COMMISSION DECISION

of 23 April 1997

modifying the decisions approving the Community support frameworks, the single programming documents and the Community initiative programmes in respect of Sweden

(Only the Swedish text is authentic)

(97/331/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments ([1]), as last amended by Regulation (EC) No 3193/94 ([2]), and in particular the fourth subparagraph of Article 8 (5), the third subparagraph of Article 9 (9), the third subparagraph of Article 10 (3.3), Article 11 and the third subparagraph of Article 11 (a) (6) thereof,

Having regard to Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments ([3]), as last amended by Regulation (EC) No 3193/94, and in particular Article 8 (3), the last subparagraph of Article 10 (1), Article 11 and Article 14 (3) thereof,

Whereas Article 1 of Council Regulation (EEC) No 4254/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the European Regional Development Fund ([4]), as amended by Regulation (EEC) No 2083/93 ([5]), specifies the type of operations the ERDF may help finance;

Whereas Council Regulation (EEC) No 4255/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the European Social Fund ([6]), as amended by Regulation (EEC) No 2084/93 ([7]), specifies in Article 1 the type of operations which may receive ESF financing and in Article 2 eligible expenditure;

Whereas Article 1 of Council Regulation (EEC) No 4256/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the EAGGF Guidance Section ([8]), as amended by Regulation (EEC) No 2085/93 ([9]), specifies the type of measures which the EAGGF Guidance Section may help finance;

Whereas Council Regulation (EEC) No 2080/93 of 20 July 1993, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the Financial Instrument for Fisheries Guidance ([10]), specifies in Article 1 the type of measures which may receive FIFG financing as well as in Article 5 and in Regulation (EC) No 3699/93 of 21 December 1993 specifying the criteria and conditions of forms of assistance for structural purposes in the fisheries and aquaculture sectors as well as the processing and marketing of their products ([11]), as last amended by Council Regulation (EC) No 25/97 ([12]), the criteria and conditions of forms of assistance;

Whereas the Council (Economic and Financial Affairs) of 11 March 1996, in its discussions on the discharge to be given in respect of the 1994 budget, called for all sources of uncertainty regarding the eligibility of expenditure to be eliminated so as to guarantee that the best possible use be made of Community resources, in accordance with the

([1]) OJ No L 185, 15. 7. 1988, p. 9.
([2]) OJ No L 337, 24. 12. 1994, p. 11.
([3]) OJ No L 374, 31. 12. 1988, p. 1.
([4]) OJ No L 374, 31. 12. 1988, p. 15.
([5]) OJ No L 193, 31. 7. 1993, p. 34.
([6]) OJ No L 374, 31. 12. 1988, p. 21.
([7]) OJ No L 193, 31. 7. 1993, p. 39.
([8]) OJ No L 374, 31. 12. 1988, p. 25.
([9]) OJ No L 193, 31. 7. 1993, p. 44.
([10]) OJ No L 193, 31. 7. 1993, p. 1.
([11]) OJ No L 346, 31. 12. 1993, p. 1.
([12]) OJ No L 6, 10. 1. 1997, p. 7.

regulations in force [1]; whereas in order to clarify the situation as regards the eligibility of expenditure, for the Member States as well as for the beneficiaries, it is appropriate to incorporate the Annex attached, drawn up in partnership with the Member States, in the different decisions approving Community support frameworks, the single programming documents, and the Community initiative programmes currently in operation;

Whereas in order to respect the principle of legitimate expectation only the provisions of this Annex which impose no new charge or condition on Member States or on beneficiaries can be applied in respect of projects already selected;

Whereas the Commission will apply this decision fully respecting the institutional, legal and financial characteristics and competence of the Member States in the context of partnership;

Whereas this Decision is in accordance with the opinion of the Management Committee for Agricultural Structures and Rural Development and the Standing Committee on Fisheries Structures;

After consultation of the Advisory Committee on the Development and Conversion of Regions and the Committee pursuant to Article 124 of the Treaty,

HAS DECIDED AS FOLLOWS:

Article 1

1. The Annex to the present Decision [2] comprises an integral part of the decisions approving Community support frameworks, single programming documents, and Community initiative programmes.

2. To the extent that the provisions of the Annex impose new or complementary charges or conditions on Member States or beneficiaries, they shall apply only to investments, operations, measures and projects comprising part of the forms of assistance mentioned in the first paragraph and selected after 1 May 1997.

Article 2

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels, 23 April 1997.

For the Commission

Anita GRADIN

Member of the Commission

[1] Recommendation of the Council of 11 March 1996 on the discharge of 1994, point 3, Chapter 4 (ERDF).

[2] See page 31 of this Official Journal.

ANNEX

Datasheets on eligibility of expenditure within the framework of the Structural Funds

CONTENTS

Number of datasheet	Title
1	Definition of 'final beneficiary' of assistance
2	Period of eligibility
3	Validity of the commitment at Member State level
4	Details on the principle of real cost
5	Overhead allocation
6	Depreciation
7	National part-financing in kind
8	Bookkeeping of bank interest earned on Community advances
9	Bookkeeping entries of other receipts
10	Financial, banking and legal charges
11	Costs of bank guarantees
12	Purchase of second-hand equipment
13	Purchase of land
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15	VAT and other taxes and charges
16	Alternative financing of part-financed projects
17	Current operations/restructuring of company balance sheets
18	Financial engineering: guarantee funds
19	Financial engineering: venture-capital funds
20	Leasing
21	Schemes involving refundable aid
22	Costs incurred by public administration, including salaries of Member States' civil servants

Datasheet No 1

Eligibility of expenditure under the Structural Funds

DEFINITION OF 'FINAL BENEFICIARY' OF ASSISTANCE

GENERAL RULE:

'Final beneficiaries' are:

— *public or private bodies or firms responsible for commissioning works,*

— *in the case of aid schemes and aid granted by bodies designated by the Member States, bodies which grant such aid.*

The bodies in question collect the financial information (list of receipted invoices or accounting documents of equivalent probative value).

(Point 6 of the financial implementation provisions).

The final beneficiaries or categories of final beneficiaries for the purposes of the Regulations and point 6 of the financial implementation provisions shall be identified at the level of the measure or, where applicable, the sub-measure, in all programming documents submitted to the Commission for decision and approval.

SPECIFICATIONS:

1. **Case of measures implying the grant of small individual amounts to a large number of private small-scale projects**

1.1. For reasons of practical implementation, when the operation concerns the grant of small individual amounts to a large number of small-scale private projects (not included in an aid-scheme), the last body responsible for paying out the funds to these projects may be considered to be the final beneficiary.

For example

— *for EAGGF Guidance Section: operations part-financed in accordance with Regulations (EEC) No 866/90 and (EEC) No 867/90 and similar operations,*

— *for FIFG: operations part-financed in accordance with Council Regulation (EEC) No 3699/93 and similar to those part-financed under Regulation (EEC) No 866/90.*

1.2. In the special case of the Leader Community initiative, the local action groups are considered to be the final beneficiaries instead of the rural operators promoting the part-financed projects, in terms of the commitment to be made. However, it is the expenditure actually incurred by those rural operators promoting the part-financed projects (and not the payments made by the local action groups to these rural operators) that must be taken into consideration.

2. **Case of aid schemes [1] and aid granted by designated bodies**

In the case of aid schemes implemented and aid granted by bodies designated by the Member States, the final beneficiaries are the bodies which grant the aid irrespective of any financial transfers made via intermediaries. 'Expenditure actually incurred' is the payments made to each final recipient of the assistance, irrespective of the abovementioned financial transfers.

PARTICULAR RULES FOR FUNDS:

— **ESF:**

Under the ESF, the final beneficiary is the body or firm, either public or private, responsible for the organization and for implementation of the operations described in Article 1 of the ESF Regulation.

When operations are not carried out (in part or in full) directly by the final beneficiary, but are 'subcontracted' to a lower level, it is the public or private body which has awarded the subcontract which remains the final beneficiary and which assumes responsibility for all expenditure for the implementation of the operations (works).

Sources:

— Framework Regulation (Article 5 (2) (c)).
— Coordination Regulation (Article 21 (3)).
— ERDF Regulation (Article 6).
— Financial implementation provisions applicable to assistance (points 6, 7, 10, 13 and 14).
— EC Treaty (Article 92).

[1] State aid means any aid granted by the State in the sense of Article 92 (1) of the EC Treaty, such as for example public aid falling within a pre-established framework and granted on the basis of general criteria defined in advance, and which has the effect of providing firms with an economic or financial advantage from which they would not benefit in the course of their normal activity and alleviates the usual charges which place a strain on their budget. Which the exception of those cases which come under the de *de minimis* rule, these schemes must be notified to the Commission, irrespective of the purpose of the aid.

Datasheet No 2

Eligibility of expenditure under the Structural Funds

PERIOD OF ELIGIBILITY

GENERAL RULE:

1. **Initial time limit for eligibility**

1.1. The initial time limit for eligibility is laid down in the rules only as regards expenditure actually incurred by final beneficiaries.

1.2. Under the terms of Article 15 (2) of the Coordination Regulation, and subject to Article 33, the starting date for the eligibility of expenditure actually incurred by the final beneficiary is the date on which the Commission receives the corresponding assistance application from the Member State.

1.3. According to the Regulations, there is no initial deadline for commitments.

1.4. In the case of projects for which commitments were entered into before the starting date of the form of assistance (FA), i. e. the date on which the Commission receives the assistance application from the Member State, the expenditure incurred for these projects/actions is eligible if the two following conditions are met:

— this expenditure has not been incurred before the date on which the corresponding application reaches the Commission (Article 15 (2) of the Coordination Regulation),

— these projects/actions (i. e. those selected by the designated authority for the implementation of the FA) will have been included in accordance with the correct procedure in the FA before the final date for commitments.

