

**IMPLEMENTING RULES OF THE CBC PROGRAMMES**  
**FINANCED WITHIN THE FRAMEWORK OF THE LEGAL BASIS ENPI**  
**<DRAFT>**

**1. ARTICLE 1 : PREPARATION OF THE PROGRAMME**

**1.1. Definition of the Programmes**

Each programme is decided jointly by all the participating countries. The programmes are established in the Strategy Paper foreseen by articles 7 and 9 of the ENPI regulation and shall respect the implementing rules mentioned hereafter.

Each programme is submitted by the Joint Managing Authority (JMA) after agreement of the participating countries.

**1.2. Content of the Programme**

Each programme defines the objectives, needs and indicators concerning the actions to be undertaken and clarifies their consistency with respect to the other ongoing or foreseen bilateral and multilateral programmes in the concerned regions.

Moreover each programme :

- defines its own eligibility criteria, by notably specifying the territorial eligibility and the foreseen activities which are classified according to the objectives stipulated in the Strategy Paper, that have been selected for the programme concerned ;
- sets out the composition of the Steering Committee according to the below-mentioned provisions of Article 5 ;
- identifies the JMA appointed by the participating countries and describes the structure that will be set up by this authority with regards to the management of the programme in compliance with Article 6 below-mentioned ;
- includes the programme's provisional financial budget table drawn up according to the defined objectives and specifying the administrative costs of the Technical Assistance.

The table only states the European Union contribution and the annual provisional amounts to be committed by the Commission for the duration of the programme. In addition to this table, should be annexed the already known co-financed amounts of each participating country's or organisation's own resources;

- specifies the provisional work timetable for the launching of the procedures and the selection of the projects to be financed under the programme. The projects directly implemented by the JMA and those which beneficiaries and partners have already identified by common agreement should be described in the programme document ;
- includes the information / communication plan as per Article 11.

### **1.3. Technical Assistance**

The Technical Assistance funds eligible to the EC financing are limited to a maximum amount of 10% of the global EU's contribution to the programme.

Moreover, it is possible, on a case by case basis and only if duly motivated and taken into account what has already been spent during the first years of implementation, to modify the amounts of Technical Assistance which had been initially decided for the programme (see point 2.4 hereafter).

### **1.4. Co-financing**

The co-financing contributed from the own resources of the participating country or organisation in each programme, shall represent at least 10% of the total amount of the EU contribution to the programme. The participating countries determine the source, amount and distribution per project of the co-financing in the programme.

## **2. ARTICLE 2 : DECISION-MAKING PROCESS**

- 2.1.** Each programme is submitted to the Commission by the JMA designated by the participating countries after a common agreement of all countries concerned.
- 2.2.** The Commission examines the submitted programme and :
  - evaluates its conformity with the Strategy Paper ;
  - checks its consistency with the other ongoing or foreseen bilateral and multilateral programmes in the regions concerned by the programme ;
  - verifies whether any necessary environmental impact studies have been carried out or are foreseen before the proposed projects are implemented ;
  - estimates the level of cooperation generated by the programme and the proposed projects at the participating country ;
  - proceeds with the verification of the programme's conformity with the Community rules ;
  - ensures, if necessary, by an on the spot ex-ante audit, the management capacity of the JMA in relation to the volume, the content and the complexity of the operations foreseen under the programme.

The Commission will particularly verify that the JMA has sufficient human resources for the programme, both in terms and quality and numbers and financial circuits in compliance with the regulation and computerised management tools necessary for the accounting purpose system (see Article 7).

- 2.3.** On this basis, the Commission will decide on the approval of each programme according to the procedures in Article 7 of the ENPI Regulation.

The Commission will take one decision for the total duration of the programme (maximum 7 years). The decision will include the table of the provisional financial commitments to be carried out on a yearly basis from the ERDF and from the ENPI funds.

- 2.4.** If necessary, upon motivated request from the JMA, and after approval by the Steering Committee, the programme can be reviewed either at mid-term or at any moment under exceptional circumstances. If necessary, the Commission can require an external evaluation, independent of the programme before taking this decision.

