

**Information sheet for Lead Partners and project partners
on the
Exceptions to the rules on nationality and origin**

According to Article 19 para (6) of the Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA):
„The Commission may, in duly substantiated exceptional cases, authorise the participation of natural persons who are nationals of and legal persons who are established in other countries than those referred to in paragraphs 1 and 2, or the purchase of supplies and materials of different origin from that set out in paragraph 5. Derogations may be justified on the basis of the unavailability of products and services in the markets of the countries concerned, for reasons of extreme urgency, or if the eligibility rules would make the realisation of a project, a programme or an action impossible or exceedingly difficult.”

Moreover, according to the European Commission Decision 3740/26.05.2011:
„in duly justified cases, the Managing Authority may grant derogations in accordance with article 19 para (g) from the Council Regulation (EC) No 1085/2006. Derogations may be justified on the basis of the unavailability of products and services in the markets of the countries concerned, for reasons of extreme urgency, or if the eligibility rules would make the realisation of a project, a programme or an action impossible or exceedingly difficult.”

If a contract notice is published, it must mention the derogation. Unless good reason is given, such derogations apply not to one country but every nationality/origin.(e.g. if a derogation is requested for a certain product, the eligibility cannot be restraint afterwards).

In duly substantiated cases the Managing Authority may:

- *extend eligibility to natural and legal persons from an ineligible country;*
- *allow the purchase of goods and materials originating in an ineligible country.*

*Derogations may be granted, depending on the grounds of economic, traditional, trade or geographical links, on the grounds that products and services are unavailable in the markets of the countries concerned; for reasons of extreme urgency; or if the eligibility rules would make it extremely difficult to carry out a project, programme or other action. Note, however, that the argument that **a product of ineligible origin is cheaper** than the EU or local product **would not** alone constitute grounds for awarding derogation.”*

Thus the Managing Authority grants exceptions from the rules on nationality and origin in exceptional and duly substantiated circumstances. These exceptions from the rules on nationality and origin have to be granted **before the launch of a procurement procedure and should be clearly indicated in the tender documents** so that the principles of transparency and equal treatment are respected.

How to obtain the derogation from the rules on nationality and origin:

- In order to obtain the derogation from the rules on nationality and origin the Lead Partner/Partner, has to conduct the market study proving that the goods/services meeting the required technical/professional specification are not produced inside the eligible area (for the IPA eligible countries please check Annex 1);ⁱ
- The Lead Partner/Partner, has to send out the official inquiry to the Suppliers in order to receive information on what are the countries of origin of goods/services required, that are available on the market.;ⁱⁱ
- At least three Suppliers have to be consulted including at least one international supplier or a national level supplier who is a chain supplier or a supplier with network of selling points and information on this fact is available to the public.
- The Lead Partner/Partner has to get at least three official answers from different Suppliers that they cannot provide the required products originating from a country within the eligible area as defined in Annex 1, due to unavailability of the respective products.
- At least three official inquiries prepared by the Lead Partner/Partner , and three official answers from the Suppliers have to be sent to the Managing Authority by the Lead Partner/Partner **through the Lead Partner** together with the covering letter asking for the derogation on the base of the unavailability of products\services on the markets of the countries concerned or because the eligibility rules would make the realization of a project impossible or exceedingly difficult.

The award of the derogation is decided on case – by – case basis by the Managing Authority. If granted, the Derogation may be applied exclusively to a

respective procurement procedure or specific item as mentioned in the Decision of awarding derogation and during lifespan of the specific project which asked for derogation.

ⁱ In case of electronic equipment, which is typically produced outside the IPA eligible area, local companies are not necessarily excluded because they often assemble IT equipment from parts. Such equipment then has the local country of origin (the place where the assembly takes place, to be precise).

ⁱⁱ Preparing the inquiry the Lead Partners /Partner, has to avoid discriminatory practices as too narrow requirements in the technical specifications for goods. Please use Guidelines for the drafting of IT-tenders' technical specifications in the field of external actions (General annexes to PRAG A11b, A11c, A11d)



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Warning - This document offers just a simple outline of the access to EU's external aid programmes. You are strongly advised to consult the Regulation governing each programme to obtain legally reliable information

ANNEX 1:

Annexe A2 Participation in procedures for the awarding of procurements contracts or grants contracts Eligibility rules in 2007-2013 programmes and in EDF after the 2010 revision of the Cotonou Agreement (GENERAL ANNEX of the Practical Guide to Contract procedures for EU external actions)

Regulation	Eligibility
<p>Instrument for Pre-Accession Assistance Council Regulation (EC) N° 1085/2006 of 17 July 2006 - OJ L 210/82 of 31.7.2006)</p>	<ul style="list-style-type: none"> a. All natural persons who are nationals of and legal persons who are established in a Member State: Austria, Belgium, Bulgaria, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom. b. All natural persons who are nationals of and legal persons who are established in a country that is a beneficiary of this Regulation: Croatia, The former Yugoslav Republic of Macedonia, Turkey, Albania, Bosnia, Montenegro, Serbia, including Kosovo. c. All natural persons who are nationals of and legal persons who are established in a country that is a beneficiary of the European Neighbourhood and Partnership Instrument: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Palestinian Authority of the West Bank and Gaza Strip, Russian Federation, Syria, Tunisia, Ukraine.



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- d. All natural persons who are nationals of and legal persons who are established in a or a Member State of the European Economic Area:
Iceland, Lichtenstein, Norway
- e. All natural persons who are nationals of and legal persons who are established in any country where reciprocal access to their external assistance has been established.
- f. International organisations:
- (a) international public-sector organisations set up by intergovernmental agreements, and specialised agencies set up by such organisations;
 - (b) the International Committee of the Red Cross (ICRC);
 - (c) the International Federation of National Red Cross and Red Crescent Societies;
 - (d) the European Investment Bank and the European Investment Fund.
- g In duly substantiated exceptional cases, authorise the participation of natural persons who are nationals of and legal persons who are established in other countries than those referred to in points (a) to (e).
- h. Whenever EU funding covers an operation implemented through an international organisation, participation in the appropriate contractual procedures shall be open to all natural or legal persons who are eligible pursuant to points (a) to (f) as well as to all natural or legal persons who are eligible pursuant to the rules of that organisation, care being taken to ensure that equal treatment is afforded to all donors.
- i. Whenever EU funding covers an operation co-financed with a Member State, with a third country, subject to reciprocity, or with a regional organisation, participation in the appropriate contractual procedures shall be open to all natural or legal persons who are eligible pursuant to points (a) to (f) as well as to all natural or legal persons who are eligible under the rules of such Member State, third country or regional organisation.