

## Financial Management in Territorial Cooperation Programmes - part 1

INTERACT



INTERACT is co-financed by the European Regional Development Fund (ERDF) | European Territorial Cooperation



#### Overview of financial management

- Programme and project lifecycle
- Regulatory framework
- Programme management structures; their role and their responsibilities
- Some basic notions: control and payment procedure, audit trail and eligibility

#### Main financial documents

- Operational programme
- Article 71 (**Article 115**): Description of management and control systems
- Audit Strategy (**not relevant for IPA CBC**)

#### Programme financial management

- a. General principles of financial management
- b. Financial framework:
  - Co-financing
  - Technical Assistance budget
- c. Advance payment and decommitment rule
- d. Decommittment at project level - case study
- e. Programme closure

#### Specific focus on eligibility



- **Control**
  - First Level Control
    - a. First Level Controllers
    - b. A process of two main elements: administrative vs on-the-spot checks
    - c. What is checked?
    - d. The practical side of First Level Control: The compendium of FLC procedures
  - Control by Certifying Authority
  - Second Level Control/Audit
    - a. Auditors
    - b. The process of auditing
    - c. What is checked?
- **Irregularities**



# DAY 1



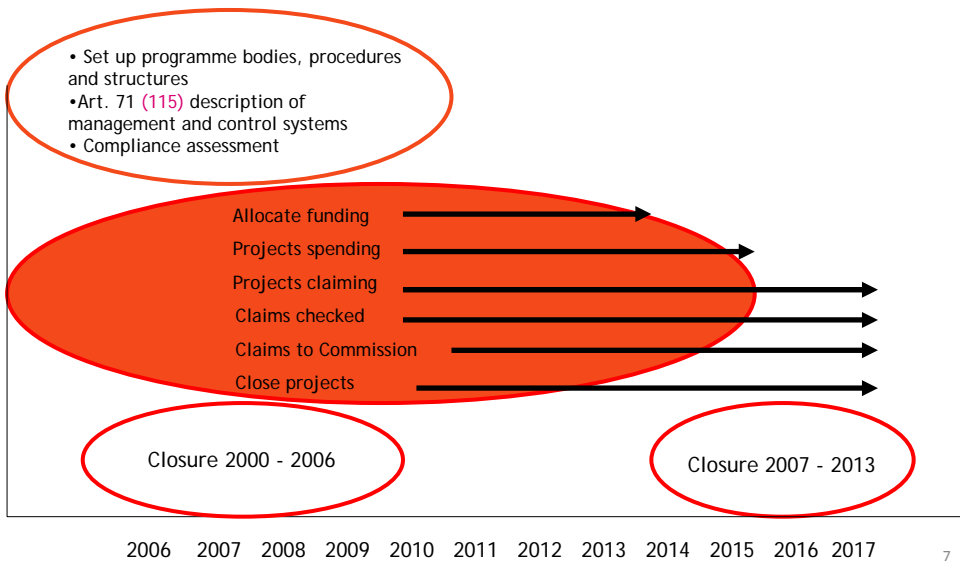


# OVERVIEW OF FINANCIAL MANAGEMENT

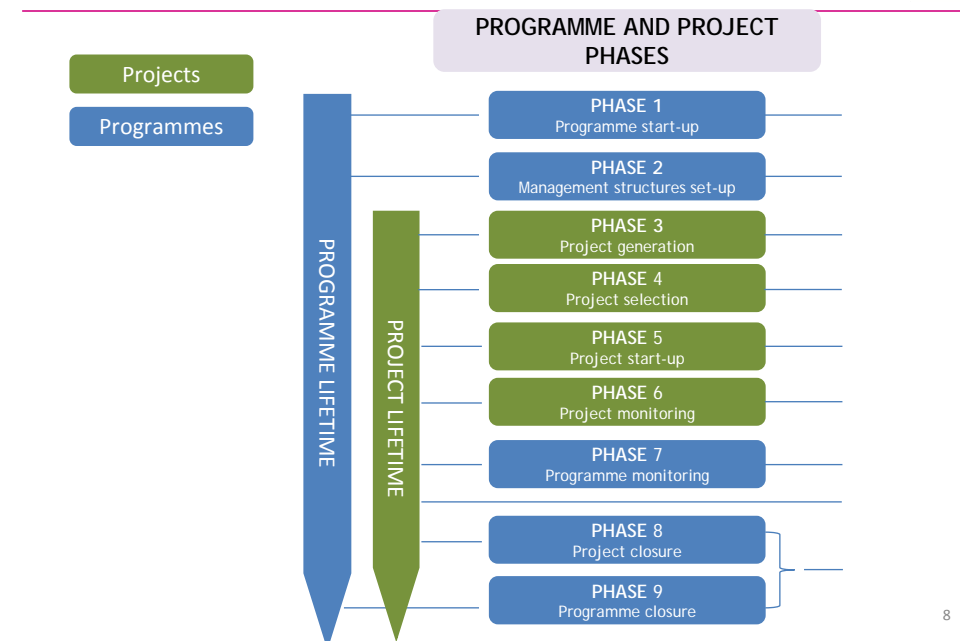


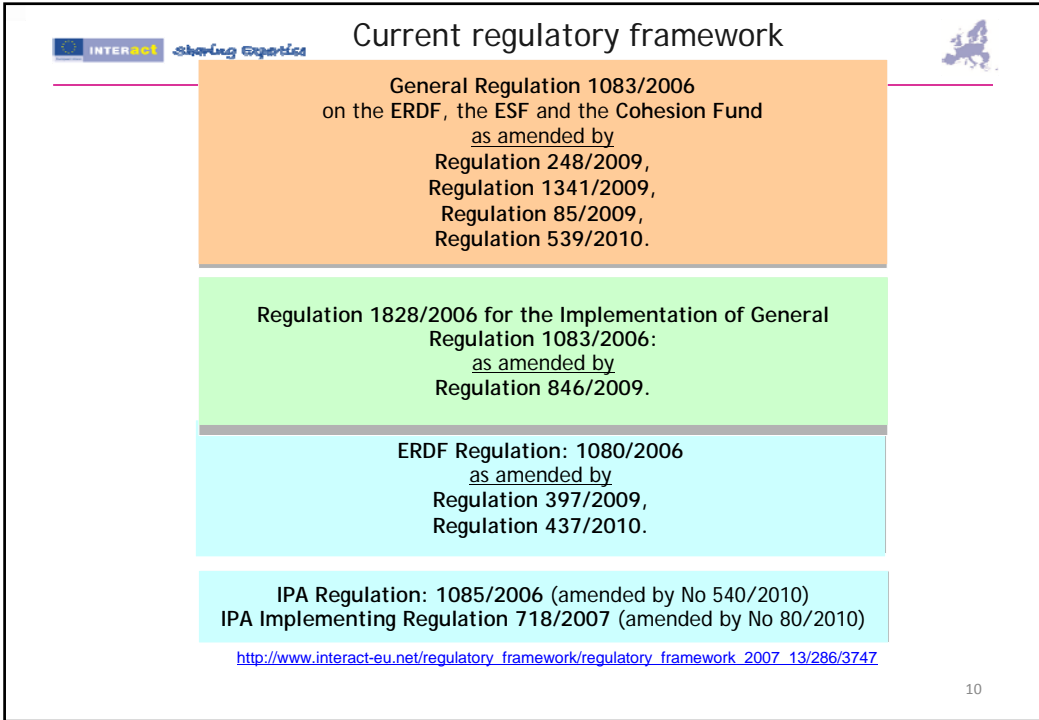
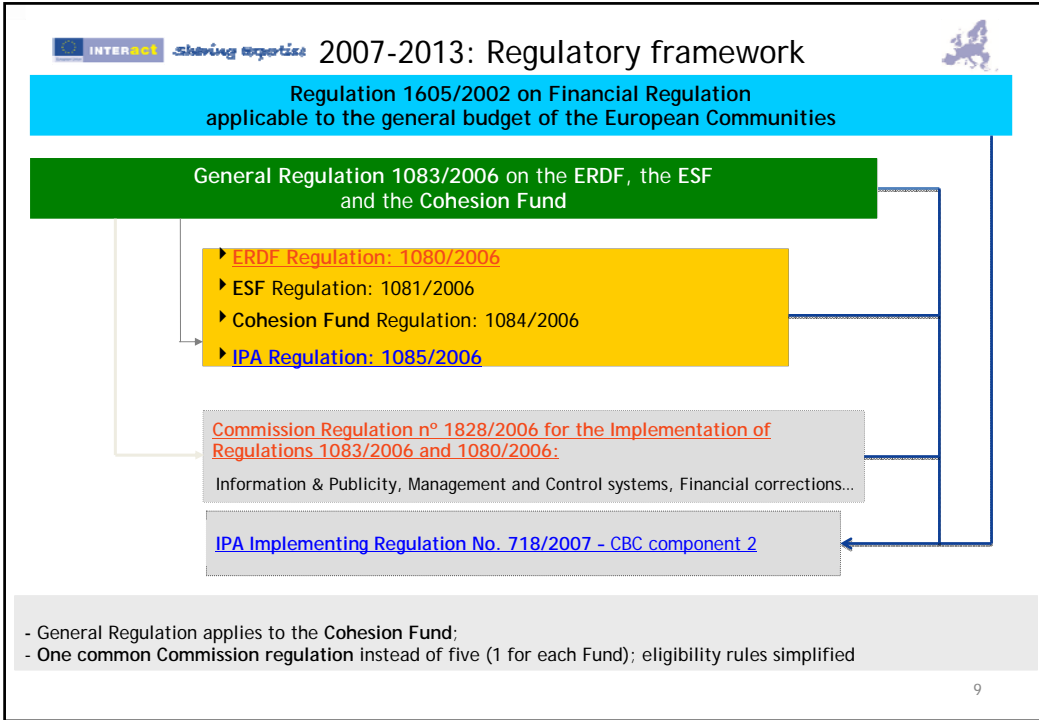
- Structure of the presentation (hyperlinks)
- Programme and project lifecycle
- Regulatory framework
- Programme management structures; their role and their responsibilities
- Some basic notions: audit trail and eligibility

