

DRAFT GUIDANCE FICHE FOR DESK OFFICERS

**PROGRAMMING OF TECHNICAL ASSISTANCE AT THE INITIATIVE OF THE
MEMBER STATES**

VERSION 2 – 25/06/2014

Regulation	Article
Common Provisions Regulation (N° 1303/2013)	Article 59 - Technical Assistance at the initiative of the Member States
	Article 119 - Technical Assistance of the Member States
European Territorial Cooperation (ETC) Regulation (N° 1299/2013)	Article 17 - Technical assistance

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

1. INTRODUCTION

The aim of this guidance is to set out how technical assistance should be programmed in the context of operational programmes under cohesion policy. This guidance also elaborates on how technical assistance can be used, based on issues raised during the programming period 2007-2013, and how actions supported from technical assistance should be distinguished from those undertaken under thematic objective 11 "Enhancing institutional capacity and an efficient public administration".

2. LEGISLATIVE FRAMEWORK

The provisions on the programming and implementation of technical assistance of the Member State are set out in Article 59 of the Common Provisions Regulation (CPR) applicable to all five ESI Funds and by Article 119 of the CPR, which applies only to the ERDF, the ESF and the Cohesion Fund. The specific rules as regards ceilings for technical assistance in European Territorial Cooperation (ETC) programmes are set out in Article 17 of the ETC Regulation.

Article 59 CPR

Technical Assistance at the initiative of the Member States

1. At the initiative of a Member State, the ESI Funds may support actions for preparation, management, monitoring, evaluation, information and communication, networking, complaint resolution, and control and audit. The ESI Funds may be used by the Member State to support actions for the reduction of administrative burden on beneficiaries, including electronic data exchange systems, and actions to reinforce the capacity of Member State authorities and beneficiaries to administer and use those Funds. The ESI Funds may also be used to support actions to reinforce the capacity of relevant partners in line with point (e) of Article 5(3) and to support exchange of good practices between such partners. These actions referred to in this paragraph may concern previous and subsequent programming periods.

2. The Fund-specific rules may add or exclude actions which may be financed by the technical assistance of each ESI Fund.

Article 119 CPR

Technical assistance at the initiative of the Member States

1. The amount of the Funds allocated to technical assistance shall be limited to 4 % of the total amount of the Funds allocated to operational programmes in a Member State under each category of region, where applicable, of the Investment for growth and jobs goal.

The specific allocation for YEI may be taken into account by a Member State in the calculation of the limit to the total amount of the Funds allocated to the technical assistance of the Member State.

2. Each Fund may support technical assistance operations eligible under any of the other Funds. Without prejudice to paragraph 1, the allocation for technical assistance from a Fund shall not exceed 10 % of the total allocation of that Fund to operational programmes in a Member State under each category of region, where applicable, of the Investment for growth and jobs goal.

3. By way of derogation from Article 70(1) and (2), technical assistance operations may be implemented outside the programme area, but within the Union, provided that the operations are for the benefit of the operational programme, or, in the case of a technical assistance operational programme, for the other programmes concerned.

4. In the case of the Structural Funds, where the allocations referred to in paragraph 1 are used to support technical assistance operations relating to more than one category of region, the expenditure relating to the operations may be implemented under a priority axis combining different categories of region and attributed on a pro rata basis taking into account the allocation under each category of region as a share of the total allocation to the Member State.

5. By way of derogation from paragraph 1, where the total amount of the Funds allocated to a Member State under the Investment for growth and jobs goal does not exceed EUR 1 000 000 000 the amount allocated to technical assistance may increase up to 6 % of that total amount or EUR 50 000 000, whichever is the lower.

6. Technical assistance shall take the form of a mono-fund priority axis within an operational programme or of a specific operational programme, or both.

Article 17 ETC

Technical assistance

The amount of the ERDF allocated to technical assistance shall be limited to 6% of the total amount allocated to a cooperation programme. For programmes with a total allocation not exceeding EUR 50 000 000 the amount of the ERDF allocated to technical assistance shall be limited to 7% of the total amount allocated, but shall not be less than EUR 1 500 000 and not higher than EUR 3 000 000.

3. THE SCOPE OF THE TECHNICAL ASSISTANCE OF THE MEMBER STATES

According to Article 59 technical assistance at the initiative of the Member States may support actions for preparation, management, monitoring, evaluation, information and communication, networking, complaint resolution, and control and audit. It may be used by the Member State to support actions for the reduction of administrative burden on beneficiaries and actions to reinforce the capacity of Member State authorities and beneficiaries to administer and use the ESI Funds. It may also be used to support actions to reinforce the capacity of relevant partners involved in the implementation of partnership and to support exchange of good practices between such partners.

