

**EUROPEAN COMMISSION**DIRECTORATE-GENERAL
REGIONAL POLICYDIRECTORATE-GENERAL
EMPLOYMENT, SOCIAL AFFAIRS AND EQUAL OPPORTUNITIES

Note of the Commission services No. 2

Programming of technical assistance in the 2007-2013 period

This note has been prepared by the Directorates-General for Regional Policy and for Employment, Social Affairs and Equal Opportunities.

A draft of this note was discussed on 31 January and 28 February 2007 in the Committee for the Coordination of the Funds (COCOF).

The note sets out the reading that the two Directorates-General will give to the relevant articles of the Regulations on this issue in their dealings with Member States.

1. INTRODUCTION

Following a series of requests from several Member States on the programming of technical assistance for 2007-2013, it is necessary to provide clarification. These requests concern two types of issue arising from the provisions of Regulation (EC) 1083/2006 laying down general provisions on the European Regional development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999¹ (the general Regulation), especially Article 46.

The two issues can be summarised as follows:

- **Programming of technical assistance (see point 4 below):**

Here, there are the following four aspects relating to the issue:

- The tasks to be carried out by each (thematic or regional) operational programme;
- The tasks to be carried out by a specific operational programme dedicated to technical assistance;
- Question of what is meant by "on a complementary basis" in Article 46(2) of the General Regulation concerning the specific technical assistance operational programme.

¹ OJ L 210, 31.7.2006, p.25

- How to treat technical assistance in the context of multi-objective programmes
- **Financing of technical assistance actions of one Fund by another Fund (see part 5 below):**

Here, there are the following three aspects relating to the issue:

- Financing of the specific technical assistance programme by the European Social Fund (ESF), the European Regional Development Fund (ERDF) or the Cohesion Fund (CF);
- Implication for operational programmes jointly financed by ERDF and CF
- Consequences relating to eligibility of expenditure

Before addressing these issues directly, it is necessary to look first at the legal provisions (part 2) and related matters (part 3).

2. LEGAL PROVISIONS

Article 4(3) of the General Regulation, entitled "Instruments and missions" provides: *"The Funds shall contribute towards the financing of technical assistance on the initiative of the Member States and the Commission"*.

Article 22 of the General regulation, entitled "Non transferability of resources" reads as follows: *"The total appropriations allocated by Member State under each of the objectives of the Funds and their components shall not be transferable between them."*

According to Article 46(1) of the same Regulation: *"At the initiative of the Member State, the Funds may finance the preparatory, management, monitoring, evaluation, information and control activities of operational programmes together with activities to reinforce the administrative capacity for implementing the Funds within the following limits: (a) 4 % of the total amount allocated under the Convergence and Regional competitiveness and employment objectives; (b) 6 % of the total amount allocated under the European territorial cooperation objective"*.

Article 46 (2) adds that: *"For each of the three objectives, technical assistance actions, within the limits set in paragraph 1, shall, in principle, be undertaken within the framework of each operational programme. On a complementary basis, however, such actions may be undertaken partially and subject to the overall limits for technical assistance set in paragraph 1, in the form of a specific operational programme"*.

Article 46 (3) reads as: *"If the Member State decides to undertake technical assistance actions in the framework of each operational programme, the proportion of the total amount allocated for technical assistance in respect of each operational programme shall not exceed the limits set in paragraph 1."*

In this case, where technical assistance actions are also undertaken in the form of a specific operational programme the total amount allocated for technical assistance

*in such a specific programme shall not cause the total proportion of Funds allocated to technical assistance to exceed the limits set in paragraph 1."*²

3. RELATED MATTERS

- It should be recalled that the expenditure paid by beneficiaries as part of the implementation of individual projects fall under the costs of the project concerned and do not count as part of the 4% or 6% ceiling laid down in Article 46(1)³. However, the management costs of the intermediate bodies running part of a programme cannot be expenditure derived from an individual project and must therefore be set against the 4 or 6% ceiling for technical assistance of the programme in question.
- Indents (a) and (b) of Article 54(3) provide that a priority axis may receive assistance from only one Fund and one objective at a time and that an operation may receive assistance from a Fund under only one operational programme; these requirements must be complied with when programming technical assistance.
- Articles 4(3) and 46 of the General Regulation are common to all the Funds (ERDF, CF and ESF). Therefore each and any of the three Funds is capable of co-financing the activities foreseen in Article 46(1) (management, monitoring, evaluation, information and control, activities reinforcing the administrative capacity for implementing the Funds).
- Technical assistance expenditure is subject to the eligibility rules applicable for the co-financing Fund and to national rules on eligibility.

4. PROGRAMMING OF TECHNICAL ASSISTANCE

4.1. Relationship between technical assistance under a thematic or regional operational programme and any specific technical assistance programme

The General Regulation foresees that, in principle, technical assistance actions must be undertaken within the framework of each operational programme. In order to make it simpler to calculate the funding allocated under technical assistance and to ensure that the ceilings are respected, it is recommended that these activities are situated in a specific technical assistance priority axis of the programme.

