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Directorate-General for Development and Cooperation — EuropeAid

Resources in Headquarters and in Delegations

Legal Affairs

Head of Unit DEVCO.R.3

Brussels, **24 JUN 2014**
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**NOTE TO THE ATTENTION OF DEVCO DIRECTORS, HEADS OF DELEGATIONS AND
DEVCO HEADS OF UNITS**

Subject: Communication on new eligibility rules sent to grants beneficiaries.

1. As announced following the entry into force of the Regulation (EU) n° 236/2014 laying down common rules and procedures for the implementation of the Union's instruments for external action (CIR)¹ and of the revised Annex IV to the Cotonou Agreement², you will find attached a notification template that has been sent by R3 to beneficiaries of grant contracts financed under the Budget under the previous multiannual financial framework (MFF 2007-2013) and under the EDF, and signed before the entry into force of these Regulations³.

This notification aims at informing those grant beneficiaries of the entry into force of the new eligibility rules and their application to calls for tenders to be launched at the latest on 1 August 2014. The immediate application of the eligibility rules of the CIR and revised Annex IV Cotonou for procedures launched under grant contracts concluded before their entry into force complies with Article 2 of Annex IV of the model contract, which contains a “dynamic reference” to the applicable Instrument in view to identify the current eligibility rules.

However, in order to balance the objectives of simplification and harmonisation pursued with the principle of legal certainty and in the interests of not undermining the contractual position already established between beneficiaries and economic operators, the beneficiaries will have

¹ “Guidelines on the transition to the Multiannual Financial Framework 2014-2020 under the EU Budget and the EDF Bridging Facility”, Ares(2014)976857.

² Decision 1 of 20th June 2014 of the ACP-EU Joint Council of Ministers (under publication in the OJ)

³ According to Article 28, the Regulation shall enter into force on the day following its publication in the Official Journal. It shall apply from 1 January 2014 to 31 December 2020.

to apply the new rules at the latest to the procedures to be launched from 1 August 2014. It should be noted that these new rules are generally more favourable⁴ to the beneficiaries.

However, the changes in the eligibility rules do not affect the possibility for international organisations to apply their own eligibility rules as stipulated in Article 8.3 of Annex IV, which provides that “If allowed by the applicable regulatory provisions of the European Union, the origin of the goods and the nationality of the organisations, companies and experts selected for carrying out activities in the Action shall be determined in accordance with the Organisation’s relevant rules.”^{5 6}

2. As mentioned above under (1), the attached notification has been already sent by R3 to all grant beneficiaries under direct management in a large scale mailing operation of more than four thousand letters.

However, it was impossible through CRIS to have access to the grants signed under indirect management, notably those under Programme Estimates. **Each Unit/Delegation has therefore to identify these grants and make sure that the information reaches the grant beneficiaries.**

Consequently, your Unit/Delegation must:

(i) send the notification template attached to this note to the relevant contracting authority (copy to the imprest administrators/accountants of each programme estimates involving grants) with appropriate instructions;

(ii) ensure that for each programme estimates involving grants, the relevant imprest administrators/accountants sends to each grant beneficiary the attached notification.

Delegations are also advised to publish the following messaging on their websites:

⁴ It follows from Article 8. 4 of the CIR and the mirror article in the revised Annexe IV of Cotonou, that supplies below EUR 100 000 and purchased under a grant, are completely untied. Beneficiaries will no longer be required to request derogations below this threshold.

⁵ January 2013 template.

⁶ The reasoning behind is that this provision refers to the regulatory provisions to ascertain whether, at contract conclusion, the beneficiary organisation may use its own eligibility rules in order to implement the action. This contract condition cannot be later challenged by a subsequent law without cutting back on any acquired rights by the beneficiary under the previous legal basis.

It follows that, even in case of a fully funded action, intergovernmental organisations signatories of grant contracts financed under the previous multiannual financial framework (MFF 2007-2013), may continue to apply their rules of eligibility provided that the rules in force at the time of the signature of the contract provide for it.

“Notification to grant beneficiaries with an ongoing contract:

Following the entry into force of the Regulation (EU) n° 236/2014 of 11th March 2014 laying down common rules and procedures for the implementation of the Union’s instruments for external action (CIR) and of the revised Annex IV to the Cotonou Agreement adopted on the 20th June 2014, new eligibility rules have to be applied in calls for tenders to be launched at the latest on 1 August 2014. In case you have not received a notification on this matter, please contact your contracting authority”.

Given the proximity of the 1st August as application date set for the new rules for ongoing grant contracts, **this should be done without delay.**

The helpdesk of Unit R3 is available for any queries in relation to this note (EUROPEAID-LEGAL-HELPDESK@ec.europa.eu).



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Annexes: Template letter to be sent to grant beneficiaries in English, French, Spanish and Portuguese.

Cc: Heads of Cooperation and UFCAs.