



## HARMONISED IMPLEMENTATION TOOLS FOR ETC PROGRAMMES –

### Complaints procedure according to Art. 74 (3) CPR (rev 3 Nov 2015)

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#### Complaints procedure<sup>1</sup>

of the ... Programme  
adopted by the Monitoring Committee on ...

##### Article 1 (Scope of the complaints procedure)

1. These rules define the procedure for a complaint against decisions taken by Programme authorities during the project assessment and selection process. The purpose of the procedure is to ensure effective examination of complaints.
2. The complaint against a decision of the Managing or Certifying Authority of the Programme during project implementation based on the subsidy contract concluded between the Managing Authority and the Lead Beneficiary follows the rules laid down in the subsidy contract.
3. Complaints related to First Level Control, Second Level Control and Audit have to be lodged to the responsible national authority according to the applicable national rules.<sup>2</sup>

##### Article 2 (Right to complain)

1. Only the project's Lead Applicant as the one representing the project partnership affected by the funding decision is entitled to file a complaint.
2. It is therefore the task of the Lead Applicant to collect and bring forward the complaint reasons from all project partners.

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<sup>1</sup> The term „complaint“ to be understood – different from the term „appeal“ – as a procedure within the Programme, not to replace, but in the best case to avoid a later appeal (national court procedure). The complaints procedure should be mentioned with a short description in the Cooperation Programme (Description of Management and Control System) and with an extended, detailed description in the Programme Manual.

<sup>2</sup> National authorities shall communicate to the programmes' Managing Authorities their specific complaints procedures and any revision to such which then could be published on the programmes' websites or otherwise made available to the beneficiaries.



### Article 3 (Complaint against funding decisions)

1. The right to complain against a decision regarding the project selection applies to the Lead Applicant whose project application was not selected for the Programme co-financing during the project assessment and selection process. This right also applies to the Lead Applicant whose project application was approved for programme co-financing under conditions set by the [Monitoring/Steering Committee] if the disagreement on the conditions cannot be resolved during the contracting process between the Managing Authority and Lead Applicant.
2. The complaint is to be lodged against the communication issued by the Managing Authority based on the decision by the [Monitoring/Steering Committee] as the Managing Authority's communication is the only legally binding act towards the Lead Applicant during the project assessment and selection process.
3. The complaint can be lodged only against the following criteria:
  - a. the outcomes of the technical and/or quality assessment of the project application, based on the selection criteria approved by the [Monitoring/Steering Committee], do not correspond to the information provided by the Lead Applicant during the project assessment and selection process; and/or
  - b. the project assessment and selection process failed to comply with specific procedures laid down in the [Cooperation Programme/Programme Manual/Call documents]<sup>3</sup> that materially affected or could have materially affected the decision.

### Article 4 (Lodging the complaint and formal requirements)

1. The complaint should be lodged in writing [by mail/fax/e-mail] to the Managing Authority of the Programme within [...] calendar days after the Lead Applicant had been officially notified by the Managing Authority about the results of the project selection process.
2. The complaint should include:
  - a. name and address of the Lead Applicant;
  - b. reference number of the application which is a subject of the complaint;
  - c. clearly indicated reasons for the complaint, including listing of all elements of the assessment which are being complaint and/or failures in adherence with procedures limited to those criteria mentioned in Art. 3(3);
  - d. [e-/signature]<sup>4</sup> of the legal representative of the Lead Applicant;
  - e. any supporting documents;
3. The relevant documentation shall be provided for the sole purpose of supporting the complaint and may not alter the quality or content of the assessed application.

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<sup>3</sup> Or any other relevant programme document – to be specified by programme individually.

<sup>4</sup> Up to the programme as it also depends on national rules (if e.g. e-signature possible), if programme will enable applicants to submit complaint electronically etc.



4. No other grounds for the complaint than indicated in this Article 4(2c) will be taken into account during the complaints procedure.

#### Article 5 (Rejection without examination)

1. A complaint will be rejected without further examination if submitted after the deadline set in Article 4(1) or if the formal requirements set in Article 4(2) are not observed.
2. In case the complaint is rejected under provisions set in this Article 5(1), the Managing Authority conveys this information within [...] calendar days to the Lead Applicant and informs the [Monitoring/Steering Committee].

#### Article 6 (Handling of the complaint by Managing Authority/Joint Secretariat)

1. Within [...] calendar days after the receipt of the complaint the Managing Authority confirms to the Lead Applicant in writing having received the complaint and notifies the [Monitoring/Steering Committee].
2. The Managing Authority, assisted by the Joint Secretariat examines the complaint and prepares its technical examination regarding the merit of the complaint.
3. The complaint will then be examined on the basis of the information brought forward by the Lead Applicant in the complaint and the technical examination according to this Article 6(2) by the Complaint Panel to be convened for this purpose.