However, in order to avoid the multiplication of requests for changes of the programme for reasons relating to minor reallocations or shorter delays in the implementation and with the aim of introducing an element of flexibility in the programme, changes in the financial table covering the simple transfer from one activity to another within the same objective or between two objectives corresponding to less than 20% of the initial amounts, can be carried out directly by the JMA, after prior approval by the Steering Committee. The JMA will inform the Commission of these changes. This rule shall only apply to the Technical Assistance financed by the Ec contribution after written prior approval of the Commission.

- 2.5.** Transitional phase: the decision will be applied directly to the Member States and the programmes financed by the ERDF budget can immediately start in the Member States. Thus, the preparatory actions required to launch the programme can be undertaken, namely :

- The establishment of the JMA and the Joint Technical Secretariat (JTS) ;
- The first meetings of the Steering Committee ;
- The preparation of the procurement procedures and call for proposals.

- 2.6.** The Commission Decision will apply to the third countries participating in the programme, once the Financing Agreement is signed by each country as described in the following article.

### **3. ARTICLE 3 : FINANCING AGREEMENT**

#### **3.1. Content of the agreement**

The financing agreement notably defines:

- The JMA of the programme ;
- The management structures of the programme, namely the Steering Committee and the Joint Technical Secretariat ;
- The ministry or administration representing the third country within the different structures of the programme having the decision-making power ;
- The financial circuits and the related responsibilities of the JMA and of the other management structures of the programme, in particular with regards to payments, certification of expenditure and audits to be carried out ;
- The rules for possible recoveries by the JMA and if necessary by the Commission towards a partner country ;
- in annex, programme document as approved by the Commission Decision.

### **3.2. Signature of the Agreement**

A Financing Agreement will be signed between the Commission and each third partner country for the respective programme.

The JMA designated for a programme will countersign the Financing Agreement. This signature is in relation to the conclusion of the individual contracts and agreements stipulated in Article 166 of the Financial Regulation applicable to the general budget of the European Communities.

A Financing Agreement shall, at the latest, be signed by the end of the year which follows the year of the Commission Decision (N+1 rule).

In case the Agreement is not signed within this time frame, the external part of the programme can not start with the third partner country concerned. When a programme has several third partner countries, it can start with each partner country as soon as it has signed the Financing Agreement. Theoretically, if no third partner country signs the Financing Agreement within the time frame, the programme becomes de facto null and void and the provisions of Article 10 shall apply.

#### **4. ARTICLE 4 : ELIGIBLE COSTS/EXPENSES**

**4.1.** To be eligible for Community funding, the costs of the programme have to be contracted during the validity period of the programme and spent during the validity period of the concerned contract in accordance with the provisions of article 7.6.

**4.2.** The categories of eligible costs are specified in annex 1.

#### **5. ARTICLE 5 : STEERING/SELECTION COMMITTEE**

##### **5.1. Composition**

The Steering Committee shall include one representative appointed by each participating country. This representative shall have the mandate to take all decisions related to the programme within the framework of the Committee's competences. The appointment of this representative is not personal but functional. In addition, the participating countries may decide, by common decision, to associate other participants, in particular representatives from the involved regions, provided that each participating country has the same number of participants. In duly justified cases and taking into account the need to preserve the Committee's efficiency, the mandated representatives of the steering Committee may decide to grant a voting capacity – general or restricted to certain decisions – to these other participants.

The Commission must be informed, at the same time as the participants, about the organization and the conclusion of each Steering Committee meeting. The Commission has the right to participate, by its own initiative, in all Committee meetings, as an observer and not as a voting member.

##### **5.2. Operation procedures**

The appointed members of the Steering Committee will unanimously adopt the rules of procedure of the Committee.

The Committee will decide by consensus. However, a voting procedure in certain cases may be considered, particularly for decisions on the selection of projects or concerning budgets.

The members of the Committee elect their chairman. He chairs the meetings and acts as an arbitrator. Therefore he does not have any voting rights.

The JMA, assisted by the Joint Technical Secretariat (JTS), will be responsible for the secretariat and the organisation of the Committee meetings (invitations, information). Minutes, co-signed by the chairman and the secretary, will be prepared after each meeting and will be circulated to all members of the Committee *and* to the Commission.