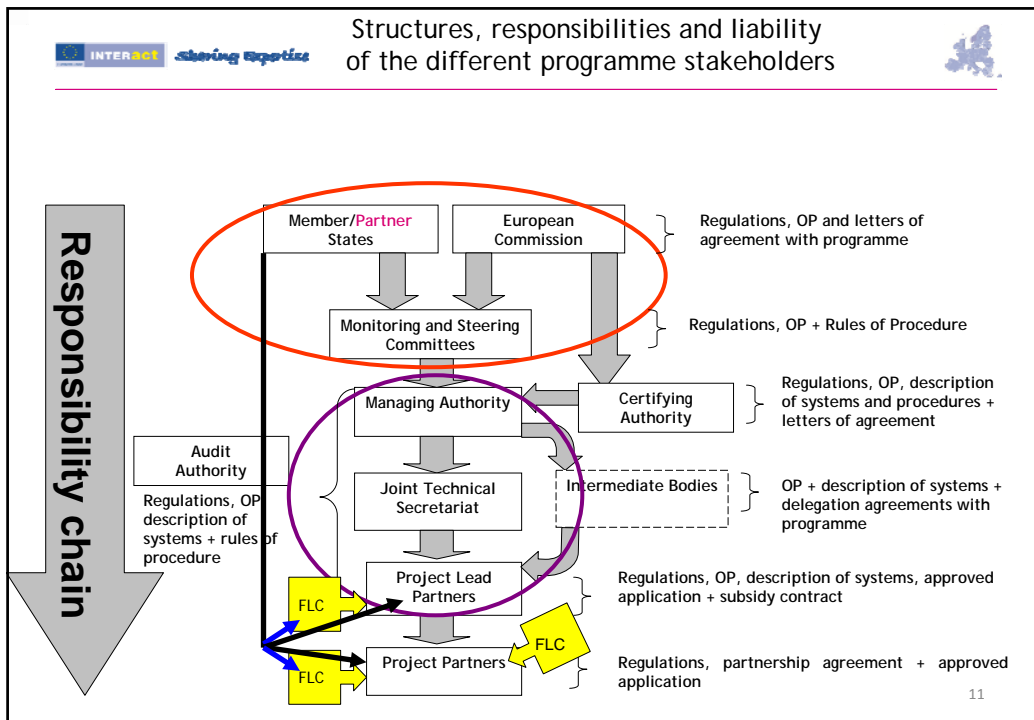
## Main financial management processes



## Phases of programmes and projects







- Programme management structures  
Definition of Programme Management Bodies
1. Monitoring and Steering Committees
  2. Member States (MS) responsibilities/Partner State responsibilities
  3. Managing Authority (MA)
  4. Joint Technical Secretariat
  5. Certifying Authority (CA) (formerly Paying Authority (PA))
  6. Audit Authority (AA)
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Art. 63-66 Reg. 1083/2006

Art. 110 Reg. 718/2007

The **Monitoring Committee (MC)** **supervises** the programme deciding, monitoring and adjusting **programme implementation and strategy**

Some programmes also have:

The **Steering Committee (SC)** is responsible for **selection** and monitoring of **projects** (art. 19 (3) Re. 1080/2006) (art. 110 Reg. 718/2007)



Art. 70-71 Reg. 1083/2006

Art. 114-116 Reg. 718/2007

### Strategic role

- **Sharing management** of programmes with the **Commission**
- Member of **Monitoring and Steering Committees**

### Operational role

- **Ultimate responsible for the expenditure and all activities carried out on a MS's territory** (Art. 16 Reg. 1080/2006) (Art. 108 Reg. 718/2007)
- Responsible for setting up of a **management and control systems** (article 71 (115) description) = FLC=designate controllers
- Issues **national eligibility rules** and provide information



Art. 60 Reg. 1083/2006 ; Art. 13 Reg. 1828/2006

Art. 103 Reg. 718/2007

Besides the overall management of the programme, these are some MA specific tasks:

- Ensuring that **operations** are approved, delivered and monitored in compliance with the agreed criteria
- Recording and storing **programme and project records** in electronic version and ensuring the maintenance of programme audit trail
- Dealing with **activity and financial reporting** of the projects
- Verifying that **expenditure** declared is **in line with EC and MS rules** (state aid, public procurement, etc) and certified correctly by beneficiary First level Controllers

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- '...shall **assist the MA, MC**, and, where appropriate, the **AA**, in carrying out their respective duties.' (Art. 14.1 Reg. 1080/2006; **Art. 102 Reg. 718/2007**)
- **Assists all stakeholders** of the whole programme area (JTS is composed of international staff) =>Provides help and support to projects at all stages => some programmes also have National Contact Points/JTS Antennas
- Responsible for processing applications, organising project assessment and making proposals for selecting projects to the selection committee

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Art 61 Reg. 1083/2006  
Art 104 Reg. 718/2007

- Certifies and draws up **claims to the Commission**
- Receives funds and makes **payments** to Lead Beneficiaries
- Maintains **computerized accounting records**
- **Supervises the MA** by ensuring that systems and documentation are in place
- Keeps an account of amounts certified, recoveries, withdrawals

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**Audit / Second Level Control** carried out by  
Audit Authority assisted by GoA  
(Art. 14 Reg. 1080/2006; **Art. 102 Reg. 718/2007**)

### Basic functions(1/2):

- Compliance assessment + opinion (optional for AA) Art. 71 (2) 1083/2006 and Art. 25 1828/2006 + annex XII + Guidance note on Compliance Assessment **Art. 116 718/2007**
- Audit strategy Art. 62 (1) c 1083/2006 and Art. 18 1828/2006 + annex V + COM guidance note - **not relevant for IPA CBC**
- (Organisation of) **systems audits** Art. 62 (1) a 1083/2006 **Art. 105 718/2007**
- (Organisation of) **audits of operations**: sampling and eventual subcontracting Art. 62 (1) b 1083/2006, Art. 16-17 1828/2006 + annex IV) + guidance note on sampling methods for AA **Art. 105 718/2007, Art. 107 718/2007**

