

Implementation Guidance 2014 -2020

Operations generating net revenues

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This is a draft document based on the new ESIF Regulations published in OJ 347 of 20 December 2013 and on the most recent version of the relevant Commission draft implementing and delegated acts. It may still require review to reflect the content of these draft legal acts once they are adopted.

1. Background

In order to ensure an effective use of public resources, and avoid the over-financing of operations, it is necessary to set out the rules for calculating the contribution from the ESI Funds to operations generating net revenues. The major simplification for the 2014-2020 period is the possibility for the Member State to apply net revenue flat rates for operations generating net revenues.

1.1 Relevant articles

The relevant articles for the section are:

Article 61(1-8) of Regulation 1303/2013 (the common provisions regulation, CPR)	Operations generating net revenue after completion
Article 65(8) CPR	Eligibility
Annex V CPR	Flat rates as referred to in Article 61(3)(a)

1.2 Key differences with the 2007-2013 period

The key changes can be summarised as follows:

- The new wording of the article(s) is more comprehensive, taking on board several aspects currently dealt with outside the legislative framework, i.e. covered by the 2007-2013 COCOF Guidance note on Article 55 (COCOF 07/0074/09);
- Introduction of the regulatory definition of what is to be considered as net revenue in case of operations generating net revenue after their completion (Article 61 CPR);
- Separate provisions applying to operations which generate net revenue mainly after their completion (covered by Article 61 CPR) and operations which generate net revenue solely during their implementation (Article 65(8) CPR);
- Introduction of a possibility to resort to a flat-rate system instead of performing the calculation of the funding gap for operations generating net revenue after their completion (Article 61(3) (a) CPR);
- Change in the duration of the follow up period of revenues generated by an operation (three years instead of five from completion of the operation, or, if earlier, 30 September 2023) for operations generating net revenue after their completion;
- Clarification and extension of operations not covered by the revenue-generating provisions;
- Fine tuning of the state aid exception as regards operations for which support under the programme constitutes *de minimis* aid or compatible state aid (need to take into consideration individual aid schemes notified to the Commission or the maximum aid intensity provided for under the RAG);
- Provisions on revenue generation are common to all ESI Funds, subject to exceptions provided in section 2 of this guidance.

2. Guidance

This guidance will familiarise desk officers with the 2014-2020 regulatory framework in the area of revenue generation, notably explaining the options Member States have in dealing with revenue-generating operations, understanding the difference between net revenues generated during implementation (covered by Article 65 (8) of the CPR) and net revenue generated after implementation (covered by Article 61 of the CPR) and providing an overview of exceptions.

2.1 Commentary/analysis of the regulatory framework

A) OPERATIONS GENERATING NET REVENUE AFTER THEIR COMPLETION (ARTICLE 61 (1-8))

Article 61 CPR applies to operations, which generate net revenue:

- a) after their completion only or
- b) during their implementation and after their completion.

The exceptions to application of provisions on revenue-generation under Article 61(7-8) CPR are specified on page 5 of this guidance note.

Net revenue is understood as cash in-flows directly paid by users for the goods and services provided by the operation, such as charges borne directly by users for the use of infrastructure, sale or rent of land or buildings, or payments for service, less any operating costs and replacement costs of short-life equipment incurred during the corresponding period.

Operating cost-savings generated by the operation shall be included in the net revenue, unless they are offset by an equal reduction in operating subsidies.

Net revenue determined in advance

By default, the potential net revenue of an operation shall be determined **in advance**, reducing the eligible expenditure of the operation to be co-financed from the Funds.

The Regulation allows for **three possible methods** to be chosen by the managing authority for a sector, subsector or type of operation (in accordance with national rules) to establish the potential net revenue/decisional amount.