#### Article 7 (Complaint Panel)

1. The Complaint Panel is the only body entitled to review a complaint against a decision regarding assessment and selection of projects co-financed by the Programme.
2. The Complaint Panel comprises of [...] members of which one is the Chair of the [Monitoring/Steering Committee] and at least one<sup>5</sup> is neither member of the [Monitoring/Steering Committee] nor the Managing Authority or Joint Secretariat and appointed according to below Art. 7(4).
3. The members of the Complaint Panel are selected by the [Monitoring/Steering Committee].<sup>6</sup>

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<sup>5</sup> This could be an external expert or a person from another ETC programme, or from the national responsible authority – most important that this person brings external, neutral expertise into the complaint panel, at the same time having the necessary understanding of the ETC context in which the complaint is to be handled.

<sup>6</sup> There are various suitable solutions for how/when the members of the Complaint Panel are selected: at the first Monitoring/Steering Committee meeting; for each application round before the respective call is opened; within a certain amount of calendar days after the Monitoring/Steering Committee has been informed about the complaint according to Art. 6(1). Eventually, the programmes have to come up with a structure to ensure independance of the Monitoring/Steering Committee members of the complaint panel from the case under observation/review to ensure impartiality. Naturally, this then would need to be included also in the Rules of Procedure of the Monitoring/Steering Committee. Another option would be that each participating Member State nominates an independant representative (of the national responsible authority or civil servant) and substitute to be nominated to the Complaint Panel.



4. The external member of the Complaint Panel will be appointed by the Managing Authority based on proposals by the [Monitoring/Steering] Committee. The proposals have to be provided at the stage of selecting the [Monitoring/Steering] Committee members to the Complaint Panel according to this Art. 7(3).
5. Impartiality of members of the Complaint Panel towards the case under review has to be ensured. If this cannot be provided, the distinct member shall refrain from the distinct case's review and be replaced by another impartial member according to this Art. 7(3).
6. Changes in the composition of the Complaint Panel later on are possible once the project assessment and selection process has been finalised and before a new application and selection process is started.
7. The [Joint Secretariat/Managing Authority] acts as the secretariat for the Complaint Panel and provides any assistance necessary for the review of the complaint.

#### Article 8 (Examination of complaint by Complaint Panel)

The Managing Authority shall provide the Members of the Complaint Panel no later than [...] calendar days after the receipt of the complaint with a copy of:

1. the complaint with the technical examination by the Managing Authority as defined in Article 6(2);
2. the original application form and all supporting documents that were taken into consideration by the relevant bodies during the project assessment and selection process;
3. all documents relating to the assessment of the application in question including checklists and the record of the [Monitoring/Steering Committee's] decision;
4. any other document requested by the Members of the Complaint Panel relevant to the complaint.

#### Article 9 (Different steps and duration of complaint examination)

1. A meeting of the Complaint Panel is assembled by the Chair of the [Monitoring/Steering Committee] no sooner than [...] calendar days after the documents defined in Article 8 are provided and no later than [...] calendar days after the complaint was lodged.
2. The Managing Authority and the Joint Secretariat are invited to the meeting to present the position of the technical examination according to Article 6(2) and to answer possible questions.
3. The Complaint Panel may decide to invite the Lead Applicant for a hearing. The representatives of the Managing Authority and Joint Secretariat have the right to respond to the statement by the Lead Applicant. Members of the Complaint Panel may request clarifications from both parties (Lead Applicant and Managing Authority).



4. The decision if the complaint is justified or to be rejected is taken by the Complaint Panel by [consensus/qualified majority]<sup>7</sup>. In case it is justified, the case will be sent back to the [Monitoring/Steering Committee] to review the project application and its assessment.<sup>8</sup> The Complaint Panel has to provide the [Monitoring/Steering Committee] with a written justification with explicit reference to the criteria established in Art. 3 (3).
5. The decision of the Complaint Panel if the complaint is justified or to be rejected<sup>9</sup> is communicated by the Managing Authority in writing to the Lead Applicant and the [Monitoring/Steering Committee] within [...] calendar days.
6. The complaints procedure - from the receipt of the complaint according to Art. 4(1) to the communication of the Complaint Panel's decision to the Lead Applicant according to this Art. 9(5) - should be resolved within maximum 90<sup>10</sup> calendar days.

#### Article 10 (Final Decision)

The decision of the Complaint Panel if the complaint is justified or to be rejected<sup>11</sup> is final, binding to all parties and not subject of any further complaint proceedings within the Programme based on the same grounds.

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<sup>7</sup> Here should apply the same as for the original decision, hence if the application was rejected by consensus, also the decision on the complaint should be taken by consensus. If by majority vote, then also here by majority vote.

<sup>8</sup> This would require adding the task for the committee to review project applications and their assessment if sent back by the Complaint Panel to the Rules of Procedure of the committee.

<sup>9</sup> The Complaint Panel will never take a decision on the project application itself (funding decision), but only if the complaint as such is justified or not. If justified, it is then up to the Monitoring/Steering Committee to reconsider its original decision.

<sup>10</sup> Although the timing for the different steps and deadlines within the complaints procedure has been left to the programme to decide, it is recommended that the overall process will not take more than 90 calendar days.

<sup>11</sup> Cf. above footnote 9.