INTRODUCTION

As of April 2014 (no retroactive effect), new calls for proposals launched by DEVCO included the 2014 version of the PRAG and standard annexes (Concept Note, full proposal, budget, financial and narrative reports, Special and General Conditions, etc.).

The 2014 PRAG is available here. This version has not been significantly revised and comes in addition to the previous running versions: 2007, 2008, 2010, and 2010 (March 2011 update), 2012, 2013 and 2013.1 rev.

This Briefing Note is an attempt by the CONCORD Funding for Development and Relief (FDR) working group to outline the main changes introduced since 2013.1 rev version. It has been prepared by its Financial Regulation subgroup, with Jenny O’Brien from Oxfam GB as main contributor.

Please note that this is a reference document for EU experts.

KEY CHANGES

The 2014 PRAG incorporates the following:

- Changes introduced in the Common Implementing Regulation (CIR)\(^1\), which sets out the implementing rules and procedures for the following funding instruments financed from the 2014-2020 EU general budget – Development Cooperation (DCI), European Neighbourhood (ENI), Pre-Accession II (IPA II), Democracy and Human Rights (EIDHR), Stability and Peace (IcSP), Partnership (PI) and Nuclear Safety (INSC).

- Changes to the financial rules for the European Development Fund (EDF), which are expected to be formally adopted by the time grant agreements are signed under the 2014 PRAG. Changes to the rules of nationality and origin for the EDF in the revised Annex IV to the Cotonou Agreement adopted on 20 June 2014.

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\(^1\) EU Regulation 236/14
Please note that the CIR is not applicable to the European Development Fund, which is an inter-governmental agreement outside the EU budget. The EDF has separate implementing rules but the European Commission (EC) is trying to bring these as much as possible into line with the rules for the general budget.

There has also been a revision of the language and style of the PRAG, based on “clear writing” guidelines.

1. Definition of Affiliated Entities

Reference: See Article 6.1.2 (pages 121-123) of the main PRAG and pages 7 to 9 and 28 of the Guidelines template.

The definitions of “affiliated entities” are completely revised. Only entities that have a structural link, in particular a legal or capital link, may be considered as affiliated entities to an applicant or co-applicant. This structural link will be based on “membership” or “control”:

(a) Membership: The applicant is legally defined as, for example, a network, association or federation in which the proposed affiliated entities also participate, or the applicant participates in the same entity (e.g., network, association) as the proposed affiliated entities.

(b) Control, as defined in Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings. Entities affiliated to an applicant may hence be:

- Entities directly or indirectly controlled by the applicant (daughter companies or first-tier subsidiaries). They may also be entities controlled by an entity controlled by the applicant (granddaughter companies or second-tier subsidiaries) and the same applies to further tiers of control;
- Entities directly or indirectly controlling the applicant (parent companies). Likewise, they may be entities controlling an entity controlling the applicant;
- Entities under the same direct or indirect control as the applicant (sister companies).

As a general rule, the structural link should not be established for the sole purpose of applying for a grant and implementing the project. It should exist before the call for proposals and remain valid after the end of the project.

However, by way of exception, in the case of “sole applicants” an entity may be considered as affiliated to an applicant even if the structural link is established for the sole purpose of implementing the project.

A sole applicant is an entity formed by several entities (a group of entities) which together comply with the criteria for being awarded a grant – for example, an association formed by its members.

The following are not affiliated entities:

- Entities that will enter into a (procurement) contract or sub-contract with an applicant;
- Third parties that will receive financial support from an applicant;
- Entities that cooperate on a regular basis with the applicant on the basis of a memorandum of understanding or share some assets;
- Entities that will sign a consortium agreement under the grant contract.

How to verify the link with the applicant:

Affiliation resulting from membership may in particular be proved from the statutes or equivalent document establishing the entity (network, federation, association) which the applicant constitutes or in which the applicant participates. Affiliation resulting from control can be proved from the consolidated accounts of the group of entities to which the beneficiary and its proposed affiliates belong.

A key change from 2013 is that, if the Contracting Authority is not satisfied with the strength of the structural link between an applicant and its affiliated entity, the affiliated entity may become a co-applicant provided all the necessary documentation for co-applicants is submitted. The application form will obviously need to be revised accordingly.

