ESF/PA/2-2001
Eligibility Rules
Department of Enterprise, Trade and Employment

Circular No. ESF/PA/2 - 2001

The text of this Circular, with the exception of that in bold & italic, is taken directly from the Annex to Commission Regulation (EC) No 1685/2000

ELIGIBILITY RULES

Rule No 1: Expenditure Actually Paid Out

1. PAYMENTS BY FINAL BENEFICIARIES

1.1. Payments effected by final beneficiaries within the meaning of the third subparagraph of Article 32(1) of Regulation (EC) No 1260/1999 (hereinafter "the General Regulation") shall be in the form of cash subject to the exceptions indicated in point 1.4.

1.2. In the case of aid schemes under Article 87 of the Treaty and aid granted by bodies designated by the Member States, "payments by final beneficiaries" means aid paid to individual recipients by the bodies which grant the aid. Payments of aid by final beneficiaries must be justified by reference to the conditions and objectives of the aid.

1.3. In cases other than those referred to in point 1.2, "payments by final beneficiaries" means payments effected by the bodies or public or private firms of the type defined in the programme complement in accordance with Article 18(3)(b) of the General Regulation having direct responsibility for commissioning the specific operation.

ESF

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

1.4 Under the conditions set out in points 1.5 to 1.7, depreciation, contributions in kind and overheads can also form part of the payments referred to in point 1.1. However, the Structural Funds' co-financing of an operation shall not exceed the total eligible expenditure, excluding contributions in kind, at the end of the operation.

ESF

The Paying Authority (Department of Enterprise, Trade and Employment), in accordance with the provisions of Regulation 438/2001 has set out specific rules in relation to the use of:

- ***Contributions in kind***
- ***Depreciation***
- ***Allocation of overheads***

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)***

- ***the Paying Authority will put procedures in place to allow final beneficiaries to demonstrate on an annual instalment basis that the co financing by the ESF does not exceed total eligible expenditure, excluding contributions in kind.***

1.5 The cost of depreciation of real estate or equipment for which there is a direct link with the objectives of the operation is eligible expenditure, provided that:

(a) national or Community grants have not contributed towards the purchase of such real estate or equipment;
(b) the depreciation cost is calculated in accordance with the relevant accountancy rules;
(c) the cost relates exclusively to the period of co-financing of the operation in question.

ESF

Depreciation is allowable:

- ***only on the part(s) of the real estate being used for ESF activity and for the period of the ESF assistance.***

- ***in respect of office furnishings, fittings and equipment the Paying Authority has set a threshold amount, above which depreciation is applied.***

1.6. In kind, contributions are eligible expenditure provided that:

(a) they consist in the provision of land or real estate, equipment or materials, research or professional activity, or unpaid voluntary work;

(b) they are not made in respect of financial engineering measures referred to in Rules 8, 9 and 10;

(c) their value can be independently assessed and audited;

(d) work is determined in the case of the provision of land or real estate, the value is certified by an independent qualified valuer or duly authorised official body;

(e) in the case of unpaid voluntary work, the value of that taking into account the amount of time spent and the normal hourly and daily rate for the work carried out;

(f) the provisions of Rules 4, 5 and 6 are complied with where applicable.

ESF

- ***Rule 1.6(a) excludes land and real estate***
- ***Rule 1.6(b) not applicable***
- ***Rule 1.6(c) not applicable***
- ***Rule 1.6(d) not applicable***
- ***Rule 1.6(e) subject to detailed rules set by Paying Authority***
- ***Rule 1.6(f) subject to Rule 4***

Contributions in kind are an important feature of certain Community Initiatives. Accordingly, the Paying Authority has set out detailed rules covering the use of contributions in kind.

1.7. Overheads are eligible expenditure provided that they are based on real costs which relate to the implementation of the operation co-financed by the Structural Funds and are allocated pro rata to the operation, according to a duly justified fair and equitable method.

ESF

General rule

Overheads are defined as eligible costs, which cannot be directly attributed in its entirety, to an activity or process.

These should be allocated in an equitable manner, in accordance with generally recognised 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.

