

**COMMISSION REGULATION (EC) No 448/2004  
of 10 March 2004**

**amending Regulation (EC) No 1685/2000 laying down detailed rules for the implementation of  
Council Regulation (EC) No 1260/1999 as regards the eligibility of expenditure of operations  
co-financed by the Structural Funds and withdrawing Regulation (EC) No 1145/2003**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds <sup>(1)</sup>, and in particular Articles 30(3) and 53(2) thereof,

After consulting the Committee set up pursuant to Article 147 of the Treaty, the Committee on Agricultural Structures and Rural Development, and the Committee on Structures for Fisheries and Aquaculture,

Whereas:

- (1) A common set of rules on eligibility is set out in the Annex to Commission Regulation (EC) No 1685/2000 <sup>(2)</sup>. That Regulation entered into force on 5 August 2000.
- (2) However, experience has shown that the eligibility rules need to be amended in several regards.
- (3) In particular, it is appropriate to recognise the eligibility of charges for transnational financial transactions in the context of assistance under Peace II and the Community initiatives, subject to deduction of interest received on payments on account.
- (4) It should also be made clear that payments into venture capital, loan and guarantee funds constitute expenditure actually paid out.
- (5) It should be made more explicit that the eligibility of VAT for co-financing does not depend on whether the final beneficiary is public or private.
- (6) As regards rural development, it should be made clear that the rule whereby proof of expenditure may take the form of receipted invoices should apply, but without prejudice to specific rules established in Commission Regulation (EC) No 445/2002 of 26 February 2002 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) <sup>(3)</sup>, where standard unit costs for certain investments in the forestry sector have to be determined.

- (7) For the sake of clarity and convenience, the Annex to Regulation (EC) No 1685/2000 should be replaced in its entirety.
- (8) The regulatory provisions governing payments in venture capital, loan and guarantee funds, and the eligibility of VAT have raised difficulties of interpretation.
- (9) Having due regard to the principle of equal treatment, and for the purpose of taking into account the costs attributable to transnational financial charges, the relevant rules should apply retroactively.
- (10) Regulation (EC) No 1685/2000 was amended accordingly by Regulation (EC) No 1145/2003. In adopting that Regulation, however, requirements with regard to the committee procedure were not fully respected and in consequence Regulation (EC) No 1145/2003 should therefore be withdrawn. The present Regulation should therefore apply from the entry into force of Regulation (EC) No 1145/2003.
- (11) The measures provided for in this Regulation are in accordance with the opinion of the Committee on the Development and Conversion of the Regions,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 1145/2003 is withdrawn.

*Article 2*

The Annex to Regulation (EC) No 1685/2000 is replaced by the Annex to this Regulation.

*Article 3*

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

It shall apply from 5 July 2003.

The following points in the Annex shall apply from 5 August 2000:

- (a) in Rule 1, points 1.3, 2.1, 2.2, and 2.3;
- (b) in Rule 3, point 1;
- (c) in Rule 7, points 1 to 5.

<sup>(1)</sup> OJ L 161, 26.6.1999, p. 1. Regulation as last amended by Regulation (EC) No 1105/2003 (OJ L 158, 27.6.2003, p. 3).

<sup>(2)</sup> OJ L 193, 29.7.2000, p. 39. Regulation as amended by Regulation (EC) No 1145/2003 (OJ L 160, 28.6.2003, p. 48).

<sup>(3)</sup> OJ L 74, 15.3.2002, p. 1. Regulation as last amended by Regulation (EC) No 963/2003 (OJ L 138, 5.6.2003, p. 32).

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

Done at Brussels, 10 March 2004.

