

DPE 055/18/2015

CIRCULAR 08/2015

NATIONAL ELIGIBILITY RULES FOR EXPENDITURE CO-FINANCED BY THE EUROPEAN REGIONAL DEVELOPMENT FUND (ERDF) UNDER IRELAND'S PARTNERSHIP AGREEMENT 2014-2020

Secretary General,

1. I am directed by the Minister for Public Expenditure and Reform to advise Managing Authorities, Intermediate Bodies, Public Beneficiary Bodies and other Implementing Departments/Bodies of the eligibility rules for the Border, Midland and Western and the Southern and Eastern Regional Operational Programmes co-financed by the ERDF under Ireland's Partnership Agreement 2014-2020.
2. The Circular should be read in association with the Circular on Financial Management and Control Procedures for the European Structural and Investment (ESI) Funds Programmes 2014-2020 to be issued by the Department of Public Expenditure and Reform¹.
3. The Circular sets out the eligibility rules which have been developed in accordance with Article 65 (1) of the Common Provisions Regulation (CPR) (EU) 1303/2013, which states:

The eligibility of expenditure shall be determined on the basis of national rules, except where specific rules are laid down in, or on the basis of, this Regulation or the Fund-specific rules.

4. The eligibility rules shall cover all expenditure declared for Operational Programmes co-financed by the ERDF under the Partnership Agreement for the 2014-2020 programming period and shall be applied when considering items of expenditure to be included in the declarations of expenditure². Any items that do not fall within the scope of these rules should not be included in the declarations of eligible expenditure to be submitted for ERDF funding.

¹ The Circular on Financial Management and Control Procedures to be issued by DPER will indicate that "Circulars dealing with the rules of eligibility of European Structural Funds co-financed expenditure will be issued by the Department of Public Expenditure and Reform in the case of the ERDF and by the Department of Education and Skills in the case of the ESF". The ERDF requirement is met by the issuing of this Circular. It is important to note that this Circular should be read in conjunction with the Circular on Financial Management and Control Procedures when issued by DPER and in particular with the section relating to Eligibility of Expenditure and Expenditure Declarations. Pending issuance of this Circular, these provisions should be read in conjunction with Finance Circular 12/2008, particularly Section 3.

² The Circular on Financial Management and Control Procedures will contain sections dealing with Procedures for the drawdown of ERDF/ESF Funding and Declaration of Statements of Expenditure and applications for payment provide more detail

5. The eligibility rules are set out in Appendix 1 and take account of the EU Regulations, i.e. the CPR (EU 1303/2013)³ and the ERDF Regulation (EU 1301/2013). The main criteria for eligibility are as follows:
- a) Expenditure incurred by a beneficiary and paid between 1st January 2014 and 31st December 2023;
 - b) Expenditure incurred by projects/operations approved by the Managing Authority in accordance with the methodology and criteria adopted by the Monitoring Committee;
 - c) All expenditure must be supported by appropriate documents to ensure an adequate and proper audit trail;
 - d) All EU publicity and information requirements must be adhered to, as outlined in the Information and Publicity guidelines for European Structural and Investment Funds issued in March 2015 by the Department of Public Expenditure and Reform;
 - e) Compliance with the conditions of grant aid as provided in a document setting out the conditions for support for each operation including the specific requirements concerning the products or services to be delivered under the operation, the financing plan, and the time-limit for execution, in accordance with Article 125(3)(c) of the CPR (EU) 1303/2013; and
 - f) All applicable public procurement legislation, including enactments transposing EU Directives, and all associated national procurement guidelines and circulars must be stringently adhered to.
6. There are separate eligibility rules for the ESF Programme for Employability Inclusion and Learning Operational Programme 2014-2020 under the Partnership Agreement. These rules were issued by the Department of Education and Skills in March 2015⁴.
7. Ireland will also participate in ERDF funded cross-border, transnational and interregional Interreg programmes. Separate eligibility rules may be issued by the Managing Authorities for the respective ETC programmes as per Article 18(3) of Regulation (EU) 1299/2013. In the absence of any separate eligibility rules being issued, or for matters not covered by such separate eligibility rules, the National Eligibility Rules set out in this Circular shall apply to expenditure incurred in the State for such programmes except for the specific expenditure categories covered by Commission Delegated Regulation (EU) 481/2014.
8. As currently set out in Finance Circular 12/2008 and as will be restated in the forthcoming Department of Public Expenditure and Reform Circular, the Management and Control system for EU co-financed activities in Ireland is based on the principle of shared responsibilities and delegation through administrative or service level agreements, with each level of the financial management and

³ In particular, Articles 65-71 of the CPR (EU) 1303/2013

⁴ Department of Education and Skills Circular 01/2015

control cascade responsible for ensuring that EU and National rules are adhered to at their own levels. Therefore, the day-to-day responsibility for the implementation of co-financed activities rests with the appropriate statutory bodies, e.g. Government Departments, Agencies, Institutions and Authorities, who are also accountable both to the Oireachtas and to the Comptroller & Auditor General and/or the Local Government Audit Service, as appropriate, for the National/Exchequer contribution to the co-financed activities.

