that Regulation and (ii) payments made under the Regulation that fall outside the scope of Article 42 TFEU (which covers the production, processing and marketing of fishery and aquaculture products) ; and (b) to national payments made outside the framework of Regulation (EU) 2021/1139 (i.e. just national funding).

NB

Pursuant to Article 12 of Regulation (EU) 2021/1139 (the EMFAF Regulation), the operations selected by Member States must fall under the scope of the priorities and specific objectives set out in Article 8(2), must not be ineligible pursuant to Article 13 and must be in accordance with applicable Union law.

In accordance with Recital 7 of the EMFAF Regulation, support should have a clear European added value, inter alia by addressing market failures or suboptimal investment situations in a proportionate manner and should not duplicate or crowd out private financing or distort competition in the internal market.

Disclaimer: This file includes answers to Member States' questions on the provisions relevant to the Funds covered by the CPR. The answers on this file express the view of the Commission services and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.