*For the Commission*  
Michel BARNIER  
*Member of the Commission*

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## ANNEX

## ELIGIBILITY RULES

**Rule No 1: Expenditure actually paid out**

1. PAYMENTS BY FINAL BENEFICIARIES
  - 1.1. Payments effected by final beneficiaries within the meaning of the third subparagraph of Article 32(1) of Regulation (EC) No 1260/1999 (hereinafter the general Regulation) shall be in the form of cash subject to the exceptions indicated in point 1.5.
  - 1.2. In the case of aid schemes under Article 87 of the Treaty and aid granted by bodies designated by the Member States, 'payments effected by final beneficiaries' means aid paid to individual recipients by the bodies which grant the aid. Payments of aid by final beneficiaries must be justified by reference to the conditions and objectives of the aid.
  - 1.3. Payments into venture capital, loan and guarantee funds (including venture capital holding funds) are treated as 'expenditure actually paid out' within the meaning of the third subparagraph of Article 32(1) of the general Regulation provided that the funds meet the requirements of Rules 8 and 9 respectively.
  - 1.4. In cases other than those referred to in point 1.2, 'payments effected by final beneficiaries' means payments effected by the bodies or public or private firms of the type defined in the programme complement in accordance with Article 18(3)(b) of the general Regulation having direct responsibility for commissioning the specific operation.
  - 1.5. Under the conditions set out in points 1.6, 1.7 and 1.8, depreciation, contributions in kind and overheads can also form part of the payments referred to in point 1.1. However, the Structural Funds' co-financing of an operation shall not exceed the total eligible expenditure, excluding contributions in kind, at the end of the operation.
  - 1.6. The cost of depreciation of real estate or equipment for which there is a direct link with the objectives of the operation is eligible expenditure, provided that:
    - (a) national or Community grants have not contributed towards the purchase of such real estate or equipment;
    - (b) the depreciation cost is calculated in accordance with the relevant accountancy rules; and
    - (c) the cost relates exclusively to the period of co-financing of the operation in question.
  - 1.7. In kind, contributions are eligible expenditure provided that:
    - (a) they consist in the provision of land or real estate, equipment or materials, research or professional activity, or unpaid voluntary work;
    - (b) they are not made in respect of financial engineering measures referred to in Rules 8, 9 and 10;
    - (c) their value can be independently assessed and audited;
    - (d) in the case of the provision of land or real estate, the value is certified by an independent qualified valuer or duly authorised official body;
    - (e) in the case of unpaid voluntary work, the value of that work is determined taking into account the amount of time spent and the normal hourly and daily rate for the work carried out; and
    - (f) the provisions of Rules 4, 5 and 6 are complied with where applicable.
  - 1.8. Overheads are eligible expenditure provided that they are based on real costs which relate to the implementation of the operation co-financed by the Structural Funds and are allocated pro rata to the operation, according to a duly justified fair and equitable method.
  - 1.9. The provisions of points 1.5 to 1.8 are applicable to individual recipients referred to in point 1.2 in the case of aid schemes under Article 87 of the Treaty and aid granted by bodies designated by Member States.
  - 1.10. Member States may apply stricter national rules for determining eligible expenditure under points 1.6, 1.7 and 1.8.

## 2. PROOF OF EXPENDITURE

- 2.1. As a general rule, payments by final beneficiaries, declared as interim payments and payments of the final balance, shall be supported by receipted invoices. Where this cannot be done, payments shall be supported by accounting documents of equivalent probative value.
- 2.2. As regards rural development, the provision specified in point 2.1 applies without prejudice to specific rules established in Commission Regulation (EC) No 445/2002 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) for the case of the determination of standard unit costs for certain investments in the forestry sector.
- 2.3. In addition, where operations are executed in the framework of public procurement procedures payments by final beneficiaries, declared as interim payments and payments of the final balance, shall be supported by receipted invoices issued in accordance with the provisions of the signed contracts. In all other cases, including the award of public grants, payments by final beneficiaries, declared as interim payments and payments of the final balance, shall be justified by expenditure actually paid (including expenditure referred to in point 1.5) by the bodies or public or private firms concerned in implementing the operation.

## 3. SUBCONTRACTING

- 3.1. Without prejudice to the application of stricter national rules, expenditure relating to the following subcontracts is ineligible for co-financing by the Structural Funds:
  - (a) subcontracting which adds to the cost of execution of the operation, without adding proportionate value to it;
  - (b) subcontracts with intermediaries or consultants in which the payment is defined as a percentage of the total cost of the operation unless such payment is justified by the final beneficiary by reference to the actual value of the work or services provided.
- 3.2. For all subcontracts, subcontractors shall undertake to provide the audit and control bodies with all necessary information relating to the subcontracted activities.

