

Fact sheet: Complaints procedure (Art. 69(7) CPR)

Period 2021-2027 | Version 2, November 2022

This is the revised fact sheet on the complaints procedure, updating previous guidance in the 2014.2020 period to reflect the position in 2021-2027.

What is the complaints procedure about?

Complaints procedure is, according to Art. 69(7) CPR, an effective arrangement for the examination of complaints concerning the Funds. It means a fair and transparent procedure allowing:

- Firstly, the applicant or beneficiary to file a complaint at any stage of the project life cycle and
- Secondly, any third party to file a complaint on the implementation of the programme or operations thereunder.

Article 69(7) Common Provisions Regulation (CPR):

“Member States shall make arrangements to ensure the effective examination of complaints concerning the Funds. The scope, rules and procedures concerning those arrangements shall be the responsibility of Member States in accordance with their institutional and legal framework. This is without prejudice to the general possibility to address complaints to the Commission by citizens and stakeholders. Member States shall, upon request by the Commission, examine complaints submitted to the Commission falling within the scope of their programmes and shall inform the Commission of the results of these examinations.”

“For the purposes of this Article, complaints cover any dispute between potential and selected beneficiaries with regard to the proposed or selected operation and any disputes with third parties on the implementation of the programme or operations thereunder, irrespective of the qualification of means of legal redress established under national law.”

Why we are discussing it?

During programme implementation, far-reaching decisions are taken first and foremost with the decision about funding or rejecting a project application. The article in CPR does not specify any requirements for the complaints procedure; e.g., against which legally binding decision a complaint can be lodged. Rather, it leaves the responsibility for setting the scope, rules and procedures concerning a complaints procedure to “the responsibility of the Member States in accordance with their institutional and legal framework”. However, the arrangements made by the Member States shall ensure an effective examination of complaints concerning the Funds.

The aspects of effectiveness for complaint management are the following: visibility, timeliness of the process, accessibility, responsiveness, objectivity and fairness, remedy, review, fit for purpose¹.

Reference to the regulations & major novelties

The requirement is in place since the period 2014-20 (see article 74(3) of Regulation (EU) 1303/2013). The requirement is largely unchanged: a complaints procedure has to be in place that should cover the

¹ See also the Study on complaints-handling systems - Regional Policy - European Commission (europa.eu): https://ec.europa.eu/regional_policy/en/information/publications/studies/2018/study-on-complaints-handling-systems

selection of operations and any dispute related to the implementation of the programme or operations thereunder.

Legislative framework:

Article 69(7) of Regulation (EU) 2021/1060 (CPR)

Challenges and frequently asked questions

The requirement to set up a complaints procedure leads to the following main questions:

1. In an Interreg context, more than one Member State is involved in the decision-taking process. This leads to the question of the relation of a programme complaints procedure jointly agreed by several Member States to the national legal framework of the country the managing authority (MA) is located in.
2. Which legal body takes the final and legally-binding decision? Evidently first and foremost the rejection of project proposals will be questioned.
3. What are justified reasons to file a complaint? Is the procedure restricted to technical-formal failures in the decision-taking process (like violations of the principles of transparency, fair and equal treatment, neglecting information, etc.), or does it also include the option to challenge the quality assessment, etc. (related to other 'competing' applications) and hence to put the funding decision into question?

How they are addressed?

Art. 69(7) CPR leaves full flexibility and responsibility to the Member States as regards the scope, rules and procedures concerning the complaints procedure. There is not one single arrangement that fits all. However, they should ensure an effective examination of complaints concerning the Funds. Together with representatives of Interreg programmes, responsible national ministries and the European Commission, Interact has worked out on a draft Harmonised Implementation Tool (HIT) description of a complaints procedure and made it available on the Interact website². The main idea behind this was to develop a unified complaints procedure within a programme for multi-country Interreg programmes.

How does it work in practice?

In short, the complaints procedure follows the following steps:

- The addressee of the legally-binding decision submits the complaint to the MA.
- The MA conducts a technical examination of the complaint and sends it to a Complaints Panel³.
- The Complaints Panel reviews the complaint, not the funding decision, and decides whether or not the complaint is justified.
- If the panel finds the complaint justified, it sends the case back to the Monitoring/Steering Committee (MC/SC) to review the project application and its evaluation and either confirm the initial decision or revise it.

N.B.: The members of the Complaints panel should be independent, impartial, having no conflict of interest. For example in case of a complaint against the MC decision on a project: The Complaints Panel will never take a decision on the project application itself (funding decision), but only if the complaint as such is justified or not. It is then up to the MC/SC to reconsider its original decision. In the best-case scenario, the case is thus solved. But naturally, the addressee of the decision has every right to follow national court procedures in the country where the Managing Authority is located. The latter cannot be excluded by the programme.