1.5. The exceptional retroactivity provided for in Article 33 of the Coordination Regulation applies for applications for assistance received between 1 January and 30 April 1994 (between 1 January and 30 April 1995 for the new Member States).

Retroactivity is also provided for in a specific transitional provision in Article 19 (1) of Council Regulation (EEC) No 866/90, as amended by Regulation (EC) No 3669/93. This provides that Article 15 (2) of Regulation (EEC) No 4253/88 shall not apply when certain operations, introduced but not aided in the previous programming period, are included in the 1994 to 1999 programmes.

The same provisions concerning retroactivity are also applicable to projects submitted in the framework of Council Regulations (EEC) No 4028/86 and (EEC) No 4042/89, in accordance with Article 9 of FIFG Regulation (EEC) No 2080/90.

For all the other cases, the general rules applies, i. e. eligibility starts from the date of receipt of the assistance application, even if this date is before 1 January 1994 (beginning of the current programming period), or before 1 January 1997 (second programming period Objective 2).

2. **Final time limit for eligibility**

2.1. The deadline for commitments is specifically mentioned in the Commission Decision approving the FA, and relates to the legal and financial commitments (see sheet on the commitment principle). This deadline for commitments can be extended by the Commission at the special request, duly justified, of the Member State.

2.2. The deadline for the acceptance of expenditure, specifically mentioned in the Commission Decision approving the FA, relates to payments made by the final beneficiaries (point 5 of the financial implementation provisions) and consequently does not relate to contributions paid by national authorities to the final beneficiaries. This deadline for payments can be extended by the Commission at the special request, duly justified, of the Member State.

3. **Other aspects**

3.1. The Member State must certify that these deadlines were met when it makes its expenditure statement on the basis of Articles 15 and 21 (4) of the Coordination Regulation.

3.2. When implementation of a project overlaps two programming periods, a separate description of the project must be clearly drawn up for each period concerned, and the project divided into at least two distinct financial and if possible physical stages corresponding to the two FAs concerned, in order to ensure transparent implementation and monitoring and to facilitate controls.

3.3. The Commission may agree, in the framework of the partnership, to more specific rules concerning the period of eligibility than those provided for above.

PARTICULAR RULES FOR CERTAIN FUNDS:

— **ESF**

expenditure not yet incurred at the time of the closure of the annual instalment

Given the fact that the ESF proceeds to an annual closure of instalments, it can be accepted that for certain current expenses (e. g. gas, electricity, telephone, etc.) the corresponding invoices may be taken into consideration for the settlement of payments beyond the end of the calendar year if actually paid by the final beneficiary before the subsequent submission of the final claim by the Member State (within six months).

Sources:

— Financial Regulation (Article 1 (7)).
— Coordination Regulation (in particular Articles 15 (2), 21 (4) and 33 (2)).
— Financial implementation provisions applicable to assistance (FIPs).
— Commission decisions granting assistance.

Datasheet No 3

Eligibility of expenditure under the Structural Funds

VALIDITY OF THE COMMITMENT AT MEMBER STATE LEVEL

GENERAL RULE:

'Legally binding arrangements' and 'requisite financial commitments' comprise the decisions taken by the final beneficiaries to implement eligible operations and the allocation of the corresponding public funds (point 4 of the financial implementation provisions).

The commitment at Member State level must include the commitment entered into by the final beneficiary. This commitment must be legally binding and be accompanied by the financial commitment, i. e. the commitment of the public funds required.

In the case of State aid schemes (or similar measures such as the granting of small individual amounts to a large number of private small-scale projects) or aid granted by bodies designated by the Member States, the date of the legal commitment is the date on which the decision to grant aid has been taken by the designated body. This decision will specify the individual recipients of the aid and the amount granted to each one.

These definitions have to take account of the particular features of institutional organizations, of the administrative procedures of each Member State and of the nature of the operations.

SPECIFICATION:

— **EAGGF Guidance Section:**

(i) *Commitment in the specific cases of Council Regulations (EEC) No 866/90 and (EEC) No 867/90*

The public body paying out funds for each individual project of mostly SMEs is treated as the commissioner, and commitments must be considered at this level.

In fact operational programmes adopted under these Regulations relate to assistance to business and cooperatives which are mostly SMEs. As a general rule the individual amounts are small and the intermediate administrative body is established at national or regional level. It would therefore be extremely difficult for the body concerned to check whether or not the beneficiaries had entered into a commitment with their suppliers. By contrast the provision of a public grant is verifiable.

(ii) *Minimum conditions justifying special cases other than those pursuant to Regulations (EEC) No 866/90 and (EEC) No 867/90*

For operations part-financed by the EAGGF Guidance Section and the FIFG, as was agreed for Regulations (EEC) No 866/90 and (EEC) No 867/90, the single commitment entered into by an intermediate administrative body automatically entails the commitment of all the various final beneficiaries. Nevertheless, this single commitment entered into by that body must fulfil the following minimum conditions in order to be clearly indentifiable: there must be an indication of a dated, formal decision, with specific reference to the projects, amounts and beneficiaries to be financed.

— **FIFG**

See paragraph (ii) above 'Minimum conditions justifying special cases ....'.

PARTICULAR RULES FOR FUNDS:

— **ERDF**

In the case of private bodies or firms responsible for commissioning works, the date of the legal commitment is that on which the legal binding to carry out the works has been entered into (e. g. date of placing an order).

Sources:

— Commission decisions granting assistance (see Article concerning closure date for the assistance).
— Financial implementation provisions applicable to assistance (points 4 and 6).

Datasheet No 4

Eligibility of expenditure under the Structural Funds

DETAILS ON THE PRINCIPLE OF REAL COST

GENERAL RULE:

'Expenditure actually incurred' must relate to payments effected by the final beneficiaries, supported by receipted invoices or accounting documents of equivalent probative value ***(point 5 of the financial implementation provisions).***

1. *The eligibility of an item of expenditure must be judged in relation to its general context, its nature and its amount, and compliance with the physical or temporal use to which the good or service is put, as well as to the operation being part-financed.*

2. *Two possibilities are ruled out:*

   — *more than two levels of subcontracting or unjustified subcontracting operations, without any added value,*

   — *contracts with intermediaries/consultants where the payment in question is expressed as a percentage of the part-financed amount.*

3. *In cases where issuing an invoice is not relevant under national tax and accountancy rules, 'accounting document of equivalent probative value' means any document submitted to prove that the book entry gives a true and fair view of the actual transaction in accordance with current accountancy law.*

PARTICULAR RULES FOR FUNDS:

— ESF

(i) the calculated costs, acceptable at the time the programmes or measures were approved under the budget proposed, must reflect real costs which can be verified using a method which can be checked at the stage of the final declaration of expenditure;

(ii) in accordance with datasheet No 2, certain invoices not yet settled when the annual instalment is closed may be entered in the accounts for that instalment if actually paid before the Member State submits the application for final payment (see datasheet No 2, particular rule for the ESF);

(iii) in accordance with point 13 and following, of the financial implementation provisions, it is recalled that, at the advance payments application stage, 'the proof for expenditure actually incurred may be based on appropriate information resulting from the follow-up procedure of the action. The Member State must furthermore certify that the action is progressing in accordance with the planned schedule'.

— EAGGF Guidance Section

In order to establish the cost of certain works carried out on the beneficiary's own account and included in part-financed investments, Member States may fix real standard costings for unit prices. These standard costings relieve the beneficiary of the need to present an invoice for such work.

Sources:

— Financial Regulation (Article 2).
— ESF Regulation (Article 21).
— Financial implementation provisions applicable to assistance (points 3, 5 and 6).

Datasheet No 5

Eligibility of expenditure under the Structural Funds

OVERHEAD ALLOCATION

GENERAL RULE:

Overheads are to be allocated in an equitable manner, in accordance with generally recognized accounting standards.

As an example, within the framework of training actions part-financed by the ESF, overheads are to be allocated in a fair and equitable manner, e. g. on the basis of a distribution pro rata according to a full-time training and obtained by relating the number of hours per participant part-financed to the number of hours per participant instructed in total by the training body.

Sources:

— Financial Regulation (Article 2).
— ESF Regulation (Article 2 (1).

Datasheet No 6

Eligibility of expenditure under the Structural Funds

DEPRECIATION

GENERAL RULE:

The Structural Funds cannot at the same time finance the purchase of real estate or long-term equipment — whether new or second-hand — as well as depreciation attaching to it. Consequently, within the period of eligibility, depreciation is eligible as an alternative to purchase, in accordance with national fiscal and accountancy legislation or generally accepted accountancy practice.

Depreciation is however excluded in respect of goods which have benefited from public (national or Community) part-financing at the time of their purchase.

PARTICULAR RULES FOR FUNDS:

— **ESF**

Under Article 2 (1) of the ESF Regulation, depreciation on immovable property (but under no circumstances its purchase) and equipment, as part of the management or operational costs linked to the training course or other eligible action, continues to be eligible, excluding where applicable any amounts already having benefited from part-financing under the Structural Funds, provided the depreciation relates to the operations set out in Article 1 of the ESF Regulation, and that it is the subject of a table based on a method complying with national legislation and corresponds to an investment formally introduced in the accounts of the final beneficiary.

Sources:

— Regulation (EEC) No 2084/93 (Article 2).
— Financial implementation provisions applicable to assistance.

Datasheet No 7

Eligibility of expenditure within the framework of the Structural Funds

NATIONAL PART-FINANCING IN KIND

GENERAL RULE:

1. *The Structural Fund Regulations (Article 21 (1) of the Coordination Regulation) and the financial implementation provisions (point 5) lay down that the payment of Community financial assistance must refer to expenditure actually incurred, which must correspond to payments effected by the final beneficiaries, justified by receipted invoices or accounting documents of equivalent probative value.*

2. *National part-financing (public or private) taking the following forms of an 'in kind' contribution:*

   — *supply of land, real estate whether the whole or in part and long-term equipment,*

   — *supply of raw materials,*

   — *voluntary unpaid work, provided by a private person or body,*

   may be considered eligible under certain conditions.

