

**GUIDANCE ON REDUCTION OF THE GRANT AMOUNT FOR POOR, PARTIAL OR LATE IMPLEMENTATION (ARTICLE II.25.4) - TECHNICAL DEGREE OF COMPLETION – BUDGET TRANSFERS (ARTICLE II.22)**

*(Version 02/07/2018 following feedback from DG BUDG)*

**1. OBJECTIVE OF THE DOCUMENT**

The Grant Agreement foresees that the Agency may reduce the grant amount for poor, partial or late implementation (Art. II.25.4, see Annex I). Such reduction should be done in proportion to the improper implementation.

The objective of this document is to provide some guidance as regards the way such "proportionate" reduction may be applied under the CEF. This guidance is therefore to be used in the context of analysis of Final Payment Requests.

The guidance is deliberately not complete but addressing the most common issues encountered so far. In particular, the document does not address breach of contractual obligations. As soon as we have sufficient experience from concrete cases, we will complement the guidance with other elements.

An additional reduction for poor implementation applied to the amount of EU contribution obtained after the reduction for partial implementation is not possible. In such a case, the potentially higher percentage reduction for poor implementation should be considered instead of a lower percentage reduction for partial implementation.

**2. LATE IMPLEMENTATION - REFERENCE POINT FOR THE DETERMINATION OF THE COMPLETION RATE**

Often, due to delays, the implementation of the Action is only partial by the Grant Agreement end date. In such cases, usually, the beneficiary does not stop the implementation and activities are completed gradually after this end date. Costs incurred after the end date of the Action are not eligible.

If the beneficiary can provide assurance to the Agency that the Action will be fully completed, the "general guidance principle" consists in applying a reduction at the pro-rata of the technical completion **by the date of submission of the final report**<sup>1</sup>. In this way, the beneficiaries have some flexibility to complete (or advance with the technical implementation).

This has to be taken as a "general guidance principle", but it is important to consider each case individually. Specific elements may have to be taken into account in the analysis. For example, there are cases (ERTMS) where the completion date is an essential element accurately defined in the call and missing a deadline may lead to ineligibility of costs. In other cases, the non-achievement of a specific milestone

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<sup>1</sup> Provided the final report is submitted within the limit laid down in the GA (12 months for Transport and Energy)

(e.g. issuance of a permit by the Competent Authority, validation only on testing environment due to the non-availability of certain services/technical specifications for the Core Service Platform) may be beyond the responsibility of the beneficiaries so this may not lead to a reduction of the GA amount. More generally, when delays reduce significantly the EU added value or the impact of the Action, the financial reduction to be applied due to the late implementation can be more severe than the one resulting from the application of the "general guidance principle".

Annex II gives some examples of application of the "general guidance principle" in concrete cases.

### **3. REDUCTION OF THE GRANT FOR LATE IMPLEMENTATION**

In practice, Actions are made of several activities and the degree of technical completion is assessed first at the level of each activity. In a second step, the technical completion rate of the Action is obtained by averaging the technical completion rate of each activity. In a third step, the maximum amount of EU funding for the Action is computed. In addition, it is possible to provide an indicative allocation of the total amount of EU funding for each activity.

#### **3.1. Technical completion rate at activity level**

In its final report the beneficiary will indicate the completion rate of each activity at the date of the submission of the final report. INEA will assess the plausibility of this information submitted by the beneficiary (based on a comparison of this rate with the "technical achievements" and expected results as described in the Grant Agreement).

The beneficiary will be offered two possibilities:

- to provide a detailed justification of the methodology used to determine the technical completion rate or
- to consider that the technical completion rate is equal to the financial progress defined as

$$\text{financial progress} = \frac{\text{Costs incurred for the Activity by the date of submission final report}}{\text{best estimate of the total cost of the activity}}$$

In both cases, project managers should check the plausibility of the information given. Such plausibility could be checked notably on an analysis of the advancement of the different deliverables. This methodology applies equally to project management costs and "other horizontal supporting activities" that should therefore not be treated as specific cases.

In both cases the end result is a percentage of completion rate for each activity.