Due to, for example, a specific institutional structure or centralised management of the Funds, a Member State may decide to establish in addition

² Corrigendum to Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJEU L 210 of 31 July 2006).

³ The same applies for technical assistance under Jaspers. As this is technical assistance at the initiative of the Commission (Article 45 of the General Regulation), it does not count to the ceiling set out in Article 46(1).

a specific technical assistance programme to facilitate management of all Structural Funds and programmes.

The purpose of such specific programme is to be complementary to the technical assistance activities undertaken under each programme and is not to replace technical assistance activities undertaken under each programme. It is to be expected that this rule will also be reflected in financial terms. In other words, the amount allocated to a specific technical assistance programme should not be higher than the sum of the overall technical assistance allocation under all the other operational programmes. Where this is not the case, the Member States should justify the financial allocations between the specific technical assistance programme and thematic and regional programmes.

Article 46 is drafted in such a way that any specific technical assistance programme shall, by definition, only contain technical assistance activities and cannot contain thematic priority axes. Technical assistance activities contained in a thematic or regional operational programme shall only contribute to that operational programme.

4.2. Division of tasks between a specific technical assistance programme and technical assistance under thematic or regional operational programmes

As far as the separation of tasks is concerned between, on the one hand, the technical assistance activities within thematic or regional operational programmes and, on the other hand, the specific technical assistance programme, it must be noted that the national authorities, in accordance with their specific institutional structure, are in the first place responsible for the management of programmes and designation of tasks to be carried out in each case. However, it would be advisable for the authorities to ensure that:

- The objectives of any specific technical assistance programme are well defined and address technical assistance activities that are horizontal and of relevance to a number or all operational programmes (e.g. establishment of a common data base and information system, common training for the staff involved in management and implementation of the programmes, etc.); while
- the technical assistance tasks directly linked to a thematic or regional operational programme (e.g. organisation of monitoring committees, annual execution reports, evaluations, information on the possibilities under that programme etc.) or to operations covered by that programme (e.g. on the spot controls, information boards relating to a co-financed operation) are situated in the programme to which the operation relates.

For Member States that do not wish to set up a specific technical assistance operational programme but have common technical assistance activities supporting several regional or thematic operational programmes, the Commission services consider the following procedure as compatible with agreed audit standards:

The cost of the technical assistance activities common to regional or thematic operational programmes should be allocated among the operational programmes concerned on the

basis of allocation criteria established in advance and described in each operational programme. One possible allocation criterion could be the financial volume of each operational programme when the TA costs are proportional to the financial amount of the OPs, but others are possible provided they are justified in advance. The basis of the allocation should be clearly documented.

Thus, it will not be necessary to organise several public procurement procedures or conclude several contracts.

A single invoice can therefore be the basis for several payment claims, from each of the operational programmes concerned by the relevant horizontal technical assistance, the amount being divided on the basis of the allocation criteria established in advance and described in each operational programme. Adequate procedures should ensure that the total amount declared for all the programmes together does not exceed 100% of the invoice.

The Member States are not obliged to review the initial allocation key except where there has been a change which will tend to make the actual costs incurred for each programme diverge significantly from the original allocation. Otherwise, payment claims can be established on the basis of the initial allocation throughout the programme period.

4.3 Ceilings of technical assistance

4.3.1. The first subparagraph of paragraph 3 introduces a ceiling on technical assistance within each regional or thematic operational programme, which operates as an additional ceiling to that fixed by reference to the total amount of the Funds allocated to a Member State by objective. This follows from the difference between the wording of Article 46(1) and the first subparagraph of Article 46(3): paragraph 1 is expressed in terms of the percentage of "the total amount allocated [by the Funds under the relevant objective]" and the first subparagraph of paragraph 3 in terms of "*the proportion of the total amount allocated for technical assistance in respect of each operational programme*". The ceiling on technical assistance within each operational programme is fixed at the "numerical" percentage laid down in paragraph 1. As a result, the expenditure for technical assistance cannot exceed 4% of the total amount allocated for technical assistance in each operational programme falling under the convergence and competitiveness objective and 6% of the total amount allocated for technical assistance in each operational programme falling under the territorial cooperation objective.

Therefore, in addition to the limits laid out under Article 46(1), each thematic or regional operational programme must respect a technical assistance ceiling of 4% or 6% in relation to the total amount allocated for technical assistance in each operational programme.

4.3.2. As a result of the second subparagraph of Article 46 (3), which applies to specific operational programmes for technical assistance, the total amount of expenditure for technical assistance in such a specific programme shall not lead to a situation where the total proportion of Funds allocated to technical assistance through the specific operational programme and through all other operational programmes exceeds the limits set in paragraph 1, that is 4% or 6% of the allocation of the Funds to the objective.

4.4 Technical assistance and multi-objective programmes

As a general rule, and as for all other operational programmes, the specific technical assistance operational programme should cover only one of the three objectives (Article 32(1) of the General Regulation).