- 9. All bodies in the financial management cascade are required to comply with the requirements of this Circular as failure to abide may lead to the deferment or cancellation of ERDF assistance by the European Commission and result in a loss to the Exchequer for which the relevant Bodies in the Financial Management cascade will have to account.**

- 10.** The “National Eligibility Rules Group” consisting of the Managing and Certifying Authorities will be established by the Department of Public Expenditure and Reform to ensure consistency in the application of these National Eligibility rules. This group will consider issues arising from the implementation and interpretation of the rules and may make recommendations to the Department of Public Expenditure and Reform as appropriate. Further Circulars or guidance documents may issue from time to time in this regard. The proposed National Eligibility Rules or any amendments thereafter will be submitted to the Audit Authority in its role as the Independent Audit Body for its opinion before being formally approved or amended.

- 11.** Finally, any queries on the terms of the Circular should be addressed in the first instance to the relevant ERDF Managing Authorities. All other queries should be addressed to the ERDF Certifying Authority, Department of Public Expenditure and Reform (the contact details are set out in Appendix 2).



Gearoid O'Keefe
Principal
June 2015

Appendix 1

NATIONAL ELIGIBILITY RULES For Expenditure Co-Financed by The European Regional Development Fund (ERDF) Under Ireland's Partnership Agreement 2014-2020.

Rule 1: General Rules on Eligibility

- 1.1 Expenditure shall be eligible for a contribution from the ERDF if it has **been incurred by a beneficiary and paid between** 1 January 2014 and 31 December 2023, subject to the receipt of the goods and services in accordance with the objectives of the project/operation. Projects/Operations shall not be selected for support from ESI funds where they have been physically completed or fully implemented before the initial application for funding under the programme is submitted by the beneficiary to the Managing Authority, via the Public Beneficiary Body and/or Intermediate Body, as appropriate, irrespective of whether all related payments have been made by the beneficiary.
- 1.2 Expenditure shall be eligible for a contribution from the ERDF only where it is incurred for **projects/operations approved by the Managing Authority** of the Operational Programme concerned or under its responsibility, in accordance with criteria set out by the Monitoring Committee and compliant with the conditions of grant aid as provided in a document setting out the conditions for support for each operation including the specific requirements concerning the products or services to be delivered under the operation, the financing plan, and the time-limit for execution, in accordance with Article 125(3)(c) of the Common Provisions Regulation (CPR) (EU) 1303/2013.
- 1.3 Expenditure that becomes eligible as a result of an amendment to a programme shall only be eligible from the date of the submission to the Commission of the request for amendment or, in the event of application of Article 96(11) of the CPR (EU) 1303/2013, from the date of entry into force of the decision amending the programme.
- 1.4 **Proof of expenditure** is always required. To be eligible for a contribution from the ERDF expenditure must be supported by receipted invoices or accounting documents of equivalent probative value, which have a proven link with the projects/operations⁵. Where it is not possible to determine a direct link to the project/operation the link may be established using a methodology agreed and documented between the Managing Authority and the public beneficiary body. Equally, the supporting documentation must provide evidence of reality of the product or service to which the expenditure relates. Effectively, this

⁵ Please note that certain receipts e.g., till receipts submitted, may fade quickly over time. Receipts which are not legible will not be admissible and may need to be either photocopied or scanned before filing.

means that expenditure must be evidenced by documents capable of supporting the accounting records in order to give a true and fair view of the transactions in accordance with accepted accountancy practice. The following is a list of records which meet the standard "document of equivalent probative value":

- a) Original invoice or a version certified to be in conformity with the original on commonly accepted data carriers (see Section 1.7 for further information on commonly accepted data carriers);
- b) Contractor's statement supported by employer representative's payment certificate (public works);
- c) Fee payment request duly certified by project manager;
- d) Payroll record to support salaries and wages claimed. Rates of pay should be justified and certified and the allocation of salaries/wages supported by logs/timesheets;
- e) Travel and subsistence claims duly authorised and in accordance with approved rates, as per Rule 2. Invoices may be used where hotel and meal expenses are claimed in lieu of approved subsistence/per diem rates;
- f) Record of calculation and allocation of overhead charge based on actual expenditure duly incurred and paid by the beneficiary/implementing body, or, based on an approved flat rate, in accordance with Rule 3;
- g) Claim for contribution-in-kind duly assessed and certified as reasonable by the appropriate authority, in accordance with Rule 4.
- h) Salary-related costs (e.g., superannuation) which are an identifiable cost to the project/operation, but remain internal to the declaring body and are accounted for separately in the annual accounts of the declaring body.