#### **3.2. Technical completion rate at Action level**

The global percentage of technical completion is calculated by applying a weighted average of the completion rate of each activity. Weighting is done using the EU

contribution of each Activity as indicated in the Grant Agreement. See example in Annex III.

### **3.3. Maximum amount of EU support to be paid**

The maximum amount of EU support to be paid will be calculated by multiplying the maximum amount indicated in the GA by the completion rate at Action level. Applying this methodology, may result in practice in a transfer between overspending and underspending activities. As indicated in Annex III, the amount of EU support to be paid will be the lower of the two amounts:

- a cap obtained by applying the completion rate to the maximum EU support, or
- the maximum contribution based on the declared costs (assuming all declared costs are eligible), which is obtained by applying the co-funding rate to the costs declared for each activity.

### **3.4. Amount of EU support for each Activity**

In principle, in case of multi-beneficiaries Actions, it is up to the beneficiaries to allocate the granted EU support between them. Experience from TEN-T shows that, in a number of cases, having the information of the allocation of EU support at activity level is useful. As it was the case under TEN-T, there is not always a unique way to carry out the transfers between under spending and overspending activities. Annex IV gives a possible methodology to carry out the transfer. This methodology may be made available **informally** to coordinators **at their request** with the clear indication that this is a possible option amongst others.

## **4. REDUCTION OF THE GRANT FOR PARTIAL IMPLEMENTATION**

The concept of partial implementation refers to cases where the Action will never be completed or beyond a reasonable date for monitoring by the Agency. We therefore speak about cases where on top of the late implementation, the beneficiary cannot provide assurance to the Agency that the Action will be fully completed.

These cases are typical situations where case by case analyses are necessary in order to assess the "prejudice" for the EU of the non-completion of the Action. Annex V provides some examples that could be used as reference when carrying out this "case by case" analysis. It is expected that such cases are discussed at unit/department level in order to ensure harmonised application of the principle. The note to the file related to the corresponding payment should be very clear about the reasoning and, as appropriate, indicate the date of unit and department meeting at which the issue was discussed.

# Annex I – legal requirements

## Reduction

### **CEF GA II.25.4 Reduction for poor, partial or late implementation, or breach of contractual obligations**

*Please check which version applies to the specific case and apply the corresponding procedure.*

"old version"

If the action is not implemented properly in accordance with Annex I, or if a beneficiary fails to comply with any other obligations under this Agreement, the Agency may reduce the grant amount per beneficiary set out in Article 3 in proportion to the improper implementation of the action or to the seriousness of the breach of obligations.

"New version"

The Agency may reduce the maximum grant amount set out in Article 3 if the action has not been implemented properly in accordance with Annex I (i.e. if it has not been implemented or has been implemented poorly, partially or late), or if any beneficiary fails to comply with any other obligations under this Agreement.

This includes the case where the Agency does not receive all the documents required under Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, Directive 2009/147/EC on the conservation of wild birds, Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, Directive 2000/60/EC establishing a framework for Community policy in the field of water, or any other relevant environmental legislation as listed in the application form (the section concerning compliance with Union policy on environmental protection).

The amount of the reduction will be proportionate to the degree to which the action has been implemented improperly or to the seriousness of the breach.

Before the Agency reduces the grant, it must send a formal notification to the coordinator:

(a) informing it of:

- (i) its intention to reduce the maximum amount of the grant;
- (ii) the amount by which it intends to reduce the grant;
- (iii) the reasons for reduction;

(b) inviting it to submit observations within 30 calendar days of receiving the formal notification.

If the Agency does not receive any observations or decides to pursue reduction despite the observations it has received, it will send a formal notification informing the coordinator of its decision.

If the grant is reduced, the Agency must calculate the reduced grant amount by deducting the amount of the reduction (calculated in proportion to the improper implementation of the action or to the seriousness of the breach of obligations) from the maximum amount of the grant.

The final amount of the grant will be the lower of the following two:

(a) the amount determined in accordance with Article II.25.1, II.25.2 and II.25.3; or

(b) the reduced grant amount determined in accordance with Article II.25.4.

