



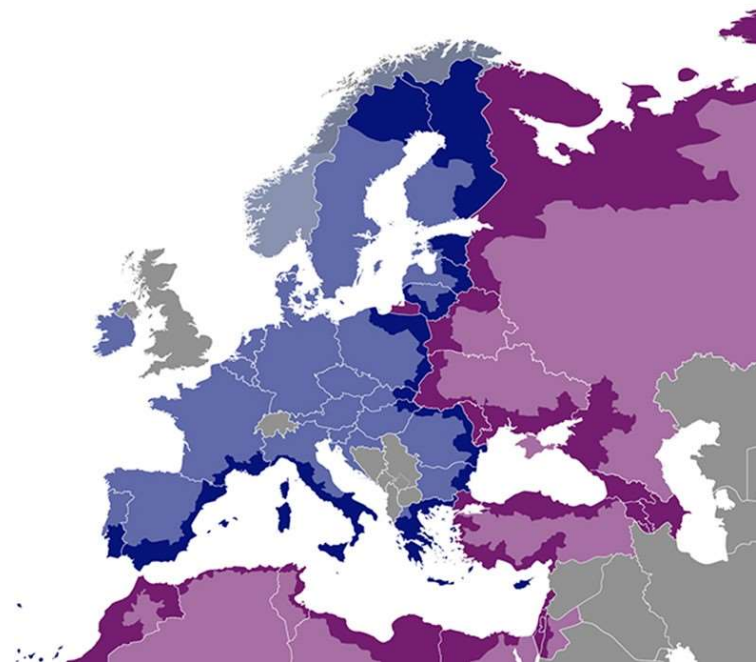
# TESIM

Technical support to the implementation and management of ENI CBC programmes

## Modification of the ENI CBC Implementing Rules and implications beyond regulatory changes

Questions and answers

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particip

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## 1. Introduction

This document aims to provide answers to the questions related to the recent modification of the ENI CBC Implementing Rules (ENI CBC IR), as well as give answers to the practical questions that go beyond the regulatory changes.

The first part of the document mainly focuses on the direct consequences of the ENI CBC IR modification proposal in order to ensure that the programmes have the necessary tools to provide a response to the consequences of the COVID-19 outbreak at programme level.

The second part of the document focuses on the practical implications beyond the regulatory changes and highlights questions that might be of relevance for the ENI CBC programmes.

It should be noted that the modification of the ENI CBC IR is comparable to modifications introduced and rules currently applied to the cross-border cooperation programmes under the European Territorial Cooperation goal. In this respect, the modification harmonises the rules between the two instruments. The document is cross-referenced (where possible) to the Q/A document of DG REGIO made available to the European Territorial Cooperation programmes, as some of the principles can be applied *mutatis mutandis* by the ENI CBC programmes as well.



## 2. Modifications of the ENI CBC IR: COVID-19 response at programme level

### 2.1. 100% EU financing - Article 12

Questions	Answers
1. If the programme total budget is reduced due to the application of this measure, should the project budget also be reduced?	Yes. The natural consequence of the measure is that, if co-financing is not requested, then the total costs reported by the project will be smaller than planned. At the same time, for example, if the contractual arrangements between the programme and the project allows for this, the reduction of the total project budget can also be treated in a similar way as underspending (savings) on the project level.
2. When will it be possible to start applying the 100% EU financing?	This option applies for the project expenditure accepted by the programmes in the accounting year July 2020 - June 2021. In general, modifications to the signed grant contract shall be needed and you may start signing such addenda after approval of the ENI CBC IR modification.
3. May a project be 100% financed from the EU funding?	No, unless it is implemented only during the 2021-2022 accounting year. The 100% EU financing covers only one accounting year, whereas projects in the absolute majority of the cases are longer than 12 months, meaning that the expenditure declared from July 2020 to June 2021 can be 100% financed from the EU funding, but the remaining amount will have to follow the general rules of co-financing.
4. Does the EU financing rate at programme level change?	<p>Yes, the programmes opting for the use of 100% EU financing will have a different global co-financing rate. The impact of the measure will be indicated separately in the annual implementation report for the accounting year 2020-2021. The percentage of EU financing in the programme budget will be higher, due to the absence of contributions from the projects during the 2020-2021 accounting year.</p> <p>In practice, applying a temporary 100% EU financing rate will mean that:</p> <ul style="list-style-type: none"> <li>• the total contribution from the EU funds can be used sooner than without it;</li> <li>• the average EU co-financing rate for the whole programming period will be higher than initially planned, and consequently,</li> <li>• the national co-financing will be proportionally lower;</li> </ul>