1.5 While bank statements or other documentary evidence of funds transfer to suppliers etc. should be available to provide proof of payment (in the cases (a) to (f) above), these alone do not constitute a "document of equivalent probative value" since they do not provide evidence (e.g. of the delivery of the product or service) to support the underlying transaction which generated the payment. In this regard, documents such as purchase orders, supplier statements and delivery dockets can provide secondary support to, but not replace, the documents listed at (a) to (g) above.

1.6 Beneficiaries should also comply with the conditions of the grant as provided in a document setting out the conditions for support for each operation including the specific requirements concerning the products or services to be delivered under the operation, the financing plan, and the time-limit for execution. The rationale for any deviation should be documented and agreed with the Managing Authority.

1.7 In accordance with the instructions to be set out in the Circular on Financial Management and Control Procedures to be issued by DPER ⁶ and Article 140 of the of the CPR (EU) 1303/2013 these supporting documents must be kept in a proper manner and available for the European Commission and the European Court of Auditors for a period of:

- three years from December 31st following the submission of accounts in which the expenditure of the operation has been included where the total eligible expenditure is less than €1,000,000; and
- two years from December 31st following the submission of accounts in which the final expenditure of the completed operation has been included where the total eligible expenditure is greater than €1,000,000.

In line with the provisions of Article 140(1) of the of the CPR (EU) 1303/2013, a managing authority may decide to apply to operations for which the total eligible expenditure is less than EUR 1 000 000 the rule referred to in the second bullet point above relating to operations for which the total eligible expenditure is greater than EUR 1 000 000.

The documents should be kept either as originals or in versions certified to be in conformity with the originals on commonly accepted data carriers. The following are considered commonly accepted data carriers:

- a) Photocopies of original documents;
- b) Microfiches of original documents;
- c) Electronic versions of original documents; and
- d) Documents existing in electronic format only.

1.8 The procedures for certification of conformity of documents with the original document should comply with national legal requirements and can be relied upon for audit purposes. Under the Electronic Commerce Act, 2000⁷ (Sections 17 and 18) electronic originals or electronic copies of original documents are acceptable when retained in electronic form in accordance with the provisions of the Act.

1.9 An operation may receive support from one or more ESI Funds or from one or more programmes and from other Union instruments, provided that the **expenditure item** included in a request for payment for reimbursement by one of the ESI Funds does not receive support from another Fund or Union

⁶ The Circular on Financial Management and Control Procedures to be issued by DPER will contain a section relating to the retention of records and ensuring an adequate audit trail. Pending issuance of this Circular, this provision should be read in conjunction with Section 7 of Finance Circular 16/2008.

⁷ Copy can be found at this address <http://www.irishstatutebook.ie/2000/en/act/pub/0027/index.html>. Section 17 deals with electronic originals and Section 18 deals with retention and production.

instrument, or support from the same Fund under another programme (Article 65(11) of the CPR (EU) 1303/2013).

- 1.10 Support from ESI Funds may be in the form of grants, prizes, repayable assistance or financial instruments, or a combination thereof, in order to provide the bodies responsible with a choice of the most appropriate form of support to address identified needs.
- 1.11 Where expenditure, related to the implementation of an operation, is incurred in a currency other than the Euro, it shall be converted into Euro by the beneficiary using, either;
- a) The exchange rate prevailing at the date of payment (thereby requiring the PBB to include the actual amount paid in the expenditure declaration); or
 - b) An appropriate rate based on the accounting policy of the beneficiary (accepting that the amount declared may not equal the actual amount paid).

The beneficiary organisation has to select one of the two accepted methods for all projects funded under Operational Programmes and the elected method should be applied consistently to all non-Euro transactions included in Expenditure Declarations for all Operations. This cannot be changed during the lifetime of the programme and the elected method for converting non-Euro transactions should be clearly disclosed in the procedures manual of the beneficiary.

- 1.12 By way of **derogation** from these rules, overheads/indirect costs, in-kind contributions and depreciation costs on co-financed assets may, under specific conditions, be treated as eligible expenditure incurred and paid by Beneficiaries in implementing operations. The specific conditions for each of the three derogation categories are set out under Rules 3, 4 and 5.