### **Rule No 2: Accounting treatment of receipts**

1. 'Receipts' for the purposes of this rule covers revenue received by an operation during the period of its co-financing or during such longer period up to the closure of the assistance as may be fixed by the Member State, from sales, rentals, services, enrolment/fees or other equivalent receipts with the exception of:
  - (a) receipts generated throughout the economic lifetime of the co-financed investments and subject to the specific provisions of Article 29(4) of the general Regulation;
  - (b) receipts generated within the framework of financial engineering measures referred to in Rules 8, 9 and 10;
  - (c) contributions from the private sector to the co-financing of operations, which appear alongside public contributions in the financing tables of the relevant assistance.
2. Receipts under point 1 represent income which reduces the amount of co-financing under the Structural Funds that is required for the operation in question. Before the Structural Funds' participation is calculated and no later than at the time of the closure of the assistance, they are deducted from the operation's eligible expenditure in their entirety or pro rata, depending on whether they were generated entirely or only in part by the co-financed operation.

### **Rule No 3: Financial and other charges and legal expenses**

#### 1. FINANCIAL CHARGES

Debit interest (other than expenditure on interest subsidies to reduce the cost of borrowing for businesses under an approved State aid scheme), charges for financial transactions, foreign exchange commissions and losses, and other purely financial expenses are not eligible for co-financing by the Structural Funds. However, charges for transnational financial transactions within assistance under Peace II and the Community Initiatives (Interreg III, Leader+, Equal and Urban II) are eligible for cofinancing by the Structural Funds after deduction of interest received on payment on account. Furthermore, in the case of global grants, debit interest charges paid by the designated intermediary prior to payment of the final balance of the assistance are eligible, after deduction of interest received on payment on account.

## 2. BANK CHARGES ON ACCOUNTS

Where co-financing by the Structural Funds requires the opening of a separate account or accounts for implementing an operation, the bank charges for opening and administering the accounts, are eligible.

## 3. LEGAL FEES FOR ADVICE, NOTARY FEES, THE COSTS OF TECHNICAL OR FINANCIAL EXPERTISE, AND ACCOUNTANCY OR AUDIT COSTS

These costs are eligible if they are directly linked to the operation and are necessary for its preparation or implementation or, in the case of accounting or audit costs, if they relate to requirements by the managing authority.

## 4. COSTS OF GUARANTEES PROVIDED BY A BANK OR OTHER FINANCIAL INSTITUTION

These costs are eligible to the extent that the guarantees are required by national or Community legislation or in the Commission Decision approving the assistance.

## 5. FINES, FINANCIAL PENALTIES AND EXPENSES OF LITIGATION

These expenses are not eligible.

### **Rule No 4: Purchase of second-hand equipment**

The purchase costs of second-hand equipment are eligible for co-financing by the Structural Funds under the following three conditions without prejudice to the application of stricter national rules:

- (a) the seller of the equipment shall provide a declaration stating its origin, and confirm that at no point during the previous seven years has it been purchased with the aid of national or Community grants;
- (b) the price of the equipment shall not exceed its market value and shall be less than the cost of similar new equipment; and
- (c) the equipment shall have the technical characteristics necessary for the operation and comply with applicable norms and standards.

### **Rule No 5: Purchase of land**

#### 1. GENERAL RULE

1.1. The cost of purchase of land not built on shall be eligible for co-financing by the Structural Funds under the following three conditions without prejudice to the application of stricter national rules:

- (a) there shall be a direct link between the land purchase and the objectives of the operation co-financed;
- (b) except in the cases described in point 2, the land purchase may not represent more than 10 % of the total eligible expenditure of the operation, unless a higher percentage is fixed in the assistance approved by the Commission;
- (c) a certificate shall be obtained from an independent qualified valuer or duly authorised official body confirming that the purchase price does not exceed the market value.

1.2. In the case of aid schemes under Article 87 of the Treaty, the eligibility of land purchase shall be assessed in terms of the aid scheme in its entirety.