It is essential that the managing authority decides at the programming stage which of the following three methods will apply to types of sectors, types of sub-sectors or to individual projects based on a sound analysis of the past experience with financing of revenue-generating operations (taking into account the profitability normally expected for the category of investment concerned, polluter pays principle and level of affordability). Whereas for methods 1 and 2 the managing authority shall indicate its general preference for the method to be applied, for method 3 a choice of a decreased co-financing rate for the chosen sector is binding and will form part of the Commission decision on the respective programme.

Methods for determining net revenue/decisional amount:

1. Calculation of discounted net revenue using the funding gap method

This is the method used in 2007-2013 period for revenue-generating projects falling under Article 55 of Council Regulation 1083/2006. The following formula shows the calculation of the funding gap (FG):

$$DEE = DIC - DNR = FG$$

where DEE stands for discounted eligible expenditure
DIC is discounted investment cost
DNR is discounted net revenue

In order to establish the decisional amount and the EU contribution, the following standard calculation should be used:

$$DA = EC * (1 - DNR/DIC)$$

where DA stands for decisional amount
EC is the eligible cost

$$EU \text{ grant} = DA * \text{maxCRpa}$$

where maxCRpa stands for maximum co-financing rate of the priority (%)

Details on the methodology to be used for establishing the funding gap will be provided in the Implementing Act as referred to in Article 61(3) CPR.

Any net revenues generated during implementation, not taken into account in determining the original potential net revenue, have to be deducted no later than at the final payment claim to be submitted to the Commission.

2. Application of a flat rate net revenue percentage

As a simplified approach to the method described above, the Member State may opt for applying flat rate net revenue percentages to the operations in sector or subsectors defined in Annex V CPR:

	Sector	Flat rates
1	ROAD	30%
2	RAIL	20%
3	URBAN TRANSPORT	20%
4	WATER	25%
5	SOLID WASTE	20%

Delegated acts are needed to establish flat rates in additional sectors (ICT, R&D, energy efficiency etc.) as well as for any technical adjustments of the above flat rates provided in the Annex to CPR

The advantage of this method is that the Member State does not need to calculate the funding gap; instead the decisional amount (and the EU contribution) is directly established as follows:

$$\text{DA} = \text{EC} * (1 - \text{FR})$$

where DA stands for decisional amount
FR stands for flat rate (%)

$$\text{EU grant} = \text{DA} * \text{maxCRpa}$$

where maxCRpa stands for maximum co-financing rate of the priority or measure (%)

All the net revenues generated during implementation and after completion of the operation are considered to be taken into account by the application of the flat rate and are therefore not deducted subsequently from the eligible expenditure.

1. Application of a decreased co-financing rate for a chosen priority

As an alternative approach to method 2, Member State may decide at the programming stage that a uniform flat rate (as specified in Annex V CPR) will be applied to all operations under a selected priority (i.e. 1 priority – 1 sector – 1 flat rate). In that case, the decreased co-financing rate will form part of the Commission decision on the respective programme.

The given priority maximum co-financing rate will be decreased as follows:

$$\text{Reduced maxCRpa} = \text{maxCRpa} * (1 - \text{FR})$$

The EU contribution is then simply established using the below formula

$$\text{EU grant} = \text{EC} * \text{reduced maxCRpa}$$

All the net revenues generated during implementation and after completion of the operation are considered to be taken into account by the application of the decreased co-financing rate and are therefore not deducted subsequently from the eligible expenditure.

It should be noted that Article 61(1-8) CPR covers also those cases where some revenues are generated by the operation already **during its implementation**, even though the bulk of the revenues come only after the completion of the said operation (eg: it may be that certain parts of an operation are finalised earlier and could generate revenues prior the completion of the overall operation). Article 61 CPR applies to all such revenues.

Where not all investment costs are eligible, the net revenue is allocated **pro-rata** to the eligible and non-eligible parts of the investment costs.

Net revenue not known in advance

Where it is objectively **not possible to establish the revenue in advance** according to one of the methods specified above, the net revenue generated within 3 years of the completion of an operation or by 30 September 2023, whichever is earlier, shall be deducted from the expenditure declared to the Commission.