Rule 2: Salaries, Wages, Travel and Subsistence Costs

- 2.1 If an individual is allocated wholly and exclusively to an ERDF project/operation either by way of documented secondment, assignment, employment contract or equivalent, then the salary or wage costs including employer's PRSI and pension are eligible if based on real costs (e.g., amounts paid to employee/revenue/pension fund (in line with 1.4 (h) above) and not notional costs). In these circumstances, timesheets are not required, but the relevant secondment decision or contract must be available.

- 2.2 Where a person is not exclusively allocated to the project, **Salary and Wage** costs including employer's PRSI and pension incurred in implementing projects/operations are eligible if based on real costs (e.g., amounts paid to employee/revenue/pension and not notional costs), and are recorded in logs/timesheets.
- 2.3 As a general rule, for the purposes of determining staff costs relating to the implementation of an operation, the hourly rate applicable may be calculated by dividing the latest documented annual gross employment costs⁸ by 1,720 hours. Alternatively, a verifiable and auditable methodology which accurately calculates the prevailing working hours based on documentary evidence may be agreed with the Managing Authority
- 2.4 **Travel and subsistence costs** of project staff members must relate to ERDF projects/operations only and beneficiaries must have appropriate documentation to support the costs. The travel and subsistence rates must be appropriate and justifiable (e.g. in line with applicable civil and/or public service rates and rules for public beneficiaries). Claims for mileage should clearly document the details of the journeys being undertaken. Hotel and meal costs may be claimed in lieu of the per diem subsistence rate if evidenced by receipted invoices. However, the total cost should not exceed the equivalent civil/public service subsistence rate, for public beneficiaries. In the case of private beneficiaries, any eligible travel and subsistence paid must be in accordance with the rates specified and approved in the document setting out the conditions for support for each operation including the specific requirements concerning the products or services to be delivered under the operation, the financing plan, and the time-limit for execution issued by the public grant awarding body.

<p>Rule 3: Overheads/Indirect Costs/Flat Rates</p>

- 3.1 Overheads/indirect costs for grants (i.e. not call for tenders) may be eligible where they are based on real costs which relate to the implementation of the project/operation co-financed by ERDF and are allocated pro rata to the project/operation, according to duly justified fair, equitable and verifiable calculation methods agreed with the Managing Authority.
- 3.2 Alternatively in cases where the implementation of an operation gives rise to indirect costs, these costs may, subject to the approval of the Managing

⁸ Annual Gross employment costs includes: the total gross remuneration including any Benefits-in-Kind paid to people in return for work related to the project/operation before deduction of taxes, employee social security contributions, levies, charges, employee pension contributions etc. and employer social security and pension contributions – see EGESIF Guidance Note on Simplified Cost Options (EGESIF 14-0017) for examples:
http://ec.europa.eu/regional_policy/sources/thefunds/fin_inst/pdf/simpl_cost_en.pdf .

Authority, be calculated at a **flat rate** in accordance with Article 68 of the CPR (EU) 1303/2013 in one of the following ways⁹:

- a) a flat rate of up to 25 % of eligible direct costs, provided that the rate is calculated on the basis of a fair, equitable and verifiable calculation method or a method applied under schemes for grants funded entirely by the Member State for a similar type of operation and beneficiary;
- b) a flat rate of up to 15 % of eligible direct staff costs without there being a requirement for the Member State to perform a calculation to determine the applicable rate;
- c) a flat rate applied to eligible direct costs based on existing methods and corresponding rates, applicable in Union policies for a similar type of operation and beneficiary (e.g., Horizon2020 in respect of research operations) and other European Union administered Instruments.

Rule 4: In-Kind Contributions

4.1 Contributions in kind (Article 69(1) of the CPR (EU) 1303/2013), in the form of provision of works, goods, services, land and real estate for which no cash payment supported by invoices, or documents of equivalent probative value, has been made, may be eligible on condition that the eligibility rules of the ESI Funds and the programme so provide and that all the following criteria are fulfilled:

- a) the public support paid to the operation which includes contributions in kind does not exceed the total eligible expenditure, excluding contributions in kind, at the end of the operation;
- b) the value attributed to contributions in kind does not exceed the costs generally accepted on the market in question;
- c) the value and the delivery of the contribution can be independently assessed and verified;
- d) in the case of provision of land or real estate, a cash payment, for the purposes of a lease agreement of a nominal amount per annum not exceeding a single unit of the currency of the Member State, may be made;
- e) in the case of contributions in kind in the form of unpaid work, the value of that work is determined by taking into account the verified time spent and the rate of remuneration for equivalent work.

⁹ See EGESIF Guidance Note on Simplified Cost Options (EGESIF 14-0017) for examples.

The value of the land or real estate referred to in point (d) shall be certified by an independent qualified expert or duly authorised official body and shall not exceed the limit laid down in Rule 7 below.