#### 2. ENVIRONMENTAL CONSERVATION OPERATIONS

For environmental conservation operations, all the conditions indicated below shall be met for the expenditure to be eligible:

- the purchase is the subject of a positive decision by the managing authority,
- the land is devoted to the intended use for a period determined in that decision,
- the land is not for agricultural purposes save in duly justified cases accepted by the managing authority,
- the purchase is made by or on behalf of a public institution or a body governed by public law.

**Rule No 6: Purchase of real estate**

## 1. GENERAL RULE

The cost of purchase of real estate, i.e. buildings already constructed and the land on which they are built, is eligible for co-financing by the Structural Funds if there is a direct link between the purchase and the objectives of the operation concerned under the conditions set out in point 2 without prejudice to the application of stricter national rules.

## 2. TERMS OF ELIGIBILITY

- 2.1. A certificate shall be obtained from an independent qualified valuer or duly authorised official body establishing that the price does not exceed the market value, and either attesting that the building is in conformity with national regulations or specifying the points which are not in conformity where their rectification by the final beneficiary is foreseen under the operation.
- 2.2. The building shall not have received, within the previous 10 years, a national or Community grant which would give rise to a duplication of aid in the event of co-financing of the purchase by the Structural Funds.
- 2.3. The real estate shall be used for the purpose and for the period decided by the managing authority.
- 2.4. The building may only be used in conformity with the objectives of the operation. In particular, the building may be used to accommodate public administration services only where such use is in conformity with eligible activities of the Structural Fund concerned.

**Rule No 7: VAT and other taxes and charges**

1. VAT does not constitute eligible expenditure except where it is genuinely and definitively borne by the final beneficiary, or individual recipient within the aid schemes pursuant to Article 87 of the Treaty and in the case of aid granted by the bodies designated by the Member States. VAT which is recoverable, by whatever means, cannot be considered eligible, even if it is not actually recovered by the final beneficiary or individual recipient. The public or private status of the final beneficiary or the individual recipient is not taken into account for the determination whether VAT constitutes eligible expenditure in application of the provisions of this rule.
2. VAT which is not recoverable by the final beneficiary or individual recipient by virtue of the application of specific national rules shall only constitute eligible expenditure where such rules are in full compliance with the Sixth Council Directive 77/388/EEC on VAT <sup>(1)</sup>.
3. Where the final beneficiary or individual recipient is subject to a flat-rate scheme under Title XIV of the Sixth Council Directive 77/388/EEC on VAT, VAT paid is considered recoverable for the purposes of point 1.
4. Community co-financing may not exceed total eligible expenditure excluding VAT, without prejudice to the provisions of Article 29(6) of the general Regulation.
5. Other taxes and charges (in particular direct taxes and social security contributions on wages and salaries) which arise from co-financing by the Structural Funds do not constitute eligible expenditure except where they are genuinely and definitively borne by the final beneficiary or individual recipient.

**Rule No 8: Venture capital and loan funds**

## 1. GENERAL RULE

The Structural Funds may co-finance the capital of venture capital and/or loan funds or of venture capital holding funds (hereinafter funds) under the conditions set out in point 2. For the purposes of this Rules, 'Venture capital funds and loan funds' means investment vehicles established specifically to provide equity or other forms of risk capital, including loans, to small and medium-sized enterprises as defined in Commission Recommendation 96/280/EC <sup>(2)</sup> as last amended by Recommendation of 6 May 2003. 'Venture capital holding funds' means funds set up to invest in several venture capital and loan funds. The Structural Funds' participation in funds may be accompanied by co-investments or guarantees from other Community financing instruments.

<sup>(1)</sup> OJ L 145, 13.6.1977, p. 1.

<sup>(2)</sup> OJ L 107, 30.4.1996, p. 4.