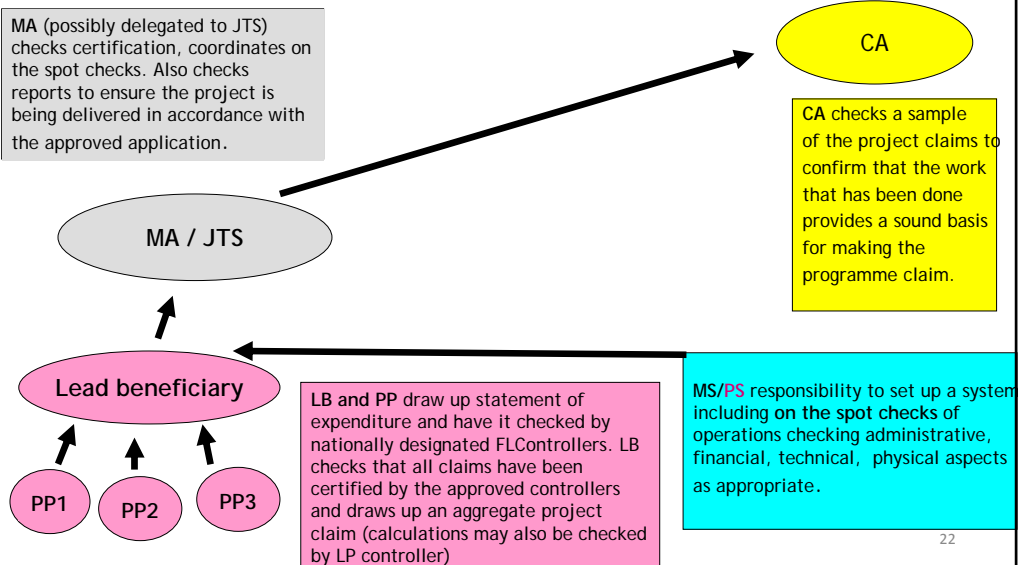
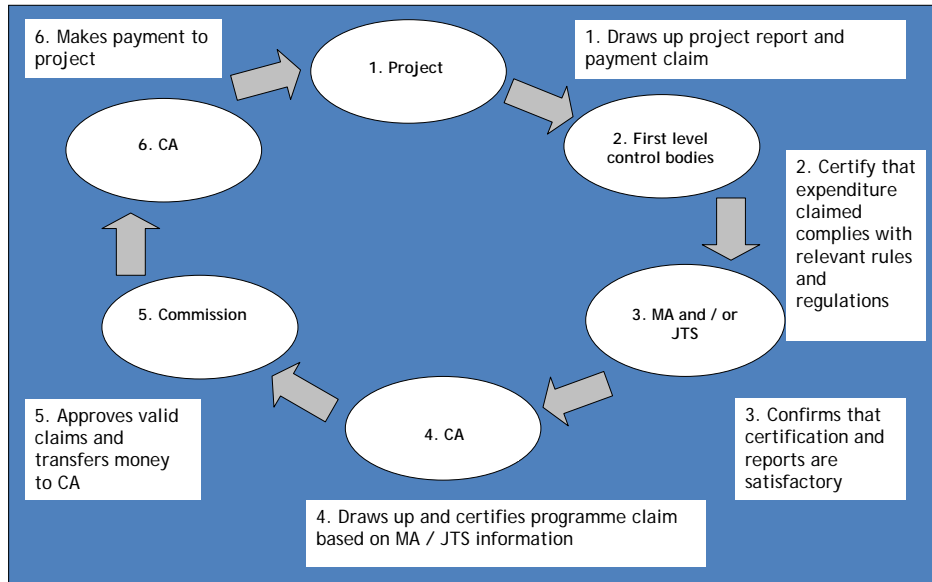
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- **Annual control report + opinion** Art. 62 (1) d (i) & (ii) 1083/2006, Art. 18 (2) & (4) 1828/2006 + annex VI & VII Art. 105 718/2007
- **Independence and supervision of other audit bodies** Art. 62 (3) 1083/2006, Art. 23 b+d 1828/2006 Art. 105 718/2007, Art. 1115 718/2007
- **Audit standards** Art. 62 (2) 1083/2006 Art. 105 718/2007
- **(Partial) Closure declaration** Art. 62 (1) d (iii) + Art. 88 1083/2006, Art. 18 (5) 1828/2006 + annex IX / Art. 62 (1) e 1083/2006, Art. 18 (3) 1828/2006 + annex VIII Art. 105 718/2007



- MSC = Monitoring and Steering Committee
- MA = Managing Authority
- JTS = Joint Technical Secretariat
- CA = Certifying Authority
- AA = Audit Authority
- LP = Lead Partner
- P = Partner





Article 15 Reg. No 1828/2006

Article 106 Reg. No 718/2007

- **Basic definition:** Documentary evidence for how every single EURO granted to the programme/projects was spent
- **Must allow authorities to:**
  - Trace all declared expenditure to all relevant documents: original invoices (or documents of equivalent probative value), proofs of payment...
  - Verify the transfer of funds to final beneficiaries
- **Clear description of the accounting evidence at each level, and communicate this to everyone involved, including project partners**
- **Accounting evidence should include:**
  - Staff
  - External experts
  - Meetings and events - Promotion
  - Investments (if allowed by the programme)
  - Overheads
  - Travel and accommodation

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### Audit Trail

- Article 15 of Regulation 1828/2006 (**Art. 106 of 718/2007**) relates to the obligation of the programme to ensure an adequate audit trail, which means that it is also applicable to projects.
- This obligation is reflected at every single stage of financial management not only at the MA level:
  - Programme level: TA and projects
  - Project level
  - Partner level
- **Availability of documents:**
  - Art. 90 of Regulation 1083/2006 (**Art. 134 of 718/2007**) states that documents must be kept until **three** years after **programme** closure

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### Eligibility rules

- It refers to eligibility of expenditure
  - Following specific criteria expenditure may or may not be eligible
  - These criteria come from :
    - European legislation
    - National rules
    - Programme rules
- ✓ **IMPORTANT!** It is possible that one project partner has to follow different eligibility rules than another partner because national rules are different



# MAIN FINANCIAL DOCUMENTS





- Operational programme
- Article 71 (115): Description of management and control systems
- Audit Strategy - *not relevant for IPA CBC*



- Priorities and type of actions that will be funded under each priority
- Joint programme financial tables (NB no breakdown by MS/PS) showing - ERDF/IPA split by programme year, and total funding for the whole period and per priority
- Basic implementation arrangements, structures and responsibilities



## Description of management and control systems

Art. 71 EC 1083/2006 **Art. 115 EC 718/2007**

- Within 12 months of OP approval or before the first interim payment a detailed description of programme management and control systems, approved by a 'Compliance Assessment body' (possibly the AA) **must be submitted to EC**
- Model set out in Annex XII EC 1828/2006
- Covers general principles of **organisation and procedures of MA, CA, IB, AA** (or bodies carrying out audits under AA responsibility)

Examples of Article 71 description and compliance assessments (Interreg IV B NWE Programme):  
[http://www.interact-eu.net/financial\\_management\\_news/news\\_external\\_article\\_71\\_successful\\_case/41/1521](http://www.interact-eu.net/financial_management_news/news_external_article_71_successful_case/41/1521)

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## Description of art. 71/115 - in simple words

Description of management and control systems describes: **document and information flow in and out of the programme.**

- Financial procedures - **Who does what?**
- Time limits - **When should things happen?**
- **Authorising TA spending + staff recruitment**
- Procedures for making changes

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(Art. 62 (1) c 1083/2006 and Art. 18 1828/2006 + annex V + COM guidance note)

- **Planning document:** to ensure high quality annual control report with opinion and closure declaration; should cover whole programming period
  - Key element = risk assessment
- **Deadline for presentation:** within 9 months of approval of OP; possibly for several programmes
- **Acceptance by COM:** 3 months
- **Model Audit Strategy:** annex V Reg. 1828/2006 = minimum requirements
- Annual update when submitting the ACR

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# PROGRAMME FINANCIAL MANAGEMENT





- a. General principles of financial management
- b. Financial framework:
  - Co-financing
  - Technical Assistance budget
- c. Advance payment and decommitment rule
- d. Decommitment at project level- case study
- e. Programme closure



## General principles of financial management = Sound financial management principles

- The **principle of economy**: resources used by the institution for the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price.
- The **principle of efficiency**: the best relationship between resources employed and results achieved.
- The **principle of effectiveness**: attaining the specific objectives set and achieving the intended results.