Exceptions

Provisions on operations generating net revenues after their completion (Article 61(1-6) CPR) **do not apply** to:

- Operations or parts of operations supported solely by the **ESF**
- Operations whose total eligible cost before deduction of net revenue does not exceed **€ 1 million** (the managing authority may nevertheless decide to apply the provisions on revenue-generation even to operations below this threshold)
- **Repayable assistance and prizes**
- **Technical assistance**
- Support to or from **financial instruments**
- Operations using **lump sums** or **standard scale of unit costs**
- Operations implemented under a **joint action plan**
- Operations for which amounts or rates of support are defined in **Annex 1 EAFRD**¹
- Operations for which support under the programme constitutes a) **de minimis aid**; b) **compatible state aid**, where an aid intensity limit is applied or where it is subject to individual verification of financing needs under state aid rules.

B) OPERATIONS GENERATING REVENUE DURING THEIR IMPLEMENTATION (ARTICLE 65(8))

Any revenues generated solely during the implementation of operations in the 2007-2013 period were regarded as revenues generated outside the scope of Article 55 of Council Regulation 1083/2006. The Member States were asked in the COCOF Guidance note on Article 55 to apply the principle of sound financial management when dealing with these sorts of revenues. The CPR clarifies this situation for 2014-2020 in Article 65(8) CPR.

¹ Annex II of the EAFRD Regulation (1305/2013) defines the aid-intensities and rate of support under various EAFRD measures: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1305&from=EN>

All operations which generate revenue during their implementation and to which the provisions of Article 61(1-6) CPR do not apply are covered by Article 65(8) CPR. ESF operations may be covered only by this provision.

Example: if the trainees have to pay some fees to attend a training course, the fees may be deducted at approval: the total eligible cost is €100 but is reduced by the fees €10. Reduced eligible cost: €100 - €10 = €90, on the basis of which the EU contribution will be reimbursed.

Alternatively the fees could be deducted during implementation but not later than at the final payment claim submitted by the beneficiary: In that case the initial agreement would be €100. If the final payment claim is €95 with €10 of fees, the reduced eligible expenditure is: 95-10 = €85.

The net revenues cannot be used as a source of co-financing to calculate the EU reimbursement (they reduce the eligible expenditure).

There are also some exceptions to application of Article 65(8) CPR:

- Operations whose total eligible cost does not exceed €50 000 (proportionality approach)
- **Repayable assistance and prizes**
- **Technical assistance**
- Support to or from **financial instruments**
- Operations using **lump sums** or **standard scale of unit costs** (net revenues should be taken into account ex ante when deciding the amount of the lump sum or the standard scale of unit cost)
- Operations implemented under a **joint action plan** (net revenues should be taken into account ex ante)
- Operations for which amounts or rates of support are defined in **Annex 1 EAFRD**²
- Operations subject to rules on state aid.

Any net revenues directly generated during the implementation, which were not taken into account at the time of approval of the operation have to be **deducted from the eligible expenditure at the latest at closure**.

Where not all costs are eligible, the net revenue is allocated **pro-rata** to the eligible and non-eligible parts of the costs.

C) PROVISIONS COMMON TO ARTICLE 61 AND 65(8)

The following payments received by the beneficiary should not be considered as revenues for the purposes of Articles 61 and 65(8) CPR:

- a) contractual penalties (payment received by the beneficiary arising from a contractual condition on a breach of contract between the beneficiary and third parties)
- b) deposits (payments received by beneficiaries which occurred as a result of the withdrawal of its offer by a third party chosen in public procurement).

² Annex II of the EAFRD Regulation (1305/2013) defines the aid-intensities and rate of support under various EAFRD measures: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1305&from=EN>

3. Contact points

For further question please contact Andreas VON BUSCH (REGIO F1: Operational Efficiency unit, 55108) or Laurent SENS (EMPL E1: ESF Legislation and Policy unit, 80474).