

## Complaint Procedure

The Interreg IPA CBC Italy-Albania-Montenegro Programme provides for a complaints procedure according to Article 74(3) of Regulation (EU) No 1303/2013 (CPR).

This 'Programme-internal' complaints procedure is useful to prevent disputes and conflicts, leading to national court cases, as the Programme complaints procedure is launched and completed before any national court procedure. Anyway, the complaint procedure does not affect the right of each party (applicants and partners) to submit complaints to the national courts. In this case, the competence on the disputes is of the Italian courts.

Complaints may be made only in case a failure affecting the JMC funding decision is suspected during the project proposals selection process. A suspected failure may relate to:

- 1) the assessment on the eligibility criteria concerning Lead Partners and Project Partners and the related decision of JMC;
- 2) the assessment on the project as an outcome of the procedural assessment process and the related decision of JMC.

In the cases of point 1) the complaints take the form of a revision claims, otherwise in the cases of point 2) the complaints take the form of a full complaint.

Failure means that the project proposal assessment or part of the project proposal assessment did not fully or partially comply with the procedures laid down in the Cooperation Programme and/or in the call-specific documents (Application Package). If a project proposal is not selected for funding as a consequence of such suspected failures or mistakes, the Lead Applicant has the right to submit a formal complaint.

**In no case the complaints can be based on the overall outcome of the assessment on funding opportunity (reasons of substance) of the proposals that remains irrevocable and unappealable decision of the JMC.**

The complaint is directed against the decision by the Managing Authority as the legal body transposing the positive or negative funding decision (rejection) by the JMC towards the applicants. In any case, this does not undermine the essential role the JMC plays in the decision-making process and the complaints procedure, as in the end the funding decision might be returned to and reviewed always by the JMC.

Prior to filing a formal complaint, the Lead Applicant is obliged to request additional clarification or technical or legal information from the Managing Authority within the timeframe available for submitting a complaint (14 calendar days). Request for clarification/information interrupts the deadline for submitting a complaint until the day of the reply by the Managing Authority to the Lead Applicant.

In case the Lead Applicant is not satisfied with the received additional information from the Managing Authority, it may decide to submit a formal complaint to the Managing Authority. The complaints may concern the assessment on the eligibility criteria or the assessment on the project as an outcome of the procedural assessment process.

Managing Authority will send confirmation of receipt of any written complaint.

Complaints against the project proposal selection process have to be submitted by the Lead Applicant on behalf of all project partners via e-mail to the Managing Authority within 14 calendar days after the notification of the JMC decision regarding the respective call. In the complaint letter, the Lead Applicant shall clearly specify what failures or mistakes have happened during the assessment of the project proposal and support its claim with clear references to the relevant applicable rules and Programme documents (Cooperation Programme, Application Package or other call-specific documents) and project proposal in question.

### COMPLAINT RULES OF PROCEDURE

The complaint procedure of Interreg IPA CBC Italy-Albania-Montenegro Programme shall be subject to the

following rules of procedure (Complaint ROPs).

- 1) Flow chart for revision claim on the assessment of the eligibility criteria concerning Lead Partners and Project Partners and the related decision of JMC:



- 2) Flow chart for complaint procedures on the quality assessment of the project as an outcome of the procedural assessment process and the related decision of JMC:



### **Article 1 – Legal bases and scope of the complaint procedure**

According to Article 74(3) of Regulation (EU) No 1303/2013, these rules define the procedure of a complaint against decisions taken by the Joint Monitoring Committee (JMC) of Interreg IPA CBC Italy-Albania-Montenegro Programme in relation to the selection process at procedural level.

These complaints are excluded from the scope of the present provisions:

- a) complaint against a decision of the Managing Authority (MA) of the Programme during project implementation which is based on the subsidy contract concluded between the MA and the Lead Partner (term "Lead Partner" means Lead Applicant or Lead Beneficiary). In this case it follows the rules laid down in the subsidy contract.
- b) complaints related to First Level Control, National Authority, Certifying Authority and Audit Authority. In this case complaints have to be lodged to the responsible institutions according to their specific applicable rules which shall be available to the beneficiaries.