² The procedure is available under HIT cooperation tools for 2014-2020 <https://www.interact-eu.net/#o=cooperation-tools/hit>

³ The Complaint Panel is a body established by the programme to review the complaint. Details can be found in Art. 7 of the HIT Complaints Procedure.

The complaint is directed against the decision taken by the MA which is the legal body that issues a positive (subsidy contract) or negative funding decision (rejection). MC/SC are not legal bodies even though they play an essential role in the decision-making process and the complaints procedure, as in the end the funding decision might be returned to and reviewed by the MC.

Reasons to launch a complaints procedure are mostly:

- The reason given to reject the project is evidently wrong (i.e. the justification for the rejection specifies a reason which is simply wrong, the applicant can show evidence of probative value);
- The outcome of the technical and/or quality evaluation of the project application, based on the selection criteria approved by the MC/SC, does not correspond with the information provided by the Lead Partner during the project evaluation and selection process;
- The assessment and selection process failed to comply with requirements stipulated in EU Regulations or specific procedures laid down in the Cooperation Programme, Programme Manual, Call documents etc. that materially affected or could have materially affected the decision⁴.

Good practice example

The programme Central Europe (CE) is considered good practice since it explains clearly the options and proceedings and promotes a clarification as a first stage. The text is taken from the Programme Manual.

Complaints on Project Selection

Request of Technical Information

Following the MA/JS notification to the lead applicant on the MC funding decision, and within the timeframe (14 calendar days) available for submitting a formal complaint (see below), the lead applicant may decide to request technical or legal information concerning the MC decision on its project proposal.

The submission of information requests interrupts the deadline for submitting a complaint (see below) until the day the MA/JS replies to the lead applicant. The lead applicant may indicate the preference for a written or oral answer in the submitted request. Oral answers or explanations will be provided by MA/JS staff in charge of the case.

Past experiences show that technical exchanges on this level between the lead applicant and the MA/JS lead to a fast clarification of concerned cases, thus keeping the administrative burden low. It is therefore strongly recommended to submit a request for technical information prior to launching a formal complaint. If, following the MA/JS answer, the lead applicant is not satisfied with the received additional information, it may still decide to submit a formal complaint.

Formal Complaint

Complaints against the project selection process have to be submitted by the lead applicant on behalf of all project partners via e-mail to the MA within 14 calendar days after the notification of the funding decision of the respective call. Complaints received after this timeframe are rejected. Complaints shall be submitted in English and in written form (scanned letter transmitted by e-mail) to info@interreg-central.eu.

The lead applicant shall clearly specify the specific matter of complaint that is deemed to have occurred during the selection process and include clear references to the relevant programme

⁴ A complaint against a decision of the MA during project implementation based on the subsidy contract concluded between the MA and the Lead Partner follows the rules laid down in the subsidy contract. Complaints related to management verification and audit have to be lodged to the responsible national authority according to the applicable national rules.

documents (Interreg CE IP document, programme manual or other call-specific documents). If a complaint includes an incomplete description of the case, further information may be requested by the MA/JS at any time of the procedure. If information requested is not provided within the period of time as specified in the request (at least 3 working days), the case shall be closed without further investigation.

A complaint on formal and administrative aspects (formal and administrative compliance check of the project proposal, legal status check of applicants, or, where applicable, financial capacity check of private lead applicant) may lead to a review of the concerned assessment. In this case, the MC will make a new assessment. Such assessment is final, binding to all parties and not subject to any further complaint proceedings within the programme⁵ if the complaint is based on the same ground. Based on the MC's assessment, the MA will take the final decision that will be notified to the complainant. *(Annotation: Please note that this decision can become subject of possible judicial review if the applicant is not satisfied)*

A complaint concerning the result of the quality or State aid assessment of the project proposal cannot result in the review of the assessment performed by the MC. However, the lead applicant may request further information from the MA/JS on the assessment performed and the reasons for rejecting the project proposal or considering it as State aid relevant.

(cf. Programme Manual Interreg CENTRAL EUROPE 2021-2027, Version 1 11 I 2021 pp. 50-51)

Reference to the tool

The HIT Complaints Procedure is based on experience and input from different programmes, national responsible authorities, the European Commission and Interact.

HIT Complaints Procedure under [project selection tools for 2014-20](#).

⁵ Annotation: This cannot exclude the option that the decisions taken by the MA based on the MC's assessment are subject to possible judicial review in case the applicant decides to go to court. This might be added in the description of procedures in Manuals.