2. Financial Support to Third Parties

Reference: See page 10 of the Guidelines template, Article 7.1 of the Special Conditions and Article 10.6 of Annex II.

As with the 2013 Guidelines, applicants are required to define in section 2.1.1 of the application form:

- the objectives and results to be achieved with the financial support;
- the different types of activities eligible for financial support, on the basis of a fixed list;
- the types of entities or categories of persons that may receive financial support;
- the criteria for selecting recipients and giving the financial support;
- the criteria for determining the exact amount of financial support for each third entity;
- the maximum amount that may be given.

Under the 2014 PRAG, the information provided will be included in the Special Conditions of the contract in order to avoid any exercise of discretion by grant beneficiaries.

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2 Here and below, the term “applicant” refers to both the lead applicant and the co-applicants.
Budget evaluation
The score for the question (5.1): “Are the activities appropriately reflected in the budget?” is reduced from 10 to five, whilst the score for the question (5.2): “Is the ratio between the estimated costs and the expected results satisfactory?” is increased from five to 10. This places greater emphasis on cost-effectiveness.

5. Changes to the Application Documents
There are no changes to Annex J (on taxes) and no substantive changes to the application form or log-frame. There are two small changes to the budget template:

- It is no longer possible to budget admin on the contingency provision (although it will presumably still be OK to charge admin on costs actually incurred when use of the contingency is agreed). This is also reflected in the financial reporting templates in Annex VI.
- In the estimated costs section of the third spreadsheet, there is now an instruction to include in kind contributions (if allowed under a particular call) as accepted but not eligible costs.

6. Changes to the Standard Contract
There are no changes to Annexes V and IX, and no significant changes to Annexes VI or VII. In addition to those flagged above, changes to the Special Conditions and Annexes II and IV are as follows:

Two further changes in 2014 are:

- Third parties receiving financial support will no longer be subject to the rules of nationality and origin. This is also reflected in Article 10.6 of the General Conditions.
- Financial support to third parties may now be the main purpose of a project under the EDF as well as the EU budget. This is also reflected in Article 7.1 of the Special Conditions.

3. Increased Emphasis on Visibility

Reference: See page 10 of Guidelines template and Articles 15.5 and 17.2 of Annex II to the Standard Contract.

The section on visibility is strengthened, with a strong focus on information dissemination and communication, and the following is added:

Guidelines, page 10: The Applicants must take all necessary steps to publicise the fact that the European Union has financed or co-financed the Action. As far as possible, actions that are wholly or partially funded by the European Union must incorporate information and communication activities designed to raise the awareness of specific or general audiences of the reasons for the action and the EU support for the action in the country or region concerned, as well as the results and the impact of this support.

In addition:

- Article 15.5(g) of Annex II now says that payments may be suspended if the visibility requirements in Article 6 have not been complied with.
- Article 17.2 of Annex II says that the amount of the grant may be reduced if we do not meet the visibility obligations.

4. Full Proposal Evaluation Grid

Reference: See pages 23 and 24 of Guidelines template.

Score for financial and operational capacity

In the 2013 Guidelines, the score out of 20 for financial and operational capacity in the first section of the full proposal evaluation grid was replaced by a requirement for the assessors to answer yes or no to each of the four questions. In the 2014 Guidelines, the score out of 20 is reintroduced with a note that, if the overall score is less than 12 or the score for any of the sub-sections is one or less, the application will be rejected.
6.1 Special Conditions

Under Article 7.2 – Derogations:
- If a derogation has been granted for an organisation to use its own exchange rate procedures, Delegations are instructed to insert the exchange rate to be used for reporting and/or accounting.
- The requirement to report interest on EDF grants and, in some cases, to repay it to the EU is removed. This is also reflected in the financial reporting templates.