- thus, the lower national co-financing will result in a lower total volume of expenditure than initially planned.

## 2.2. Contracting and implementation of projects – Article 18

Questions	Answers
5. Under which conditions may projects be extended until December 2023?	The extension until the end of 2023 should be considered as exceptional and only granted in duly justified cases. The justification does not need to be limited to COVID -related impact. A possible extension should be decided by the programmes and does not require the approval by the Commission.
6. What will be the deadline for implementation of projects related to the COVID-19 crisis? 31 December 2023?	The requirements for the implementation of operational programmes remains fully applicable. Consequently, the final date of the implementation of the projects and eligibility of costs (except costs linked to the project closure) is 31 December 2023.

## 2.3. Technical assistance for closure of programmes – Article 19

Questions	Answers
7. Would it be possible to allow technical assistance costs until the date of submission of the final programme report, that is, February 2025?	The use of technical assistance funds in 2024 is already an exception to the rules applicable for Cohesion Policy programmes, as all ERDF programmes have a final deadline of 31 December 2023. Therefore, it is not possible to extend the date of eligibility of expenditure beyond 30 September 2024. The draft Common Provisions Regulation for post-2020 programmes explicitly allows that costs linked to the closure of ENI CBC programmes are financed from the 2021-2027 (Interreg NEXT) programmes.
8. If eligibility of technical assistance in 2024 is only linked to programme and project closure, how can the preparation of the new programmes be financed?	It is expected that the new programmes should be adopted before 2024 and the technical assistance funds of ENI CBC programmes may be used for the preparation of the Interreg NEXT programmes before that date.

## 2.4. Non-statistical sampling – Article 28

Question	Answers
<p>9. If the audit authority was planning to use a statistical sampling method to select the projects for audit and this is not possible due to the COVID-19 consequences, is it allowed to change the approach?</p>	<p>Audits by the audit authorities under Article 28 of the ENI CBC IR are done on a statistical sample of operations drawn from the expenditure of the accounting year or based on professional judgement on a non-statistical sample under duly justified cases, while respecting a minimum coverage of operations and expenditure. The ENI CBC IR modification has been introduced so that the current COVID-19 crisis may be considered as a duly justified case to apply non-statistical sampling for the 2019-2020 accounting year.</p>

## 2.5. Direct award – Article 41

Question	Answers
<p>10. Who takes the final approval decision on direct award projects, if the programme decides to address the COVID-19 impact via direct award?</p>	<p>The final decision will be taken by the Joint Monitoring Committee, provided that all the requirements are being followed. The EC will assess the projects proposed for selection without a call for proposals on the basis of a project summary. The Commission shall notify its assessment to the Managing Authority within two months of the document submission date. This deadline may be extended where necessary. In case of a negative assessment, the Commission shall notify the Managing Authority of its reasons.</p>

## 2.6. Eligibility of project costs – Article 48

Question	Answers
<p>11. Would the costs of activities held by the end of 2023, e.g. a final conference, be eligible if paid in 2024?</p>	<p>No. Only costs linked to closure, such as the preparation of final reports, expenditure verification or evaluation paid in 2024 are eligible.</p>
<p>12. Are the project closure costs eligible if incurred in 2024, before the submission of its final report?</p>	<p>Yes, according to the new provision in article 48.2.a the costs linked to the project closure incurred in 2024 can be eligible, even if incurred after the end of the project implementation period (costs relating to final reports, including expenditure verification, audit and final evaluation of the project). This possibility is provided by the article 48.2.a.iii.</p>