**Budget transfers**

**CEF ARTICLE II.22 – BUDGET TRANSFERS**

The estimated budget breakdown set out in Table 2 of Annex III may be adjusted by transfers of amounts between budget categories, without this adjustment being considered as an amendment of the Agreement within the meaning of Article II.12, provided that the action is implemented as described in Annex I.

# Annex II

## EXAMPLES RELATED TO THE REFERENCE DATE FOR CALCULATING THE COMPLETION RATE IN CASE OF LATE IMPLEMENTATION

In the following examples, for simplification, we assume an action funded under transport or energy (1 year to transmit the final report) and we assume that co-funding rate is 50%. We also assume that there is a single activity and the maximum EU contribution for the Action was 10M€ (corresponding to 20M€ of eligible costs) and end date was 31.12.2018. We assume that the final report is sent on 30.11.2019.

### Example 1

Situation 31.12.2018	Situation 30.11.2019
Costs incurred during eligible period : 24M€ Technical completion : 90%	Costs incurred during eligible period : 24M€ (costs incurred in 2019 are ineligible anyway) Technical completion : 100%

In this case, there will be no technical limitation as the Action is fully completed when the final report is transmitted. The full amount of the Grant will be paid = 10M€.

### Example 2

Situation 31.12.2018	Situation 30.11.2019
Costs incurred during eligible period : 16 M€ Technical completion : 90%	Costs incurred during eligible period : 16 M€ (costs incurred in 2019 are ineligible anyway) Technical completion : 100%

In this case, there is no technical limitation. The EU contribution corresponding to the costs incurred during the eligible period is 8M€ and 8M€ will be paid.

### **Example 3**

Situation 31.12.2018	Situation 30.11.2019 as described in the final report
Costs incurred during eligible period : 20 M€ Technical completion : 90%	Costs incurred during eligible period : 20 M€ (costs incurred in 2019 are ineligible anyway) Technical completion : 95%

In this case, there is still a technical limitation (95% of 10M€ corresponding to a CEF contribution of 9.5M€). EU contribution will be limited to 9.5M€.

### **Example 4**

Situation 31.12.2018	Situation 30.11.2019 as described in the final report
Costs incurred during eligible period : 20 M€ Technical completion : 40%	Costs incurred during eligible period : 20 M€ (costs incurred in 2019 are ineligible anyway) Technical completion : 50%

In this case, there is still a technical limitation (50% of 10M€ corresponding to a CEF contribution of 5M€). Given the relatively low implementation rate, such case should be further analysed, in particular as regards the reliability of the methodology used to determine the degree of technical completion and if there is a need to apply also a reduction for partial implementation.

### **Example 5**

Situation 31.12.2018	Situation 30.11.2019 as described in the final report
Costs incurred during eligible period : 21 M€ Technical completion : 80%	Costs incurred during eligible period : 21 M€ (costs incurred in 2019 are ineligible anyway) Technical completion : 100% but permit still to be issued

In this case, the Action was "financially" completed by 30.11.2019 : the remaining step was purely of an administrative nature (e.g. issuance of a permit by the Competent Authority or validation only on testing environment due to the non-availability of certain services/technical specifications for the Core Service Platform). In this case, it may be considered that the technical completion is 100% and the full grant (10M€) can be paid.

# Annex III

## EXAMPLE –COMPLETION RATE AT ACTION LEVEL

The Action has 4 activities. We assume that the beneficiary declares the costs indicated in column (b) and declares the technical completion rates indicated in column (c). After technical assessment, these technical completion rates are accepted. We also assume that no ineligible costs are identified. The situation is therefore as follows:

	Costs G.A.	declared costs	technical completion	EU funding rate	Maximum EU support (GA)
	(a)	(b)	(c)	(d)	(e) = (a)x(d)
activity 1	1,000,000	1,100,000	80%	50%	500,000.00
activity 2	1,000,000	900,000	90%	30%	300,000.00
activity 3	1,000,000	1,200,000	75%	30%	300,000.00
activity 4	1,000,000	700,000	80%	50%	500,000.00
Total	4,000,000	3,900,000			1,600,000.00