## 2. CONDITIONS

- 2.1. A prudent business plan shall be submitted by the co-financiers or sponsors of the fund specifying, *inter alia*, the targeted market, the criteria, terms and conditions of financing, the operational budget of the fund, the ownership and co-financing partners, the professionalism, competence and independence of the management, the fund's by-laws, the justification and intended utilisation of the Structural Funds' contribution, the investment exit policy, and the winding-up provisions of the fund, including the reutilisation of returns attributable to the contribution from the Structural Funds. The business plan shall be carefully appraised and its implementation monitored by or under the responsibility of the managing authority.
- 2.2. The fund shall be set up as an independent legal entity governed by agreements between the shareholders or as a separate block of finance within an existing financial institution. In the latter case the fund shall be subject to a separate implementation agreement, stipulating in particular the keeping of separate accounts distinguishing the new resources invested in the fund (including those contributed by the Structural Funds) from those initially available in the institution. All participants in the fund shall make their contributions in cash.
- 2.3. The Commission cannot become a partner or shareholder in the fund.
- 2.4. The contribution from the Structural Funds shall be subject to the limits laid down in Article 29(3) and (4) of the general Regulation.
- 2.5. Funds may invest only in SMEs at their establishment, early stages (including seed capital) or expansion and only in activities which the fund managers judge potentially economically viable. The assessment of the viability should take into account all sources of income of the enterprises in question. Funds shall not invest in firms in difficulty within the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(1)</sup>.
- 2.6. Precautions should be taken to minimise distortion of competition in the venture capital or lending market. In particular returns from equity investments and loans (less pro rata share of the management costs) may be preferentially allocated to the private sector shareholders up to the level of remuneration laid down in the shareholder agreement, and after that, they shall be allocated proportionally between all shareholders and the Structural Funds. Returns to the fund attributable to the Structural Funds' contributions shall be reused for SME development activities in the same eligible area.
- 2.7. Management costs may not exceed 5 % of the paid-up capital on a yearly average for the duration of the assistance unless, after a competitive tender, a higher percentage proves necessary.
- 2.8. At the time of the closure of the operation, the eligible expenditure of the fund (the final beneficiary) shall be the capital of the fund that has been invested in or loaned out to SMEs, including the management costs incurred.
- 2.9. Contributions to funds from the Structural Funds and other public sources, as well as the investments made by funds in individual SMEs, are subject to the rules on State aid.

## 3. RECOMMENDATIONS

- 3.1. The Commission recommends the standards of good practice set out in points 3.2 to 3.6 for funds to which the Structural Funds contribute. The Commission will regard compliance with these recommendations as a positive element when it examines the fund's compatibility with State aid rules. The recommendations are not binding for the purposes of the eligibility of expenditure.
- 3.2. The financial contribution of the private sector should be substantial, and above 30 %.
- 3.3. Funds should be large enough and cover a wide enough target population to ensure that their operations are potentially economically viable, with a time scale for investments compatible with the period of the Structural Funds' participation, and focusing on areas of market failure.
- 3.4. The timing of payments of capital into the fund should be the same for the Structural Funds and the shareholders, and pro rata to the stakes subscribed.
- 3.5. Funds should be managed by independent professional teams with sufficient business experience to demonstrate the necessary capability and credibility to manage a venture capital fund. Management teams should be chosen on the basis of a competitive selection process, taking into account the level of fees envisaged.
- 3.6. Funds should not normally acquire majority stakes in firms and should pursue the objective of realising all investments within the life of the fund.

<sup>(1)</sup> OJ C 288, 9.10.1999, p. 2.

**Rule No 9: Guarantee funds**

## 1. GENERAL RULE

The Structural Funds may co-finance the capital of guarantee funds under the conditions set out in point 2. For the purposes of this Rule, 'Guarantee funds' mean financing instruments that guarantee venture capital and loan funds within the meaning of Rule No 8 and other SME risk financing schemes (including loans) against losses arising from their investments in small and medium-sized enterprises as defined in recommendation 96/280/EC as last amended by Commission Recommendation of 6 May 2003. The funds may be publicly-supported mutual funds subscribed by SMEs, commercially-run funds with private-sector partners, or wholly publicly-financed funds. The Structural Funds' participation in funds may be accompanied by part-guarantees provided by other Community financing instruments.