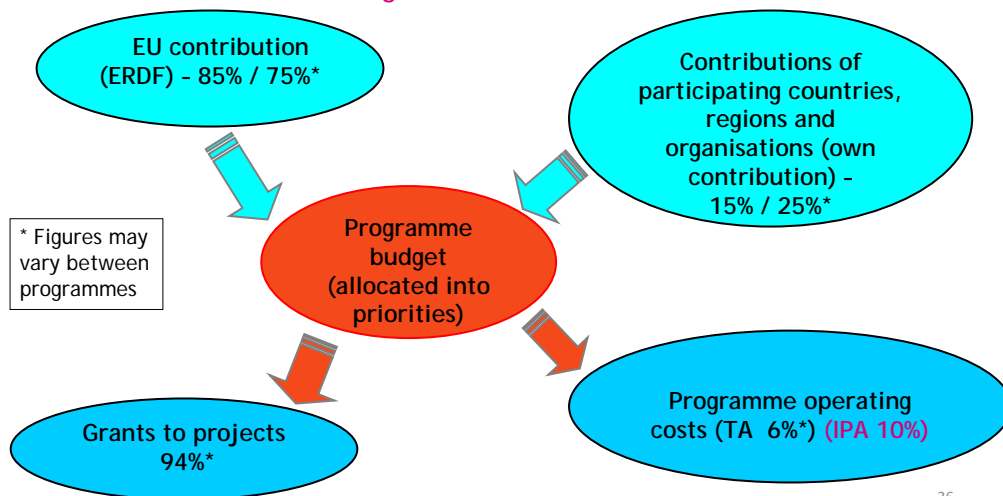
Key Point 1: The **main elements** of the framework are:

- Co-financing mechanisms
- Programme priorities
- Financial tables

Key point 2: The **Technical Assistance budget** is the key to enabling effective action within this framework



Sources and uses of funds in Territorial Cooperation Programme:  
 75% ERDF - 25% or 85% ERDF - 15% co-financing  
 85% IPA - 15% co-financing





## ERDF/IPA grant rates in 2007 - 2013

### Maximums:

➤ Territorial Cooperation programmes use  
75% ERDF - 25% own contribution

or

85% ERDF - 15% own contribution  
85% IPA - 15% own contribution

Some programmes use lower ERDF rates

e.g. 50% ERDF - 50% own contribution

Minimum rate per priority: 20%

Maximum rate per priority: 100%

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## Sources of co-financing /own contribution versus ERDF/IPA

- Automatic co-financing
- Competition based co-financing
- Private co-financing
- Own contribution
- Public similar

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## TA budget co-financing

Art 46.1. b) 1083/2006 **Art 94.1.f) Reg. 718/2007**  
Technical assistance of the MS/PS:

*"6% of the total amount allocated under the European  
Territorial cooperation objective"*

*"up to a maximum of 10 % of the Community contribution  
allocated to the programme"*

How much MS co-financing for TA budget?



## TA budget in 2007 - 2013

### TA Priority

- Preparation, selection, appraisal and monitoring
- Meetings of monitoring committees
- Audits and on the spot checks
- Information actions
- Evaluation (Ex ante, Mid term)
- Acquisition and installation of computerised systems for management and monitoring



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Council Regulation 1083/2006 Article 93 as amended by Regulation 539/2010 of 16 June 2010:

1. The Commission shall automatically decommit any part of the amount calculated in accordance with the second subparagraph in an operational programme that has not been used for payment of the pre-financing or interim payments or for which an application for payment has not been sent in conformity with Article 86 by 31 December of the second year following the year of budget commitment under the programme, with the exception mentioned in paragraph 2 (...)

For EU 12 MS (plus GR and PT) the deadline is the 31st December of the third year following the year of the annual budget commitment from 2007-2010 (n+3).



## Automatic de-commitment

Council Regulation 718/2007 article 137

Automatic and final de-commitment of any portion of the budgetary commitment for a cross-border programme shall follow the rules laid down in *paragraph 3 of Article 166 of Regulation (EC, Euratom) No 1605/2002*:

*“any portion of a budget commitment for such a multi-annual programme shall be automatically decommitted where, by 31 December of the third year following year n being the one in which the budget commitment was made:*

- i. it has not been used for the purpose of pre-financing; or*
- ii. it has not been used for making intermediate payments; or*
- iii. no declaration of expenditure has been presented in relation to it”.*



*“Decommitment is not a meant as a punishment...”*



***“Decommitment is rather a mechanism to speed up the implementation of programmes.”\****

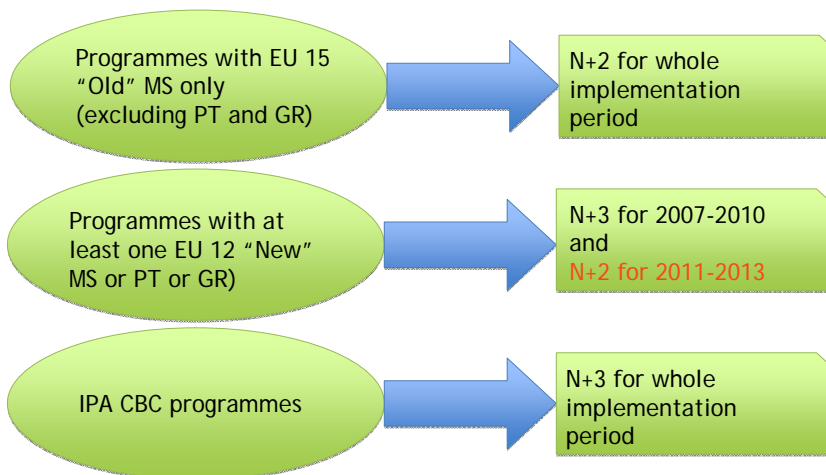
\* Recital 71 of Regulation 1083/2006



- The amounts that you have to spend by a certain period (decommitment targets)
- The amounts taken from financial table in the OP
- The amounts considered include verified (by FLC) and certified costs (by CA)
- N+2 for 15 “Old” MS without GR and PT
- N+3 for 12 “New” MS with GR and PT and **IPA CBC**
- Programmes where N+2 and N+3 states are both participating apply N+3



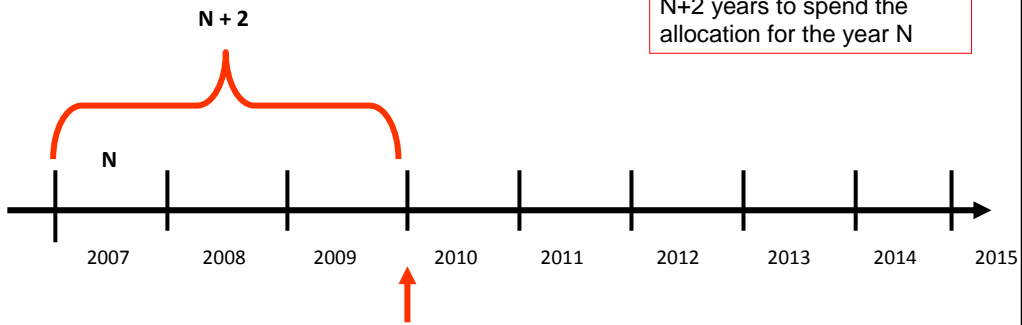
### How does it work?





### Programmes with N+2

N+2 means that you have N+2 years to spend the allocation for the year N

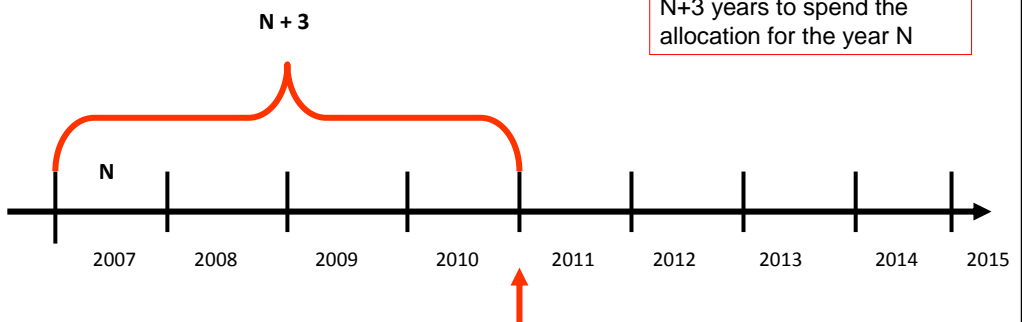


31 December 2009 was the first decommitment target (before the regulation was amended)



### Programmes with N+3

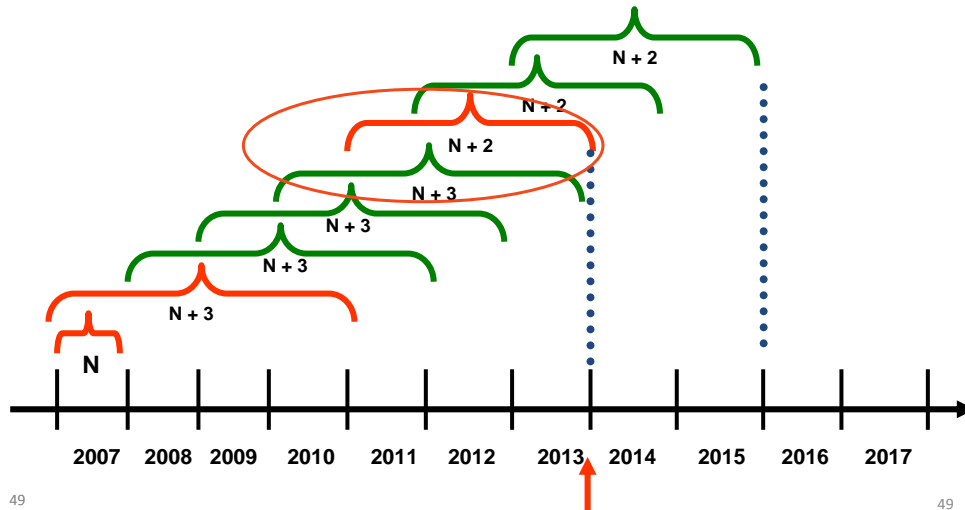
N+3 means that you have N+3 years to spend the allocation for the year N