Rule 5: Purchase cost of tangible fixed assets and depreciation charge

- 5.1 Having regard to the provisions of Department of Finance Circular 02/2004¹⁰, an asset is defined, for the purposes of these National Eligibility rules, as any tangible item with a useful economic life of more than 1 year and a cost of greater than €1,000 (net of VAT).
- 5.2 The **full purchase cost** of an asset (excluding the purchase of land which is dealt with separately under Rule 7), used wholly and exclusively for the co-financed project/operation, can be classified as eligible expenditure and may be charged in full to the project only where:
- a) The asset is purchased within the period of co-financing; and
 - b) The purchase of the asset is the co-funded operation or the asset has a useful economic life less than or equal to the remaining life of the project; and
 - c) Expenditure relates to the purchase or construction of plant and equipment that is to be permanently installed and fixed in the project and that it is treated as capital expenditure in accordance with standard accounting practice.
- 5.3 **In all other cases**, expenditure should be limited to the depreciation charge based on the applicable annual depreciation rates, for an asset directly used for the project/operation can be declared as eligible expenditure for a contribution from the ERDF, provided that the following conditions are met:
- a) the amount of the expenditure is duly justified by supporting documents having equivalent probative value to invoices for eligible costs were reimbursed in the form referred to in point 4.1 (a) above;
 - b) the costs relate exclusively to the period of support for the operation;
 - c) public grants have not contributed towards the acquisition of the depreciated assets.

¹⁰ Available on Department of Finance website: <http://circulars.gov.ie/pdf/circular/finance/2004/02.pdf>

Rule 6: Purchase costs of second-hand equipment
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- 6.1 The purchase of second-hand equipment is eligible provided that it meets the following conditions:
- a) The seller of the equipment shall provide a declaration stating its origin, and confirming that the equipment has not been purchased with the aid of National or Community grants;
 - b) The price of the equipment shall not exceed its market value and shall be less than the cost of similar new equipment; and
 - c) The equipment shall have the technical characteristics necessary for the project/operation and comply with applicable norms and standards.
- 6.2 It should be noted that where the value of second-hand equipment exceeds €1,000 the provisions of Rule 5 also apply.

Rule 7: Land Costs

- 7.1 The purchase cost of land, and any associated costs, is eligible subjects to the thresholds as follows:
- a) The purchase cost of land not built on and land built on for amounts exceeding 10% of the total eligible expenditure for the operation shall not be eligible.
 - b) For derelict sites and for those formerly in industrial use which comprise buildings, that limit shall be increased to 15 %.
 - c) In exceptional and duly justified cases, the limit may be raised above the respective aforementioned percentages for operations concerning environmental conservation.

These provisions are in accordance with Article 69(3)(b) of the CPR (EU) 1303/2013.

The approval of the relevant Managing Authority in consultation with the relevant Certifying Authority must be sought in all instances.

Rule 8: Purchase of real estate
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8.1 The cost of purchase of real estate i.e. buildings already constructed and the land on which they are built, is eligible for co-financing provided there is a direct link between the purchase and the objectives of the project/operation, subject to the following conditions:

- (a) There is a certificate of the value of the property from an independent qualified valuer certifying that the price does not exceed prevailing market values;
- (b) The property shall not have received within the previous ten years a National or Community grant;
- (c) The property shall be used in conformity with the objectives of the project/operation; and
- (d) An apportionment methodology (which must be capable of being independently assessed and audited) must be agreed with the Managing Authority where the real estate is not used exclusively for the project/operation.

The approval of the relevant Managing Authority in consultation with the relevant Certifying Authority must be sought in all instances.

Rule 9: Leasing and Rental Costs

9.1 The leasing/rental costs of projects/operations are eligible when the following conditions are met:

- a) The lease/rental costs are **exclusively related** to the ERDF co-financed project/operation, and are incurred within the period of eligibility of the project/operation;
- b) The lease/rental costs are **exclusively related** to the ERDF co-financed project/operation, but the lease/rental period exceeds the period of eligibility of the project/operation, only those costs incurred within the project eligibility period are eligible;
- c) If the lease/rental costs are **not exclusively related** to the project/operation, then the lease/rental costs are ineligible, but may be claimed as an overhead/indirect cost if all the conditions set out under Rule 3 above are met; and

- d) The maximum amount of ERDF eligible expenditure shall not exceed the market value of the asset leased/rented as supported, where possible, by a receipted invoice or an accounting document of equal probative value detailing the purchase cost to the lessor of the asset being leased/rented.