The scope of technical assistance is therefore limited to:

- actions which are linked to the functions necessary for the implementation of the ESI Funds. For the ERDF, ESF and Cohesion Fund these functions are fulfilled by the managing authority, the certifying authority, the audit authority, the intermediate bodies fulfilling delegated functions, Monitoring Committees and in the case of ETC, joint secretariats. In some cases such functions can be fulfilled by other bodies (responsible for preparation/programming or coordination of the implementation of programmes). However, technical assistance should not be used to support functions not necessary for the implementation of the ESI Funds fulfilled by other bodies.
- actions to reduce the administrative burden of beneficiaries linked to the ESI Funds.
- capacity building of Member State authorities and beneficiaries to use the ESI Funds. Technical assistance should not be used for capacity building actions which are not linked to the administration and use of the ESI Funds.
- capacity building of relevant partners involved in the implementation of partnership and actions to support exchange of good practices between such partners.

This may also include actions by the European Investment Bank (EIB) under Article 31 (1) of the CPR whereby the EIB may, at the request of Member States, participate in the preparation of the Partnership Agreement, as well as in activities relating to the preparation of operations, in particular major projects, financial instruments and public-private partnerships.

4. PROGRAMMING OF TECHNICAL ASSISTANCE

4.1. Programming structure

<p>Technical assistance is not linked to any of the thematic objectives set out in Article 9 of the CPR. It also does not comprise investment priorities.</p>
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Technical assistance is not included under thematic objective 11 "Enhancing institutional capacity of public authorities and stakeholders and efficient public administration". It constitutes a self-standing element which is not part of the menu of thematic objectives.

This is also taken into account in Article 96 of the CPR, which envisages specific content requirements for priority axes dedicated to technical assistance (see the Guidelines for the content of the OP).

Technical assistance shall take the form of a mono-fund priority axis within an operational programme and/or of a specific operational programme (Art. 119(6) CPR).

Technical assistance must be programmed as one or several specific priority axis (axes) within programmes and/or as a specific programme dedicated solely to technical assistance. Member State may opt also for the combination of the two options. The priority axes dedicated to technical assistance are always mono-fund (even in the case of operational programme dedicated solely to technical assistance).

There are no restrictions as regards the number of priority axes for technical assistance in an operational programme. Especially in multi-fund operational programmes, the Member States might opt to set up two or more priority axes supported from different Funds for technical assistance.

However, the provisions of the CPR provide for a possibility to set-up mono-fund axes or mono-fund programmes, which in effect support the implementation of more than one Fund.

Each Fund (ERDF, ESF, Cohesion Fund) may support technical assistance operations eligible under any of the other Funds (ERDF, ESF, Cohesion Fund - Article 119 (2) CPR).

This provision was proposed by the Commission to simplify the management of technical assistance where the operations supported benefit the management of several Funds or programmes, or where dividing technical assistance expenditure between Funds or programmes leads to a disproportionate administrative effort.

In practice this means that ERDF or the Cohesion Fund can be used to support actions which relate the management of the ESF and vice versa in multi-fund operational programmes or specific programme dedicated to technical assistance. Therefore, the Member State does not necessarily need to set aside an allocation for technical assistance from all two/three Funds it manages. However, this mechanism is subject to ceilings by Fund, as outlined below and an equal access to technical assistance should be guaranteed for the administrations of all three Funds.

In addition, the ERDF, the ESF and the Cohesion Fund should not be used to cover costs specific to the implementation of the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF). The most appropriate solution to cover the costs of coordination activities at the level of the Partnership Agreement would be a pro-rata arrangement with allocations from each of the 5 ESI Funds (according to their relative share in the overall allocation for example). However, coordination activities of the ESI Funds may be difficult to link to a particular Fund. Therefore, where these costs cannot be linked to any specific ESI Fund (i.e. they are linked to any general coordination at Partnership Agreement level) and where they are clearly necessary to fulfil the obligations derived from the CPR (e.g. to prepare the

Partnership Agreement or the progress report), the use of the ERDF/ ESF/ Cohesion to cover these costs could be accepted as these costs are also necessary for the implementation of the ERDF, the ESF and the Cohesion Fund, subject to the ceilings mentioned below.