3. Conditions to be respected:

   (i) the provision of the 'in kind' contribution must be agreed beforehand by the public body responsible for the measure;

   (ii) it must be in conformity with the general rules on eligibility, particularly when it concerns the purchase of land and building, and expenses of public administrations;

   (iii) the amount certified by the final beneficiary which relates to the supply of 'in kind' contributions must be evaluated and certified either using official scales drawn up by an independent authority, or by an independent professional third party;

   (iv) the Community contribution is limited to expenditure actually incurred (i. e. the total eligible cost net of the 'in kind' contributions).

   Example: Given a Community part-financing rate of 50 % and a total eligible cost of 100 of which only 40 was expenditure actually incurred and 60 was supplied in kind. The theoretical Community assistance of 50 (50 % × 100) would be limited to 40;

   (v) the evaluation of the cost of private voluntary work must be in conformity with the national rules establishing the calculation of labour cost per hour, day or week (legally approved standards, for example), where such rules exist.

NB: Private contribution in kind is excluded in the framework of financial engineering operations (guarantee funds and venture capital funds).

PARTICULAR RULES FOR FUNDS:

— EAGGF Guidance Section

The total costs of a part-financed project may include, as eligible expenditure, under the conditions of evaluation and control set out above, the cost of a farmer's work, carried out on his own behalf, according to the legal standard in force in the Member State (see datasheet on 'Details on the principle of real costs'). When the value of this cost is assessed in conformity with the fixed and approved legal standards in force in the Member State, the cost of the farmer's work carried out on his own behalf is to be considered as expenditure actually incurred and justified by an accounting document of equivalent probative value; it is thus eligible for a Community contribution.

— ESF

In respect of training action part-financed by the ESF, the 'in kind' contribution can also take the form of teaching material.

Sources:

— Coordination Regulation (EEC) No 2082/93 (Article 21).
— Framework Regulation (EEC) No 2081/93, (Article 13 (3)).
— Mrs Wulf-Mathies's answer to Parliamentary question PQ 3178/95 (OJ No C 109, 15. 4. 1996).

Datasheet No 8

Eligibility of expenditure under the Structural Funds

BOOKKEEPING OF BANK INTEREST EARNED ON COMMUNITY ADVANCES

GENERAL RULE:

Any action part-financed by a Structural Fund may benefit from bank interest earned on Community advances.

1. **Transfer of community funds via a public authority:**

   This may give rise to interest earned on Community advances which pass via the public authority. In this case, the Community is no longer the owner of the financial resources once these have been transferred to the Member States (judgment of the Court of Justice of the European Communities of 14 July 94 in Case C-186/93).

   The Commission makes every effort to check for compliance with the provisions of Article 21 (5) of the Coordination Regulation on the three-month time limit as a general rule for the transfer of these funds to the final beneficiaries (1).

2. **Subsidies paid directly by the Commission to a final beneficiary:**

   There may arise as well interest earned by final beneficiaries in the case of assistance involving subsidies paid directly to the final beneficiaries (e. g. some global grants or pilot projects under Article 10 of the ERDF Regulation).

   In this case, a clause in the agreement signed between the Commission and the final beneficiary may lay down that the interest he earns on the total Community amount granted must be used in accordance with the objectives of the assistance measure, and that he must account for the precise use which is made of it. In addition, if the subsidy relates to a project clearly identified by and known to the Commission, the rule on deduction of the interest earned on the total Community amount granted can be applied when the balance of the assistance is paid (2).

Sources:

— Mrs Gradin's answer to Parliamentary written question 2847/94 (OJ No C 145, 12. 6. 1995).
— Court of Justice of the European Communities, judgment of 14 July 1994 in Case C-186/93.

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(1) *For obvious reasons, a deliberate delay in the transfer of Community funds to final beneficiaries with the aim of profiting from the interest earned on Community advances, as well as its undue appropriation has to be considered an irregularity.*

(2) PM: The proposal to amend the Financial Regulation of 21 December 1977 submitted to the Council implies that the Commission maintain separate gross bookkeeping which distinguishes between the state of receipts and expenditure linked to interest on the basis of six-month periods at maximum.

Datasheet No 9

Eligibility of expenditure under the Structural Funds

BOOKKEEPING ENTRIES OF OTHER RECEIPTS

DEFINITION:

Every action part-financed by a Structural Fund may lead to or benefit from receipts during the course of its part-financing. It could consist of resources resulting from sales, rentals or the availability of products or services, individual enrolment fees or other expenses or deductions from salaries equivalent to enrolment fees and supported by trainees participating in training courses.

GENERAL RULE:

Two different situations may occur in practice:

(i) ***Situation A:***

All revenue is directly related to the part-financed operations. It must be attributed ***entirely*** *to the operation, i. e. deducted from eligible expenditure.*

(ii) ***Situation B:***

Revenue is only partially related to the part-financed operations. It must be deducted from eligible expenditure by means of a suitable distribution key (pro rata).

CLARIFICATION:

Receipts coming within the following cases are not to be considered as receipts to be deducted from the total eligible costs covered by this datasheet:

(a) receipts generated throughout the economic lifetime of the part-financed investments and which are subject to the specific provisions of Article 17 of the Coordination Regulation;

(b) receipts generated within the framework of financial engineering measures, which are covered by specific provisions in the corresponding datasheets (Nos 18, 19 and 21);

(c) contributions from the private sector to the part-financing of actions, investments or projects and which, if the case occurs, appear in the financing tables alongside public contributions.

Sources:

— Financial Regulation (Article 2).
— Coordination Regulation (Article 17 (3)).
— ESF Regulation (Article 2 (1) second indent).

Datasheet No 10

Eligibility of expenditure within the framework of the Structural Funds

FINANCIAL, BANKING AND LEGAL CHARGES

GENERAL RULE:

Only expenses directly connected with the preparation and implementation of a project are eligible for part-financing. By their nature, certain types of expenses are excluded from part-financing.

1. **Financial charges:** Debit interest (other than interest rebates approved within the framework of forms of assistance or other than debit interest covered by a State aid scheme approved by the Commission), transaction charges, foreign exchange commissions and other purely financial expenses *are not eligible* for part-financing.

2. **Bank charges for opening and administering bank accounts, bank transfers and other administrative costs:** Where part-financing requires the opening of a separate account for a project, the opening and subsequent administering expenses, other than interest charges due (see point 1), form part of the administrative expenses relating to the project and *are therefore eligible.*

   Special feature of the ESF: one bank account can be used for carrying out several successive training activities. The share of the expenses relating to this account and eligible under each training activity is determined according to a suitable distribution key (see datasheet No 5 'Overhead allocation').

3. **Fines, financial penalties and expenses for legal procedures:** These types of expenses *are not eligible* as they do not contribute directly to achieving the aim of the project or operation.

4. **Cost of legal fees for advice, notary fees and the costs of technical or financial experts necessary for preparing and/or implementing a project:** *these costs are eligible* if they are directly linked to the project, and are necessary for the proper preparation or implementation of the project.

Sources:
— Financial Regulation (Article 2).
— Framework Regulation (EEC) No 2081/93 (Article 3).
— ERDF Regulation (EEC) No 2083/93 (Article 1).
— EAGGF Guidance Section Regulation (EEC) No 2085/93 (Articles 5 and 6).

Datasheet No 11

Eligibility of expenditure within the framework of the Structural Funds

COSTS OF BANK GUARANTEES

GENERAL RULE:

Expenses connected with a bank guarantee are not eligible for part-financing in the cases envisaged below:

— all forms of assistance (OPs, SPDs, CIPs, etc.) except for global grants, as well as

— any type of risk to be insured against by the project operator (for example bank guarantee as a form of 'performance bond' or any other kind of bank guarantee required from a contractor against tender offers or execution of a project), regardless of the form of assistance involved.

EXCEPTION: CASE OF GLOBAL GRANTS

In connection with global grants, bank guarantee expenses are eligible.

In this case, eligibility is limited to expenses relating to the bank guarantee or any other insurance that the intermediary designated by the Member State may contract for in order to cover the risk of misuse or negligence in the use of Community funds that is not ascribable to it (in accordance with the third indent of Article 23 (1) of the Coordination Regulation.

SPECIFICATION:

— **CIP Leader:**

In connection with the Community initiative Leader, the local action groups, which are intermediate managers approved by the designated intermediary, could be required to take out letters of guarantee from a bank. The costs arising directly from these bank letters of guarantee only as presented by the local action groups (intermediate bodies) are eligible for part-financing.

— **Pilot projects:**

If the Commission requires bank guarantee letters beyond the requirements provided for in Community legislation, the expenses arising solely from these bank guarantee letters are eligible. In every other case they are not eligible.

Sources:

— Coordination Regulation (Article 23 (1) third indent).
— Declaration of the Commission on Article 21 (3) of the Coordination Regulation, included in the minutes of adoption of Council Regulation (EEC) No 2082/93.

Datasheet No 12

Eligibility of expenditure under the Structural Funds

PURCHASE OF SECOND-HAND EQUIPMENT

GENERAL RULE:

1. *The purchase of second-hand equipment can be regarded as eligible expenditure in duly substantiated cases approved within the framework of the partnership, and without prejudice to possibly more restrictive national provisions that may be in force, when the four following conditions are met simultaneously:*

   — a declaration by the seller of the equipment confirms its exact origin and that the equipment has not already been the subject of national or Community assistance,

   — the purchase of the equipment represents a particular advantage for the programme or project, or is made necessary by exceptional circumstances (no new equipment available on time, thus threatening proper execution of the project),

   — reduction of the costs involved (and therefore of the Community contribution) as compared with the cost of the same equipment purchased new, while maintaining a good cost-benefit ratio,

   — the second-had equipment acquired must have the necessary technical and/or technological characteristics consistent with the requirements of the project.