In this case this would lead to estimate the completion rate at

$$\frac{80\% \times 500,000 + 90\% \times 300,000 + 75\% \times 300,000 + 80\% \times 500,000}{1,600,000} = 81\%$$

The total EU support will therefore be the lower of the two amounts:

- a cap obtained by applying the completion rate to the maximum EU support of  $81\% \times 1,600,000 = 1,296,000$ , or
- the maximum contribution based on the declared costs (assuming all declared costs are eligible). This will be 1,530,000€ in the example as indicated in the table below.

maximum possible contribution based on costs declared			
	declared	co-funding	contribution
activity 1	1,100,000	50%	550,000.00
activity 2	900,000	30%	270,000.00
activity 3	1,200,000	30%	360,000.00
activity 4	700,000	50%	350,000.00
Total	3,900,000		1,530,000.00

In this example, INEA will therefore consider that the amount to be paid is 1,296,000€. This amount will be paid to the coordinator and it will be up to the coordinator to allocate this amount between activities and beneficiaries. There are several possibilities to do so. Annex IV gives an example.

# Annex IV – transfers

In cases when some activities "underspend" and other "overspend" there is not a unique way to allocate the transfers between activities. This annex presents a possible methodology that can be used, if need be, to carry out these transfers. This methodology can easily be implemented in an excel sheet.

The allocation of amounts between beneficiaries inside a given activity is usually not an issue, but, if need be, the same principles can be used.

## Example

	Data from the GA			Report from beneficiary		
	Eligible Costs	Funding rate	EU contribution	Declared Costs	corresponding EU contribution	Completion rate
	(b)	(c)	(d) = (b) x (c)	(e)	(f) = (e) x (c)	
Activity 1	3,000,000	50%	1,500,000	3,500,000	1,750,000.00	95%
Activity 2	3,000,000	40%	1,200,000	2,900,000	1,160,000.00	100%
Activity 3	3,000,000	50%	1,500,000	2,800,000	1,400,000.00	100%
Activity 4	3,000,000	40%	1,200,000	2,000,000	800,000.00	50%
Activity 5	3,000,000	50%	1,500,000	3,100,000	1,550,000.00	100%
TOTAL	15,000,000		6,900,000	14,300,000	6,660,000.00	

We assume that no ineligible costs are identified during the ex-ante analysis (costs outside the eligibility period etc.). In this case we first calculate a global completion rate for the Action. In this case the weighted average rate is 90.22%.

$$\frac{1,500,000 \times 95\% + 1,200,000 \times 100\% + 1,500,000 \times 100\% + 1,200,000 \times 50\% + 1,500,000 \times 100\%}{6,900,000} = 90,22\%$$

This global rate is then applied to the total EU contribution 90.22%.6,900,000=6,225,000.

The amount to be paid is the lower of the two amounts: 6,225,000 (and not 6,660,000).

In this case, there are several possibilities to allocate the final amount of 6,225,000 between the activities.

It is proposed to use a three steps methodology:

In a first step each activity gets a "secured contribution" which is the minimum between what was requested and the amount (completion rate of the activity x maximum EU contribution according to the GA).

Step 1				
	maximum contribution according to the GA	Requested (declared cost x funding rate)	completion rate x contribution GA	"secured contribution"
	(a)	(b)	(c)	(d) = min(b,c)
Activity 1	1,500,000	1,750,000.00	1,425,000	1,425,000.00
Activity 2	1,200,000	1,160,000.00	1,200,000	1,160,000.00
Activity 3	1,500,000	1,400,000.00	1,500,000	1,400,000.00
Activity 4	1,200,000	800,000.00	600,000	600,000.00
Activity 5	1,500,000	1,550,000.00	1,500,000	1,500,000.00
TOTAL	6,900,000	6,660,000.00	6,225,000	6,085,000.00

The sum of the 'secured part' column is lower or equal to the total sum of the column ('completion rate' x contribution GA).

- In a second step the remaining "margin" between the EU contribution (6,225,000 EUR in our example) and the sum of the "secured part" (6,085,000 EUR in our example) is calculated. The result is 140,000 EUR in our example.