### **Article 2 – Legitimated subjects**

Only the project's Lead Partner (LP) as the one representing the project partnership affected by the funding decision is entitled to file a complaint under the present provisions.

In the case of complaint submitted by a project partner or other subject the complaint will be declared inadmissible by the MA.

The right to file a complaint against a decision regarding the project selection process applies to the LP whose project application was not selected for the Programme co-financing during the project selection process.

The complaint is to be lodged against the decision of the JMC which is communicated by the MA.

The complaint can be lodged exclusively against the procedural and/or administrative aspects of the selection process.

### **Article 3 – Lodging the complaint and formal requirements**

Prior to filing a complaint, the LP is obliged to request additional technical or legal information from the Managing Authority within the timeframe available for submitting a complaint.

If, following the answer submitted by the MA, the LP is not satisfied with the received additional information, it may decide to submit a formal complaint to the MA.

A complaint may relate to:

- 1) the assessment on the eligibility criteria concerning Lead Partners and Project Partners and the related decision of JMC;
- 2) the assessment on the project as an outcome of the procedural assessment process and the related decision of JMC.

In the cases referred to in Article 3 point 1, the complaint is submitted in the form of revision claim directly to the MA according to the provisions of Article 3 and the form in Annex 1. The revision claim shall be addressed to the MA, who receive it and decide within 20 calendar days from the receipt of the revision claim. The decision of MA on the eligibility criteria of Lead Partners or Project Partners are final and binding to all parties and not subject to any further complaint proceedings or appeal concerning the application, interpretation and execution of eligibility criteria of the Programme.

In the complaints referred to in Article 3 point 2, the complaining procedure is set by Article 6.

The complaint shall be submitted in English in written form, via e-mail and signed by Legal Representative of the LP, to the MA of the Programme within 14 calendar days after the publication on the Programme website of the JMC decision by the MA, which will also be notified via e-MS and e-mail, about the results of the project selection process. The LP has to check if the MA has received the complaint email, by making sure that an e-mail receipt has been sent by the MA in reply to its own email.

The complaint shall clearly include (see template in annex):

- a) name, address and contact details of the LP;
- b) reference number of the application which is the subject of the complaint;
- c) clearly description of reasons for the complaint, specified what failures or mistakes that have happened during the assessment/selection of the proposal and include a clear reference to the relevant documents within the Application pack;
- d) the applicable legal rules and the relevant Programme documents on which the complaint is based;
- e) the signature of the legal representative of the Lead partner;
- f) any other supporting documents the Lead partner may consider relevant.

The text of the original application in the complaint shall be quoted for the sole purpose of supporting the complaint and cannot alter the quality or content of the originally assessed application.

No other grounds for the complaint than indicated under Article 3 shall be taken into account during the complaint procedure.

#### ***Article 4 – Rejection without examination***

A complaint or a revision claim shall be rejected without further examination if submitted after the required deadline or if the formal requirements set under Article 3 are not observed.

Anyway, if a complaint or revision claim includes an incomplete description of a case that does not allow MA or any involved body to perform a thorough assessment of a complaint, further information may be requested at any time of the procedure. If the information requested is not provided within the period of time as specified by the requesting authority/body (at least 3 working days) the case shall be closed without further investigation.

In case the complaint or revision claim is rejected under the present provisions the MA conveys this information within 10 calendar days from the receipt of the complaint to the LP and JS, on behalf of the MA, informs the JMC.

#### ***Article 5 – Handling of the complaint***

MA instructs the JS to prepare all the relevant documentation regarding the assessment process in connection to the merit of the received complaint no later than within 14 calendar days after the receipt of

the complaint.

The complaint shall then be examined on the basis of the information brought forward by the LP in the complaint and documentation according to Article 6 by the Complaint Panel.

#### **Article 6 – Complaint Panel**

The Complaint Panel is the only body entitled to review the complaint against a decision regarding the selection of projects co-financed under the Programme.

The Complaint Panel comprises three members appointed by the JMC among its own members, upon request by the MA. The three members are representatives from participating countries in the Programme and, preferably, at least one of these should have legal background.