## 2.7. Retroactivity of expenditure fostering crisis response capacities – Article 48.3

Question	Answers
13. Under which circumstances may retroactivity be applied?	<p>Expenditure linked to the response to the crisis may be eligible from 1 February 2020. Retroactivity may be applied for:</p> <ul style="list-style-type: none"> <li>a) unforeseen expenditure linked to response activities in <b>running projects</b>. The addendum to the grant contract may be signed after that date.</li> <li>b) for <b>new projects</b>, awarded directly or via calls for proposals. The grant contract may be signed after that date with beginning of eligibility from 1 February, provided that the project is not finalized at the contract signature.</li> </ul>
14. Is it compulsory to use 1 February as initial date for retroactive expenditure?	The Regulation allows the programme to choose the beginning of retroactivity from 1 February. It can be a later date, but not an earlier one.

## 2.8. Final balance of the programme – Article 64

Question	Answers
15. Will the 10% flexibility be added to the 20% already included in the ENI CBC IR?	The 10% flexibility is an additional tool to the existing possibility of non-substantial programme modification provided in article 6 of the ENI CBC IR. The 10% flexibility will be used at the stage of programme closure, if there has been overspending in one of the programme priorities.

## 2.9. Programme reporting – Article 77.6

Question	Answers
16. Is there a possibility to revise the deadlines for submission of the annual reports considering all the steps that are now in question?	Yes. Article 77.6 of the ENI CBC IR introduces the possibility to extend the deadline of submission of the annual report to 1 March of the respective year. The need for extension should be communicated by the Managing Authority to the EC.

### 3. Implications beyond the modification of the ENI CBC IR

#### 3.1. Force majeure

Where Union law refers to reasons of force majeure, three conditions set out by the Court of Justice<sup>1</sup> have to be fulfilled and properly demonstrated on a case-by-case basis, that is, circumstances which:

- a) Are abnormal and unforeseeable,
- b) Are beyond the control of the one claiming force majeure, and
- c) Could not have been avoided despite the exercise of all due care.

Questions	Answers	Reference to the CRII Q&A Sharepoint website
17. Does the state of force majeure apply to the current quarantine situation?	<p>There may be instances in which circumstances resulting from the COVID-19 outbreak qualify as a force majeure event and thus constitute a valid justification for the incapacity to comply with an obligation. However, <b>it is not clear that the outbreak is necessarily to be regarded as a force majeure event in all cases.</b> Instead, the Commission considers that a careful analysis should be undertaken and flexibility should be granted to all cases where there is failure by beneficiaries to fulfil obligations in a timely manner for reasons related to the COVID-19 outbreak (for example, the unavailability of staff due to quarantine in a country because of the outbreak).</p> <p><b>The legislative framework for the implementation of the [...] programmes remains fully applicable even under the current exceptional circumstances. This concerns in particular rules on the management and control system, which remain an important safeguard for the regularity of operations.</b></p>	<p><i>The answers to the questions listed in the "Force majeure" subsection of the CRII Q&amp;A Sharepoint website apply mutatis mutandis to ENI CBC.</i></p>
18. As force majeure may affect a big number of projects, would it be possible to make a decision by the Managing Authority for the same type of projects?	<p>The Commission considers that all cases should be analysed carefully and treated with flexibility where there is failure by beneficiaries to fulfil obligations in a timely manner for reasons related to the COVID-19 outbreak. This assessment should also comprise examination of whether all due care has been taken to avoid, mitigate and minimize the consequences of the event. A <b>case-by-case assessment is therefore inevitable</b> to establish whether flexibility can be exercised or not.</p>	<p><i>The answers to the questions listed in the "Force majeure" subsection of the CRII Q&amp;A Sharepoint website apply mutatis mutandis to ENI CBC.</i></p>

