



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
REGIONAL AND URBAN POLICY
Inclusive Growth, Urban and Territorial Development and Northern Europe
Estonia, Finland and Latvia
Head of Unit

Brussels,
H3/LF/ib D(2016) 873346

Subject: Clarification on the eligibility of payments into escrow accounts

Ref: E-mail of 15 December 2015, Ares(2015)5930424

Dear Ms Rancāne

By the e-mail of the 15 December 2015 (our ref: Ares(2015)5930424), Ms Morgana requested the Commission services to provide additional clarification on the eligibility of expenditures if payments are made in to an escrow account, this relates to closure process for the programming period 2007-2013.

As it is indicated in the e-mail, in the frame of ERDF co-financed project the construction agreement is concluded between final beneficiary and a contractor. The actual works are completed and the project is functional. As regards the final payment from final beneficiary to the contractor- the agreement foresees that 5% from the sum agreed by the construction contract is paid to the contractor after the end of the building warranty period (from 2-5 years ahead, there are cases where the warranty period ends also after the end of eligibility period, 31 December 2015).

In this situation beneficiary transfers 5% from the sum agreed by the construction contract (the money that is retained by final beneficiary according to the construction agreement as a warranty after the end of the building warranty period) to the trilateral agreement (escrow account) in the bank where account holders are final beneficiary, Bank and the contractor. The legal rights for this money are not transferred until the end of the warranty period.

Your question is **whether the eligibility requirement definition “financing paid to the contractor”** according to EU regulations can be considered fulfilled in this case of money transfer to a trilateral agreement (escrow account).

Ms Diāna Rancāne
Managing Authority
Ministry of Finance
Smilšu iela 1
Riga, LV-1919
Latvia

It should be noted that in accordance with Article 56(1) of the General Regulation, expenditure shall be eligible for a contribution from the Funds if it has actually been paid (by the beneficiary) between the date of submission of the operational programmes to the Commission or from 1 January 2007, whichever is earlier, and 31 December 2015.

In accordance with the Guidance Note on Financial Engineering Instruments under Article 44 of Council Regulation (EC) No 1083/2006 (COCOF note 10/0014/05), an escrow account refers to a contractual arrangement where an independent trusted third-party receives and disburses the contributions for the transacting parties, with the timing of such disbursement by the third-party dependent on the performance by the parties of agreed-upon contractual provisions.

As it has been described, a part of the payment to the contractor would be made to a third party's escrow account. The payment to the contractor would be made only upon fulfilment of certain conditions (thus, the payment could be made after the eligibility period) and in case of non-performance this amount would be returned to the beneficiary.

In the reply to your question, since the payment can be returned to the beneficiary in case the contractual condition specified are not satisfied by the contractor, payments from a beneficiary on an escrow account are not eligible if released after the 31 December 2015.

Yours sincerely

A handwritten signature in black ink, appearing to be 'AM', with a long horizontal line extending to the right.

Angela Martinez Sarasola

Copy: Ms Gundega Morgana, EU Funds Management System Department, Ministry of Finance of the Republic of Latvia