## 2. CONDITIONS

- 2.1. A prudent business plan shall be submitted by the co-financiers or sponsors of the fund in the same way as for venture capital funds (Rule No 8), *mutatis mutandis*, and specifying the target guarantee portfolio. The business plan shall be carefully appraised and its implementation monitored by or under the responsibility of the managing authority.
- 2.2. The fund shall be set up as an independent legal entity governed by agreements between the shareholders or as a separate block of finance within an existing financial institution. In the latter case the 'fund' shall be subject to a separate implementation agreement, stipulating in particular the keeping of separate accounts distinguishing the new resources invested in the fund (including those contributed by the Structural Funds) from those initially available in the institution.
- 2.3. The Commission cannot become a partner or shareholder in the fund.
- 2.4. Funds may only guarantee investments in activities that are judged potentially economically viable. Funds shall not provide guarantees for firms in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty.
- 2.5. Any part of the Structural Funds' contribution left over after the guarantees have been honoured shall be reused for SME development activities in the same eligible area.
- 2.6. Management costs may not exceed 2 % of the paid-up capital on a yearly average for the duration of the assistance unless, after a competitive tender, a higher percentage proves necessary.
- 2.7. At the time of the closure of the operation, the eligible expenditure of the fund (the final beneficiary) shall be the amount of the paid-up capital of the fund necessary, on the basis of an independent audit, to cover the guarantees provided including the management costs incurred.
- 2.8. Contributions to guarantee funds from the Structural Funds and other public sources, as well as the guarantees provided by such funds to individual SMEs are subject to the rules on State aid.

**Rule No 10: Leasing**

## 1. GENERAL RULE

Expenditure incurred in relation to leasing operations is eligible for co-financing under the Structural Funds subject to the rules set out in points 2 to 4.

## 2. AID VIA LESSOR

- 2.1. The lessor is the direct recipient of the Community co-financing, which is used for the reduction of the lease rental payments made by the lessee in respect of assets covered by the leasing contract.
- 2.2. Leasing contracts for which Community aid is paid shall include an option to purchase or provide for a minimum leasing period equal to that of the useful life of the asset to which the contract relates.
- 2.3. Where a leasing contract is terminated before expiry of the minimum leasing period without the prior approval of the competent authorities, the lessor shall undertake to repay to the national authorities concerned (for credit to the appropriate fund) that part of the Community aid corresponding to the remainder of the leasing period.
- 2.4. The purchase of the asset by the lessor, supported by a receipted invoice or an accounting document of equal probative value, constitutes the expenditure eligible for co-financing. The maximum amount eligible for Community co-financing shall not exceed the market value of the asset leased.

- 2.5. Costs connected with the leasing contract (notably tax, lessor's margin, interest refinancing costs, overheads, insurance charges), other than the expenditure referred to in point 2.4, are not eligible expenditure.
- 2.6. Community aid paid to the lessor shall be used in its entirety for the benefit of the lessee by means of a uniform reduction in all the leasing rentals for the duration of the leasing period.
- 2.7. The lessor shall demonstrate that the benefit of the Community aid will be transferred fully to the lessee by establishing a breakdown of the rental payments or by an alternative method giving equivalent assurance.
- 2.8. The costs referred to in point 2.5, the use of any fiscal benefits arising from the leasing operation, and other conditions of the contract shall be equivalent to those applicable in the absence of any Community financial intervention.

### 3. AID TO LESSEE

- 3.1. The lessee is the direct recipient of the Community co-financing.
- 3.2. The leasing rentals paid to the lessor by the lessee, supported by a receipted invoice or an accounting document of equivalent probative value, constitute the expenditure eligible for co-financing.
- 3.3. In the case of leasing contracts which include an option to purchase or which provide for a minimum leasing period equal to the useful life of the asset to which the contract relates, the maximum amount eligible for Community co-financing shall not exceed the market value of the asset leased. Other costs connected with the leasing contract (tax, lessor's margin, interest refinancing costs, overheads, insurance charges, etc.) are not eligible expenditure.
- 3.4. The Community aid in respect of leasing contracts referred to under point 3.3 is paid to the lessee in one or more tranches in respect of leasing rentals effectively paid. Where the term of the leasing contract exceeds the final date for taking account of payments under the Community assistance, only expenditure in relation to leasing rentals falling due and paid by the lessee up to the final date for payment under the assistance can be considered eligible.
- 3.5. In the case of leasing contracts which do not contain an option to purchase and whose duration is less than the period of the useful life of the asset to which the leasing contract relates, the leasing rentals are eligible for co-financing by the Community in proportion to the period of the eligible operation. However, the lessee must be able to demonstrate that leasing was the most cost-effective method for obtaining the use of the equipment. Where the costs would have been lower if an alternative method (for example hiring of the equipment) had been used, the additional costs shall be deducted from the eligible expenditure.
- 3.6. Member States may apply stricter national rules for determining eligible expenditure under points 3.1 to 3.5.

