

GENERAL RULES OF THE PROGRAMMES FUNDED BY THE EUROPEAN STRUCTURAL AND INVESTMENT FUNDS – PORTUGAL 2020

INTRODUCTION

On 27 October 2014 Decree-Law no. 159/2014 was published, establishing the general rules for the implementation of Operational Programmes (**OP**) and Rural Development Programmes (**RDP**) funded by the European Structural and Investment Funds (**ESIF**)¹ during 2014-2020. The set of OP and RDP outlined by this decree-law is designated Portugal 2020 and replaces QREN, which comprised the previous multi-annual programming framework for 2007-2013.

This briefing describes the most relevant aspects of the new legal regime and identifies the main requirements to be considered for the purposes of accessing the financing instruments available under Portugal 2020. The densification of the most relevant features and applicable requirements will be, however, subject to a specific regulation for each OP and RDP to be approved at a subsequent date.

PRIORITIES OF PORTUGAL 2020

The new legal regime identifies as priorities that underlie the implementation of the programmes under Portugal 2020 the promotion of the competitiveness and internationalization of the economy, the education and training of human capital, the promotion of social inclusion, employment and social and territorial cohesion and State reform.

SIMPLIFICATION AND TRANSPARENCY MEASURES

Taking into consideration the experience gathered during the previous programming framework, the new legal regime foresees the following measures aimed at promoting the simplification and transparency in the implementation of the ESIF: (i) a common web portal designated Portal Portugal 2020 (www.pt-2020.pt) for access to funding through different funds; (ii) dematerialization of the applications, which should be submitted via electronic means; (iii) reduction of the number of requests for information from the governing bodies of funds; and (iv) make available *via* Portal Portugal 2020 the updated and consolidated versions of the legal framework applicable to existing funding.

¹ European Regional Development Fund (**ERDF**), European Social Fund (**ESF**), Cohesion Fund (**CF**), European Agricultural Fund for Rural Development (**EAFRD**) and European Maritime & Fisheries Fund (**EMFF**).



EU AND
COMPETITION
LAW

The new general rules applicable to the programmes funded under the European Funds allow, at this stage, the unveiling of some of the main features of these types of public incentives. However it is still necessary to wait for the specific regulations of each Operational Programme and Rural Development Programme in order to draw a complete picture regarding the criteria of the several available instruments for the programming period 2014-2020

In addition, Decree-Law no. 159/2014 establishes the general rule pursuant to which the granting of incentives shall be made, in principle, upon signing of an acceptance term by a beneficiary; thus the use of grant agreements is now an exceptional expedient.

OP AND RDP FUNDED BY THE ESIF

Portugal 2020 comprises 13 OP, divided into thematic and regional OP, and 3 RDP, namely:

- (i) 4 thematic OP:
 - a. Competitiveness and Internationalization;
 - b. Social Inclusion and Employment;
 - c. Human Capital; and
 - d. Sustainability and Efficient Use of Resources;
- (ii) 5 Regional OP in the Portuguese continental territory:
 - a. North;
 - b. Centre;
 - c. Lisbon;
 - d. Alentejo; and
 - e. Algarve;
- (iii) 2 regional OP for the autonomous regions of the Azores and Madeira;
- (iv) 1 OP for technical assistance;
- (v) 1 national OP, designated Sea 2020;
- (vi) RDP 2020, for the Portuguese continental territory;
- (vii) PRORURAL+ for the Azores; and
- (viii) PRODERAM 2020 for Madeira.

Each OP and RDP will be subject to specific regulation, which shall establish, *inter alia*: (i) the identification of specific objectives; (ii) the geographic area of implementation; (iii) the relevant concepts; (iv) the eligibility criteria of the operations; (v) the type of beneficiaries and the form, the amounts or the limits of the incentives; (vi) the funding rates of the eligible expenses; and (vii) the eligibility rules for expenses.

GENERAL PRINCIPLE OF RESULTS ORIENTATION

This new legal regime establishes the “principle of results orientation”, pursuant to which the results to be achieved in a given funded project are part of the commitments undertaken by a beneficiary when the financing decision is accepted. In this context, the level of fulfilment of the agreed results within a financed operation is intended to be a criterion for the determination of the amount of financial support and a weighting factor in an application’s selection procedure.

BENEFICIARIES AND ELIGIBILITY CRITERIA

The set of entities that can benefit from the incentives under the ESIF comprises natural and legal persons, from the public, cooperative, social and private sectors, including both profit-seeking and non-profit entities. In order to benefit from these incentives, beneficiaries must, *inter alia*, be legally constituted, have their situation regularized in terms of tax, social security and reposition of ESIF funding related matters and possess, or be able to ensure until approval of an application, the technical, physical, financial and human resources necessary for the development of an operation.

In accordance with the new legal regime, productive investment or investment in infrastructures funded under Portugal 2020 must be kept allocated to the respective activity and, when applicable, in the geographic location foreseen in an operation, for at least 5 years, or 3 years in case of investments made by SMEs, from the date the final payment is made to the beneficiary

In addition, beneficiaries should also have a balanced economic and financial situation or, alternatively, demonstrate their capacity for financing the operation.

Beneficiaries that have been convicted in a criminal proceeding for offenses involving the misuse of ESIF or in criminal or administrative proceedings related to infringement of child labour and discrimination in employment and occupation legislation are, as a rule, prevented from accessing funding in the context of Portugal 2020.