6.2 Annex II – General Conditions

- There is a new Article 4.5 under Conflict of Interests and Good Conduct: “The Beneficiary(ies) shall respect human rights and applicable environmental legislation including multilateral environmental agreements, as well as internationally agreed core labour standards.”
- There is a change to Article 7.5 on disposal of assets at the end of a project:

2014 Article 7.5: Unless otherwise clearly specified in the Description of the Action in Annex I, the equipment, vehicles and supplies paid for by the Budget for the Action shall be transferred to the final beneficiaries of the Action, at the latest when submitting the final report.

If there are no final Beneficiaries of the Action to whom the equipment, vehicles and supplies can be transferred, the Beneficiary(ies) may transfer these items to:
- local authorities
- local Beneficiary(ies)
- local affiliated entity(ies)
- another action funded by the European Union
- or, exceptionally, retain ownership of these items.

In such cases, the Coordinator shall submit a justified written request for authorisation to the Contracting Authority, with an inventory listing the items concerned and a proposal concerning their use, in due time and at the latest with the submission of the final report.

In no event may the end use jeopardize the sustainability of the Action or result in a profit for the Beneficiary(ies).

- There is an addition to Article 8.1 stipulating that representatives of the European Commission should be invited to participate in the main project monitoring and evaluation missions.
- There is a revision to Article 9.4. When we make changes to the project or budget, which do not require a formal addendum, we are now required to notify the Delegation in writing and at the latest in the next report.

This is much clearer than the 2013 requirement to notify the changes “without delay”. In its overview of the 2014 changes, DEVCO R3 has indicated that this new approach should also apply to on-going contracts.

Under Article 12.7, if a project is terminated because of force majeure, the Delegation may now agree to cover unavoidable residual expenditure incurred during the notice period.

Article 17.2 on reduced payment for non-delivery of the project is more explicit and now includes non-delivery of visibility activities:

In addition and without prejudice to its right to terminate this Contract pursuant to Article 12, if the Action is implemented poorly or partially - and therefore not in accordance with the Description of the Action in Annex I - or late, the Contracting Authority may, by a duly reasoned decision and after allowing the Beneficiary(ies) to submit its observations, reduce the initial grant in line with the actual implementation of the Action and in accordance with the terms of this Contract. This applies as well with regards to the visibility obligations set out in Article 6.

6.3 Annex IV – Procurement

The procurement principles in Article 1 are expanded (new elements underlined):

- Contracts must be awarded in accordance with procurement rules and procedures:
- Ensuring sufficient transparency, fair competition and adequate ex-ante publicity;
- Ensuring equal treatment, proportionality and non-discrimination;
- Avoiding conflicts of interests throughout the entire procurement procedure.

Under both the CIR and the revised Annex IV to the Cotonou Agreement, supplies\(^3\) may originate from any country if the amount of the supplies to be procured is below €100,000 per purchase.

- In Article 2.4, there is an additional ground for exclusion from participation in procurement contracts – non-compliance with obligations to pay social security contributions or taxes.
- Article 8.6 of the 2013 version, which allowed ECHO FPA organisations that followed the “P” control mechanism to use this mechanism for DEVCO contracts also, is deleted. This is because ECHO has abolished the “P” control mechanism in the new FPA.

\(^3\) Supplies and materials as per revised Annex IV of Cotonou Agreement
7. Rules of Nationality and Origin

TWO VERY IMPORTANT CHANGES:

As is indicated in section 6.3 above, the rule of origin no longer applies to supply purchases below €100,000. However, the rule of nationality for suppliers, service providers and works contractors does still apply.

Please note that, from 1 August 2014, the change in bullet point one and the changes to the rules of nationality and origin for specific budget lines outlined below are applicable not only to contracts financed under the 2014-2020 MFF but also to contracts financed under the 2007-2013 MFF. So the new DCI rules, for example, will apply not only to the 2014-2020 DCI but also to the 2007-2013 DCI. The new ENI rules will also apply to the 2007-2013 ENPI. The changes in the EDF rules will apply to on-going as well as new contracts.

7.1 EU Budget

Reference: See Articles 8 to 11 of the CIR and Annex a2a to the PRAG – Rules on Participation in Procurement Procedures and Grants.

The rules of nationality and origin for most external funding instruments financed from the EU budget are now set out in the Common Implementing Regulation. This applies both to eligibility for grant funding and procurement carried out by grant beneficiaries.