<sup>1</sup> Force majeure may be conceived even more restrictively under national law



	<p>Managing Authorities, provided this is in line with national law, after a case-by-case assessment, may decide to grant the same flexibility to operations which, on the basis of their professional judgment, can be considered to have been affected in the same or similar manner, and to the same extent, by the COVID-19 outbreak</p>	
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### 3.2. JOP amendments

Questions	Answers	Reference to the CRII Q&A Sharepoint website
<p><b>19. Which kind of justification will be needed for requesting a modification of the JOP?</b></p>	<p>If the modification is related to the application of the 100% EU financing rule, no specific justification is needed. In all other cases, article 6 of the ENI CBC IR should be followed.</p>	<p><i>The answers to the questions listed in the "Programme amendments" the CRII Q&amp;A Sharepoint website subsection, <u>are not</u> directly applicable, as no such amendment is introduced in the ENI CBC IR.</i></p>
<p><b>20. How does the EC intend to carry out the modification of financing agreements with CBC Partner Countries following the approval of the modified IR?</b></p>	<p>The intention of the Commission is to modify the agreements through an exchange of letters.</p>	<p><i>The answers to the questions listed in "Programme amendments" of the CRII Q&amp;A Sharepoint website <u>are not</u> directly applicable, as no such amendment is introduced in the ENI CBC IR.</i></p>

### 3.3. Transfers between priorities

Questions	Answers	Reference to the CRII Q&A Sharepoint website
<p><b>21. Due to the measures needed to</b></p>	<p>The transfers between the priorities have to respect the rules set in article 6 of the ENI CBC IR. Depending on the</p>	<p><i>The answers to the questions listed in</i></p>

<p>mitigate the COVID-19 impact, may the programme allocate additional resources to one priority from savings in other programme priorities? What is the procedure of transfer between the priorities?</p>	<p>amount transferred, the changes of the programme financial plan may be either:</p> <ul style="list-style-type: none"> <li>- directly made by the Managing Authority (with the prior approval of the Joint Monitoring Committee) or.</li> <li>- approved both by the Joint Monitoring Committee and the EC.</li> </ul> <p>Please refer to the article 6 of the ENI CBC IR for further details.</p>	<p>“Programme amendments” of the CRII Q&amp;A Sharepoint website <u>are not</u> directly applicable, as no such amendment is introduced in the ENI CBC IR.</p>
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### 3.4. Eligibility of expenditure

Questions	Answers	Reference to the CRII Q&A Sharepoint website
<p>22. How to treat the eligibility of expenditure related to the cancellation/postponement of events related to the coronavirus crisis and delays in project implementation?</p>	<p>To be checked and assessed <b>on a case-by-case basis in the light of the applicable rules.</b></p> <p>Please also note that for EU spending programmes under direct/indirect management, the Commission has issued guidance with regard to the implications of the COVID-19 outbreak. For example, where individuals who were to take part in meetings or events are prevented from doing so because of COVID-19, expenses of travel or accommodation that could not be cancelled and which are not reimbursed from other sources should be regarded as eligible costs.</p> <p>Furthermore, where the execution of contracts is impeded because of COVID-19, substitute performance or delayed performance could be permitted if requested and justified by the beneficiary/contractor. Finally, due to the COVID-19 outbreak, an extension of the deadlines for submission of proposals or tenders under on-going award procedures may be considered.</p> <p>The same approach can be taken for technical assistance costs in similar situations.</p>	<p>The answers to the questions listed in the “COVID-19 and Force Majeure” and “Eligibility and flexibility (ongoing implementation and CRII)” subsections of the CRII Q&amp;A Sharepoint website apply <i>mutatis mutandis</i> to ENI CBC.</p>