The Steering Committee is convened by its Chairperson either at the request of the JMA, or by a duly justified request by one of its appointed members. It meets as often as necessary but at least twice a year

### **5.3. Responsibilities**

The committee takes in particular the following decisions concerning the CBC programme:

- it approves the work programme of the JMA
- it appoints the selection committees for the projects
- it decides the selection criterias to be applied and the final choice of the projects
- it decides on the budget of each project
- it decides on the amounts and on the allocation of funds and resources for technical assistance including human resources
- periodically, and at least once a year, it controls the administrative aspects taken by the JMA
- at least once a year, it examines the operational and financial reports submitted by the JMA

### **5.4. Nature of the projects**

The projects should be submitted jointly by beneficiaries of one or several Member States and of one or several partner countries. The nature of these projects can be of three types :

- Integrated projects, where partners carry out part of the actions of a joint project for their respective side of the border;
- Symmetrical projects, where similar activities are carried out in parallel on both sides of the border;
- Simple projects with a cross-border effect, taking place mostly or exclusively on one side of the border but for the benefit of both partners.

## **6. ARTICLE 6 : THE JOINT MANAGING AUTHORITY (JMA)**

### **6.1. Organisation**

The JMA is usually a public body.

Within the JMA, the operational and financial management functions remain completely separate.

The JMA has an internal audit service completely independent of the services being responsible for the previously mentioned functions (cfr 6.2).

The JMA is subject to an annual external ex-post audit carried out by an organisation entirely independent of the JMA(cfr 6.2). This annual audit

covers all management decisions taken by the JMA in relation to the programme, both operational and financial.

Each JMA, with the previous agreement of the Steering Committee, may establish a Joint Technical Secretariat (JTS) equipped with the necessary resources, which assists in the daily management of the programme. The JTS may have antennas established in other participating countries with the task to inform potential beneficiaries of the programme in the country where activities are envisaged and to assist them in the preparation of projects.

## **6.2. Functions**

The JMA assures the organisation and the secretariat of the Steering Committee, and selection committees.

Following approval by the Steering Committee, it launches the calls for tenders and calls for proposals for the selection of projects, receives tenders and proposals and organizes the work of the Steering and selection committees.

It prepares the minutes of the various committees.

It prepares the detailed annual budgets of the programme.

It issues the necessary payment requests to the European Commission.

Once the projects have been selected by the Steering Committee, the JMA will negotiate and conclude contracts with the lead partners.

It proceeds with payments and recovery orders upon reception of supporting documents and after operational and financial verification. At the end of the project, and after the necessary audits have been carried out, it effects final payments or recovery orders. In the case where recovery orders concern ineligible expenses in a third partner country, and whereby the JMA does not succeed to recover the funds from the lead company within a maximum of 12 months after the respective project has ended, the JMA refers the case to the Commission who, on the basis of a complete file, takes the responsibility to settle the matter.

The JMA draws up operational and financial reports according to the periodicity envisaged and reports to the Steering Committee.

The internal audit unit (cfr 6.1) carries out annual controls of the internal circuits and of the correct application of procedures within the JMA. The resulting report is forwarded to the Steering Committee and to the Commission.

Moreover, independently of the external audits which are undertaken by the Administration of the country in which the JMA is established, the JMA contracts an independent external auditor approved according to the

internationally recognized audit standards (cfr 6.1), to carry out an annual ex-post audit to certify the expenditure of the programme, verify the correctness of accounts and to ensure the conformity with the regulation.

The JMA is assisted by the JTS in the execution of these various tasks.

Like the various contractors and consortium partners with whom contracts will be signed for the implementation of projects, the JMA is subject to controls by the Commission, by the European Court of Auditors and by the Commission's Anti-fraud Office OLAF.

### **6.3. Principle of continuity**

In case an already existing JMA benefiting from the agreed mechanisms for the management of ongoing or previous programmes relating to the ERDF, is again designated for the management of a CBC programme, being understood that the separation of the functions listed in Article 6.1 is respected, it is not necessary to modify the existing organisation if the Commission is satisfied by the current mechanisms in force (with separation of the managing, paying, certification, and auditing authorities).

### **6.4. JMA in a third country**

In case the participating countries to a programme decide to establish the JMA in a third partner country, the same principles apply mutatis mutandis, provided that the designated JMA complies with the criteria stated in Article 164 of the Financial Regulation applicable to the general budget of the European Communities which governs the decentralised management in a beneficiary third country.