Rule 10: Financial & Legal Charges

10.1 The financial/legal charges of projects/operations are eligible only in the following circumstances:

- a) charges for transnational financial transactions¹¹;
- b) the bank charges for opening and administering a bank account or accounts, where the implementation of an project/operation requires a separate bank account or accounts to be opened;
- c) legal consultancy fees, the costs of technical and financial experts and accountancy and audit costs, if they are directly linked to the co-financed project/operation and are necessary for its preparation or implementation, including professional advices sought in advance of project approval on issues related to implementation (e.g., legislation on procurement); and
- d) the cost of guarantees, not including interest on debt, provided by a bank or other financial institutions to the extent to which the guarantees are required by national or Community legislation.

Rule 11: Technical Assistance

11.1 The technical assistance costs¹² covering the following actions are eligible:

- a) For the preparation, management, monitoring, evaluation, information and communication, networking, complaint resolution, and control and audit;

¹¹ These include all financial transactions outside the state.

¹² Article 59 of the CPR (EU) 1303/2013 – **Technical assistance at the initiative of the Member States**
“... the ESI Funds may support actions for preparation, management, monitoring, evaluation, information and communication, networking, complaint resolution, and control and audit. The ESI Funds may be used by the Member State to support actions for the reduction of the administrative burden on beneficiaries, including electronic data exchange systems, and actions to reinforce the capacity of Member State authorities and beneficiaries to administer and use those Funds. The ESI Funds may also be used to support actions to reinforce the capacity of relevant partners in line with point (e) of Article 5(3) and to support exchange of good practices between such partners. The actions referred to in this paragraph may concern previous and subsequent programming periods”.

- b) For the reduction of the administrative burden on beneficiaries, including electronic data exchange systems,
- c) To reinforce the capacity of Member State authorities and beneficiaries to administer and use the ESI Funds; and
- d) To reinforce the capacity of relevant partners in line with point (e) of Article 5(3) of the CPR (EU) 1303/2013 and to support exchange of good practices between such partners.

11.2 These actions include the following:

- a) Costs relating to the preparation, selection, appraisal and monitoring of the assistance and of projects/operations;
- b) Costs relating to meetings of monitoring committees (Partnership Agreement and OPs) and sub-committees relating to the implementation of assistance on an apportioned or actual cost basis, as appropriate. This expenditure may also include the costs of experts and other participants in these committees, including third-country participants, where the chairperson of such committees considers their presence essential to the effective implementation of the assistance;
- c) Costs relating to audits and management checks of Managing Authorities, Intermediate Bodies, Public Beneficiary Bodies and projects/operations;
- d) Expenditure relating to studies, seminars, information and publicity actions and evaluation;
- e) The development, hosting, maintenance and support of the EU Structural Funds 2014-2020 IT Systems to meet the e-cohesion requirements of the Cohesion Regulations;
- f) The acquisition, installation, hosting, maintenance and support of computerised systems for management, monitoring and evaluation, including electronic data exchange systems. Depreciation costs may be claimable if all the conditions set out under Rule 5 are met;
- g) As there is a clear and demonstrable link between programmes of the 2014-2020 period and those of the 2007-2013 period in terms of geographical scope, fields of intervention and administrative systems regarding management and control; technical assistance costs relating to the 2007-2013 period e.g. closure, may be eligible under the 2014-2020 programming period. On a similar basis, programme planning and preparations for the new round of funding 2021-2027 programme period may also be eligible;
- h) Costs relating to activities to ensure assistance from the funds is consistent and complementary with other financial instruments of the Union, particularly in relation to the ESF, ERDF, EMFF, EAFRD and ETC programmes may also be eligible subject to approval from the relevant

Managing Authority in consultation with the relevant Certifying Authority and,

- i) Other Technical Assistance and Capacity Building activities as specified in the ERDF Operational Programmes.

11.3 As set out in Article 119 of the CPR (EU) 1303/2013, the amount of funds allocated to technical assistance shall be limited to 4% of the total amount of the funds allocated to the Member State Operational Programme under each category of region.

Rule 12: Joint support from the Funds under the Investment for growth and jobs goal
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12.1 The Funds may jointly provide support for operational programmes under the Investment for growth and jobs goal in a complementary manner. This is subject to

- a) a limit of 10 % of Union funding for each priority axis of an operational programme;
- b) a part of an operation for which the costs are eligible for support from the other Fund on the basis of eligibility rules applied to that Fund; and
- c) such costs are necessary for the satisfactory implementation of the operation and are directly linked to it.

This is in accordance with Article 98 (1) and (2) of the CPR (EU) 1303/2013.