<p><b>23. How to treat unforeseen costs related to the continuing activities of the projects, such as costs which were not planned in the budget of the projects – for example, internet connection, acquisition of relevant equipment (notebooks, mobile phones for home office, etc.)?</b></p>	<p>Managing Authorities must analyse whether the expenditure at stake should be regarded as eligible costs in the light of the applicable rules or consider the modification of the programme rules, if necessary.</p> <p>Concerning procurement, and taking into account the fact that the COVID-19 crisis may qualify as unforeseeable, contracting authorities may make use of the negotiated procedure without prior publication for public works contracts, public supply contracts and public service contracts insofar as it is strictly necessary because of extreme urgency. Such circumstances require a case-by-case analysis.</p>	<p><i>The answers to the questions listed in the “Eligibility and flexibility (ongoing implementation and CRII)” subsection of the CRII Q&amp;A Sharepoint website apply mutatis mutandis to ENI CBC.</i></p>
<p><b>24. Can the project beneficiaries use the equipment for COVID-related purposes when purchased for other purposes?</b></p>	<p>Equipment that was purchased as part of the projects supported by ENI CBC may be used to foster crisis response capacities in the context of the COVID-19 outbreak. In addition, expenditure related to the use of such equipment would be eligible as of 1 February 2020.</p>	<p><i>The answers to the questions listed in the “Eligibility and flexibility (ongoing implementation and CRII)” subsection of the CRII Q&amp;A Sharepoint website apply mutatis mutandis to ENI CBC.</i></p>
<p><b>25. Is the purchase of medicines, testing and treatment facilities eligible?</b></p>	<p>Similarly as in the case of unforeseen costs (question no.23), Managing Authorities must analyse whether the expenditure at stake can be regarded as eligible costs in the context of the thematic priorities as well as the eligibility rules of the programme (or consider the modification of the programme rules, if necessary). In the context of public procurement, the purchase of medicines or sanitary equipment relating to the COVID-19 crisis can be considered as necessary for reasons of extreme urgency within the meaning of Article 32(2)(c) of the 2014/24/EU Directive.</p>	<p><i>The answers to the questions listed in the “Eligibility and flexibility (ongoing implementation and CRII)” subsection of the CRII Q&amp;A Sharepoint website (pages 3 &amp; 11) apply mutatis mutandis to ENI CBC.</i></p>

### 3.5. Performance

#### 3.5.1. COVID-specific indicators

Questions	Answers	Reference to the CRII Q&A Sharepoint website
<p><b>26. Even if the programme's thematic orientation allows for measures fostering COVID-19 response, there are no indicators related to COVID-19 - is a JOP amendment necessary?</b></p>	<p>Specifically, as regards the indicators, Article 4 of the ENI CBC IR requires that the programme strategy consists of a description of objectively verifiable indicators, in particular:</p> <ul style="list-style-type: none"> <li>- the expected results for each priority, and the corresponding result indicators, with a baseline value and a target value,</li> <li>- and the output indicators for each priority, including the quantified target value, which are expected to contribute to the results.</li> </ul> <p>There is no obligation to ensure that all projects and their outputs/results are covered in 100% by the indicators. As long as the indicators for the given specific objective allow for the progress assessment, this requirement (of indicators reflecting programme strategy) is considered met. The JOP amendment might not be necessary; however, you are advised to consult with your desk officer in the EC.</p>	<p><i>The answers to the questions listed in the "Monitoring, reporting, performance framework (ongoing implementation and CRII)" subsection of the CRII Q&amp;A Sharepoint website apply mutatis mutandis to ENI CBC.</i></p>

#### 3.5.2. Low performance in thematic objectives/programme priorities

Questions	Answers	Reference to the CRII Q&A Sharepoint website
<p><b>27. One of the Covid-19 impacts can be the underachievement of indicators at project/programme level. Will it lead to</b></p>	<p>The programme should assess whether the COVID-19 impact poses the risk of a serious failure to achieve some targets. Even though there is no obligation to ensure that all projects and their outputs/results are covered in 100% by the indicators, there has to be an assessment whether a failure to achieve targets is due to the</p>	<p><i>The answers to the questions listed in the "Monitoring, reporting, performance framework (ongoing</i></p>