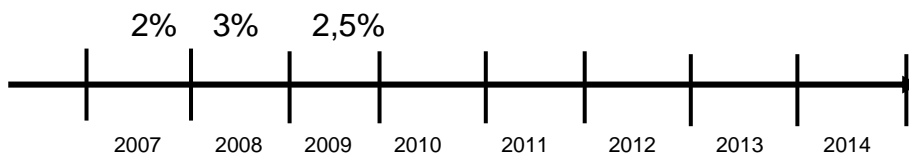
31 December 2010 was the first decommitment target ((before the regulation was amended)



31 December 2013 – accumulation of 2010 and 2011 allocations

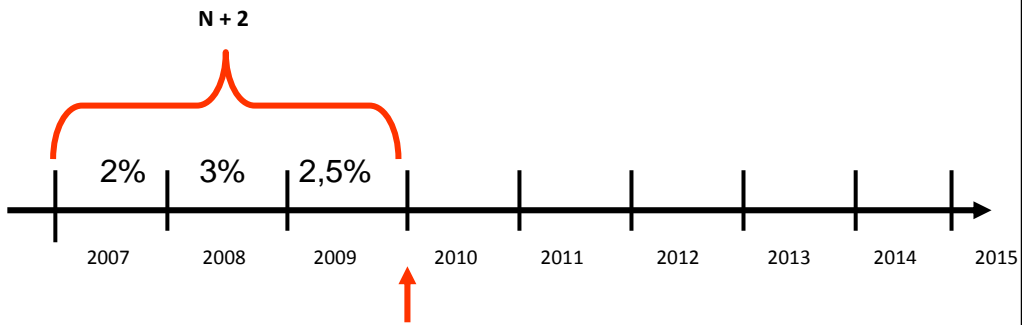


Advance payment 7,5% for 15 "Old" MS





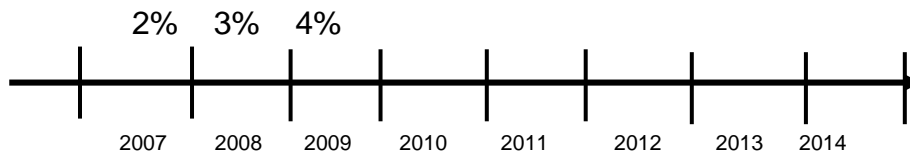
Advance payment 7,5% for 15 "Old" MS



You deduct 7,5% (2%+3%+2,5%) Advance Payment (ERDF total budget) from the first de-commitment target

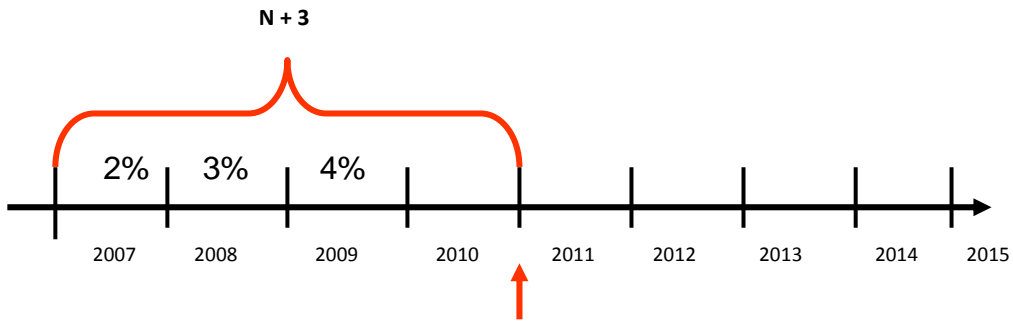


Advance payment 9% for 12 "New" MS





Advance payment 9% for 12 "New" MS



You deduct 9% (2%+3%+4%) Advance Payment (ERDF total budget) from the first de-commitment target



- Pre-financing or in other words advance payment (7,5% for "Old" MS and 9% for "New" MS) is deducted from the first decommitment target
- But only if the programme has already sent a financial claim to the Commission within 24 months of payment of the first advance payment (which is only possible if Art. 71 DMCS has been officially submitted) - no matter the amount of the claim



### 2007 annual contribution

1. For the purpose of the automatic decommitment, the Commission shall calculate the amount by adding one sixth of the annual budget commitment related to the 2007 total annual contribution to each of the 2008 to 2013 budget commitments.
  
- 2a (...) the deadlines for automatic decommitment shall not apply to the annual budget commitment related to the 2007 total annual contribution.
  
- (...) appropriations which have been cancelled because of decommitments made by the Commission for the financial year 2007 (...) shall be reconstituted (...)



### 2007 annual distribution : What does it mean?

N+ 2 old system

2007	2008	2009	2010	2011	2012	2013	2014	2015
10	10	10	10	10	10	10		
		10	10	10	10	10	10	10

N+2 new system

2007	2008	2009	2010	2011	2012	2013	2014	2015
10	10	10	10	10	10	10		
		0	11,6	11,6	11,6	11,6	11,6	11,6



## Case Study on Automatic decommitment



There are 4 main causes:

- Delays in setting up programme's systems and procedures and submission of Art 71 (115) description to the Commission
- Slow commitment of programme funds
- Slow project spending
- Slow certification and processing of project payment claims

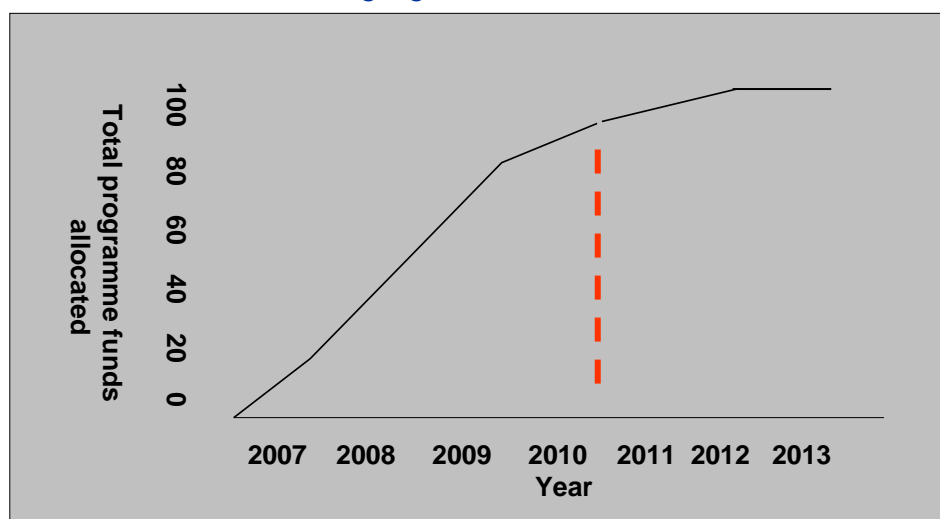


## Data needed for managing decommitment

- Project spending forecasts = Building blocks for programme forecast
- But project spending forecasts are highly optimistic
- Project spending normally very low at the first year of implementation - a significant number of projects should be approved (large part of the budget committed especially if programme approval is delayed)

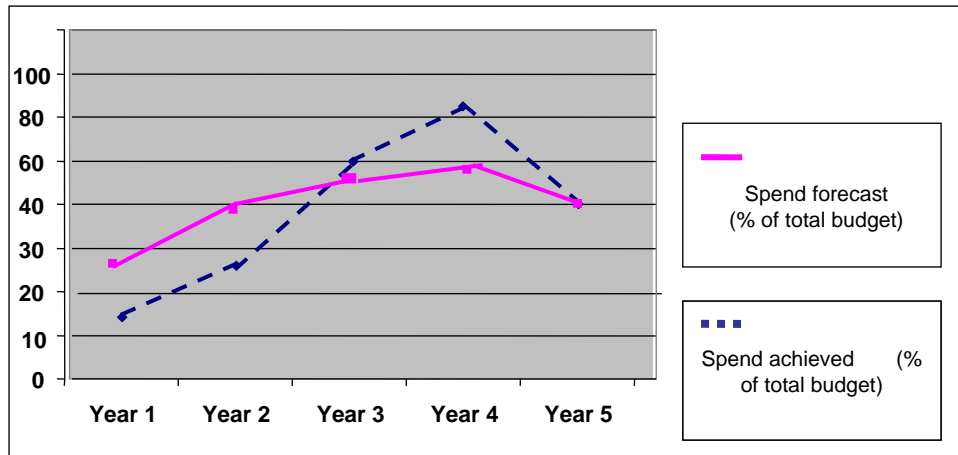


## Data needed for managing decommitment





## Funding Allocation - Project profile



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## How to avoid decommitment?

