COMMISSION REGULATION (EC) No 16/2003

of 6 January 2003

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

(1) Under Regulation (EC) No 1164/94, the Cohesion Fund may part-finance projects, preliminary studies and technical support measures. The conditions under which such measures are eligible and to be implemented should therefore be specified.

(2) Until now the eligibility rules have been set out as a standardised text in Annex IV to the decisions granting aid.

(3) To ensure that measures part-financed by the Cohesion Fund receive uniform treatment, common rules should be laid down on the eligibility of the relevant expenditure. Those rules should specify the period of eligibility and different categories of eligible expenditure.

(4) Regulation (EC) No 1164/94 stipulates that the Commission may approve proposed projects only if they meet criteria guaranteeing that they are of high quality and compatible with the Community's policies, in particular the rules on the award of public contracts and on competition.

(5) The rules set out below are to replace those in Annex IV to the Commission decisions granting aid from the Cohesion Fund for new projects approved by Commission decision after the entry into force of this Regulation,

HAS ADOPTED THIS REGULATION:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Scope

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

Article 2

Body responsible for implementation

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

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

Article 3

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

1. The implementation of a project shall cover all stages from preliminary planning to the completion of the approved project, including the relevant publicity measures. Preliminary planning shall include the study of alternatives.

2. A project may be restricted by the Commission decision to only one or several stages of implementation.

3. The implementation phase of a project shall cover the period necessary for the stages of implementation to be completed, up to the point at which the project becomes fully operational and at which the material objectives adopted by the Commission decision have been completed.

Article 4

Transparency and documentary evidence

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

Appropriate supporting documents must be produced.

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

[1] OJ L 130, 25.5.1994, p. 1.
[2] OJ L 161, 26.6.1999, p. 62.

Article 5

Expenditure actually incurred

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

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

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

Article 6

Completed projects

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

Article 7

Initial time limit on eligibility

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

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

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

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

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

Article 8

End of the eligibility period

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

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

CHAPTER 2

ELIGIBLE EXPENDITURE

Article 9

Categories of eligible expenditure

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

(a) planning and design;

(b) land purchase;

(c) site preparation;

(d) construction;

(e) equipment;

(f) project management;

(g) expenditure on publicity and information measures undertaken pursuant to Commission Decision 96/455/EC [2].

Article 10

Other categories of expenditure

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

CHAPTER 3

VALUE ADDED TAX AND OTHER TAXES AND CHARGES

Article 11

Value added tax

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

[1] OJ L 201, 31.7.2002, p. 5.

[2] OJ L 188, 27.7.1996, p. 47.

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

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

Article 12

Other taxes and charges

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

CHAPTER 4

EXPENDITURE RELATING TO PLANNING AND DESIGN OF MEASURES

Article 13

Eligibility of expenditure

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

Article 14

Compatibility of costs

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

Article 15

Expenditure incurred by public authorities on planning and design of measures

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

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

(b) expenditure must be based on a contract relating to one or more specified projects; where a contract relates to several projects, costs must be allocated in a transparent manner;

(c) expenditure must be directly linked to one or more of the individual projects concerned;

(d) the contract must be limited in time and must not exceed the time limit set for implementation of the project;

(e) the tasks to be implemented under that contract must not cover general administrative functions as specified in Articles 27 and 28.

CHAPTER 5

PURCHASE OF LAND AND RIGHTS OF ACCESS

Article 16

Purchase of land not built on

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

(a) purchase of the land must be indispensable to the implementation of the project;

(b) the purchase of land shall not exceed 10 % of the eligible expenditure for a project, except in cases duly justified by the body responsible for implementation;

(c) a certificate shall be obtained from an independent qualified valuer or duly authorised official body, confirming that the purchase price does not exceed the market value;

(d) the purchase of land shall be approved by the Commission decision;

(e) national rules laid down to avoid speculation shall be complied with.

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

Article 17

The purchase of land containing developed facilities

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

Article 18

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

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

[1] OJ L 145, 13.6.1977, p. 1.