However, if the Commission and the Member State so agree, the specific technical assistance programme may be of multi-objective nature (Article 32(1) of the General Regulation). In such case a multi-objective programme for technical assistance will be subject to the same rules as applied to any other multi-objective programme, i.e. separate priority axis for each objective as laid down in Article 54(3)(a) of the General Regulation and separate financial management per objective⁴.

4.4.1 It must be underlined that in the case where such a specific technical assistance programme contributes to the Regional Competitiveness and Employment objective it would have to be financed either by the ERDF or by the ESF because the Cohesion Fund cannot finance, through a specific technical assistance operational programme, activities for operational programmes under the regional Competitiveness and Employment objective. This conclusion is based on the distinction which is drawn by the Community legislator between geographical eligibility and the three objectives laid down for the Funds in the General Regulation.

In the case of the Cohesion Fund, geographical eligibility is established at national level (Articles 5(2) and 8(3) of General Regulation, in conjunction with Article 4(2) thereof), and as a result several Member States eligible for assistance from the Cohesion Fund contain at least one region which is not covered by the Convergence objective. The financial framework for the Funds allocates 81,54% of the resources available from the Funds to the Convergence objective (Article 19 thereof), which is accompanied by the requirement set out in Article 22 of that Regulation that the appropriations allocated by Member State under each of the objectives of the Funds shall not be transferable between those objectives.

The fact that activities supported by the Cohesion Fund can be executed in whole or in part in a Regional competitiveness and employment region (i.e. be geographically eligible), does not involve a transfer of resources from the Convergence objective to the Regional competitiveness and employment objective. On the other hand, the prohibition on transferring resources from one objective to another precludes the provision of support from the Cohesion Fund through a specific programme for technical assistance to the Regional competitiveness and employment objective.

⁴ Where a specific technical assistance operational programme, whether multi-objective or not, covers operational programmes benefiting from transitional allocations under Article 8 (1) and 8 (2) of Regulation (EC) n° 1083/2006, the provision of Article 22 of that Regulation on non transferability of resources between objectives and their components shall be respected.

In addition, the Commission services would point to the legislator's clear instruction in Article 3(2)(a) of the General Regulation, providing that the Convergence objective "shall constitute the priority of the Funds". Were the diversion of Convergence objective resources into, for example, Regional competitiveness and employment objective activities (whether in the form of, for example, operations eligible by virtue of Article 5 of Regulation (EC) n° 1080/2006 of the European parliament and of the Council of 5 July 2006 on the ERDF⁵ or of technical assistance for such actions) possible, this intention would be undermined.

4.4.2 in the case where such a specific technical assistance programme contributes to the European territorial co-operation objective it would have to be financed by the ERDF because neither the CF nor the ESF can contribute to this objective.

It should also be noted that in case of a thematic operational programme which is already multi-objective and assuming that technical assistance is established in the form of a priority axis as recommended by the Commission, there should be one technical assistance priority axis for each objective covered by this programme followed by separate financial management by objective.

5. FINANCING OF TECHNICAL ASSISTANCE ACTIONS OF ONE FUND BY ANOTHER FUND

All explanations given in this paragraph are subject to the limits laid out under point 4.4.

Activities relating to preparation, management, monitoring, evaluation, information and control of a programme, together with activities to reinforce the administrative capacity to implement the programme and which are of benefit for one or more Funds, can be co-financed by any appropriate Fund.

Where a thematic or regional operational programme is jointly financed by ERDF and CF, technical assistance priority axis(es) may be co-financed by either ERDF or CF. While the decision lies with the Member State as to which Fund should support technical assistance under an ERDF/CF programme, it would be normal to expect that where one Fund has clearly a superior contribution, it would also assume responsibility to support technical assistance.

As regards a specific technical assistance operational programme, this can only be co-financed by one Fund (the principle of mono-Fund programming) with the exception of the possibility for the ERDF to cofinance such an operational programme with or without the Cohesion Fund. Thus, a Fund financing such a specific technical assistance programme may finance horizontal technical assistance actions in favour of programmes financed by another Fund(s). By way of example, a specific technical assistance programme can support actions aiming at the development of IT based monitoring system or training of horizontal nature for the staff involved in management and implementation of all Funds and programmes.

⁵ OJEU L 210, 31.07.2007, p. 1

Consequences relating to eligibility of expenditure

It should be noted that while the General Regulation defines the scope of technical assistance activities, it does not specify whether there are any limitations as regards the eligibility of the technical assistance tasks under a Fund. In relation to eligibility, in the 2007-2013 programming period the eligibility rules will be defined to a large extent at national level (Article 56(4) of the General Regulation).

A particular case concerns the ESF. Article 11 (2)(c) of the ESF Regulation explicitly excludes the purchase of furniture, equipment, vehicles, infrastructure, real estate and land as eligible expenditure. This exclusion also applies where such expenditure is incurred under technical assistance. Technical assistance activities under an ESF programme giving rise to such costs can, however, be co-financed indirectly via the depreciation provisions of Article 11(3)(c) of the ESF Regulation or directly in the context of the 10% flexibility facility relating to the ESF and the ERDF (Article 34(2) of the General Regulation).