## **7. ARTICLE 7 : FINANCIAL PROCEDURES**

- 7.1.** The JMA is responsible for the financial management of the programme and of the reports to the Commission. A single bank account in Euro, specific to the programme will be opened and managed by the responsible service for the financial operations within the JMA. This account operates under double signature. If it bears interests, the amount of interests is individualised and entered into the accounts separately. These interests remain the property of the Commission under the provisions of Articles 3 and 4 of the Implementing Rules of the Financial Regulation applicable to the general budget of the European Communities.
- 7.2.** In addition to the initial commitment connected with the decision, each year, according to the financial table included in the Commission decision on the programme, the Commission's services make the corresponding annual commitment by the 31st of March of the corresponding year, at the latest. The Commission's services inform the JMA about the precise date on which the annual commitment has been made.
- 7.3.** As soon as an initial or annual commitment is notified to it, the JMA can ask for the transfer to the programme's bank account of a maximum of 80% of

the annual contribution as pre-financing payment of the activities to be implemented as from the ongoing financial year.

The pre-financing request must be accompanied by the annual operational and financial report covering all the activities of the programme until the 31<sup>st</sup> of December of the previous year as well as by the corresponding external audit report.

On the basis of this pre-financing request and after verification of the related reports and the evaluation of the actual financing needs of the programme, the Commission proceeds with the payment of all or part of the requested pre-financing.

- 7.4.** In parallel, on the basis of the two above-mentioned annual reports, the Commission clears the previous pre-financings according to the eligible and actual expenses incurred, as certified by the annual external audit report.

On the basis of the results of this clearance, the Commission completes or reduces, whatever the case, the pre-financing amount requested.

The Commission and the JMA automatically allocates any new expenditure incurred during the ongoing financial year on the oldest annual commitment until the amount of this tranche has been spent. Then the spending of the next tranche can begin.

- 7.5.** The accountancy of the programme is established by the service of the JMA in charge of the financial transactions. This accountancy is independent and separate and only carries out the operations related to the programme. It must provide an analytic follow-up by objective and by activity of the programme.

The reconciliation operations of this accountancy with the balance of the bank account of the programme must be submitted, periodically and at least once a year, by the JMA to the Steering Committee, the external supervisory authorities in charge of controlling the JMA and to the Commission, to support to the annual report.

- 7.6.** At the end of the fourth year following the one of the commitment of an annual payment period as notified to the JMA by the Commission, the funds related to this payment period that have not been spent on an eligible way must be automatically recovered by the Commission (N+4 rule) and the possible balance of the corresponding commitment is de-committed by the Commission on the basis of the annual report relating to this last year.

- 7.7.** As from the end of the year of the starting date of the programme, the JMA must establish, for each successive year, an audit programme of the projects that it can either carry out directly, using the human resources of its services or by recruiting certified external auditors. This annual programme must cover at least 10% of the total amounts spent by the programme during the previous year.

- 7.8.** If, at the time of reception of a final account of a contract or following a control or audit, the service in charge of the financial management of the

programme or that in charge of the audit identifies ineligible expenses for which a payment has already been made, the service in charge of the financial management, after a procedure in which both parties are heard, proceeds with the recovery orders to the attention of the contractors concerned.

If the recoveries concern contractors established in a third country, the related procedure stated in Article 6.2 applies.

In any case, the JMA is responsible for the recovery of any unjustified or ineligible expenditure from contractors established in the Member States participating to the programme, and for the reimbursement to the Commission of any amount that could not be recovered. However as a last resort, in case the JMA could not recover the amounts due within one year, the Member State where the concerned contractor is established will have to reimburse the JMA.

## **8. ARTICLE 8 : CONTRACTUAL PROCEDURES**

The contractual procedures will be those applicable to external actions as per title IV of the Financial Regulation applicable to the general budget of the European Communities and specified in the detailed rules for the implementation of this Financial Regulation.

The corresponding procedures and the standard documents and contracts are detailed in the Practical Guide to contract procedure for EC external actions available on the Internet site of the Commission at the following address : [http://europa.eu.int/comm/europeaid/tender/practical\\_guide\\_2006/index\\_en.htm](http://europa.eu.int/comm/europeaid/tender/practical_guide_2006/index_en.htm).

## **9. ARTICLE 9 : USE OF LANGUAGES**

The CBC programmes being by definition multinational, in order to facilitate management and to shorten the completion periods, it is recommended that the JMA use one of the Community language that could be used by all the participants.