Rule 13: Repayable Assistance

13.1 Repayable assistance¹³ paid by a Public Beneficiary Body (PBB) is eligible when the following conditions are met:

- a) Repayable assistance may only be used to fund activities which have the prior written approval of the Managing Authority, in consultation with the Certifying Authority;
- b) The support repaid to the body that provided it (usually the PBB) or to another competent Authority of the Member State, shall be kept in a separate account or separated with accounting codes and re-used for

¹³ "Repayable Assistance" is assistance provided under the Operational Programmes to eligible recipients which must be refunded in accordance with agreed schedules e.g. repayable grants issued by Local Enterprise Offices.

the same purpose or in accordance with the objectives of the programme;

- c) Repayable Assistance only becomes eligible expenditure when it is actually paid out by the PBB;
- d) Repayments received in respect of aid/grants issued are disregarded for the purpose of subsequent expenditure declarations;
- e) Income received in respect of deposit interest earned on the repayable assistance account must be re-used for the original purpose of the fund, as per (g) below
- f) Grants subsequently funded (recycled) by the repayable assistance accounts are not included in any subsequent expenditure declarations;
- g) Disbursement by the PBB from the repayable assistance accounts to grant-assist further projects must respect the same EU rules/regulation on eligibility, publicity, environment protection, state aids etc.; and
- h) The PBB is obliged to control and ensure that the ERDF related returns were used for the purpose of the assistance.

Rule 14: Net Revenue Generating Projects and Receipts
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- 14.1 This section applies to operations which generate net revenue after their completion (Article 61 of the CPR (EU) 1303/2013). Net revenue means cash in-flows directly paid by users for the goods or services provided by the operation, such as charges borne directly by users for the use of infrastructure, sale or rent of land or buildings, or payments for services less any operating costs and replacement costs of short-life equipment incurred during the corresponding period. Operating cost-savings generated by the operation shall be treated as net revenue unless they are offset by an equal reduction in operating subsidies. Where not all the investment cost is eligible for co-financing, the net revenue shall be allocated pro rata to the eligible and non-eligible parts of the investment cost.
- 14.2 The eligible expenditure of the operation to be co- financed from the ESI Funds shall be reduced in advance taking into account the potential of the operation to generate net revenue over a specific reference period that covers both implementation of the operation and the period after its completion.
- 14.3 The potential net revenue of the operation shall be determined in advance by one of the following methods chosen by the managing authority for a sector, subsector or type of operation:

- a) application of a flat rate net revenue percentage for the sector or subsector applicable to the operation as defined in Annex V of the CPR (EU) 1303/2013 or subsequent delegated acts
- b) calculation of the discounted net revenue of the operation, taking into account the reference period appropriate to the sector or subsector applicable to the operation, the profitability normally expected of the category of investment concerned, the application of the polluter-pays principle and, if appropriate, considerations of equity linked to the relative prosperity of the Member State or region concerned.

Where the method referred to in point (a) is applied, all the net revenue generated during implementation and after completion of the operation shall be considered to be taken into account by the application of the flat rate and shall therefore not be deducted subsequently from the eligible expenditure of the operation.

When a flat rate for a new sector or subsector has been established by the adoption of a delegated act by the Commission, a managing authority may choose to apply the method set out in point (a) of the first subparagraph for new operations in relation to the sector or subsector concerned.

Where the method in point b) is applied, the net revenue generated during implementation of the operation, resulting from sources of revenue not taken into account in determining the potential net revenue of the operation, shall be deducted from the eligible expenditure of the operation, no later than in the final payment claim submitted by the beneficiary.

- 14.4 The method by which the net revenue is deducted from the expenditure of the operation included in the request for payment submitted to the Commission shall be determined in accordance with national rules.
- 14.5 As an alternative to the application of the methods laid down in paragraph 3 above, the maximum co-financing rate may, at the request of a Member State, be decreased at the moment of adoption of a programme for a priority or measure under which all operations supported under that priority or measure could apply a uniform flat rate in accordance with point (a) of the first subparagraph of paragraph 3. The decrease shall be not less than the amount calculated by multiplying the maximum Union co-financing rate applicable under the Fund-specific rules by the relevant flat rate referred to in point (a) of the first subparagraph of paragraph 3.

Where this method is applied, all net revenue generated during implementation, and after completion, of the operation shall be considered to be taken into account by application of the decreased co- financing rate and

shall therefore not be deducted subsequently from the eligible expenditure of the operations.

14.6 Where it is not objectively possible to determine the revenue in advance based on any of the methods set out above, the net revenue generated within three years of the completion of an operation, or by the deadline for the submission of documents for programme closure fixed in the Fund-specific rules, whichever is the earlier, shall be deducted from the expenditure declared to the Commission.