(i) DCI, PI and ENI

Changes from the 2013 PRAG are highlighted in bold. Note that, for the DCI, there are no longer different rules for geographical and thematic funding:

- 28 EU member states
- IPA II beneficiary countries – Albania, Bosnia/Herzegovina, Iceland, Kosovo, Macedonia, Montenegro, Serbia and Turkey
- European Economic Area – Iceland, Liechtenstein and Norway
- Developing countries as per the OECD-DAC list that are not members of the G20 group. Non-eligible G20 members are Argentina, Brazil, China, India, Indonesia, Mexico and South Africa, although South Africa will be eligible if a project is co-financed with the EDF.
- Developing countries as per the OECD-DAC list, which are members of the G20 group, only when they are beneficiary countries of a particular EU programme.
- For projects implemented in a Least Developed Country (LDC) or Highly Indebted Poor Country (HIPC) - OECD member states: Australia, Canada, Chile, Israel, Japan, Korea, Mexico, New Zealand, Switzerland and the US. For regional or global programmes that include at least one LDC or HIPC, the automatic reciprocal access applies to the whole programme. The HIPCs that are not also LDCs are Bolivia, Cameroon, Republic of the Congo, Cote d’Ivoire, Ghana, Guyana, Honduras and Nicaragua.
- For the ENI only - Israel and, for multi-country and cross-border projects, the Russian Federation.

(ii) EIDHR and IcSP

In principle, there are no restrictions of nationality and origin for these instruments, which are fully untied. However, Article 8(7) of the CIR states “Eligibility, as set out in this Title, may be restricted with regard to the nationality, geographical location or nature of the applicants, where such restrictions are required on account of the specific nature and objectives of the action and where they are necessary for its effective implementation”. This means that Delegations will be able to restrict eligibility for in-country EIDHR calls as they did for the 2007-2013 EIDHR.

(iii) IPA II

- 28 EU member states
- IPA II beneficiary countries – Albania, Bosnia/Herzegovina, Iceland, Kosovo, Macedonia, Montenegro, Serbia and Turkey
- European Economic Area – Iceland, Liechtenstein and Norway
- ENI beneficiary countries – Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Occupied Palestinian Territories, Syria, Tunisia and Ukraine.

7.2 European Development Fund (EDF)

Reference: See revised Annex IV to the Cotonou Agreement, adopted on 20 June 2014.

The new rules apply both to eligibility for grant funding and procurement carried out by grant beneficiaries. Changes are highlighted in bold.

- 28 EU member states
- IPA II beneficiary countries – Albania, Bosnia/Herzegovina, Iceland, Kosovo, Macedonia, Montenegro, Serbia and Turkey
- European Economic Area – Iceland, Liechtenstein and Norway
- Developing countries as per the OECD-DAC list, which are not members of the G20 group without prejudice to the status of South Africa. Non-eligible G20 members are Argentina, Brazil, China, India, Indonesia and Mexico.
- For projects implemented in a Least Developed Country (LDC) or Highly Indebted Poor Country (HIPC) - OECD member states: Australia, Canada, Chile, Israel, Japan, Korea, Mexico, New Zealand, Switzerland and the US. ACP HIPCs that are not also LDCs are Cameroon, Republic of the Congo, Cote d’Ivoire and Ghana.
I. KEY DEFINITIONS

Rule of nationality: refers to the nationality of service providers, suppliers and consultants.

Rule of origin: refers to the origin of supplies, equipment and materials. The European Commission defines “origin” as follows: “Goods originating in a country shall be those wholly obtained or produced in that country. Goods whose production involved more than one country shall be deemed to originate in the country where they underwent their last, substantial, economically justified processing or working”. The origin must be certified by a certificate of origin that you should ask the supplier to provide when making the purchase. The certificate of origin must be made out by the competent authorities of the country of origin of the supplies or supplier (such as Chambers of Commerce).

II. KEY CHANGES

As from 15 March 2014, the rules of nationality and origin for most external funding instruments financed from the EU budget have been aligned and are now set out in the Common Implementing Regulation. This applies both to eligibility for grant funding and procurement carried out by grant beneficiaries.