   If accepted, the calculation of the eligible expenditure relating to the puchase of second-hand equipment is based on its current value.

2. The depreciation of second-hand equipment, as an alternative to purchase, is covered by datasheet No 6.

3. **Specification:**

   The taking over of firms which have closed or which would have closed if not taken over under aid schemes authorized by the Commission may be considered eligible.

PARTICULAR RULES FOR FUNDS:

— **ESF**

The purchase of second-hand equipment is excluded within the framework of operations part-financed by the ESF. However, the depreciation of equipment purchased second-hand is eligible for the life of the measure (see datasheet No 6: 'Depreciation').

— **EAGGF Guidance Section**

The Regulations (EEC) No 866/90 and (EEC) No 867/90 expressly stipulate that the purchase of second-hand equipment is strictly ineligible.

— **FIFG**

Council Regulation (EC) No 3699/93 does not provide for the purchase of second-hand equipment in the framework of operations cofinanced by FIFG.

Sources:

— Council Regulation (EEC) No 2328/91 (Articles 6 to 11, 13 to 16 and 20).
— Council Regulations (EEC) No 866/90 (Article 11) and (EEC) No 867/90.

Datasheet No 13

Eligibility of expenditure under the Structural Funds

PURCHASE OF LAND

GENERAL RULE:

1. *The purchase of land not built upon must be part of an operation that contributes to economic development and will not be an eligible expenditure item unless there is a direct link with productive or infrastructure investment.*

   Land purchase included in an investment which is not part of an aid scheme may exceed the limit of 10 % of the cost of the project provided that national rules laid down to avoid speculation are respected (for example, a clause prohibiting the transfer of the property during a minimum period).

2. ***Case of environmental conservation projects:***

   For environmental conservation projects, land acquisition may be eligible as the principal component if the conditions below, which are designed *inter alia* to avoid speculation, are met:

   (i) the project is covered by a partnership decision;

   (ii) the land will be devoted to the intended use within a timescale to be agreed in partnership; where a change made in the use to which the land is put within this timescale might affect the nature or conditions of implementation of the project and neither the Commission nor the Monitoring Committee have been asked for their approval, the change will be reviewable in accordance with Article 24 of the Coordinating Regulation;

   (iii) the land is not for agricultural purposes (exceptions could be decided upon in the framework of partnership in duly justified cases);

   (iv) the purchase is made under the responsibility of a public institution or a body governed by public law.

SPECIFICATION:

In the case of part-financed aid schemes, in accordance with the guidelines for regional aid schemes adopted by the Commission the purchase will be within the standard basis for assessment of the value of the initial investment (fixed capital), alongside buildings and plant and machinery. In this case Commission services will assess the eligibility of land purchase in terms of the aid scheme in its entirety.

PARTICULAR RULES FOR FUNDS:

— **ESF**

This expenditure is excluded from ESF financing (Article 2 of the ESF Regulation).

— **EAGGF Guidance Section**

(i) Land purchase investments are strictly ineligible for part-financed operations under Council Regulation (EEC) No 2328/91 (Article 7) and (EEC) No 866/90 (Article 11).

(ii) The purchase of land is eligible within the framework of reparcelling under Article 5 (d) of the EAGGF Guidance Regulation.

— **FIFG**

According to Annex III point 2.0 (c) of Council implementing Regulation (EC) No 3699/93, land purchase investments are strictly ineligible.

Sources:

— ERDF Regulation (Article 1).
— Decisions granting assistance for projects 'outside the quota' (ERDF).
— ESF Regulation (Article 2).
— EAGGF Guidance Regulation (Articles 2, 5 and 6).
— Regulation (EEC) No 866/90 (Article 11).
— Regulation (EEC) No 2328/91 (Article 7, (1)).
— Application Regulation of the FIFG Regulation (EC) No 3699/93 (Annex III, point 2.0 (c)).

Datasheet No 14

Eligibility of expenditure under the Structural Funds

PURCHASE OF REAL ESTATE

GENERAL RULE:

1. *Purchases of real estate (buildings already constructed) and the land on which they are built are eligible on the terms set out below (in the absence of specific regulatory provisions to the contrary).*

   The purchase must be part of an operation to help economic development. Eligibility will be assessed in relation to the part-financed operation as a whole. As a general rule it must constitute only a part of the project.

   The purchase might in some circumstances constitute the principal object to the operation (e. g. purchase by public authorities of a building to be made available to small businesses; financing for business expansion or for support to rural employment diversification where the purchase of a workshop is the main expenditure item).

   The acquisition of the land surrounding the building which is the subject of part-financing, is eligible when respecting the specific provisions laid down for the purchase of land (datasheet No 13 'Purchase of land').

   Real estate purchase costs and taxes are considered eligible if they are genuinely and definitively borne by final beneficiaries (see datasheet on 'VAT and other taxes and charges').

TERMS OF ELIGIBILITY:

In all cases eligibility will depend on the following conditions, which are designed to avoid speculation and secure good cost/effectiveness ratios:

(i) a certificate confirming that the purchase price corresponds to the building's true value, and is in conformity with national legislation in force, must be available for consultation on request;

(ii) the competent authorities in the Member State or the seller must declare that the building has not previously benefited from a national or Community grant for the same purpose;

(iii) the real estate will be used for the agreed purpose within a timescale to be agreed in partnership. Where a change made in the use to which the building is put within this timescale might affect the nature or conditions of implementation of the project and neither the Commission nor the Monitoring Committee have been asked for their approval, the change will be reviewable in accordance with Article 24 of the coordinating Regulation;

(iv) the building must not be used to accommodate public administrative services.

SPECIFICATIONS:

In the case of part-financed aid schemes, in accordance with the guidelines for regional aid schemes adopted by the Commission, real estate purchase will be within the standard basis for assessment of the value of the initial investment (fixed capital), alongside land and plant and machinery. In this case Commission services will assess the eligibility of real estate purchase in terms of the aid scheme in its entirety.

PARTICULAR RULES FOR CERTAIN FUNDS:

— **ESF**

The ESF never part-finances real estate purchases (only the depreciation of a building for the duration of a training project can be supported: see datasheet No 3, 'Depreciation').

— **EAGGF, Guidance Section**

Council Regulations (EEC) No 866/90 (Article 11 (3)) and (EEC) No 2328/91 (Article 7) make express provision for construction or acquisition of buildings, excluding the value of the land, in respect of the terms laid down for part-financed investments.

Council Regulations (EEC) No 1035/72, (EEC) No 1360/78, (EEC) No 389/82 and (EEC) No 1696/71, on the other hand, allow eligibility only of interest on loans for building acquisitions for the purposes of starting-up producers' organizations.

The datasheet applies to the EAGGF Guidance Section, therefore, except where the relevant specific Regulation expressly lays down other provisions.

— **FIFG**

Eligibility of building purchase costs (excluding the value of the land) is expressly provided for in aquaculture and fishery product processing and marketing (Council Regulation (EC) No 3699/93).

— **ERDF**

Purchase of new buildings by public authorities is basically to be avoided in order to exclude any possibility of bypassing the rules on public tendering. All exceptions need a reasoned agreement from the Monitoring Committee.

Sources:

— EAGGF Guidance Section Regulation (Articles 2, 5 and 6).

— Regulation (EEC) No 866/90 (Article 11).

— FIFG implementing Regulation (EC) No 3699/93, Annex II.

Datasheet No 15

Eligibility of expenditure under the Structural Funds

VAT AND OTHER TAXES AND CHARGES

GENERAL RULE:

1. *VAT which is recoverable, refunded or offset by whatever means cannot be considered eligible, and therefore cannot be part-financed by the Structural Funds.*

   It is the responsibility of the authorities designated in the Member States, and the Commission departments when on-the-spot checks are carried out, to check the justification for eligibility of the expenditure declared, and in particular any VAT included in it.

   Where doubts arise as to whether the VAT should be refunded, that part of the declared expenditure corresponding to the VAT is subsidized by the Funds only after analysis case by case.

   The public or private status of the final beneficiary does not have to be taken into consideration for the assessment of eligibility, but only the fact of whether he is liable for VAT.

2. *In the same way as for VAT, the other categories of levies, taxes or charges (in particular direct taxes and social contributions on wages) arising from Community financing constitute eligible costs if these taxes and charges are actually and definitively borne* (and regardless of the fact that they contribute to the budget of the Member State).

Sources:

— Internal instructions relating to the treatment of VAT under public contracts awarded by Directorates-General and Commission departments, SEC(95) 715 dated 28 April 1995.
— Mrs Gradin's answer to Parliamentary written question 2837/94 (OJ No C 103, 24. 4. 1995).

Datasheet No 16

Eligibility of expenditure within the framework of the Structural Funds

ALTERNATIVE FINANCING OF PART-FINANCED PROJECTS

DEFINITION OF THE CONCEPT:

Alternative financing or payment is a management facility aimed at using as efficiently as possible the cash flow made available on different dates by all the financial partners: Community, national government and public sector entities. Since the part-financing rates are agreed at the level of the measure in question, this accounting practice results in some projects being entirely financed by national resources and others entirely by Community resources, although overall the average part-financing rate fixed for each measure concerned is complied with. This method is applied in practice:

— *de facto* between the start date of a part-financed intervention and the payment of the first Community advance,

— *de facto* at the end of a programming period, before the payment of the remaining Community balance,

— in order to avoid blocking a whole measure owing to delays in the availability of various part-financing sums for each individual project, and more particularly when the national accountancy rules provide for the recording of the sources of part-financing under separate budget headings.

GENERAL RULE:

Provided the technique is in accord with national budgeting rules, and has the aim of avoiding hold-ups in payments made by the managers of liquid funds, the managing services of the Member States may exceptionally resort to alternative financing. Use of this fund management facility is conditional, however, on strict compliance with the following rules to ensure transparency.