<p><b>financial corrections at the programme level?</b></p>	<p>impact of socio-economic or environmental factors, significant changes in the economic or environmental conditions in the programme area concerned or because of reasons of force majeure seriously affecting the implementation of the programme.</p> <p>Consequently, during the review of the annual/final implementation reports the EC will consider in its assessment whether the programme has provided evidence to show the impact of socio-economic or environmental factors, significant changes in the economic or environmental conditions or force majeure prior to finance-related decisions.</p>	<p><i>implementation and CRII)" subsection of the CRII Q&amp;A Sharepoint website apply mutatis mutandis to ENI CBC.</i></p>
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### 3.6. Eligibility of actions linked to the response to financial crisis

Questions	Answers	Reference to the CRII Q&A Sharepoint website
<p><b>28. Is it possible to support businesses within the measures and schemes planned so far or do the procedures need to be new and focused to support companies affected by COVID-19?</b></p>	<p>In the context of thematic objectives and scope of the eligibility rules of the relevant programme, the support could be provided to businesses (directly or indirectly) where such support is necessary as a temporary measure to provide an effective response to the COVID-19 crisis. Where possible, when this would make support timelier and more efficient, support could be provided:</p> <ul style="list-style-type: none"> <li>• through the existing mechanisms,</li> <li>• launching a new open call for proposals or</li> <li>• focusing on already existing beneficiaries (limitation of access to funding to current beneficiaries is permitted only when duly justified and should be assessed on a case-by-case basis).</li> </ul>	<p><i>The answers to the questions listed in the Eligibility and flexibility (ongoing implementation and CRII)" subsection of the CRII Q&amp;A Sharepoint website apply mutatis mutandis to ENI CBC.</i></p>

### 3.7. Audit and control

Question	Answers	Reference to the CRII Q&A Sharepoint website
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<p><b>29. Article 26.6 of the ENI CBC IR foresees on-the-spot verifications to be carried out by the Managing Authorities. Will the EC consider greater flexibility in terms of planning and carrying out the on-the-spot checks?</b></p>	<p>Compliance with the applicable rules is still a requirement. Article 26.6 of the ENI CBC IR provides for administrative verifications in respect of each payment request by beneficiaries (desk-based verifications). The programmes are encouraged to perform desk-based verifications where possible until it is safe for staff to perform on-the-spot visits again.</p> <p>As for the on-the-spot verifications, these checks by the Managing Authorities (or Joint Technical Secretariats, if delegated so) are selected on a risk-based approach. Their extent and timing depend on the characteristics of the projects. Therefore, Managing Authorities have flexibility also under the current rules to carry out the on-the-spot verifications they deem necessary (e.g. in the 2nd half of 2020). In the meantime, desk verifications should be carried out as much as possible remotely, making maximum use of the review of documents available in the programmes' information systems or submitted electronically by the beneficiaries.</p>	<p><i>The answers to the questions listed in the "Audit" subsection of the CRII Q&amp;A Sharepoint website (on-the-spot checks) apply mutatis mutandis to ENI CBC.</i></p>
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### 3.8. ROM

Questions	Answers	Reference to the CRII Q&A Sharepoint website
<p><b>30. Article 78.3 of the ENI CBC IR require that result-oriented programme and project monitoring (ROM) shall be carried out. The ROM includes also visits to the projects - should such visits still be carried out as part of the ROM?</b></p>	<p>The programmes are encouraged to apply a desk-based approach where possible until it is safe to perform visits in the framework of ROM again. In the current emergency situation, the Commission understands that on the-spot missions are not possible (or are possible in very limited extent). The programmes should apply flexibility in terms of the visits necessary in the framework of ROM, for example, postponing them to 2<sup>nd</sup> half of 2020.</p>	<p><i>The answers to the questions listed in the "Audit" subsection of the CRII Q&amp;A Sharepoint website (on-the-spot checks) apply mutatis mutandis to ENI CBC.</i></p>