TWO VERY IMPORTANT CHANGES:

The rule of origin no longer applies to supply purchases below €100,000 per procurement contract – including the EDF following the adoption of the revision of Annex IV of the Cotonou Agreement on 20 June 2014. However, the rule of nationality for suppliers, service providers and works contractors does still apply.

From 1 August 2014, the changes to the rules of nationality and origin for specific budget lines outlined below are applicable not only to contracts financed under the 2014-2020 MFF but also to contracts financed under the 2007-2013 MFF. So the new DCI rules, for example, will apply not only to the 2014-2020 DCI but also to the 2007-2013 DCI. The new ENI rules will also apply to the 2007-2013 ENPI as well as the IcSP and IFS. The changes in the EDF rules will apply to on-going as well as new contracts.

III. APPLICABLE RULES OF NATIONALITY AND ORIGIN FOR THE MAIN INSTRUMENTS / PROGRAMMES OF INTEREST TO NGOs


Another relevant DG DEVCO document is titled “Annex A2b1 – EU External Aid Programmes”. To access this document, click here. It has 3 parts:

- A list of the legal bases of EU external assistance programmes

- A section with detailed OECD/ DAC lists of developing countries since 2003. Note that the DAC updates the list regularly and be sure to refer to the list applicable to your contract.


Annexes A2a and A2b1 are available in French (click here) and should be available in Spanish (click here) and Portuguese (click here).

For development projects implemented through NGOs, the rules of nationality and origin for the main instruments are as in the table below.

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6 See Articles 8 to 11 of the CIR which can be found here

7 Supplies and materials as per revised Annex IV of Cotonou Agreement which can be found here
<table>
<thead>
<tr>
<th>Instrument</th>
<th>Programme</th>
<th>Applicable rules of nationality and origin</th>
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<tr>
<td>Development Cooperation Instrument – DCI</td>
<td>Civil Society Organisations and Local Authorities</td>
<td>• The 28 EU countries,</td>
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<tr>
<td>European Neighbourhood Instrument - ENI</td>
<td>Global Public Goods and Challenges (GPGC)</td>
<td>• IPA II beneficiary countries – Albania, Bosnia/Herzegovina, Iceland, Kosovo,</td>
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<td>Partnership Instrument - PI</td>
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<td>Macedonia, Montenegro, Serbia and Turkey</td>
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<td>• Member States of the European Economic Area (Iceland, Liechtenstein, Norway),</td>
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<td>• All developing countries as listed by OECD DAC(^8) that are not members of</td>
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<td>G20 group. Non-eligible G20 members are Argentina, Brazil, China, India,</td>
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<td>• International Organisations</td>
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<td>• Overseas countries and territories – OCTs</td>
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<td>• ENI beneficiary countries – Algeria, Armenia, Azerbaijan, Belarus, Egypt,</td>
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<td>Territories, Syria, Tunisia and Ukraine.</td>
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<td>global actions that include at least one LDC or HIPC, the automatic reciprocal</td>
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<td>access applies to the whole action.</td>
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<td>*** The HIPCs that are not also LDCs are: Bolivia, Cameroon, Republic of the</td>
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<td>Congo, Cote d’Ivoire, Ghana, Guyana, Honduras and Nicaragua.</td>
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<td>Note that these rules apply both to thematic and geographical programmes funded</td>
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<td>from the DCI.</td>
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\(^8\) 2013 list concerning reports for 2012 and 2013. The detailed list of countries is available here.
<table>
<thead>
<tr>
<th>European Instrument for Democracy and Human Rights - EIDHR</th>
<th>Programmes funded under all 5 objectives of the EIDHR.</th>
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<tr>
<td>Instrument contributing to Stability and Peace - IcSP</td>
<td>There are no restrictions of nationality and origin for these instruments, they are fully untied.</td>
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<td>However, Article 8(7) of the CIR states “Eligibility, as set out in this Title, may be restricted with regard to the nationality, geographical location or nature of the applicants, where such restrictions are required on account of the specific nature and objectives of the action and where they are necessary for its effective implementation”. This means that Delegations will be able to restrict eligibility for in-country EIDHR calls as they did for the 2007-2013 EIDHR.</td>
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**Instrument for Pre-accession Assistance - IPA II**

- 28 EU member states
- IPA II beneficiary countries – Albania, Bosnia/Hercegovina, Iceland, Kosovo, Macedonia, Montenegro, Serbia and Turkey
- European Economic Area – Iceland, Liechtenstein and Norway
- ENI beneficiary countries – Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Occupied Palestinian Territories, Syria, Tunisia and Ukraine.