Conditions of eligibility:

All the conditions listed below derive from the fundamental principle that all projects included in a form of assistance must comply with the standard clauses attached to each Commission Decision approving the forms of assistance, quite independently of the origin of the funds being used to finance them:

(i) *not a generalized practice:*

Alternative financing must be a facility for managing cashflow and not be a generalized practice.

(ii) *adherence to the original programming:*

At any moment, it must be clear which projects are the national counterpart to those being funded entirely by Community resources, and such projects must be integrated according to the procedures laid down in the form of assistance. In addition, all the projects included in a measure, independently of the source of their financing, must have been selected on the same criteria as defined for the measure itself.

(iii) *compliance with the publicity rules governing Community assistance:*

The final recipients must be clearly informed that their project has been integrated into a measure part-financed by the Structural Funds; this applies to all the projects under each measure, regardless of the source of alternative financing. For training actions part-financed by the ESF, only agreements signed with promoters explicitly mentioning the part-financing of the ESF (regardless of the alternative source of payment) are eligible.

(iv) *identical terms and conditions for controls:*

The Community's personnel must be able to check on all the projects involved in a measure, regardless of the source of alternative financing, on the same terms and conditions and in line with the same regulatory requirements.

(v) *joint management of all the projects:*

The choice of source for the monies to finance a project is to be based on the cashflow situation at the time of payment of the public aid. This rules out any distinctions made in managing projects, or any priority being given to certain projects, on the basis of the origin of the alternative financing.

(vi) *compliance with rates of part-financing for the measure as a whole:*

Compliance of the whole measure with the rate of part-financing must be monitored and made subject to an analysis of conformity with the overall rate of public aid after each individual financing decision.

Datasheet No 17

Eligibility of expenditure within the framework of the Structural Funds

CURRENT OPERATIONS/RESTRUCTURING OF COMPANY BALANCE SHEETS

GENERAL RULE:

Certain financing techniques relating to current activities or restructuring of the balance sheet of a business and which do not constitute productive investment are excluded from part-financing under the Structural Funds, except in the case of techniques included in a State aid scheme approved by the Commission.

These techniques involve the following operations:

1. *Financing the working capital of firms:* The working capital of businesses is usually financed from overdrafts or other forms of short-term loan. Since working capital forms part of current assets, it does not contribute to financing productive investment which creates or safeguards permanent jobs. The financing of working capital and cashflow operations *is not eligible.*

2. *Factoring:* Factoring is used as a way of financing the working capital of businesses. It allows working capital to be financed by freeing in customer accounts the sums normally blocked until the moment of payment. A large share, usually up to 80 % of monies due from creditors, can be advanced by the factor, thereby improving short-term cashflow. Costs related to factoring services incurred by businesses *are not eligible.*

   Particularity ERDF: in accordance with Article 1 (c) first indent of the ERDF Regulation, support to SME activities including aids to business services are eligible. In the case of an aid to a firm offering services — including for example factoring — to SMEs, the costs linked to the creation and maintenance during a specified period of such a firm offering factoring services are eligible.

3. *Consolidation of losses:* Losses arising out of an economic activity *are not eligible* for part-financing. Simple restructuring of liabilities in the balance sheet does not have a direct effect on subsequent investments.

Sources:

— Framework Regulation (EEC) No 2081/93 (Article 3).
— ERDF Regulation (EEC) No 2083/93 (Article 1).
— EAGGF Guidance Section Regulation (EEC) No 2085/93 (Articles 5 and 6).

Datasheet No 18

Eligibility of expenditure within the framework of the Structural Funds

FINANCIAL ENGINEERING: GUARANTEE FUNDS

GENERAL RULE:

The Structural Funds may part-finance a contribution by a Member State towards setting up or replenishing a guarantee fund (referred to as GF).

The following general principles should apply to part-financing of financial engineering measures, in particular GFs:

(i) The involvement of the Community in financial engineering should be limited and, in any event, it should avoid substituting for or overlapping with the financial sector, unless it can be shown that the latter is not suited to the development needs of the region in question.

(ii) The Community may part-finance the public contribution to the authorized capital of a fund; it should not take part in the management of the fund or contribute to its running costs. Only the Member State and its private or public partners, and not the Commission, can be participants/shareholders in such funds.

(iii) The Community contribution rate must be adjusted in order to take account of the income generated by the Fund, in accordance with the first indent of Article 17 (3) of Council Regulation (EEC) No 4253/88 as amended by Regulation (EEC) No 2082/93.

(iv) Principle of partnership between public and private sectors: it is preferable for GFs to include shareholders from both the public and the private sectors, with a substantial contribution (for example to 30 % of the fund capital) from the private sector to generate a leverage effect.

(v) Where an exception to the previous principle involves an absence of national public financing, the Member State must retain a subsidiary responsibility within the framework of partnership under the Structural Funds (see Article 23 of the Council Coordination Regulation No (EEC) 4253/88 as amended).

(vi) GFs must be managed according to the rules and practices existing in each individual market concerned.

(vii) The ways in which such funds are run must be appropriate to the financial implementing provisions of the assistance, in particular with regard to commitment of resources and expenditure incurred as well as termination of the operation.

(viii) GFs assist firms which are economically and financially viable. Their operations may not merely refinance company liabilities.

(ix) The activities of GFs are to be presented in a report to be submitted each calendar year to the Commission after the Monitoring Committee has given its opinion.

(x) The Commission and the Court of Auditors have a right to audit the activities of GFs, including the right to carry out audits or have them carried out in businesses to which the GF has provided a guarantee.

(xi) GFs should be set up for a suitable duration, compatible with the aims of the operation. The minimum lifespan is the duration of the form of assistance.

(xii) All exceptions to the principles agreed in this datasheet must be submitted on a case-by-case basis for the approval of the services of the Commission.

NB: The provisions of point (i) are automatically considered to be complied with if the Commission (DG IV) has agreed that the State aid scheme is in compliance with Article 92 (3) of the Treaty.

SPECIFIC PROVISIONS CONCERNING GUARANTEE FUNDS:

1. The detailed provisions below apply to organizations providing guarantees to financial institutions securing a part of the outstanding amounts owed by companies to those institutions, in order to share with the institutions the risk on the investments of beneficiary companies. They therefore specifically cover three types of guarantee funds:

   — traditional bank loan guarantee funds,

   — mutual guarantee companies; these companies generally grant guarantees only to their shareholder members (generally tradesmen or very small enterprises),

   — funds guaranteeing holdings (guaranteeing a share of the risks taken by venture capital funds).

2. This datasheet therefore relates to the grant made to the public authority responsible (Member State, region, local authority, etc.) or to an intermediary designated in agreement with the Member State (e.g. in the case of a global grant) for the purposes of its participation in the formation or expansion of the capital of a guarantee fund (GF).

A. Formation or expansion of the capital of a guarantee fund

1. The formation of a GF must be the subject of an *ex ante* assessment submitted as appropriate to the

Monitoring Committee for the assistance measure concerned (if the GF is included in a form of assistance).

2. The GF must be set up as an independent fund governed by articles of association and/or an agreement or contract between the various partners stipulating the gearing ratio [1] authorized for the fund for the duration of Community assistance. The GF may be set up within the framework of an existing body on condition that it is the subject of a specific implementation agreement, notably stipulating that separate accounts must be kept for the funds provided (public funds from the Member State and the Community and others).

3. Management of the GF is entrusted to a body which has been authorized by national law to perform the operations concerned and which has the capacity to manage the allocated funds efficiently.

4. The agreement/articles of association and any amendments to it/them are subject to the prior approval of the relevant Commission departments.

5. All participants must make their payments (initial and subsequent) in the form of cash, excluding any contribution in kind.

B. **GF operating rules**

1. The GFs must abide by the national rules governing guarantee operations in the Member State where they operate.

2. *Cover rate for bank loans*

The part-financed GFs operate according to the usual national rules applicable to these kind of funds.

In the absence of such rules, GFs operate according to the following principles:

The investment made by the company benefiting from the fund guarantee should not be entirely financed by a bank loan. The GF cover rate is limited to a maximum percentage of the outstanding debt on the loan granted, for example 75 %. This guarantee rate should decrease proportionally to the increase in the proportion of the total cost of the company's investment that is financed by the loan. In the event of the guarantee being called in, refunding is limited to a percentage of the residual loss after disputes over individual loans have been settled, for example between 50 and 75 %. The guarantee may cover repayment of the principal and payment of accumulated unpaid interest.

3. *Cover rate for guarantees of holdings:*

The part-financed GFs operate according to the usual national rules applicable to these kind of funds.

In the absence of such rules, GFs operate according to the following principles:

The guarantee covers a limited percentage of the losses incurred by the investors, for example 50 %, minus the dividends already paid to the investors.

4. GFs assist firms which are economically and financially viable. The loans which they secure may not involve operations merely to refinance company liabilities. They must involve operations to expand existing activities, to develop new ones or to introduce innovations or new technologies into the production method or system.

5. GF activities in relation to firms operating in the field covered by Council Regulation (EEC) No 866/90 on the improvement of the processing and marketing conditions for agricultural products (as last amended by Regulation (EC) No 2843/94 (OJ No L 302, 25. 11. 1994, p. 1) have to satisfy the selection criteria set out in Commission Decision 94/173/EC (OJ No L 79, 23. 3. 1994, p. 29).

6. For the duration of the Community assistance, GF receipts (particularly any insurance premiums and interest yield on investments) must be fed back into the fund.

7. A report on the activities of the GF must be submitted each calendar year to the Commission after the Monitoring Committee has given its opinion. This report must contain a balance sheet and an analysis of the revenue and losses of the GF, a detailed breakdown of management costs incurred, a detailed list of the guarantees provided (investments made, loans granted, guarantees provided, by firm and by sector, with due respect for the principles of confidentiality) and the problems encountered together with any solutions proposed or decided on.