The method adopted must be based on real costs and the organisation must maintain an adequate audit trial in order to prove the appropriateness of the overhead allocation.

1.8. The provisions of points 1.4 to 1.7 are applicable to individual recipients referred to in point 1.2 in the case of aid schemes under Article 87 of the Treaty and aid granted by bodies designated by Member States.

1.9. Member States may apply stricter national rules for determining eligible expenditure under points 1.5 to 1.7.

2. PROOF OF EXPENDITURE

As a rule, payments by final beneficiaries shall be supported by receipted invoices. Where this cannot be done, payments shall be supported by accounting documents of equivalent probative value.

In addition, where the execution of operations is not subject to a competitive tendering procedure, payments by final beneficiaries shall be justified by expenditure actually paid (including expenditure referred to in point 1.4) by the bodies or public or private firms concerned in implementing the operation.

3. SUBCONTRACTING

3.1. Without prejudice to the application of stricter national rules, expenditure relating to the following subcontracts is ineligible for co-financing by the Structural Funds:

(a) subcontracting which adds to the cost of execution of the operation, without adding proportionate value to it;

(b) subcontracts with intermediaries or consultants in which the payment is defined as a percentage of the total cost of the operation unless such payment is justified by the final beneficiary by reference to the actual value of the work or services provided.

3.2. For all subcontracts, subcontractors shall undertake to provide the audit and control bodies with all necessary information relating to the subcontracted activities.

ESF

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 sub-contract which remains the final beneficiary and which assumes responsibility for all expenditure for the implementation of the operations (works).

****The EU Public Procurement Directive must be followed if the project is wholly or partly funded by EU institutions. See Public Procurement Procedures 1984.***

Rule No 2: Accounting treatment of receipts

---

* Services (92/50/EEC)
Contract Notice 200,000 Euro
Prior Indicative Notice 750,000 Euro

1. "Receipts" for the purposes of this rule covers revenue received by an operation during the period of its co-financing or during such longer period up to the closure of the assistance as may be fixed by the Member State, from sales, rentals, services, enrolment/fees or other equivalent receipts with the exception of:

   (a) receipts generated throughout the economic lifetime of the co-financed investments and subject to the specific provisions of Article 29(4) of the General Regulation;

   (b) receipts generated within the framework of financial engineering measures referred to in Rules 8, 9 and 10;

   (c) contributions from the private sector to the co-financing of operations, which appear alongside public contributions in the financing tables of the relevant assistance.

   See ESF rules on match funding.

2. Receipts under point 1 represent income that reduces the amount of co-financing under the Structural Funds that is required for the operation in question.

   Before the Structural Funds' participation is calculated and no later than at the time of the closure of the assistance, they are deducted from the operation's eligible expenditure in their entirety or pro rata, depending on whether they were generated entirely or only in part by the co-financed operation.

Given the fact that the ESF proceeds to an annual closure of instalments the Paying Authority will prescribe procedures to allow recipients demonstrate that income as defined under point 1 has been deducted on an annual basis.

Rule No 3: Financial and other charges and legal expenses

1. FINANCIAL CHARGES

Debit interest (other than expenditure on interest subsidies to reduce the cost of borrowing for businesses under an approved State aid scheme), charges for financial transactions, foreign exchange commissions and losses, and other purely financial expenses are not eligible for co-financing by the Structural Funds. However, in the sole case of global grants, debit interest charges paid by the designated intermediary prior to payment of the final balance of the assistance are eligible, after deduction of credit interest on advances.

2. BANK CHARGES ON ACCOUNTS

Where co-financing by the Structural Funds requires the opening of a separate account or accounts for implementing an operation, the bank charges for opening and administering the accounts, are eligible.

3. LEGAL FEES FOR ADVICE, NOTARY FEES, THE COSTS OF TECHNICAL OR FINANCIAL EXPERTISE, AND ACCOUNTANCY OR AUDIT COSTS

These costs are eligible if they are directly linked to the operation and are necessary for its preparation or implementation or, in the case of accounting or audit costs, if they relate to requirements by the Managing Authority (Department of Enterprise, Trade and Employment).

ESF

Prior agreement must be obtained from the Paying Authority before undertaking / commissioning audit work in addition to that required to satisfy the requirements of 1260/99.