### 4. SALE AND LEASE-BACK

Leasing rentals paid by a lessee under a sale and lease-back scheme may be eligible expenditure under the rules set out in point 3. The acquisition costs of the asset are not eligible for Community co-financing.

## **Rule No 11: Costs incurred in managing and implementing the Structural Funds**

### 1. GENERAL RULE

Costs incurred by Member States in the management, implementation, monitoring and control of the Structural Funds are ineligible for co-financing except as provided for in point 2 and falling within the categories set out in point 2.1.

### 2. CATEGORIES OF MANAGEMENT, IMPLEMENTATION, MONITORING AND CONTROL EXPENDITURE ELIGIBLE FOR CO-FINANCING

- 2.1. The following categories of expenditure are eligible for co-financing under assistance under the conditions set out in points 2.2 to 2.7:
  - expenditure relating to the preparation, selection, appraisal and monitoring of the assistance and of operations (but excluding expenditure on the acquisition and installation of computerised systems for management, monitoring and evaluation),

- expenditure on meetings of monitoring committees and sub-committees relating to the implementation of assistance. This expenditure may also include the costs of experts and other participants in these committees, including third-country participants, where the chairperson of such committees considers their presence essential to the effective implementation of the assistance,
- expenditure relating to audits and on-the-spot checks of operations.

2.2. Expenditure on salaries including social security contributions is eligible only in the following cases:

- (a) civil servants or other public officials seconded by duly documented decision of the competent authority to carry out tasks referred to in point 2.1;
- (b) other staff employed to carry out tasks referred to in point 2.1.

The period of secondment or employment may not exceed the final date for the eligibility of expenditure laid down in the decision approving the assistance.

2.3. The Structural Funds' contribution to the expenditure under point 2.1 shall be limited to a maximum amount which will be fixed in the assistance approved by the Commission and shall not exceed the limits set out in points 2.4 and 2.5.

2.4. For all assistance, except Community Initiatives, the Peace II special programme and innovative actions, the limit shall be the sum of the following amounts:

- 2,5 % of that part of the total Structural Funds' contribution less than or equal to EUR 100 million,
- 2 % of that part of the total Structural Funds' contribution which exceeds EUR 100 million but is less than or equal to EUR 500 million,
- 1 % of that part of the total Structural Funds' contribution which exceeds EUR 500 million but is less than or equal to EUR 1 000 million,
- 0,5 % of that part of the total Structural Funds' contribution which exceeds EUR 1 000 million.

2.5. For Community Initiatives, innovative actions and the Peace II special programme, the limit shall be 5 % of the Structural Funds' total contribution. Where such assistance involves the participation of more than one Member State this limit may be increased to take account of higher costs of management and implementation and will be fixed in the Commission's decision.

2.6. For the purposes of calculating the amount of the limits in points 2.4 and 2.5, the Structural Funds' total contribution shall be the total fixed in each assistance approved by the Commission.

2.7. The implementation of points 2.1 to 2.6 of this Rule shall be agreed between the Commission and the Member States and laid down in the assistance. The rate of the contribution will be fixed in accordance with Article 29(7) of the General Regulation. For the purposes of monitoring, the costs referred to in 2.1 will be the subject of a separate measure or submeasure within technical assistance.

### 3. OTHER EXPENDITURE UNDER TECHNICAL ASSISTANCE

Actions which can be co-financed under technical assistance, other than those set out in point 2 (such as studies, seminars, information actions, evaluation, and the acquisition and installation of computerised systems for management, monitoring and evaluation), are not subject to the conditions set out in points 2.4 to 2.6. Expenditure on the salaries of civil servants or other public officials in carrying out such actions is not eligible.