FORMS OF FUNDING

The funding to be granted under the ESIF may consist of grants (reimbursable or not), premiums (the latter only available under the *EAFRD*) or financial instruments; it is also possible to combine these different forms of funding. With regard to grants, they may take the following forms:

- (i) Reimbursement of eligible and actually incurred and paid costs, including, if applicable, amortizations;
- (ii) Reimbursement of contributions in kind;
- (iii) Standard tables of unitary costs;
- (iv) Fixed amounts of up to Euros 100,000 of public funding;
- (v) Funding through a fixed rate applicable to eligible direct costs.

The above forms of grants may be combined provided that each of them covers different categories of costs or if they are used for different projects within the same operation or in succeeding stages of the same operation.

DURABILITY OF OPERATIONS

In accordance with the new legal regime, productive investment or investment in infrastructures funded under Portugal 2020 must be kept allocated to the respective activity and, when applicable, in the geographic location foreseen in an operation, for at least 5 years, or 3 years in case of investments made by SMEs, from the date the final payment is made to the beneficiary. On this particular point, there was an option to change the event that triggers the counting of the “limitation period” in relation to the previous programming frameworks where such “limitation period” started from the date of the national decision regarding the funding contribution or from the date of the conclusion of a project.

In this setting, during the time periods referred to above, beneficiaries should not incur any of the following situations:

- (i) Termination or relocation of a productive activity outside the OP or RDP geographical area;
- (ii) Transfer of ownership of an infrastructure item which confers to a public or a private entity an undue advantage;
- (iii) Substantial modification of an operation affecting its nature, objectives or implementation conditions in a way that compromises its original objectives.

The amounts unduly paid in the context of an operation where the above referred situations occur are recovered in a manner proportional to the period during which the obligations were not fulfilled.

Greater representation of women in management bodies of beneficiaries and greater wage equality between women and men performing the same or identical functions within a beneficiary entity are weighted for the purposes of tiebreaker criteria between applications

ELIGIBILITY OF EXPENSES

Expenses that are eligible for the purposes of funding within Portugal 2020 are those incurred and effectively paid by beneficiaries between 1 January 2014 and 31 December 2023 without prejudice of specific regulation approved by the management authority of the relevant OP or RDP and other applicable eligibility rules foreseen in national and European legislation.

Regarding operations approved within the framework of the Youth Employment Initiative the eligibility time period for expenses incurred and effectively paid is between 1 September 2013 and 31 December 2023.

This new legal regime also establishes specific eligibility rules for expenses related to financial leases and long-term leases and for expenses incurred in connection with factoring agreements.

Lastly, recoverable Value Added Tax (VAT) and expenses paid in the context of contracts concluded *via* intermediaries or consultants where the amount payable is foreseen as the percentage of the amount financed under the ESIF or of the eligible expenses of an operation are not considered as eligible expenses.

ANALYSIS OF APPLICATIONS

The criteria for the analysis and selection of applications shall be established in the specific regulation and respective calls for proposals.

Greater representation of women in management bodies of beneficiaries and greater wage equality between women and men performing the same or identical functions within a beneficiary entity are weighted for the purposes of *tiebreaker* criteria between applications.

DECISIONS AND PAYMENTS

Reasoned decisions on applications are rendered by management authorities within 60 business days from the term of submission, and are notified to beneficiaries within 5 business days after being adopted. The acceptance of the incentives is made upon signature, by beneficiaries, of the acceptance term, or submitted by electronic means. Alternatively, the acceptance of incentives may be subject to written agreement to be concluded between a competent authority and the beneficiary.

With regard to payments, they may adopt the nature of advance payments, reimbursement or final balance. The decision concerning payment is adopted by management authorities within 30 business days from the date of a request by beneficiaries and payment is made in its entirety within a maximum time period of 45 business days. Payments are made to beneficiaries up to 95% of the funded amount, the remaining 5% is subject to request by a competent management authority after submission by a beneficiary of the final balance request and confirmation of the operation in accordance with the foreseen conditions.

Lastly, it should be taken into consideration that funds granted in the context of an operation financed by the ESIF may be reduced or revoked in case of default by beneficiaries of their respective obligations foreseen, *inter alia*, in the applicable legislation and specific regulations.

Reasoned decisions on applications are rendered by management authorities within 60 business days from the term of submission

In case of recovery, beneficiaries may request that the amounts to be returned are paid in a phased manner, up to 36 monthly instalments

RECOVERY OF FUNDING

The amounts that were unduly received must be returned by beneficiaries within 30 business days from the date they are notified by the competent authority. In case of recovery, the beneficiaries may request that the amounts to be returned are paid in a phased manner, up to 36 monthly instalments plus legal interest.

The enforced recovery of amounts unduly received by beneficiaries is made pursuant to tax execution procedure and members of management bodies of a beneficiary are liable, in alternative, for the payment of the debt.

CONCLUSION

The publication of the general rules applicable to the programmes funded by the ESIF allows, at this stage, the unveiling of some of the main features of these types of public incentives. However, the criteria established in this legal regime have necessarily to be developed by the specific regulation for each of the OP and RDP outlined for the programming period 2014-2020, which is hoped to be published by the end of 2014 and to respect the principles of simplification, transparency and celerity enshrined in the Decree-Law no. 159/2014.

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