4. COSTS OF GUARANTEES PROVIDED BY A BANK OR OTHER FINANCIAL INSTITUTION

These costs are eligible to the extent that the guarantees are required by national or Community legislation or in the Commission Decision approving the assistance.

5. FINES, FINANCIAL PENALTIES AND EXPENSES OF LITIGATION

These expenses are not eligible.

Rule No 4: Purchase of second-hand equipment

The purchase costs of second-hand equipment are eligible for co-financing by the Structural Funds under the following three conditions without prejudice to the application of stricter national rules:

(a) the seller of the equipment shall provide a declaration stating its origin, and confirm that at no point during the previous seven years has it been purchased with the aid of national or Community grants;

(b) the price of the equipment shall not exceed its market value and shall be less than the cost of similar new equipment; and

(c) the equipment shall have the technical characteristics necessary for the operation and comply with applicable norms and standards.

ESF:

The Paying Authority has set a threshold amount, above which depreciation is applied.

Rule No 5: purchase of land

1. GENERAL RULE

1.1. The cost of purchase of land not built on shall be eligible for co-financing by the Structural Funds under the following three conditions without prejudice to the application of stricter national rules:

(a) there shall be a direct link between the land purchase and the objectives of the operation co-financed;

(b) except in the cases described in point 2, the land purchase may not represent more than 10 % of the total eligible expenditure of the operation, unless a higher percentage is fixed in the assistance approved by the Commission,

(c) a certificate shall be obtained from an independent qualified valuer or duly authorised official body confirming that the purchase price does not exceed the market value.

1.2. In the case of aid schemes under Article 87 of the Treaty, the eligibility of land purchase shall be assessed in terms of the aid scheme in its entirety.

2. ENVIRONMENTAL CONSERVATION OPERATIONS

For environmental conservation operations, all the condtions indicated below shall be met for the expenditure to be eligible:

the purchase is the subject of a positive decision by the managing authority,

the land is devoted to the intended use for a period determined in that decision,

the land is not for agricultural purposes save in duly justified cases accepted by the managing authority,

the purchase is made by or on behalf of a public institution or a body governed by public law.

ESF :

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

Rule No 6: purchase of real estate

1. GENERAL RULE

The cost of purchase of real estate, i.e. buildings already constructed and the land on which they are built, is eligible for co-financing by the Structural Funds if there is a direct link between the purchase and the objectives of the operation concerned under the conditions set out in point 2 without prejudice to the application of stricter national rules.

2. TERMS OF ELIGIBILITY

2.1. A certificate shall be obtained from an independent qualified valuer or duly authorised official body establishing that the price does not exceed the market value, and either attesting that the building is in conformity with national regulations or specifying the points which are not in conformity where their rectification by the final beneficiary is foreseen under the operation.

2.2. The building shall not have received, within the previous 10 years, a national or Community grant which would give rise to a duplication of aid in the event of co-financing of the purchase by the Structural Funds.

2.3. The real estate shall be used for the purpose and for the period decided by the managing authority.

2.4. The building may only be used in conformity with the objectives of the operation. In particular, the building may be used to accommodate public administration services only where such use is in conformity with eligible activities of the Structural Fund concerned.

ESF :

This expenditure is excluded from ESF financing. (Articles 2 of the ESF Regulation).
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 also, rules for depreciation.

Rule No 7: VAT and other taxes and charges

1. VAT does not constitute eligible expenditure except where it is genuinely and definitively borne by the final beneficiary, or individual recipient within the aid schemes pursuant to Article 87 of the Treaty and in the case of aid granted by the bodies designated by the Member States. VAT which is recoverable, by whatever

means, cannot be considered eligible, even if it is not actually recovered by the final beneficiary or individual recipient.

2. Where the final beneficiary or individual recipient is subject to a flat-rate scheme under Title XIV of the Sixth Council Directive 77/388/EEC on VAT(1), VAT paid is considered recoverable for the purposes of point 1.
3. In no case may Community co-financing exceed total eligible expenditure excluding VAT.