**European Development Fund - EDF**

- The 28 EU Member States
- An ACP state
- IPA II beneficiary countries (Albania, Bosnia/Hercegovina, Iceland, Kosovo, Macedonia, Montenegro, Serbia and Turkey)
- Member states of the European Economic Area (Iceland, Liechtenstein, Norway)
- Overseas countries and territories – OCTs
- All developing countries as per the OECD-DAC list, which are not members of the G20 group without prejudice to the status of South Africa. Non-eligible G20 members are Argentina, Brazil, China, India, Indonesia and Mexico.
- International organisations

** When the project takes place in a Least Developed Country (LCD) or Highly Indebted Poor Country (HIPC) according to the OECD-DAC list, reciprocal access is automatically granted to OECD members. This includes the following additional countries: Australia, Canada, Chile, Israel, Japan, Mexico, South Korea, New Zealand, Switzerland and the United States.

*** ACP HIPC that are not also LDCs are Cameroon, Republic of the Congo, Cote d’Ivoire and Ghana.

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<th>28 EU member states</th>
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<td>IPA II beneficiary countries – Albania, Bosnia/Hercegovina, Iceland, Kosovo, Macedonia, Montenegro, Serbia and Turkey</td>
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<td>European Economic Area – Iceland, Liechtenstein and Norway</td>
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<tr>
<td>ENI beneficiary countries – Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Occupied Palestinian Territories, Syria, Tunisia and Ukraine.</td>
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</table>
I. OTHER REMARKS

- If a project is implemented through an international organisation (via indirect management), all natural and legal persons who are eligible according to the rules of that organization are also eligible for grants and procurement contracts. When a project it is implemented through a partner country (via indirect management) only natural and legal persons according to the EU rules are eligible.

- If a project is implemented within a global, regional or cross-border initiative, all natural and legal persons from countries participating in that initiative are also eligible for grants and procurement contracts. If an action is co-financed by different instruments, the countries identified under any of those Instruments shall be considered eligible for the purpose of that action.

- If the project is co-funded by a third country, then all natural and legal persons eligible according to the rules of that country are also eligible for EDF grants and procurement contracts.

- If the project is funded through a Trust Fund established by the Commission, all natural and legal persons who are eligible according to the trust fund constitutive act are also eligible for grants and procurement contracts.

- Please note that the basic act might contain derogations to the above rules in exceptional cases. For each basic act, specific eligibility provisions may apply. The corresponding rules on nationality and origin are listed in Annex A2 to the Practical Guide. On that base, you might therefore decide to request a derogation to the Contracting Authority: the request must be clearly justified and the Contracting Authority will review each derogation on a case-by-case basis. These can be on the basis of the unavailability of products and services in the markets of the countries concerned or for reasons of extreme urgency of project implementation, if the rules would impede the realisation of the project.

- The rules of eligibility (nationality and origin) laid down in the CIR are applicable to all calls financed under the EU Budget with the exception of calls funded under IPA I. For actions financed under the Budget to which the CIR is not applicable, you should refer to the relevant basic act and the relevant Annexes A2b or A2c for the list of eligible countries.

- Rule of nationality applies from the first Euro spent while the rule of origin only applies for supply purchases above €100 000 per procurement contract as stated in Section II. Key changes.

- The rules of nationality apply for all service, work and supply contracts within grant agreements (Rules of origin apply only to supply and work contracts). However, consultants or experts (freelance or belonging to a service provider) can be of any nationality both for the EDF and EU Budget-funded programmes: The nationality of experts and other natural persons employed or legally contracted does not have to follow the nationality rules as long as they are legally contracted by an eligible contractor or, where applicable, eligible subcontractor.