- Identify project budget signs and reduce unrealistic projects budgets at the assessment stage
- Monitor project spending (adapt reporting to your needs)
- Monitor closely spending by large projects (esp. infrastructure)
- Recycle projects' savings
- Organise meetings with underspending projects
- Consider using reserve list by the programme
- Speed up verification and certification process

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## Regulatory exceptions to automatic decommitment

- Major projects and Aid schemes (Art. 94 Reg. 1083/2006)
- Interruption for legal proceedings and administrative appeals (Art. 95 of Reg. 1083/2006)
- Commission suspension or payment interruption or capping (Art. 96 of Reg. 1083/2006)
- *Force Majeure*: “when delays in implementation result from circumstances which are independent of the party concerned, abnormal or unforeseeable and whose consequences cannot be avoided despite the diligence shown” (Art. 96 of Reg. 1083/2006)

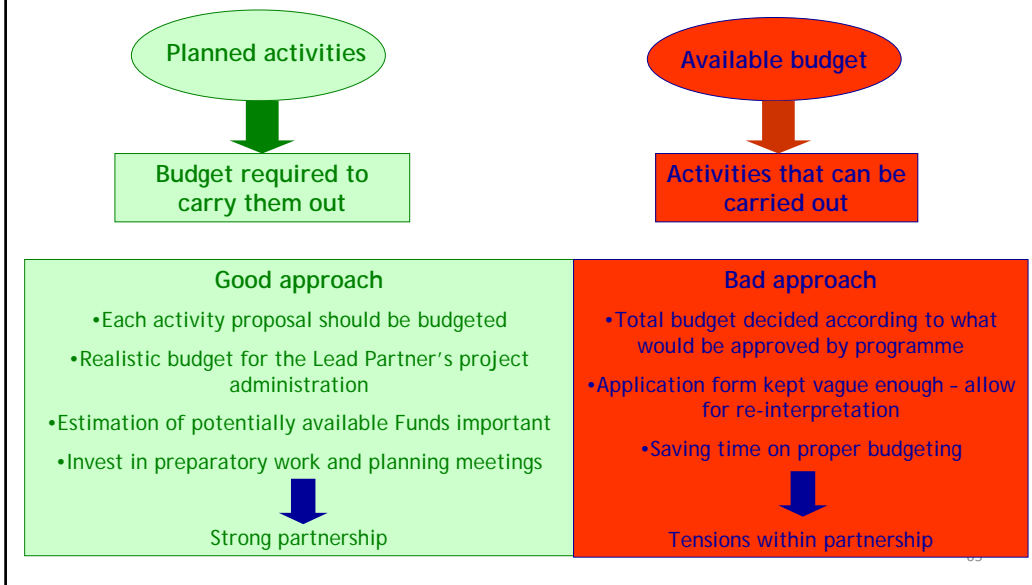


## Decommitment at project level?

- Each programme’s individual decision
- Needs to be communicated at the start e.g. fact sheets, programme manual, Subsidy Contract, Partnership Agreement
- Programme’s methodology for how this can be executed, e.g.
  - Estimate % of average project underspending
  - Assess project spending profile regularly
  - Cut budgets of projects which underspend above the average

More about decommitment:

[http://www.interact-eu.net/downloads/1809/Tips\\_on\\_decommitment.pdf](http://www.interact-eu.net/downloads/1809/Tips_on_decommitment.pdf)



## Project budget danger signs

- Unrealistic spread of funds across project lifetime
- Uneven split of funds across partnership
- Partners not contributing co-financing
- Excessive staff costs
- Excessive external expert costs
- Unrealistic figures



## Case Study Project Budget Assessment



### Project budgets - Avoiding problems

- Seed money or preparatory costs
- Guidelines and fact sheets
- Meetings and seminars
- Pre-assessments / 2-stage application process
- Lead Beneficiary mentoring
- Professional project management



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### Basic concepts

EC normally issues [guidelines for closure](#)

2000 - 2006 EC closure guidelines available here:

[http://www.interact-eu.net/programme\\_closure/programmeeclosure\\_ecguidance\\_2000\\_06/61/135](http://www.interact-eu.net/programme_closure/programmeeclosure_ecguidance_2000_06/61/135)

### Deadlines:

- 31 December 2015 - last date for eligibility of expenditure
- **31 December 2016 IPA CBC**
  
- 31 March 2017 - last date for sending the closure documentation:
  - The programme has to send the closing documents to EC
  - EC needs to issue an opinion within 5 months after reception of the closing documents (if no answer, documents are accepted)
- **31 March 2018 IPA CBC**



## The closing documents

- An **application for payment of the final balance** - the cumulative total of pre-financing and interim payments did not exceed 95% of the contribution = **5% retention**
- A **final control report and opinion** (*in case of IPA CBC included in Final implementation report*)
- The **final implementation report**
- A **closure declaration**

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## Opinion - possible results

- **Unqualified opinion:** approval without reservations
- **Qualified opinion:** approval with reservations  
For example, sampling technique is weak, there is no formal procedure for identifying and treating systemic problems.
- **Adverse opinion:** not approved  
For example, because audits have been inadequate or serious management failures have not been addressed

The last two opinions delay the final payment and request to quantify the extent of the problems (how much money to deduct)

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## Irregularities and error rates

- At closure a decision on the overall reliability of management and control systems is made
- Low or high frequency of irregularities and errors? **2% error rate is the limit**
- Different importance of errors, e.g.
  - ❖ Formal vs. substantive
  - ❖ Have financial impact
  - ❖ Systemic Very important to avoid systemic problems since they could lead to cut in funding for all measures / priorities where these systems and procedures are in place if corrective action cannot be taken

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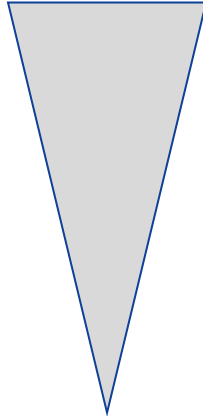


# SPECIAL FOCUS ON ELIGIBILITY





## Legal basis for eligibility rules



European legislation  
Regulations, Directives...

National rules

Programme rules



## Eligibility rules: National vs Community rules

Regulation  
(EC)  
1080/2006  
§13

The relevant national rules agreed by the participating Member States in an operational programme under the European territorial cooperation objective shall apply to determine the eligibility of expenditure **except where Community rules are laid down.**



### Eligibility rules: National vs programme rules

Regulation  
(EC)  
1083/2006  
§56 (4)

'... rules on the eligibility of expenditure shall be laid down at **national level** subject to the exceptions provided for in the specific Regulations for each Fund. They shall cover the entirety of the expenditure declared under the operational programme.'

Regulation  
(EC)  
1828/2006  
§21+22

"The description of management and control systems submitted by MS to the EC shall include: eligibility rules laid down by MS and **applicable to the Operational Programme**"

MS are obliged to publish their national eligibility rules for each OP within 12 months of OP approval



Regulation  
(EC)  
718/2007  
§34(3), 89,  
115

Article 34(3) and 89 - community eligibility rules  
Article 115 ...