4.2. Ceilings for the technical assistance allocation

4.2.1 Ceilings under Investment in growth and jobs goal

Two different ceilings apply to support to technical assistance: the first one is established in comparison to the **total amount of ERDF, ESF and Cohesion Fund** allocated to the Member State (under each category of region) and the second one is established at Fund level (i.e **for each Fund**).

The allocation to technical assistance is limited to 4% of the total allocation from the Funds (ERDF, ESF and the Cohesion Fund) to the Member State. In addition the technical assistance allocation from the ERDF and the ESF may not exceed 4% of the allocation to each category of region (Art. 119(1) CPR).

In Member States where the total amount of the Funds under the Investment for growth and job goals does not exceed EUR 1 000 000 000, the amount allocated to technical assistance may increase up to 6% of that total amount or EUR 50 000 000, whichever is the lower (Art. 119(5) CPR).

The legal text establishes clearly that the 4% ceiling established for the Investment in growth and jobs goal is not applied to each Fund or to individual programmes. Therefore these provisions provide considerable flexibility to increase the allocation to technical assistance beyond the 4% in certain operational programmes (including in specific TA Operational Programmes), provided that the allocation in other programmes is decreased to an extent that allows compliance with the overall ceiling.

Additional flexibility is also given to Member States with a rather small amount of EU funding under the Investment for growth and job goals (Member States where the total amount of the Funds under the Investment for growth and job goal does not exceed EUR 1 000 000 000¹). In these Member States the allocation to technical assistance could even go up to 6% of the total amount of ERDF, ESF and Cohesion Fund allocated to them under the Investment in growth and jobs goal, within the ceiling of EUR 50 000 000 set out by Art. 119 (5) for TA under this goal.

The specific allocation for Youth Employment Initiative may be taken into account by a Member State in the calculation of the limit to the total amount of the Funds allocated to technical assistance of the Member State.

¹ DK, IE, CY, LU, MT, AT

In addition, the allocation for technical assistance from the ERDF and the ESF respectively shall not exceed 10% of the total allocation of each Fund to operational programmes in a Member State under each category of region of the Investment for growth and jobs goal (Art. 119(2) CPR). The allocation for technical assistance from the Cohesion Fund is also limited to 10% of the total allocation of Cohesion Fund to operational programmes in a Member States under the Investment for growth and jobs goal.

Therefore, at least 90% of the total ERDF allocation and 90% of the total ESF allocation (dedicated to each category of region within a Member State under the Investment for growth and jobs goal) must be used towards the thematic objectives 1 to 11 set out in Article 9 of the CPR.

4.2.2 Ceilings under the European Territorial Cooperation goal

The amount of the ERDF allocated to technical assistance shall be limited to 6% of the total amount allocated to a cooperation programme. For "small" programmes (with a total allocation not exceeding EUR 50 000 000) the amount of the ERDF allocated to technical assistance shall be limited to 7% of the total amount, but shall not be less than EUR 1 500 000 and not higher than EUR 3 000 000. (Art. 17 ETC Regulation).

In the case of ETC programmes, the legal framework sets a ceiling of 6% of the total amount allocated per programme, but also provides flexibility to ensure sufficient financial means for programme implementation for relatively small ETC programmes.

In ETC programmes with a total allocation of less than EUR 50 000 000, technical assistance could absorb up to 7% of the total amount allocated to these programmes and should amount to EUR 1 500 000 at the minimum and EUR 3 000 000 at the maximum. This means that in case of very small ETC programmes (less than EUR 21 500 000), the allocation to technical assistance may be higher than 7%. However, for ETC programmes getting closer to the ceiling of EUR 50 000 000 (programmes beyond EUR 42 860 000), the amount dedicated to technical assistance is limited to EUR 3 000 000.

4.2.3 Technical assistance in relations to other requirements from the regulations

- Co-financing rates applying to technical assistance priority axes: Art. 120 of the CPR established maximum co-financing rates at the level of the priority axes. These maximum rates also apply to priority axes dedicated to technical assistance. It cannot be increased beyond the normally applicable maximum for technical assistance.

- ERDF thematic concentration: The allocation from the ERDF to technical assistance is deducted from the overall ERDF allocation before the concentration requirements are applied. For example, if 4% of the ERDF is dedicated to technical assistance, the thematic concentration requirements apply to the remaining allocation. Hence the concentration requirements is in such a case applied to 96% of the ERDF allocation

- ERDF support to sustainable urban development. Article 7(4) of the ERDF Regulation does not exclude from the calculation of the 5% requirement the ERDF contribution to technical assistance. Hence the 5% is calculated from the entire ERDF financial allocation under the Investment and jobs goal, including technical assistance.

