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 [1], 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 [2]. 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) [3], 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.

[1] 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).
[2] 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).
[3] 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

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.