Impartiality of members of the Complaint Panel towards the case under review has to be ensured. If this cannot be provided, the distinct member or their deputy shall refrain from the concerned case's review and be replaced by another impartial member, appointed by the JMC. Members have to sign a declaration on impartiality, on the template approved by the JMC, at the first attendance on the Complaint Panel meeting. Members are not entitled to disclose any details of meeting discussions. This obligation shall remain in force after the end of their mandate. The JS acts as the secretariat for the Complaint Panel and provides any assistance necessary for the review of the complaint.

No later than 14 calendar days after the receipt of the complaint JS shall provide the members of the Complaint Panel with following documents:

- a) the complaint with the documents prepared by the JS regarding the assessment process as defined under Article 3;
- b) the access to the Application Form via e-MS and all supporting documents that were taken into consideration by the JS during the project selection process;
- c) any other document requested by the Members of the Complaint Panel relevant to the complaint.

On behalf of the MA the JS informs the JMC about the received complaint no later than within 10 calendar days.

The three members of the Panel shall agree on a Chair, selected among them, who shall convene the meetings of the Complaint Panel and draw its conclusions on official minutes.

#### **Article 7 – Complaint examination**

The meeting of the Complaint Panel is convened by the Chair, no later than within 10 calendar days after the documents defined in Article 6 are provided. All the members or their deputies shall be present at the meeting. The working language is English.

The JS are invited to attend the meeting to present the position of documents prepared regarding the assessment process, according to Article 3 and to answer any questions.

The decision on whether the complaint is justified or to be rejected is taken by the Complaint Panel by consensus of all the members or their deputies. In case the Complaint is justified, the Application Form shall be reviewed again through a new selection process. On behalf of the MA the JS shall than provide the MC with the new assessment within an indicative timeframe of 15 working days, on the basis of which the JMC shall take decisions. The Complaint Panel has to provide the JMC a written justification of the decision with explicit reference to the criteria established under Article 2. Each member has the right to request that own opinions are recorded in the minutes, if these do not contradict, but specify the decision by consensus of the Panel.

The decision of the Complaint Panel is communicated by the MA to the LP and by the JS on behalf of the MA to the JMC within 10 calendar days after the decision by the Complaint Panel is reached.

#### **Article 8 – Final decision**

The decision of the Complaint Panel is immediately submitted to the JMC, which adopts it with a short written procedure of five working days according to the JMC rules of procedure, in order to be final, binding to all parties and not subject to any further complaint proceedings or appeal within the Programme based on the

same grounds.

Received complaints do not interrupt the process of contracting the Subsidy Contract for the approved applications.

The complaint procedures set out above are without prejudice to any mechanism or process for legal redress at national level, in particular with regard to unsuccessful applicants. Where courts, public prosecution offices or other national institutions are competent in relation to the object of the complaint, the LP has the right to also turn to the relevant authorities.

According to Article 74(3) of Regulation (EU) No 1303/2013 the MA shall, upon request by the EC, examine complaints submitted to the EC falling within the scope of their arrangements. The MA shall inform the Commission, upon request, of the results of those examinations.

## Template for complaints/revision claims

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**Acronym of the project**

(as submitted in the eMS)

**Project number**

(as provided by the eMS)

**Name of the organisation Lead Partner**

(Original name and in English)

**Address of the Lead Partner****Legal representative**

(As stated in the application)

**Contact person****Phone number of the contact person****Preferred communication**

- Email at .....
- Certified email (PEC) at .....
- Fax number .....
- Post address .....
- eMS inbox
- Others .....

As legal representative of the organization acting as the Lead Partner of the project above and according to Article 74(3) of Regulation (EU) No 1303/2013 (CPR), herewith I intend to submit to Puglia Region, acting as Managing Authority of the Programme Interreg IPA CBC Italy-Albania-Montenegro, a formal complaint on the assessment procedure. I declare that I read and accepted the rules on complaint procedures published by the Programme and that I give my consent to process this data for the sole purpose of the current complaint procedure.

The reasons<sup>1</sup> for the complaint are:

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Signature of the legal representative of the Lead partner

Enclosures: 1) ..... 2) .....

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<sup>4</sup> Please add here:

- a) clear description of reasons for the complaint, specified what failures or mistakes that have happened during the assessment/selection of the proposal and include a clear reference to the relevant documents within the Application pack;
- b) the applicable legal rules and the relevant Programme documents on which the complaint is based