To take into account the partnership aspect of the CBC programmes, the beneficiaries of projects can submit all documents in relation to the programme in their national language provided that this language is mentioned specifically in the programme description and that the participating countries have foreseen, via the JMA, the necessary means of interpretation and of translation.

Costs related to these interpretations and translations will have to be budgeted for and defined within the technical assistance section of the programme or for the costs related to each project in the budget of the project.

## **10. ARTICLE 10 : POSSIBLE CANCELLATION OF THE PROGRAMME**

If the Steering Committee decides to end the programme before the deadline envisaged, the JMA refers this request to the Commission.

The Commission, after having taken into account the authorized expenditures and commitments carried out, recovers the eventual balance of the EC contribution to the programme from the JMA and decommits the balance of the opened budgetary commitments.

When the programme is terminated due to the non-signature of the financing agreements by the third countries partners within the necessary deadlines, the commitments related to the funds from the ERDF remain valid for their normal lifetime but can cover only cross-border activities which proceed exclusively within the Member States concerned.

Regarding the financial provisions concerning the commitment of future budget, the procedure envisaged in the event of non signature of the financing agreement by the third country partners applies :

- For ERDF allocations, the foreseen amounts for the future annual commitments related to the terminated programme are used to finance ERDF cross-border programmes according to the ERDF procedures;
- For ENPI allocations, the foreseen amounts for the future annual commitments related to the terminated programme are used to finance other eligible projects according to the ENPI legal basis.

## **11. ARTICLE 11 : INFORMATION – VISIBILITY**

Programmes include a specific section concerning information and publicity. In particular the antennas that may be established in several participating countries are responsible for awareness raising of the programme. Within this framework, the programme has to be in conformity with the visibility handbook applicable to the external actions of the EU. The handbook can be found on the following EuropeAid internet site: [http://europa.eu.int/comm/europeaid/visibility/index\\_en.htm](http://europa.eu.int/comm/europeaid/visibility/index_en.htm).

## **12. ARTICLE 12 : FINAL EVALUATION**

The programme is subject to an evaluation by the Commission within the year following the end of the programme.

## **1. ANNEX 1 : ELIGIBLE EXPENDITURES**

### **1.1. Subject to the time limits provisions of article 4.1 of these implementing rules being respected, the following costs shall be eligible:**

- the cost of staff assigned to the Action, corresponding to actual salaries plus social security charges and other remuneration-related costs; salaries and costs must not exceed those normally borne by the Beneficiary or his partners, as the case may be, unless it is justified by showing that it is essential to carry out the action;
- travel and subsistence costs for staff and other persons taking part in the Action, provided they do not exceed those normally borne by the Beneficiary or his partners, as the case may be. Any flat-rate reimbursement of the subsistence costs must not exceed the rates published by the European Commission at the time of signing this contract;
- purchase or rental costs for equipment and supplies (new or used) specifically for the purposes of the Action, and costs of services, provided they correspond to market rates;
- costs of consumables;
- subcontracting expenditure;
- works expenditures directly related and necessary for the execution of the projects;
- costs deriving directly from the requirements of the Contract (dissemination of information, evaluation specific to the Action, audits, translation, reproduction, insurance, etc.) including financial service costs (in particular the cost of transfers and financial guarantees);
- overhead costs directly related and necessary to each project as foreseen in the grant contract model;

### **1.2. Any contributions in kind made by the Beneficiary, his partners or any other source, which must be listed separately within the budget of the action, do not represent actual expenditure and are not eligible costs. They may not be treated as cofinancing by the Beneficiary. The cost of staff assigned to the Action is not a contribution in kind and may be considered as cofinancing in the Budget of the Action when paid by the Beneficiary or his partners.**

However, contributions in kind from the Joint Managing Authority may, subject to the agreement of the Commission be considered as cofinancing. In this case they should be mentioned specifically within the Programme document.

### **1.3. The following costs shall not be considered eligible:**

- debts and provisions for losses or debts;
- interest owed;

- items already financed in another framework;
- purchases of land or buildings;
- currency exchange losses;
- taxes, including VAT, unless the Beneficiary (or, where applicable, his partners) cannot reclaim and the applicable regulations authorise coverage of taxes;
- credits to third parties.