### 4. EXPENDITURE BY PUBLIC ADMINISTRATIONS RELATING TO THE EXECUTION OF OPERATIONS

The following expenditure of public administrations is eligible for co-financing outside technical assistance if it relates to the execution of an operation provided that it does not arise from the statutory responsibilities of the public authority or the authority's day-to-day management, monitoring and control tasks:

- (a) costs of professional services rendered by a public service in the implementation of an operation. The costs must be either invoiced to a final beneficiary (public or private) or certified on the basis of documents of equivalent probative value which permit the identification of real costs paid by the public service concerned in relation to that operation;

- (b) costs of the implementation of an operation, including the expenditure related to the provision of services, borne by a public authority that is itself the final beneficiary and which is executing an operation on its own account without recourse to outside engineers or other firms. The expenditure concerned must relate to expenditure actually and directly paid on the co-financed operation and must be certified on the basis of documents which permit the identification of real costs paid by the public service concerned in relation to that operation.

#### **Rule No 12: Eligibility of operations depending on the location**

##### **1. GENERAL RULE**

As a general rule, operations co-financed by the Structural Funds shall be located in the region to which the assistance relates.

##### **2. EXCEPTION**

- 2.1. Where the region to which the assistance relates will benefit wholly or partly from an operation located outside that region, the operation may be accepted by the managing authority for co-financing provided that all the conditions set out in points 2.2 to 2.4 are satisfied. In other cases an operation may be accepted as eligible for co-financing under the procedure in point 3. For operations financed under the Financial Instrument for Fisheries Guidance (FIFG), the procedure under point 3 must always be followed.
- 2.2. The operation must be located in a NUTS III area of the Member State immediately adjacent to the region to which the assistance relates.
- 2.3. The maximum eligible expenditure of the operation is determined pro rata to the proportion of the benefits from the operation which it is foreseen will accrue to the region and shall be based on an evaluation by a body independent of the managing authority. The benefits shall be assessed taking account of the specific targets of the assistance and its expected impact. The operation cannot be accepted for co-financing where the proportion of benefits is less than 50 %.
- 2.4. For each measure of the assistance, the eligible expenditure of the operations accepted under point 2.1 should not exceed 10 % of the total eligible expenditure of the measure. In addition, the eligible expenditure of all operations in the assistance accepted under point 2.1 should not exceed 5 % of the total eligible expenditure of the assistance.
- 2.5. Operations accepted by the managing authority under point 2.1 shall be indicated in the annual and final implementation reports of the assistance.

##### **3. OTHER CASES**

In the case of operations located outside the region to which the assistance relates but which do not fulfil the conditions of point 2, and of operations financed under the FIFG, the acceptance of the operation for co-financing shall be subject to prior approval by the Commission on a case-by-case basis following a request submitted by the Member State, taking into account in particular the proximity of the operation to the region, the level of benefit to the region which can be foreseen, and the amount of the expenditure in proportion to the total expenditure under the measure and under the assistance. In the case of assistance relating to the outermost regions, the procedure in this point will be applicable.

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## ANNEX II

## Correlation table

Regulation (EC) No 1685/2000	Amending Regulation
Article 1	Article,1 modified
Article 2	Article 2, modified
Annex	Annex I
Rule 1	Rule 1, modified
Point 1.1	Point 1.1, modified
	Point 1.3, new
Point 1.3	Point 1.4
Point 1.4	Point 1.5
Point 1.5	Point 1.6
Point 1.6	Point 1.7
Point 1.7	Point 1.8
Point 1.8	Point 1.9
Point 1.9	Point 1.10
Point 2	Point 2, modified
Point 3	Point 3, unchanged
Rule 2	Rule 2, unchanged
Rule 3	Rule 3, modified
Point 1	Point 1, modified
Points 2 to 5	Points 2 to 5, unchanged
Rule 4	Rule 4, unchanged
Rule 5	Rule 5, unchanged
Rule 6	Rule 6, unchanged
Rule 7	Rule 7, modified
Point 1	Point 1, modified
	Point 2, new
Point 2	Point 3, modified
Point 3	Point 4, modified
Point 4	Point 5, modified
Rule 8	Rule 8, unchanged
Rule 9	Rule 9, unchanged
Rule 10	Rule 10, unchanged
Rule 11	Rule 11, unchanged
Rule 12	Rule 12, unchanged
	Annex II, new