4. Other taxes and charges (in particular direct taxes and social security contributions on wages and salaries) which arise from co-financing by the Structural Funds do not constitute eligible expenditure except where they are genuinely and definitively borne by the final beneficiary or individual recipient.

Rule No 8: venture capital and loan funds

1. GENERAL RULE

The Structural Funds may co-finance the capital of venture capital and/or loan funds or of venture capital holding funds (hereinafter "funds") under the conditions set out in point 2. For the purposes of this Rules, "Venture capital funds and loan funds" means investment vehicles established specifically to provide equity or other forms of risk capital, including loans, to small and medium-sized enterprises as defined in

Commission Recommendation 96/280/EC(2). "Venture capital holding funds" means funds set up to invest in several venture capital and loan funds. The Structural Funds' participation in funds may be accompanied by co-investments or guarantees from other Community financing instruments.

2. CONDITIONS

2.1. A prudent business plan shall be submitted by the co-financiers or sponsors of the fund specifying, inter alia, the targeted market, the criteria, terms and conditions of financing, the operational budget of the fund, the ownership and co-financing partners, the professionalism, competence and independence of the management, the fund's by-laws, the justification and intended utilisation of the Structural Funds' contribution, the investment exit policy, and the winding-up provisions of the fund, including the reutilisation of returns attributable to the contribution from the Structural Funds. The business plan shall be carefully appraised and its implementation monitored by or under the responsibility of the managing authority.

2.2. The fund shall be set up as an independent legal entity governed by agreements between the shareholders or as a separate block of finance within an existing financial institution. In the latter case the fund shall be subject to a separate implementation agreement, stipulating in particular the keeping of separate accounts distinguishing the new resources invested in the fund (including those contributed by the Structural Funds) from those initially available in the institution. All participants in the fund shall make their contributions in cash.

2.3. The Commission cannot become a partner or shareholder in the fund.

2.4. The contribution from the Structural Funds shall be subject to the limits laid down in Article 29(3) and (4) of the General Regulation.

2.5. Funds may invest only in SMEs at their establishment, early stages (including seed capital) or expansion and only in activities which the fund managers judge potentially economically viable. The assessment of the viability should take into account all sources of income of the enterprises in question. Funds shall not invest in firms in difficulty within the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty(3).

2.6. Precautions should be taken to minimise distortion of competition in the venture capital or lending market. In particular returns from equity investments and loans (less pro-rata share of the management costs) may be preferentially allocated to the private sector shareholders up to the level of remuneration laid down in the shareholder agreement, and after that, they shall be allocated proportionally between all shareholders and the Structural Funds. Returns to the fund attributable to the Structural Funds' contributions shall be reused for SME development activities in the same eligible area.

2.7. Management costs may not exceed 5 % of the paid-up capital on a yearly average for the duration of the assistance unless, after a competitive tender, a higher percentage proves necessary.

2.8. At the time of the closure of the operation, the eligible expenditure of the fund (the final beneficiary) shall be the capital of the fund that has been invested in or loaned out to SMEs, including the management costs incurred.

2.9. Contributions to funds from the Structural Funds and other public sources, as well as the investments made by funds in individual SMEs, are subject to the rules on State aid.

3. RECOMMENDATIONS

3.1. The Commission recommends the standards of good practice set out in points 3.2 to 3.6 for funds to which the Structural Funds contribute. The Commission will regard compliance with these recommendations as a positive element when it examines the fund's compatibility with State aid rules. The recommendations are not binding for the purposes of the eligibility of expenditure.

3.2. The financial contribution of the private sector should be substantial, and above 30 %.

3.3. Funds should be large enough and cover a wide enough target population to ensure that their operations are potentially economically viable, with a time scale for investments compatible with the period of the Structural Funds' participation, and focusing on areas of market deficiency.

3.4. The timing of payments of capital into the fund should be the same for the Structural Funds and the shareholders, and pro rata to the stakes subscribed.

3.5. Funds should be managed by independent professional teams with sufficient business experience to demonstrate the necessary capability and credibility to manage a venture capital fund. Management teams should be chosen on the basis of a competitive selection process, taking into account the level of fees envisaged.