8. The Commission and the Court of Auditors have a right to inspect the activities of the GF, including the right to perform or have performed audits in firms to which the GF has provided its guarantee.

9. Where the fund is used for operations not covered by the agreement or articles of association, the Commission may at any time request the Member States to pay back all or part of the Community assistance provided for the formation of the GF.

10. The cost of managing the GF must be clearly defined and limited in advance as a maximum annual percentage of the share capital paid. In annual terms, this percentage must lie within a limit which is appropriate to the activities of the fund. As a general rule, the limit should be of the order of 5 %. The management costs are not taken into account for the purpose of calculating the use of the share capital when the operation is terminated, in order to ensure that 100 % of the GF capital is used for guarantee purposes.

11. A GF should not guarantee the holdings of a venture capital fund which is itself already part-financed by the Structural Funds.

[1] Ratio used to calculate the maximum total of the guarantees the GF may provide in relation to its paid-up capital.

C. **Concepts of 'legal and financial commitment' and 'expenditure actually incurred'**

1. *Commitment at national level:*

The legal act of forming or increasing the initial capital of a GF is considered to be the legal and financial commitment for the purposes of the rules on financial procedures for the implementation of assistance measures.

2. *Expenditure actually incurred:*

Expenditure actually incurred consists of the payment in cash of the paid-up capital of the GF by the participants (share capital) in strict relation to the performance reports mentioning the guarantees provided which serve as proof of the progress of the measure.

Subsequent inputs of capital into the GF are made by the partners if the Monitoring Committee, on the basis of the performance reports, considers that the GF has provided sufficient guarantees in relation to the amounts previously allocated.

Financial engineering operations are an integral part of the method of part-financing assistance measures. Where appropriate, the Member States therefore have to agree to refinance capital payments to the GFs if calls for Community funds are delayed at the level of the assistance measure.

3. GF capital payments have to be made according to the same timetable regardless of whether partners are public or private; the capital share percentages must be respected.

D. **Termination of assistance (see example at Annex I)**

1. It is for the Monitoring Committee to decide in good time, within the limits of its powers, throughout the implementation of the measure and on the basis of an examination of the GF's performance reports, on the reprogramming of amounts assigned to the GF which will obviously be unused or underused.

2. When the Community operation is terminated (after the final date for payments) the net financial position of the GF must be calculated by comparing the total paid-up capital with the cumulative total sum of guarantees provided during the period.

   (i) If the actual performance ratio (cumulative total of guarantees provided by the GF/paid-up capital) is at least 75 % of the gearing ratio authorized in the fund's articles of association, the measure is considered to have been performed in full.

   (ii) If, despite the surveillance of the Monitoring Committee, at the time of termination, the actual performance ratio (cumulative total of guarantees provided/paid-up capital) is less than 75 % of the gearing ratio authorized, the fund's eligible expenditure is reduced proportionately and the amount corresponding to the excess will be deducted from the final balance paid to the Member State by the Community in respect of the assistance measure concerned.

3. Once the final balance of the assistance measure has been paid, the Commission no longer intervenes in the implementation or monitoring of the measure save where specific provisions to the contrary are contained in the initial agreement and irrespective of the other general rules concerning, particularly, control.

PARTICULAR RULES FOR FUNDS:

ERDF

The GFs act exclusively to assist SMEs under the terms of Article 1 (c), third indent, of the ERDF Regulation.

The definition of SMEs should make reference to the recommendation of the Commission of 3 April 1996 on the definition of SMEs (OJ No L 107, 30. 4. 1996, p. 4).

Sources:

— ERDF Regulation (Article 1 (c) third indent).
— EAGGF — Guidance Section Regulation (Articles 5 (k) and 6).
— Commission notice to the Member States No 94/C 180/03 published in Official Journal No C 180 of 1 July 1994 (Community SME initiative), particularly point 7.9.

ANNEX

to Datasheet No 18 'Financial Engineering: Guarantee Funds'

Termination of assistance: example of termination mechanism

1. A guarantee fund operates with a Community contribution of 30 %.

   The fund's paid-up capital is 100.

   The gearing ratio laid down in the fund's articles of association is six, i.e. the total value of the guarantees provided by the fund at any given time represents not more than six times the value of its paid-up capital, i.e. a maximum of 600.

2. On the termination of assistance, there is a check whether the cumulative total of the guarantees provided by the GF is at least 75 % of the gearing ratio, i.e. 75 % of 6 × 100 = 450 (called the 'threshold' below).

   Hypothesis A:

   The amount of the guarantees provided is at least 450.

   The measure is considered to have been implemented in full (the Community contribution paid is considered to have been used up in its entirety).

   Hypothesis B:

   The amount of the guarantees provided is less than 450, e.g. 400.

   The measure has been only partly implemented. The implementation rate is: (amount of guarantees provided/threshold, i.e. 400/450 = 88,89 %. The fund's capital is considered 88,89 % eligible for part-financing and the Community contribution must be adjusted in line with the Community contribution rate in respect of the 11,11 % of the GF's capital which is deemed not to have been used, i.e. 30 % × (11 % of 100) = 3,33. This 3,33 is deducted from the final balance paid by the Community to the Member State for the form of assistance concerned.

3. Obviously the gearing ratio varies from one Member State to another and from one fund to another depending on the type of risk guaranteed. This means that in theory, for two GFs with similar characteristics and identical performance but different gearing ratios, termination may not be the same.

Datasheet No 19

Eligibility of expenditure within the framework of the Structural Funds

FINANCIAL ENGINEERING: VENTURE-CAPITAL FUNDS

GENERAL RULE:

The Structural Funds may part-finance a contribution by a Member State towards setting up or replenishing a venture capital fund (hereafter called VCF).

The following general principles should apply to part-financing of financial engineering measures, in particular VCFs:

(i) the involvement of the Community in financial engineering should be limited and, in any event, it should avoid substituting for, or overlapping with the financial sector, unless it can be shown that the latter is not suited to the development needs of the region in question;

(ii) the Community may part-finance the public contribution to the authorized capital of a fund; it should not take part in the management of the fund or contribute to its running costs. Only the Member State and its private or public partners, and not the Commission, can be participants/shareholders in such funds;

(iii) the Community contribution rate must take account of the limits imposed under the second indent of Article 17 (3) of Council Regulation (EEC) No 4253/88 as amended by Regulation (EEC) No 2082/93;

(iv) principle of partnership between public and private sectors: it is preferable for VCFs to include shareholders from both the public and the private sectors, with a substantial contribution (amounting for example to 30 % of the Fund capital) from the private sector to generate a leverage effect;

(v) where an exception to the previous principle involves an absence of national public financing, the Member State must retain a subsidiary responsibility within the framework of partnership under the Structural Funds (see Article 23 of the Council Coordination Regulation (EEC) No 4253/88 as amended);

(vi) VCFs must be managed according to the rules and practices existing on each individual market concerned;

(vii) the ways in which such funds are run must be appropriate to the financial implementing provisions of the assistance, in particular with regard to commitment of resources and expenditure incurred as well as termination of the operation;

(viii) VCFs assist firms which are economically and financially viable. Their operations may not merely refinance company liabilities;

(ix) the activities of VCFs are presented in a report to be submitted each calendar year to the Commission after the Monitoring Committee has given its opinion;

(x) the Commission and the Court of Auditors have a right to audit the activities of VCFs, including the right to carry out controls or have them carried out in businesses assisted by a VCF;

(xi) VCFs should be set up for a suitable duration, compatible with the aims of the operation. The minimum lifespan is the duration of the form of assistance;

(xii) all exceptions to the principles agreed in this datasheet must be submitted on a case-by-case basis for the approval of the services of the Commission.

NB: The provisions of point (i) are automatically considered to be complied with if the Commission (DG IV) has agreed that the State aid scheme is in compliance with Article 92 (3) of the Treaty.

SPECIFIC PROVISIONS CONCERNING VENTURE CAPITAL FUNDS:

Nature/type of expenditure:

— The financial engineering operations provided for in the Regulations are an integral part of the method of co-financing assistance measures. In practice, grants from the Structural Funds serve to co-finance participation by the Member States in venture capital funds. It is the Member State and its private or public partners alone which are the participants/stakeholders in these VCFs. The Commission is not.

— This datasheet therefore relates to the grant made to the public authority responsible (Member State, region, local authority, etc.) or to an intermediary designated in agreement with the Member State (in the case of a global grant) for the purposes of participation in the formation or expansion of a venture capital fund (VCF) [1].

A. *Formation or expansion of a VCF*

1. The formation of a VCF must be the subject of an *ex-ante* assessment submitted as appropriate to the Monitoring Committee for the assistance measure concerned, if the VCF is included in a form of assistance.

2. The VCF must be set up as an independent fund governed by articles of association and or an agreement or contract between the various partners. The VCF may be set up

[1] This datasheet also applies to venture-capital companies or other entities with the same purpose.

within the framework of an existing body on condition that it is the subject of a specific implementation agreement, notably stipulating that separate accounts must be kept for the funds provided (public funds from the Member State and the Community and others) in order to distinguish between the use made of the initial funds (part of which may not necessarily be of Community origin) and that made of the funds newly invested in the context of Community assistance measures.

3. Management of the VCF is entrusted to a body which has been authorized by national law to perform the operations concerned and which has the capacity to manage the allocated funds efficiently. This means that the routine management of the fund (compilation and monitoring of individual files, investment decision, etc.) will have to be entrusted to a competent professional team acting in accordance with the criteria of the private sector.

4. The agreement/articles of association and any amendments to it/them are subject to the prior approval of the relevant Commission departments.

5. Principle of public-private partnership:

To produce some leverage effect on private investors, it is preferable for a substantial part of the capital of the VCF (e.g. 30 %) to be provided by the private sector. Exceptions to this basic model must be submitted for approval to the responsible services of the Commission on a case-by-case basis.