'... "The description of management and control systems submitted by MS to the EC shall include: eligibility rules laid down by participating countries and applicable to the cross-border programme"



## Time eligibility of expenditure actually paid out

Regulation 1083/2006, Article 56

### Programme level

- **Start date** for eligibility 1 January 2007 or date of submission of OP (check preparatory costs) - **whichever is earlier**
- **Final date** 31 December 2015 (check contract expenditure)  
**Final date 31 December 2016 - IPA CBC**
- Each programme sets deadlines for projects
- Expenditure - "**actually been paid**" = actually paid out
- Operations must not have been completed before the starting date for eligibility

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## Some basic rules on eligibility set up in the European Regulations:

### Regulation 1828/2006 - Implementing Reg.

- Article 49 - financial charges and guarantee costs
- Article 50 - expenditure by public authorities
- Article 51 - In-kind contributions (*not applicable in IPA CBC*)
- Article 53 - Depreciation (*not applicable in IPA CBC*)

### Regulation 1080/2006 - ERDF Reg.

- Article 7 (4) - indirect and flat-rate costs
- Article 21 - 10%-20% flexibility rules
- Article 7 - ineligible costs

### Regulation 1083/2006 - General Reg.

- Article 55 - Revenue-generating projects
- Article 56 - Overheads

### Other elements to check

- Common costs
- Public procurement
- State aid
- Publicity and information
- Other horizontal issues

For IPA CBC: Articles 34 and 89 of Reg. 718/2007  
Article 89 is amended by 80/2010

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### Ineligible costs

Regulation 1080/2006, Article 7 **Regulation 718/2007 Art. 34 and 89 (amended by 80/2010)**

- Interest on debt
- Purchase of land for an amount exceeding 10% of the total expenditure for the operation (except for some environment projects)
- Decommissioning nuclear power stations
- **Recoverable VAT** → If in any doubt about the eligibility of VAT, the answer should be not eligible



### Financial charges and guarantee costs

Regulation 1828/2006 Article 49 **Regulation 718/2007 Article 89**

#### **Eligible costs**

- Charges for transnational financial transactions
- Bank charges for opening and administering a separate account(s) - if required by the programme / for the operation
- Legal consultancy fees, notary fees, technical and financial experts, accountancy and audit costs - directly linked to the operation, needed for its preparation or implementation or for accountancy and audit required by the MA
- Cost of bank guarantees if required by national or Community legislation

#### **Ineligible costs**

- Fines, financial penalties and expenditure on legal disputes



## Staff

- Usually involves **salary, taxes and social security**
- Be careful! For the audit trail much documentation is needed: contracts, time sheets, bank transfers, etc.

### Art. 50 Reg. 1828/2006 - public authorities expenditure excluding technical assistance

Eligible costs for professional services provided by a **public authority other than the beneficiary** or by a **public authority which is itself the beneficiary** acting on its behalf

“Eligible if they **do not** arise from statutory responsibilities or its day-to-day management, monitoring and control tasks”



## Overheads/ office and administration costs

- **Overheads normally include:** Office supplies and photocopies, office furniture, electricity, heating, other utilities (water etc), charges for phone, fax and internet services, cleaning, IT support for computers / printers etc., rent if the building is not owned by the host organisation, taxes on the building, insurance for the building
- **Overheads normally do not include:** Costs for snacks, drinks, meals, social events, works of art etc.
- **Do overheads include:** Window cleaning, security guards, plants in offices etc.?



## Overheads / office and administration costs

### ❖ Declared on a real-cost principle:

- Submission of supporting documentation, justification of the share of overhead costs for the project on a prorata basis (according to number of full-time equivalents working on the project, or area dedicated to the project in the institution's premises) Article 56 Regulation 1083/2006

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## Simplified Cost Options

Three options which are available according Art 7(4) 1080/2006 amended by 397/2009

- indirect costs, declared on a flat-rate basis, of up to 20 % of the direct costs of an operation;
- flat-rate costs calculated by application of standard scales of unit cost as defined by the Member State;
- lump sums to cover all or part of the costs of an operation (especially for small project funds / People to people types of actions)

More on simplification:

[http://www.interact-eu.net/regulatory\\_changes/simplified\\_cost\\_options/286/3809](http://www.interact-eu.net/regulatory_changes/simplified_cost_options/286/3809)

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**Depreciation** *(not applicable in IPA CBC)*

Regulation 1828/2006 Article 53

- Expenditure **eligible** if the asset(s) are directly used for an operation and incurred during the period of co-financing
- Acquisition of the asset(s) **cannot be declared as eligible** expenditure



**In-kind contributions** *(not applicable in IPA CBC)*

Regulation 1828/2006 Article 51

**Eligible costs**

- Provision of land or real estate, equipment or raw materials, **research or professional work or unpaid voluntary work**
  - A contribution for which no charge is made
- Value can be independently assessed and audited
  - For land or real estate value certified by independent qualified valuer or equivalent
  - **Unpaid voluntary work** - value of the work to take into account the time spent and the hourly/daily rates of pay for equivalent work



### Common costs/ cost-sharing / project management costs

- Procedures for the eligibility of common costs can be different in each Member State and programme. Partners will have to ask their national controller or contact person in the respect of the method accepted for sharing costs!
- Common costs are normally related to the project's
  - common management and coordination
  - common communication and dissemination
- Common activities and related budgets: **outlined in the approved application form** with partners involved in the common activity, and **indicate their share of the costs** in the related table provided.
- For each common activity a **responsible partner** is to be selected.
  - in charge of the implementation or the subcontracting of the activity according to the relevant National Public Procurement Law on behalf of the whole partnership.



### Common costs/ cost-sharing / project management costs

- Justifiable where **one partner carries out activities on behalf of other partners**
- Relationship between partners is **not a supplier - provider relationship**: No invoices, no VAT, no profit!= sub-contracting between partners is not allowed
- Any payments should be regarded as reimbursements
- Shared costs are still based on real costs
- Where consultants are used for project management, selection must be based on non-discriminatory tendering process



**Revenue-generating project**

Regulation 1083/2006, Art. 55 **Regulation 718/2007 Art. 89, amended by 80/2010**

Any operation involving an investment in infrastructure the use of which is subject to charges borne directly by users;

or

2. Any operation involving the sale or rent of land or buildings;

or

3. Any other provision of services against payment

→ Might lead to the reduction of cofinancing

→ Obligation to **monitor revenue** for ERDF / Cohesion Fund operations of the total cost over 1 000 000 EUR (1341/2008), but many programmes monitor all projects (**for IPA CBC monitor revenue for all projects**)

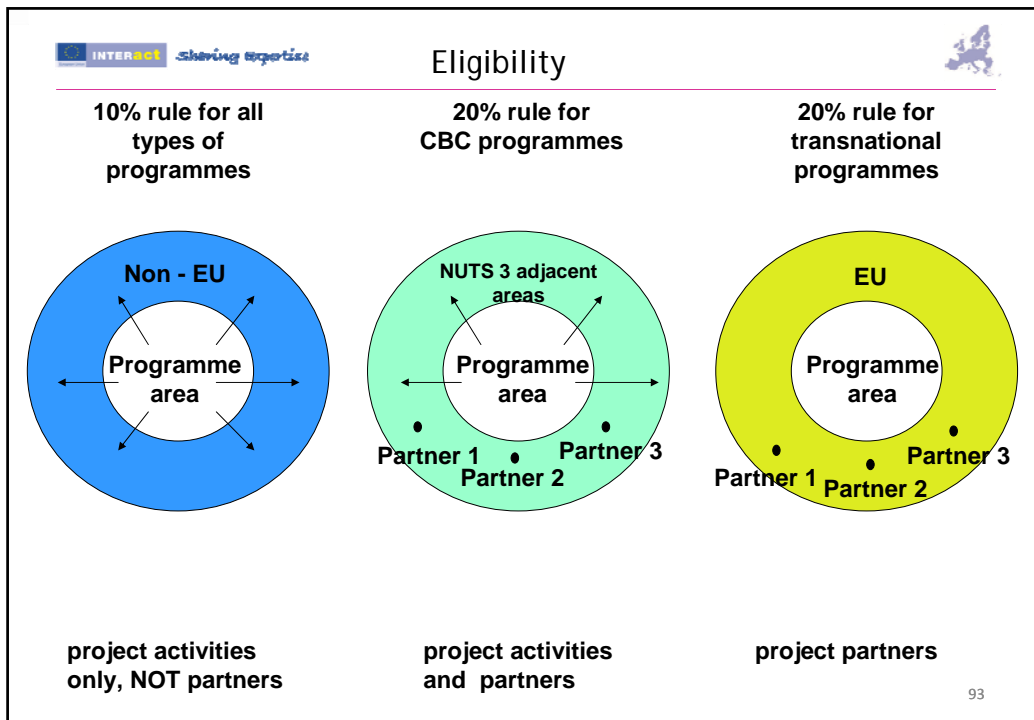
More on revenue generating projects in the COCOF document:


[http://www.interact-eu.net/financial\\_management\\_news/revenue\\_generating\\_projects\\_article\\_55/41/7294](http://www.interact-eu.net/financial_management_news/revenue_generating_projects_article_55/41/7294)



**10% rule vs. 20% rule**

10% rule	20% rule for CBC programmes	20% rule for transnational programmes
Areas inside or outside of programme area but outside of European Community	NUTS 3 areas adjacent to programme area	Outside of programme area, but within European Community
Applicable for project activities	Applicable for project activities and partners	Applicable for project partners
benefit for the European Community regions	partners located outside the programme area eligible if the project would have difficulty in achieving its objectives without that partner's participation	benefit for the regions in the programme area
Article 21.3 and 21.4 of Reg. 1080/2006	Article 21.1 of Reg. 1080/2006 <b>Art. 97 of Reg 718/2007</b>	Article 21.2 of Reg. 1080/2006



INTERACT *Sharing expertise* 

## Eligibility

**10%-20% flexibility rules**  
Regulation 1080/2006 Article 21

- All thresholds **by programme**, not by project. Eg. 10% of the ERDF programme's budget can be spent on activities outside of EU
- some programmes transfer this **programme rule to projects** (i.e. 10% of the project budget)
- Use of these **rules depends on the programme** - check!
- Controllers must verify:
  - That the activity that takes place outside the area of the programme or located outside the EU is described in the application form and there is a provision in the project budget
  - benefit for the regions of the Community / programme is clearly demonstrated in the project proposal

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How does 10% rule functions in practice?