3.6. Funds should not normally acquire majority stakes in firms and should pursue the objective of realising all investments within the life of the fund.

Rule No 9: guarantee funds

1. GENERAL RULE

The Structural Funds may co-finance the capital of guarantee funds under the conditions set out in point 2. For the purposes of this Rule, "Guarantee funds" mean financing instruments that guarantee venture capital and loan funds within the meaning of Rule No 8 and other SME risk financing schemes (including loans) against losses arising from their investments in small and medium-sized enterprises as defined in recommendation 96/280/EC. The funds may be publicly-supported mutual funds subscribed by SMEs, commercially-run funds with private-sector partners, or wholly publicly-financed funds. The Structural Funds' participation in funds may be accompanied by part-guarantees provided by other Community financing instruments.

2. CONDITIONS

2.1. A prudent business plan shall be submitted by the co-financiers or sponsors of the fund in the same way as for venture capital funds (Rule No 8), mutatis mutandis, and specifying the target guarantee portfolio. The business plan shall be carefully

appraised and its implementation monitored by or under the responsibility of the managing authority.

2.2. The fund shall be set up as an independent legal entity governed by agreements between the shareholders or as a separate block of finance within an existing financial institution. In the latter case the "fund" shall be subject to a separate implementation agreement, stipulating in particular the keeping of separate accounts distinguishing the new resources invested in the fund (including those contributed by the Structural Funds) from those initially available in the institution.

2.3. The Commission cannot become a partner or shareholder in the fund.

2.4. Funds may only guarantee investments in activities that are judged potentially economically viable. Funds shall not provide guarantees for firms in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty.

2.5. Any part of the Structural Funds' contribution left over after the guarantees have been honoured shall be reused for SME development activities in the same eligible area.

2.6. Management costs may not exceed 2 % of the paid-up capital on a yearly average for the duration of the assistance unless, after a competitive tender, a higher percentage proves necessary.

2.7. At the time of the closure of the operation, the eligible expenditure of the fund (the final beneficiary) shall be the amount of the paid-up capital of the fund necessary, on the basis of an independent audit, to cover the guarantees provided including the management costs incurred.

2.8. Contributions to guarantee funds from the Structural Funds and other public sources, as well as the guarantees provided by such funds to individual SMEs are subject to the rules on State aid.

Rule No 10: leasing

1. Expenditure incurred in relation to leasing operations is eligible for co-financing under the Structural Funds subject to the rules set out in points 2 to 4.

2. AID VIA LESSOR

2.1. The lessor is the direct recipient of the Community co-financing, which is used for the reduction of the lease rental payments made by the lessee in respect of assets covered by the leasing contract.

2.2. Leasing contracts for which Community aid is paid shall include an option to urchase or provide for a minimum leasing period equal to that of the useful life of the asset to which the contract relates.

2.3. Where a leasing contract is terminated before expiry of the minimum leasing period without the prior approval of the competent authorities, the lessor shall undertake to repay to the national authorities concerned (for credit to the appropriate fund) that part of the Community aid corresponding to the remainder of the leasing period.

2.4. The purchase of the asset by the lessor, supported by a receipted invoice or an accounting document of equal probative value, constitutes the expenditure eligible for co-financing. The maximum amount eligible for

Community co-financing shall not exceed the market value of the asset leased.

2.5. Costs connected with the leasing contract (notably tax, lessor's margin, interest refinancing costs, overheads, insurance charges), other than the expenditure referred to in point 2.4, are not eligible expenditure.

2.6. Community aid paid to the lessor shall be used in its entirety for the benefit of the lessee by means of a uniform reduction in all the leasing rentals for the duration of the leasing period.

2.7. The lessor shall demonstrate that the benefit of the Community aid will be transferred fully to the lessee by establishing a breakdown of the rental payments or by an alternative method giving equivalent assurance.

2.8. The costs referred to in point 2.5, the use of any fiscal benefits arising from the leasing operation, and other conditions of the contract shall be equivalent to those applicable in the absence of any Community financial intervention.

3. AID TO LESSEE

3.1. The lessee is the direct recipient of the Community co-financing. 3.2. The leasing rentals paid to the lessor by the lessee, supported by a receipted invoice or an accounting document of equivalent probative value, constitute the expenditure eligible for co-financing.