6. Member State share in capital of VCF:

It is preferable for the Member State to make a public contribution of its own to the capital of the VCF in addition to the Community contribution.

Exceptions to this basic model must be submitted for approval to the responsible services of the Commission on a case-by-case basis. Where exceptions are made to this principle, the Member State remains jointly responsible for the proper execution of the measure in the light of all existing regulatory provisions and takes part in the formation of the VCF on the basis of the Community funds alone.

7. Under Article 17 (3) of Council Regulation (EEC) No 4253 as last amended by Regulation (EC) No 3193/94, the rate at which the Community co-finances the capital of VCFs may not exceed 50 % of the total cost in Objective 1 regions and 30 % of the total cost in other regions.

8. All participants must make their payments (initial and subsequent) in the form of additional cash.

B. *VCF operations*

1. The VCFs must abide by the national rules governing venture capital operations in the Member State where they operate.

2. VCF activities consist in the acquisition of shareholdings, e.g. subscription of share capital in firms supported, loans (where appropriate, equity loans), bonds (where appropriate, convertible). Their purpose is to provide funds for the firm by subscription of initial capital (incorporation of firms) or increases in the capital or liquid assets at the firm's disposal. These acquisitions, whatever form they may take, have to be paid for entirely in cash.

3. If the activities of the VCF comprise an element of aid not covered by the *de minimis* rule, prior authorization under Articles 92 and 93 of the Treaty is required.

4. VCF activities in relation to firms operating in the field covered by Council Regulation (EEC) No 866/90 on the improvement of the processing and marketing conditions for agricultural products (as last amended by Regulation (EC) No 2843/94 (OJ No L 302, 25. 11. 1994, p. 1) have to satisfy the selection criteria set out in Commission Decision 94/173/EEC (OJ No L 79, 23. 3. 1994, p. 29).

5. VCFs assist firms which are financially and economically viable. Their activities may not serve merely to refinance firms' debts. They must relate to the expansion of existing activities, the development of new activities or the introduction of innovations or new technology into production methods and systems.

6. VCF assistance for firms must not result in the acquisition of a majority stake and must remain temporary.

7. VCFs may operate as a syndicate with other VCFs existing on the market.

8. During the period of Community assistance, the revenue of the VCF (more particularly any dividends, capital gains and interest on investments) must be credited to the fund and be used for the purpose of financing acquisitions of holdings as well as management costs within the limits set out below.

9. As regards firms in which the VCF acquires a holding, it may in some cases be desirable to introduce a clause precluding the distribution of dividends to the VCF and requiring that they be kept in reserve in the firms (for the entirety of the fund stake or at least pro rata to the Community co-financing).

10. Reports on the activities of the VCF must be produced for each calendar year and submitted to the Commission after the Monitoring Committee has given its opinion. This report must contain a balance sheet and an analysis of the revenue and losses of the VCF, a detailed breakdown of management costs incurred, an analysis of repayments made to the fund, a detailed list of the holdings acquired (investments made, loans granted, etc. by firm and by sector, with due respect for the principles of confidentiality) and the problems encountered together with any solutions proposed or decided on.

11. The Commission and the Court of Auditors have a right to inspect the activities of the VCF, including the right to perform or have performed audits in firms in which the VCF has held or holds a stake.

12. Where the fund is used for operations not covered by the implementation agreement concluded, the Commission may at any time request the Member States to pay back all or part of the Community assistance provided for the formation of the VCF.

13. To ensure that 100 % of the VCF capital is used for assistance purposes, the assumption by the VCF of the cost of managing the fund (market surveys etc.) must be clearly defined and limited in advance as a maximum annual percentage of the share capital paid. In annual terms, this percentage must always be less than 5 % of the capital. The management costs are not taken into account for the purpose of calculating the use of the share capital when the operation is terminated.

C. *Concepts of 'legal and financial commitment' and 'expenditure actually incurred'*

1. Commitment at national level

The legal act of forming or increasing the initial capital of a VCF is considered to be the legal and financial commitment for the purposes of the rules on financial procedures for the implementation of assistance measures.

2. Expenditure actually incurred

Expenditure actually incurred consists of the payment in cash of the paid-up capital of the VCF by the participants (share capital) in strict relation to the performance reports mentioning the acquisitions made which serve as proof of the progress of the measure.

Subsequent inputs of capital into the VCF are made by the partners if the Monitoring Committee, on the basis of the performance reports, considers that the VCF has made proper use of the amounts previously allocated.

Financial engineering operations are an integral part of the method of co-financing assistance measures. Moreover, by means of their subsidies, the Structural Funds co-finance Member States' participation in VCFs. However, only the Member State and its private or public partners are the participants/shareholders in these VCFs. This means therefore that the financing of the VCFs must be compatible with the financial rules for the implementation of Structural Fund assistance measures. Where appropriate, the Member States therefore have to agree to prefinance capital payments to the VCFs if calls for Community funds are delayed at the level of the assistance measure.

3. VCF capital payments have to be made according to the same timetable regardless of whether partners are public or private; the capital share percentages must be respected.

D. *Termination of assistance*

1. The VCF has to be established for an appropriate length of time compatible with the aims pursued. The minimum lifespan of a VCF is that of the assistance measure concerned.

2. When the Community operation is terminated (after the final date for payments), the net financial position of the VCF must be calculated by comparing the use made of the total paid up capital with the total sum of assistance to firms during the period.

   — If the resultant sum of the cumulative total of assistance to firms during the period is found to cover at least 100 % of the paid-up capital (> or =), the measure is considered to have been performed in full.

   — It is for the Monitoring Committee throughout the implementation of the measure and in the light of the reports on the operation of the VCF which it is examining to decide in good time, within the limits of its powers, on the reprogramming of those amounts allocated to the VCF which will clearly be unused or underused.

   — If, despite the surveillance of the Monitoring Committee, at the time of termination, the total sum of assistance to firms during the period is found to be less than the total paid-up capital, the amount corresponding to the excess will be deducted from the final balance paid to the Member State by the Community in respect of the assistance measure concerned.

3. Once the final balance of the assistance measure has been paid, the Commission no longer intervenes in the implementation or monitoring of the measure save where specific provisions to the contrary are contained in the initial agreement and irrespective of the other general rules concerning, particularly, control.

PARTICULAR RULES FOR FUNDS:

ERDF

The VCFs act exclusively to assist small businesses under the terms of Article 1 (c), third indent, of the ERDF Regulation.

The definition of SMEs should make reference to the recommendation of the Commission of 3 April 1996 on the definition of SMEs (OJ No L 107, 30. 4. 1996, p. 4).

Sources:

— Council Regulation (EEC) No 4254/88 (as amended by Regulation (EEC) No 2083/93 Article 1 (c) third indent (ERDF Regulation).
— Council Regulation (EEC) No 4256/88 (as amended by Regulation (EEC) No 2085/93 Articles 5 (k) and 6 (EAGGF — Guidance Section Regulation).
— Commission notice to the Member States No 94/C 180/03 published in Official Journal No C 180 of 1 July 1994 (Community SME initiative), particularly point 7.9.

Datatsheet No 20

Eligibility of expenditure under the Structural Funds

LEASING

GENERAL RULE:

A leasing operation is eligible on the terms set out below [1].

Terms of eligibility:

A. ***Direct leasing***

(the leasing company, or lessor, is the first recipient of the Community aid, which is granted in respect of the assets it purchases and leases to others under contract):

1. *Leasing contracts receiving aid under the scheme must include an option to purchase or a provision that the leasing period shall be the same length as the useful life of the asset to which the contract relates.*

   Where a contract is terminated before term without the approval of the competent authorities, the lessor must undertake to repay to the national authorities concerned (for credit to the relevant fund) that part of the Community subsidy corresponding to the remainder of the leasing period.

2. *The purchase of the asset by the leasing company, supported by a receipted invoice or an accounting document of equivalent probative value, constitutes the expenditure eligible for part-financing.*

   The Community contribution will be paid to the lessor, it being his responsibility to pass the Community aid on to the lessee.

3. *The maximum amount eligible for Community part-financing must not exceed the net market value of the asset leased.*

   This limit is set in order to exclude from the part-financing ineligible expenditure connected with the leasing contract (tax, interest payments, refinancing costs, the leasing company's overheads, insurance charges, etc.). The contract must therefore provide for each rental to be broken down into two parts, namely the amount intended to cover the net purchase and the secondary costs arising from the operation as listed above.

4. *Community aid paid to the leasing company must be used in its entirety for the benefit of the lessee,*

   by means of a uniform reduction in all the leasing rentals and corresponding interest payments during the leasing period.

B. ***Indirect leasing***

(the lessee directly receives the Community subsidy):

1. *Leasing contracts eligible under the scheme must include an option to purchase or a provision that the leasing period shall be the same length as the useful life of the asset to which the contract relates.*

2. *The leasing rentals paid to the lessor (the leasing company) by the lessee, supported by a receipted invoice or an accounting document of equivalent probative value, constitute the expenditure eligible for part-financing.*

   The Community contribution is paid to the lessee in respect of each leasing rental effectively paid, or as a single payment on the basis of the updated amount of the rental corresponding to the period of eligibility, if this updated amount represents 'expenditure actually incurred' and paid by the final beneficiary at the beginning of the operation.

3. *If the total term of the leasing contract exceeds the period of Community involvement, only the leasing rentals paid by the lessee up to the date on which such involvement ends (the cut-off date for booking of payments) shall be eligible.*

   This condition arises from the fact that only real, actually incurred costs are eligible for part-financing, while expenditure to be incurred in the future (i.e. future leasing rentals) is ineligible. To ensure that the duration of the leasing contract coincides more closely with the period of Community involvement, the initial price of the asset could be reduced at the beginning of the period by a payment eligible for part-financing.