- **Non-EU Partner** does not receive directly any ERDF funds, although can formally participate in the project (depending on the programme)
- **Lead Partner** or **Project Partner** located in the cooperation area ensures proper financial control (First Level Control)
- In some countries the invoices issued outside of the EU did not meet the requirements of **proper audit trail**



Compliance EC & national rules on:

- Public procurement
- State aid
- Publicity and information
- Protection of the environment
- Equal opportunities





## Legal basis of public procurement in ERDF co-financed programmes

- **National rules** implementing the Directive: detail thresholds, deadlines, procedures, etc. - **usual for ETC**
- EU Procurement **Directives 2004/18/EC** and **2004/17/EC** relates to the award of contracts for public works, supplies and services and set up detailed rules for EU-wide competitive tendering procedures
- **EU COM Interpretative Communication 2006/C 179/02** on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directive
- EU COM Guidelines for determining financial corrections in case of non-compliance with the rules of public procurement

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## General Principle:

- Contracting authorities shall treat economic operators **equally** and **non-discriminatorily** and shall act in a **transparent** way.

## Important notice:

- No works project or proposed purchase of a certain quantity of supplies and/or services may be subdivided to prevent its coming within the scope of this Directive.

More on public procurement:

[http://www.interact-eu.net/public\\_procurement/public\\_procurement/436/7267](http://www.interact-eu.net/public_procurement/public_procurement/436/7267)

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One set of rules on both sides of the border

### Legal basis of public procurement in IPA CBC

✓ Commission Decision 2034 from 2007 defining *Rules and procedures for service, supply and works contracts financed from the general budget of the European Communities for the purpose of cooperation with third countries*

Practical Guide to contract procedures for EC external actions (PRAG) - ONLY guidance!



### Definition of State Aid: § 107(1) EC Treaty\*

- “Any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market”

\* Formerly article 87. New numbering reflects the Treaty of Lisbon



- [Activities](#) are considered, not the status of the body applying for funds
- The 'undertaking' definition can apply to private, public and public similar bodies
- There are cases where public bodies are involved in economic activities so they are in no sense exempted from State Aid



In order to be considered State Aid, [a funded activity](#) must fulfil all 5 of the following criteria:

- *[\(1\) Is there a transfer of State resources?](#)* Programmes always involve a grant of public funds. This criterion therefore applies automatically to all projects. [Always yes](#) for cooperation programmes.
- *[\(2\) Are actions selective?](#)* *Do they provide funding to some undertakings but not to all?* All programmes select projects. This criterion therefore applies automatically to all projects. [Always yes](#) for cooperation programmes.



- (3) Do aid recipients receive an economic advantage? The aid must give a specific economic advantage e.g. buying state land at lower than market prices, provision of discounted / free services, privileged access to infrastructure without a fee, risk capital at favourable terms etc. Aid strengthens the relative position of the beneficiary relative to that of its competitors. In many cases this is not true for cooperation projects and programme rules can make economic advantage less likely. Needs to be assessed.
- Key point: Remember this assessment is limited to considering 'undertakings' carrying out an 'economic activity'. In this context economic advantage should be quite clear

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- (4) Is there a (potential) distorting effect on European competition? Yes if the beneficiary is involved in an economic activity and the aid granted strengthens the competitive position by reducing costs in relation to competitors
- (5) Is there a (potential) distorting effect on trade between MS? Most products and services are traded between MS so aid granted to any selected undertaking is capable of affecting trade between MS. This criterion is fulfilled if the beneficiary is involved in an economic activity, operates in a market in which there is trade between MS, and receives an advantage that is sufficient to distort trade between MS.
- The criteria are very widely interpreted: 'Where the benefit is limited, competition is distorted to a lesser extent, but it is still distorted.' [1]
- It should be assumed that where there is advantage, there is a potential to distort competition unless actions are of purely local in impact

[1] T-214/95 Vlaamse Gewest v European Commission [1998] ECR-II 71, para 46

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- The **analysis** of State Aid compliance has to be performed **for each project**, during the Project selection phase, by the Managing Authority resulting to a classification of the projects as high or low risk of state aid compliance



1. Informed risk management
2. De minimis EC 1998/2006
3. General Block Exemption Regulation - Aid scheme
4. General Block Exemption Regulation - Ad hoc aid
5. Existing national schemes
6. Notification to the Commission



- Exclusion of State Aid activities from the programme, eg.
  - Private partners can contribute co-financing (provided private co-financing is included in programme financial tables) but do not receive ERDF (no transfer of funds)
  - Undertakings take part in project activities but do not give or receive funding (not part of formal partnership, no transfer of funds)
- Reduce opportunities for economic advantage:
  - The organisation must act on a real costs basis for all project activities and should not make a profit from its participation
  - All project results are made available to the general public free of charge and the organisation has no ownership or special rights over these results
- Public procurement rules must be respected for all project costs
- These criteria will not rule out all possible cases of State Aid (especially when the beneficiary is not the final recipient)



- De Minimis - 200 000 EUR / 100 000 EUR for public transport companies
  - if activities are found to be “de minimis” relevant, the maximum contribution for the applying body can amount to 200 000 EUR within the last 3 fiscal years (100 000 EUR for transport)
  - example of an undertaking which already had been granted de minimis
 

Year	“De minimis” aid granted
2008	20 000 EUR
2009	50 000 EUR
2010	ERDF contribution cannot exceed 130 000 EUR



- Only look at the GBER once you are sure that an activity really is state aid
- The GBER is intended primarily as a tool for providing direct support
- Territorial Cooperation programmes are not intended to provide direct support to enterprises. Rather they should produce structural change which may involve some support to enterprises
- Even if the programme moves in the direction of welcoming increased participation by enterprises, only in so far as they contribute to wider programme objectives



### 9 categories of compatible aid outlined in GBER

- Regional aid
- SME investment and employment aid
- Aid for female entrepreneurship
- Aid for environmental protection
- Aid for consultancy in favour of SME participation in fairs
- Aid in the form of risk capital
- Aid for research and development
- Training aid
- Aid for disadvantaged and disabled workers



## Preparation of the scheme

- Programme must write down an announcement on the basis of which aid will be granted to one or several undertakings
- Information/conditions which must be included in the announcement:
  - Undertakings are defined in the general and abstract manner
  - Aid to be granted must not be linked to a specific project
  - Aid can be awarded to undertakings for an indefinite period of time and of an indefinite amount
- This announcement must be communicated to the Commission as part of the information submission for the scheme

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## Publicity and information

- Beneficiaries must inform the general public of the role played by the EU in regional development (Art. 69 EC 1083/2006; **Art. 62 EC 718/2007**)
- Implementing rules in EC 1828/2006 Art. 8+9.
- A breach in publicity rules will result in the reduction of the project budget (flat rate)
- Breaches of publicity rules: a common problem spotted in Commission audits - particularly but not only failure to put proper logos on publications

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# EUROPEAN UNION EUROPEAN REGIONAL DEVELOPMENT FUND



## Mediterranean Ports' Contribution to Climate Change Mitigation

**MAIN OBJECTIVES**

To evaluate the contribution of the Mediterranean ports to the different environmental aspects which are involved in climate change and thus develop tools and best practices that can be widely used to mitigate the contribution of Mediterranean ports to climate change, including environmental risks.

**EXPECTED RESULTS**

- Methodology for Climate Change Assessment in Ports: CO<sub>2</sub> Footprint & GHG Emissions in Ports Evaluation Report.
- GHG Emission in Ports Monitoring Tool
- Action Plans to mitigate Port Contribution to Climate Change. Best Practices and Pilot Projects.

**PARTNERS**

Port Authority of Valencia	Port Authority of Livorno
Port Authority of Algeciras Bay	ITE - Electrical Technology Institute.
Port Authority of Marseille	AVEN - Regional Agency of Energy
Luka Koper - Port of Koper	GOLEA - Goriska Local Energy Agency
Port Authority of Piraeus	



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Projet cofinancé par le Fonds Européen de Développement Régional  
Project cofinanced by the European Regional Development Fund



Thank you very much for your attention.

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