3.3. In the case of leasing contracts which include an option to purchase or which provide for a minimum leasing period equal to the useful life of the asset to which the contract relates, the maximum amount eligible for Community co-financing shall not exceed the market value of the asset leased. Other costs connected with the leasing contract (tax, lessor's margin, interest refinancing costs, overheads, insurance charges, etc.) are not eligible expenditure.

3.4. The Community aid in respect of leasing contracts referred to under point 3.3 is paid to the lessee in one or more tranches in respect of leasing rentals effectively paid. Where the term of the leasing contract exceeds the final date for taking account of payments under the Community assistance, only expenditure in relation to leasing rentals falling due and paid by the lessee up to the final date for payment under the assistance can be considered eligible.

3.5. In the case of leasing contracts which do not contain an option to purchase and whose duration is less than the period of the useful life of the asset to which the leasing contract relates, the leasing rentals are eligible for co-financing by the Community in proportion to the period of the eligible operation. However, the lessee must be able to demonstrate that leasing was the most cost-effective method for obtaining the use of the equipment. Where the costs would have been lower if an alternative method (for example hiring

of the equipment) had been used, the additional costs shall be deducted from the eligible expenditure.

3.6. Member States may apply stricter national rules for determining eligible expenditure under points 3.1 to 3.5.

4. SALE AND LEASE-BACK

Leasing rentals paid by a lessee under a sale and lease-back scheme may be eligible expenditure under the rules set out in point 3. The acquisition costs of the asset are not eligible for Community co-financing.

ESF

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

  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.

- ***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 that 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 expenditure eligible.

Rule No 11: costs incurred in managing and implementing the Structural Funds

1. GENERAL RULE

Costs incurred by Member States in the management, implementation, monitoring and control of the Structural Funds are ineligible for co-financing except as provided for in point 2 and falling within the categories set out in point 2.1.

2. CATEGORIES OF MANAGEMENT, IMPLEMENTATION, MONITORING AND CONTROL EXPENDITURE ELIGIBLE FOR CO-FINANCING

2.1. The following categories of expenditure are eligible for co-financing under assistance under the conditions set out in points 2.2 to 2.7:

- expenditure relating to the preparation, selection, appraisal and monitoring of the assistance and of operations (but excluding expenditure on the acquisition and installation of computerised systems for management, monitoring and evaluation),

- expenditure on meetings of monitoring committees and sub-committees relating to the implementation of assistance. This expenditure may also include the costs of experts and other participants in these committees, including third-country participants, where the chairperson of such committees considers their presence essential to the effective implementation of the assistance,

- ***Expenditure relating to audits and on-the-spot checks of operations.***

2.2. expenditure on salaries including social security contributions is eligible only in the following cases:

(a) civil servants or other public officials seconded by duly documented decision of the competent authority to carry out tasks referred to in point 2.1;

(b) other staff employed to carry out tasks referred to in point 2.1. The period of secondment or employment may not exceed the final date for the eligibility of expenditure laid down in the decision approving the assistance.

2.3. The Structural Funds' contribution to the expenditure under point 2.1 shall be limited to a maximum amount which will be fixed in the assistance approved by the Commission and shall not exceed the limits set out in points 2.4 and 2.5.

2.4. For all assistance, except Community Initiatives, the PEACE II special programme and innovative actions, the limit shall be the sum of the following amounts:

- 2,5 % of that part of the total Structural Funds' contribution less than or equal to EUR 100 million,
- 2,00 % of that part of the total Structural Funds' contribution which exceeds EUR 100 million but is less than or equal to EUR 500 million,

- 1,00 % of that part of the total Structural Funds' contribution which exceeds EUR 500 million but is less than or equal to EUR 1000 million,

- 0,5 % of that part of the total Structural Funds' contribution which exceeds EUR 1000 million.

2.5. For Community Initiatives, innovative actions and the PEACE II special programme, the limit shall be 5 % of the Structural Funds' total contribution. Where such assistance involves the participation of more than one Member State this limit may be increased to take account of higher costs of management and implementation and will be fixed in the Commission's decision.