4. *The maximum amount eligible for Community part-financing must not exceed the net market value of the asset leased.*

   This limit is set in order to exclude the part-financing of ineligible expenditure connected with the leasing contract (tax, interest payments, refinancing costs, the leasing company's overheads, insurance charges, etc.). The contract must therefore provide for each rental charge to be broken down into two parts, namely the amount intended to cover the net purchase and the secondary costs arising from the operation as listed above.

PARTICULAR RULES FOR FUNDS:

— ESF

(i) The ESF does not part-finance purchases of assets, only the leasing or depreciation thereof for the lifetime of the action

[1] These terms apply except if a State aid scheme provides for different procedures.

(see datasheet 6, 'Depreciation'). The option-to-purchase condition is not, therefore, compulsory in the case of this Fund, and in any event the ESF part-finances only part of the rentals incurred by the final lessee under an operational leasing contract, in proportion to the duration of the training measure or other eligible action.

(ii) Furthermore, in order to ensure cost-effectiveness, the cost borne by the final lessee must be checked to make sure that it is not greater than the cost which would have been incurred if the same material had been hired, provided that the option of hiring was available. Otherwise the additional charge incurred through leasing instead of merely hiring will be deducted from the eligible expenditure.

— **ERDF**

Internally generated development part-financed by the ERDF enables, through leasing, assets required for the establishment and operation of a business providing small firms with services to be acquired. The particular rules for the ESF set out above also apply to current expenditure financed under this heading.

— **Pilot projects**

As such operations are by their nature of short duration, the particular rules for the ESF set out at (i) and (ii) also apply to pilot projects and innovatory schemes, in respect of the three Structural Funds and the FIFG.

Source

Detailed guidelines on the treatment of leasing in the framework of the Community's structural financial instruments (OJ No C 250, 14. 9. 1993).

Datasheet No 21

Eligibility of expenditure within the framework of the Structural Funds

SCHEMES INVOLVING REFUNDABLE AID

DEFINITION:

1. 'Refundable aid' means assistance which may be temporary or not definitively awarded as a grant-in-aid by a responsible public authority, or an intermediary designated by a Member State, to business or private individuals acting within a national aid scheme forming part of an operational programme. The aid applies to all actions eligible under the Structural Funds.

2. In other words, this datasheet concerns part-financing of an approved State aid scheme or one which falls under the *de minimis* rule, and not a loan scheme (which would be a banking operation). This distinction arises out of the origin of the funds, where these are supplied by a public body whose aid payments are subject to the notification requirement to the Commission under the terms of Article 93 (3) of the Treaty.

3. Refundable aid may bear a reduced rate of interest as compared with loan conditions in the banking sector or it may bear a zero rate of interest (whence the character of an aid).

4. The case dealt with in this datasheet does not come under the heading of financial engineering because the Commission is part-financing a scheme of aid to individual recipients as and when the Member State presents a certificate of expenditure and does not thus part-finance the creation of a fund.

5. The first round of aid granted to business or private individuals constitutes the expenditure actually incurred in terms of the financial implementing provisions annexed to the form of assistance in question.

6. The business receiving the aid must refund it to the body which granted it in accordance with rules laid down beforehand; these repayments and any interest should be fed back into the original appropriation for the scheme, thus providing monies for further refundable aid payments.

SPECIFIC PROVISIONS:

The procedures for the repayment of such aid must be based on transparent criteria as set out below:

1. The financial management of refundable aid must follow the rules and definitions applicable to non-refundable aid. However, the 'repayment' component means that the following principles and methods of financial management apply:

1.1. The body granting the refundable aids (= final beneficiary, see datasheet on final beneficiary) must keep transparent accounts showing, in particular for inspection purposes, the distinction between:

— the amount of aid on the basis of the appropriation originally assigned to the body in question,

— any repayments and interest paid by the recipients of the refundable aid,

— the amount of new aids paid out from amounts refunded by aid recipients (reimbursements and any interest paid).

1.2. It must be assured that refunds (reimbursements and any interest paid) will not be used to substitute for the national counterpart funds entered in the financing plan for the measure, and that they will be reused within the same measure. Accordingly, at the end of the programme the body granting the aid will have to justify its use of resources programmed in the financing plan as well as of any additional resources generated by repayments received in the meantime, if it is to benefit from the total Community assistance allocated to the measure.

1.3. In order to guarantee transparency of financial flows, it is necessary that the body granting the aid draw up a statement of expenditure showing both expenditure actually incurred (i.e. the amount of aid granted and paid out to recipients) and the repayments and any interest received during the same timescale, as separately recorded in the accounts (supporting documents must be produced in the event of on-the-spot inspections).

2. For the closure of accounts on a form of assistance which includes part-financing of a refundable-aid scheme, the same methods as for financing non-refundable schemes apply, without taking account of any aid granted out of monies refunded (reimbursements and possible interest) during the period while the form of assistance was running.

3. After payment of the final balance in respect of the form of assistance, the Commission is no longer involved in implementing or monitoring an operation, save for any general regulatory provisions concerning inspections in particular.

Sources:

— Framework Regulation (EEC) No 2052/88 as amended (Article 5 (2) (b))
— Regulation (EEC) No 4254/88 as amended (Article 1).
— Regulation (EEC) No 4256/88 as amended (Articles 5 and 6).
— Commission notice on the *de minimis* rule for State aid (OJ C No 68, 6. 3. 1996).

Datasheet No 22

Eligibility of expenditure under the Structural Funds

COSTS INCURRED BY PUBLIC ADMINISTRATION, INCLUDING SALARIES OF MEMBER STATES' CIVIL SERVANTS

GENERAL RULE:

1. Costs incurred by public administration, including salaries of national and local (statutory) civil servants employed on day-to-day management, monitoring and control tasks on part-financed projects meeting regulation requirements are ineligible for part-financing through forms of assistance, including technical assistance.

2. Only additional expenditure, meaning expenditure over and above normal patterns that is linked to specific and supplementary regulatory requirements may be eligible. Evidence that the expenditure is 'additional' must be furnished by the Member State. This expenditure will require prior acceptance by the Commission services. In addition, it has to be checked whether financing is warranted by the programme's objectives, and whether the administrative expenditure is directly chargeable to projects eligible under the programme.

   Additional expenditure eligible for technical assistance appropriations means the following (the reference to costs relating to additional staff concerns all administrations whether at central, decentralized or territorial level):

   — monitoring and evaluation of assistance: expenditure entailed by monitoring committee meetings and coordination between various committees and sub-committees (transport, accommodation and daily allowances for civil servants attending meetings, but not their salaries) in accordance with the standard scales in use in the public service or according to the scales to be established in the partnership,

   — control actions: costs linked to on-the-spot checks (transport, accommodation, daily allowances) and the organization and coordination of the control system established by the Member State, except for the salaries of controllers, in accordance with the standard scales in use in the public service or according to the scales to be established in the partnership (however, according to Article 6 (1) (b) of the ESF Regulation the total cost of control actions is eligible for ESF measures),

   — costs, including salaries, linked to temporary employment of staff (whether temporary civil servants or staff from the private sector) for work involving management, follow-up, evaluation and control,

   — costs, including salaries, linked to temporary secondment of civil servants to local authorities, to the central administration or from a local administration to another local administration (for not more than 12 months) to assist with the training of local civil servants and with the pooling of experience in matters of management, monitoring, evaluation and control of part-financed measures.

   The detailed rules for the application of these provisions (application procedure, ceilings, control, etc.) are worked out case by case in the framework of the partnership.

Specification

3. Costs of public administrations, including salaries of national civil servants, as operational costs pertaining to a project, incurred otherwise than on day-to-day management, monitoring and control tasks are eligible expenditure if they are:

   — project implementation fees incurred by way of professional services rendered by public servants or a public service and invoiced either to a final beneficiary or certified on the basis of documents of probative value which permit the identification of real costs incurred by the public service concerned to the benefit of the individual project (document detailing the work provided for the account of the final beneficiary, calculated pro rata on the basis of the salary statement of the public servant on detachment),

   — project implementation fees including provision of services borne by a public authority that is itself the final beneficiary undertaking the realization of the works on its own account without recourse to outside engineers or firms, provided the costs relate to expenditure actually and directly incurred on the part-financed project,

   — costs of action integrated into measures that by definition entail public spending (as specified in the particular rules for certain Funds).

PARTICULAR RULES FOR FUNDS:

— **ESF**

Measures that by definition entail public spending:

The administrative costs to which the datasheet relates are not operational costs borne by public agencies or their staff as final beneficiaries on the 'preparation, operation, management and evaluation' of training measures, which are eligible under Article 2 (1) of the ESF Regulation.

Example: training for local and national civil servants in Objective 1 regions.

— **EAGGF Guidance Section**

Measures that by definition entail public spending:

The administrative costs to which the datasheet relates are not operational costs borne by public agencies as final beneficiaries for an action that is integrated into a measure that explicitly entails public spending.

— **ERDF**

Pilot projects under Article 10 of the ERDF Regulation:

Costs of local civil servants acting as project managers (carrying out the pilot project) or as service providers may be treated as eligible. The expenditure may in no case exceed 25 % of the total eligible costs of the pilot project.

Sources:

— Coordination Regulation (Articles 17 (2) and 25 (1)).
— EAGGF Guidance Section Regulation (Articles 2, 5 and 6).
— Council Regulation (EEC) No 270/79 (EAGGF Guidance Section).
— ESF Regulation (Articles 1 and 6).
— ERDF Regulation (Article 1).
— Commission statement and Article 21 (3) of the Coordination Regulation (EEC) No 4253/88 as amended by Regulation (EEC) No 2082/93, entered in the Council minutes recording the adoption of Regulation (EEC) No 2082/93.
— DG XVI Technical assistance *Vade-mecum* (November 1994).