14.7 Paragraphs 14.1 to 14.6 do not apply to:

- a) operations or parts of operations supported solely by the ESF;
- b) operations whose total eligible cost before application of paragraphs 1 to 6 does not exceed EUR 1 000 000;
- c) repayable assistance subject to an obligation for full repayment and prizes;
- d) technical assistance;
- e) support to or from financial instruments;
- f) operations for which public support takes the form of lump sums or standard scale unit costs;
- g) operations implemented under a joint action plan; and
- h) Operations for which amounts or rates of support are defined in Annex II to the EAFRD Regulation.

14.8 In addition, paragraphs 14.1 to 14.6 do not apply to operations for which support under the programme constitutes:

- a) de minimis aid;
- b) compatible State aid to SMEs, where an aid intensity or an aid amount limit is applied in relation to State aid;
- c) compatible State aid, where an individual verification of financing needs in accordance with the applicable State aid rules has been carried out.

14.9 Receipts (other than revenues received after their completion referred to in paragraph 14.1 above) for the purpose of ERDF co-financed operations are income received during the implementation of co-financing (e.g. training/enrolment fees) or other income which reduces or off-sets the amount of co-financing under the structural funds that is required for the operation. In accordance with Article 65(8) of the CPR (EU) 1303/2013, these receipts must be deducted from the operation's eligible expenditure (either in full or pro-rata, as appropriate) prior to the final declaration of eligible expenditure on the operation to the Managing Authority, with the exception of:

- (a) technical assistance;

- (b) financial instruments;
- (c) repayable assistance subject to an obligation for full repayment;
- (d) prizes;
- (e) operations subject to the State aid rules;
- (f) operations for which public support takes the form of lump sums or standard scale unit costs provided that the net revenue has been taken into account ex ante;
- (g) operations implemented under a joint action plan provided that the net revenue has been taken into account ex ante;
- (h) operations for which amounts or rates of support are defined in Annex II to the EAFRD Regulation;
- (i) operations for which the total eligible cost does not exceed EUR 50 000; or
- (j) payments received on foot of contractual penalties arising from a breach of contract between the beneficiary and a third party or third parties or that has occurred as a result of the withdrawal of an offer by a third party chosen under public procurement rules.
- (k) Statutory Publications
- (l) Refundable Deposits

Rule 15: Value Added Tax (VAT)

- 15.1 The cost of VAT is eligible only in circumstances where such VAT is not recoverable under national VAT legislation (Article 69(3)(c) of the CPR (EU 1303/2013)).

Rule 16: Sub-contracting Costs

- 16.1 Sub-contracting costs are eligible where the sub-contracting does not add to the cost of execution of the project/operation, without adding proportionate value to it.
- 16.2 Sub-contracts with intermediaries or consultants in which the costs are defined as a percentage of the total eligible cost of a project/operation are not eligible unless such costs are justified by the beneficiary by reference to the actual value of the work or services provided. If such justification cannot be provided the costs for sub-contracting are not eligible.

Rule 17: Location of operation
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17.1 As a general rule, operations not located in the programme area are ineligible, with the exception for projects/operations approved by the Managing Authority in writing, in consultation with the Certifying Authority, and that meet the following conditions in accordance with Article 70 of the CPR (EU) 1303/2013:

- a. the operation is for the benefit of the programme area;
- b. the total amount allocated under the programme to operations located outside the programme area does not exceed 15 % of the support from the ERDF, Cohesion Fund and EMFF at the level of the priority, or 5 % of the support from the EAFRD at the level of the programme;
- c. the monitoring committee has given its agreement to the operation or types of operations concerned;
- d. the obligations of the authorities for the programme in relation to management, control and audit concerning the operation are fulfilled by the authorities responsible for the programme under which that operation is supported or they enter into agreements with authorities in the area in which the operation is implemented.

Appendix 2

Contact Points for further information

Any queries from Intermediate and Public Beneficiary Bodies on the terms of the Circular should, in the first instance, be addressed to the relevant Managing Authorities;

Northern and Western Regional Assembly (as successor to the BMW Regional Assembly¹⁴)

The Square,
Ballaghaderreen,
Co Roscommon.
Telephone: 094 9862970

www.nwra.ie

Southern Regional Assembly (as successor to the S&E Regional Assembly¹⁵)

Assembly House,
O'Connell Street,
Waterford.

Telephone: 051 860700

www.southernassembly.ie

All other queries should be addressed to the ERDF Certifying Authority;

Ms. Patricia Hennessy
Department of Public Expenditure and Reform,
7-9 Merrion Row,
Dublin 2.
Telephone 01 6045737
E-mail address patricia.hennessy@per.gov.ie.

¹⁴ As specified in the Local Government Reform Act, 2014

¹⁵ *ibid*