

Fact sheet 5: Contractual arrangements

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5.1. Clarification procedure

After project approval, the contracting phase starts. During this phase eventual modifications or clarifications to the application are carried out.

Projects approved under conditions must fulfil such requirements for approval before entering into contracting. Where conditions are specified by the PMC, fulfilment of these is compulsory and must be undertaken prior to the signing of the Subsidy Contract. Recommendations are normally carried out by projects during the implementation phase, however projects must describe how they will address these issues.

Conditions, recommendations and clarifications may result in revisions of the project approved form (PAF). The Lead Partner, in close e collaboration with the Joint Secretariat, is in charge of making the necessary adaptations to the PAF and to upload all relevant signed documents within the given deadline.

Successful completion of this process is a precondition for the award of a Subsidy Contract.

5.2. Partnership Agreement

According to Article 13(2) of the ETC Regulation, the Lead Partner shall define arrangements for relations with the project partners in an agreement comprising, *inter alia*, provisions which guarantee the sound financial management of the funds allocated to the project, including the recovery of unduly paid amounts. While the Subsidy Contract establishes a legal base between the MA and the Lead Partner, the Partnership Agreement establishes a legal base between Lead Partner and all project partners.

The Subsidy Contract is signed between the Lead Partner and the MA, whereas the Partnership Agreement constitutes the contractual relationship between all project participants. While the Lead Partner is responsible for ensuring the proper project implementation towards the

MA, each project partner is responsible to the Lead Partner for bringing in its project contribution and giving full support to the Lead Partner to ensure the successful project realisation.

The Partnership Agreement provides the framework for efficient project implementation and management and aims at guaranteeing the project's contribution to reaching the programme's objectives. The Partnership Agreement shall raise awareness of and clearly define the responsibilities of Lead Partner and project partners in a legally binding manner.

The Interreg Atlantic Area Programme provides a downloadable template of the Partnership Agreement on www.atlanticarea.eu. The Partnership Agreement must be signed by the Lead Partner and all project partners, either in one single document or as bilateral documents between the Lead Partner and each project partner.

The Partnership Agreement shall be signed the latest within three months after the Subsidy Contract enters into force. The Lead Partner has to provide evidence to the MA/JS on the signing of the Partnership Agreement that should be included/uploaded in the PAF. The MA reserves the right to check the Partnership Agreement in order to verify that it has been signed and that it meets the requirements set by the programme.

5.3. Subsidy Contract

According to the European Structural and Investment funds (ESI) Regulations 2014-2020, the MA shall provide to the Lead Partner a document called a Subsidy Contract setting out the conditions for the ERDF-co-financing of the project, including specific requirements concerning the products or services to be delivered by the project, the financing plan and the time-limit for execution.

The Subsidy Contract is an essential element within the framework of managing and monitoring territorial cooperation programmes. This contract stipulates the rights and duties of the Lead Partner, as well as of the programme bodies and other organisations involved in the implementation of the programme (e.g. MA, JS, PMC, CA, first level control bodies, organisations involved in the second level control). It regulates issues such as reporting obligations and procedures, conditions for project changes, obligations and rights related to information and communication activities, provisions on financial controls and audits of the project, use and ownership of project results or liabilities of the Lead Partner.

The Subsidy Contract is established between the CCDD-N, acting as the MA of the programme and the Lead Partner. The Subsidy Contract constitutes the legal framework for the implementation of the project, confirming the final ERDF commitment to the project, setting out the conditions for support and providing implementing arrangements.

The most recent version of the PAF forms a binding agreement along with the Subsidy Contract. The Subsidy Contract template is available for download on the programme website www.atlanticarea.eu. Following the approval of the project by the PMC and, (where applicable), following the fulfilment of all conditions/recommendations for approval set by the PMC, a Subsidy Contract must be signed

The Lead Partner must sign and return two original print outs of the Subsidy Contract that are dated, stamped (when possible) and signed by the legal representative of the Lead Partner institution. The MA will send back to the Lead Partner a countersigned copy of the Subsidy Contract.

5.4. Decommitment of funds

According to Article 136 of Regulation (EU) No 1303/2013, the EC shall automatically decommit any part of a budget commitment of a programme that has not been used by 31 December of the third year following the year of budget commitment. Payments not requested by projects on time and in full may be lost.

In case of decommitment of funds, Article 18 Point 4 of the Partnership Agreement applies: “the project partners herewith agree that the deduction shall be imputed to those project partners that have contributed to the decommitment of funds unless a different decision is taken by the PMC. Deduction of funds shall be done in a way not to jeopardise future involvement of project partners and implementation of activities”.

In accordance with Article 16.4 of the Partnership Agreement “Should the programme face a budget reduction due to the decommitment rule and should the ERDF funds allocated to the project be reduced as a consequence, the project participants herewith agree that the budget reduction shall be imputed to the project participants that have contributed to the underspending by not reporting according to the time schedule of the project as stated in the PAF, unless a different decision is taken by the PMC”.

Project partners should be aware that the PMC is much more likely to grant flexibility to projects with slow rates of commitment if: a) flexibility is asked for as early as possible (i.e. before payment claims fall behind schedule), and; b) if there is a clear plan to deal with delays in payment claims. Without both of these, the presumption is that the PMC will decide to decommit funding to projects. Projects should therefore engage the JS as early as possible once they realise there is a risk of not hitting payment claim targets.

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Abbreviations used in the Programme Manual

AA	Audit Authority
AD&C	Agência para o Desenvolvimento e Coesão
CA	Certifying Authority
CCDR-N	Comissão de Coordenação e Desenvolvimento Regional do Norte
CPR	Common Provisions Regulation
DCLG	Department for Communities and Local Government
EOI	Expression of Interest
ERDF	European Regional Development Fund
ESI	European Structural and Investment Funds
ETC	European Territorial Cooperation
EU	European Union
FLC	First Level Controller
GBER	General Block Exemption Regulation
GoA	Group of Auditors
IGF	Inspeção Geral de Finanças
IPR	Intellectual Property Rights
JS	Joint Secretariat
MA	Managing Authority
MS	Member State
NC	National Correspondents
NCP	National Contact Points
PAF	Project Approved Form
PMC	Programme Monitoring Committee
SIGI	Integrated management information system
SME	Small and Medium Enterprises
WP	Work Package