5. IMPLEMENTATION OF TECHNICAL ASSISTANCE

5.1. Implementation of technical assistance outside the programme area (Art. 119(3) CPR)

In certain cases the administrations responsible for the management and control of operational programmes are not physically located in the programme area e.g. the certifying authority or the audit authority of the programme may be located in another (often capital) region. The Commission accepts that in such cases, it should be possible to use technical assistance of a programme outside the programme area (but within the Union) as long as it is for the benefit of the operational programme i.e. used by or for the benefit of programme authorities and beneficiaries, or in the case of a programme dedicated to technical assistance, for the benefit of the other programme concerned.

5.2. Implementation of technical assistance relating to more than one category of region (Art. 119(4) CPR)

In case where technical assistance operations relate to one category of region (and is thus only for the benefit of that category of region), the funding should be drawn from that category of region.

In case where technical assistance operations relate to more than one category of region, the concerned expenditure relating to these operations may be implemented under a priority axis combining different categories of region. In such a case, the expenditure is to be allocated on a pro-rata basis, taking into account the allocation under each category of region as a share of the total allocation to the Member State. If they are two priority axes covering each one category of region, the split between these two priority axes would also need to be done on the same prorata basis. Therefore, in case where a Member State would implement technical assistance operations relating to more than one category of region from one of them only (often the capital region), the expenditure should be allocated on a prorata basis.

This provision only applies for the Structural Funds (i.e. the ERDF and the ESF). It does not apply to the Cohesion Fund, which does not distinguish between categories of regions.

5.3. The use of technical assistance across programming periods

<p>Article 59 clarifies that technical assistance actions supported under the programming period 2014-2020 may concern previous and subsequent programming periods.</p>
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Therefore the technical assistance allocated for the programming period 2014-2020 may be used to facilitate e.g. the closure of the previous programming periods, or the preparation for the programming period 2020+.

5.4. Technical assistance versus support granted under thematic objective no. 11 "Enhancing institutional capacity of public authorities and stakeholders and efficient public administration"

Technical assistance may support actions for the reduction of administrative burden for beneficiaries including electronic data exchange systems and actions to reinforce the capacity of Member State authorities and beneficiaries to administer and use the ESI Funds.

Article 59 sets out explicitly that technical assistance can be used to reinforce the administrative capacity of beneficiaries, as long as this is done with the objective of improving the administration of the ESI Funds. It shall also be used, where necessary, to support administrative reforms related to the management and control system of the ESI Funds.

The use of technical assistance must always be directly related to the effective and efficient management of the ESI Funds concerned.

While it may be used to support capacity building, such actions should be aimed at increasing the capacity of the authorities and beneficiaries to manage and implement ESI Funds.

Technical assistance shall not be used to support broad administrative reforms or general capacity building beyond the implementation of the ESI Funds. In turn, thematic objective no 11 "Enhancing institutional capacity of public authorities and stakeholders and efficient public administration" shall not be used to support focused actions related to the management and control system of the ESI Funds.

Technical assistance shall not be used to support general capacity building of authorities, partners or persons which are not directly engaged in the management of the ESI Funds or to support administrative reforms beyond the management and control systems of the ESI Funds. These actions should be supported under thematic objective 11: "Enhancing institutional capacity of public authorities and stakeholders and efficient public administration".

General administrative capacity building and administrative reform e.g. (general capacity building of social and economic partners and local governments, pension reform, reform of the civil service etc.) should not be supported from technical assistance. Such actions can be supported from the ESF in the context of thematic objective 11.

The ERDF regulation sets out a single investment priority contributing to this thematic objective: "*enhancing institutional capacity and an efficient public administration by strengthening of institutional capacity and the efficiency of public administrations and public services related to implementation of the ERDF, and in support of actions in institutional capacity and in the efficiency of public administration supported by the ESF*".

ERDF investment under thematic objective 11 should therefore be complementary to that undertaken under the ESF, it should be limited to the public sector and primarily directed to the administrations and services related to (but not directly engaged in) the implementation of the ERDF.

In practice actions supported under ERDF in connection with thematic objective 11 include capacity development and system reform in areas relevant for the management and control of the ERDF, such as public procurement, state aid, statistics etc. where such actions go beyond bodies and issues of implementation of the ESI Funds and cover other entities e.g. specialised agencies or bureaux.