2.6. For the purposes of calculating the amount of the limits in points 2.4 and 2.5, the Structural Funds' total contribution shall be the total fixed in each assistance approved by the Commission.

2.7. The implementation of points 2.1 to 2.6 of this Rule shall be agreed between the Commission and the Member States and laid down in the assistance. The rate of the contribution will be fixed in accordance with Article 29(7) of the General Regulation. For the purposes of monitoring, the costs referred to in 2.1 will be the subject of a separate measure or sub-measure within technical assistance.

3. OTHER EXPENDITURE UNDER TECHNICAL ASSISTANCE

Actions which can be co-financed under technical assistance, other than those set out in point 2 (such as studies, seminars, information actions, evaluation, and the acquisition and installation of computerised systems for management, monitoring and evaluation), are not subject to the conditions set out in points 2.4 to 2.6. Expenditure on the salaries of civil servants or other public officials in carrying out such actions is not eligible.

4. EXPENDITURE BY PUBLIC ADMINISTRATIONS RELATING TO THE EXECUTION OF OPERATIONS

The following expenditure of public administrations is eligible for co-financing outside technical assistance if it relates to the execution of an operation provided that it does not arise from the statutory responsibilities of the public authority or the authority's day-to-day management, monitoring and control tasks:

(a) costs of professional services rendered by a public service in the implementation of an operation. The costs must be either invoiced to a final beneficiary (public or private) or certified on the basis of documents of equivalent probative value which permit the identification of real costs paid by the public service concerned in relation to that operation;

(b) costs of the implementation of an operation, including the expenditure related to the provision of services, borne by a public authority that is itself the final beneficiary and which is executing an operation on its own account without recourse to outside engineers or other firms. The expenditure concerned must relate to expenditure actually and directly paid on the co-financed operation and must be certified on the basis of documents which permit the identification of real costs paid by the public service concerned in relation to that operation.

Rule No 12: eligibility of operations depending on the location

1. GENERAL RULE

As a general rule, operations co-financed by the Structural Funds shall be located in the region to which the assistance relates.

2. EXCEPTION

2.1. Where the region to which the assistance relates will benefit wholly or partly from an operation located outside that region, the operation may be accepted by the managing authority for co-financing provided that all the conditions set out in points 2.2 to 2.4 are satisfied. In other cases on operation may be accepted as eligible for co-financing under the procedure in point 3. For operations financed under the Financial Instrument for Fisheries Guidance (FIFG), the procedure under point 3 must always be followed.

2.2. The operation must be located in a NUTS III area of the Member State immediately adjacent to the region to which the assistance relates.

2.3. The maximum eligible expenditure of the operation is determined pro rata to the proportion of the benefits from the operation which it is foreseen will accrue to the region and shall be based on an evaluation by a body independent of the managing authority. The benefits shall be assessed taking account of the specific targets of the assistance and its expected impact. The operation cannot be accepted for co-financing where the proportion of benefits is less than 50 %.

2.4. For each measure of the assistance, the eligible expenditure of the operations accepted under point 2.1 should not exceed 10 % of the total eligible expenditure of the measure. In addition, the eligible expenditure of all operations in the assistance accepted under point 2.1 should not exceed 5 % of the total eligible expenditure of the assistance.

2.5. Operations accepted by the managing authority under point 2.1 shall be indicated in the annual and final implementation reports of the assistance.

3. OTHER CASES

In the case of operations located outside the region to which the assistance relates but which do not fulfil the conditions of point 2, and of operations financed under the FIFG, the acceptance of the operation for co-financing shall be subject to prior approval by the Commission on a case-by-case basis following a request submitted by

the Member State, taking into account in particular the proximity of the operation to the region, the level of benefit to the region which can be foreseen, and the amount of the expenditure in proportion to the total expenditure under the measure and under the assistance. In the case of assistance relating to the outermost regions, the procedure in this point will be applicable.

(1) OJ L 145, 13.6.1977, p. 1.
(2) OJ L 107, 30.4.1996, p. 4.
(3) OJ C 288, 9.10.1999, p. 2.