- in a third step we calculate the difference between what was declared and what was "secured" in the first step and we allocate the "margin" proportionally to the "difference". This gives a possible final allocation per activity. In our example, Activity 2 and 3 "got" already all what they requested and can't therefore obtain more.

Step 3				
	contribution secured	difference between declared and secured	allocating the margin	EU contribution
Activity 1	1,425,000	325,000.00	79,130.43	1,504,130.43
Activity 2	1,160,000	-	-	1,160,000.00
Activity 3	1,400,000	-	-	1,400,000.00
Activity 4	600,000	200,000.00	48,695.65	648,695.65
Activity 5	1,500,000	50,000.00	12,173.91	1,512,173.91
TOTAL	6,085,000	575,000.00	140,000.00	6,225,000.00

<b>Final result – EU contribution</b>				
	Grant Agreement	Completion rate	Declared	Payment
Activity 1	1,500,000.00	95%	1,750,000.00	1,504,130.43
Activity 2	1,200,000.00	100%	1,160,000.00	1,160,000.00
Activity 3	1,500,000.00	100%	1,400,000.00	1,400,000.00
Activity 4	1,200,000.00	50%	800,000.00	648,695.65
Activity 5	1,500,000.00	100%	1,550,000.00	1,512,173.91
TOTAL	6,900,000.00		6,660,000.00	6,225,000.00

# Annex V

## EXAMPLES RELATED TO THE REDUCTION OF THE GRANT FOR PARTIAL IMPLEMENTATION

As indicated in section 4 we speak here about cases where the Action will never be completed or beyond a reasonable date for monitoring by the Agency. The main point to be assessed is whether or not an additional reduction (on top of the reduction due to the reduction for "late implementation") needs to be applied.

As explained in point 1, an additional reduction for poor implementation applied to the amount of EU contribution obtained after the reduction for partial implementation is not possible. In such a case, the potentially higher percentage reduction for poor implementation should be considered instead of a lower percentage reduction for partial implementation.

### **Example 1 – no EU support**

The Action is about building a new rail line of 15 kilometres between 4 cities A-B-C-D (three links of 5 kilometres, similar technical conditions). B-C is the cross border link. A-B and C-D were built as foreseen but the link between B-C is not built and there is no assurance that it will be completed in a near future. Technical completion at the date of the submission of the final report was estimated at 67%. However, the cross border link was an essential element of the Action: the completion of the cross border link was the reason why the Action had been selected. The EU added value of the Action is significantly reduced and the Agency may simply decide not to grant any EU support.

### **Example 2 – additional reduction**

The Action had two main activities. The first activity consists in retrofitting a number of vessels with an LNG propelling system and to equip a number of port facilities with LNG bunkering and supply stations. The second activity consists in studying the operation over a one year period in order to draw a number of lessons learnt due to be used to help developing additional facilities.

Due to delays, at the date of the submission of the final report, the pilot part is implemented (it represents 90% of the eligible costs) but the study part is not done. The beneficiary indicates that the study part will never be done.

For the sake of this example, we consider that the study was not an eligibility condition under the call. Without the study the relevance and impact of the Action would have certainly be lower but it would probably still have been selected.

While the "technical completion" of the Action can be estimated at 90%, the fact that the study is not carried out reduces significantly the added value of the Action. After analysis of this specific case, it may be considered to apply an additional reduction and, for example, to cap the EU support at 50% of the maximum amount of the GA. Such an approach is to be assessed on a case by case, and agreed with the Authorising Officer. Concrete tangible arguments need to be gathered to prevent contestations from the Beneficiary.

### **Example 3 - no additional reduction**

The Action is about implementing 100 charging stations along a corridor. When the final report is submitted, only 80 charging stations have been built and the remaining 20 will not be built. A reduction of 20% for partial implementation is therefore applied.

After analysis, it is concluded that the fact that 80 charging stations instead of 100 have been built reduces the scope of the Action. Nevertheless the fact that 20 charging stations have not been done does not reduce the added value of the funding granted for building the 80 charging stations. For this reason, no additional funding reduction is applied.