

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

According to Article 2.3 “Exceptions to the rules on nationality and origin” of the ANNEX IV “Procurement by grant Beneficiaries in the context of European Community external actions” to the Grant Contract:

“Where an agreement on widening the market for procurement of goods or services applies, the procurement contracts must also be open to nationals of other countries under the conditions laid down in that agreement.

In addition, in duly substantiated exceptional cases, the Commission/JMA may allow nationals of countries other than those referred to in section 2.1 to tender for contracts (or supplies of goods originating in such countries) on the basis of the specific conditions laid down in the basic act or other instrument governing the programme under which the grant is financed.”

Above that, Point 2.3.2. “Exceptions to the rule on nationality and origin” of the Practical Guide to Contract procedures for EU external actions describes:

Exceptions to the rule on nationality and origin may be made in some cases. The award of such derogation is decided on a case-by-case basis by the Commission/JMA before the procedure is launched. If the award of contract is preceded by a tender procedure, the derogation must be mentioned in the procurement notice; in such cases, except where justified, such derogation would concern not only one country but would be open to any nationality/origin.

*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. 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 Contracting Authority (JMA) grants exceptions from the rules on nationality and origin in exceptional and duly substantiated circumstances. There could be exceptions from the rules on nationality and origin but this have to be approved 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.

The Contracting Authority (JMA) delegates the right of granting exceptions from the rules on nationality and origin to the Joint Technical Secretariat.

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 Beneficiary/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 ENPI eligible countries pls check Annex 1);¹

- The Beneficiary/Partner has to send out the official inquiry to the Suppliers asking for the defined goods/services produced in the eligible countries²;
- At least three big Suppliers have to be consulted including one which is located in the Capital City of the Beneficiary/Partner country;
- The Beneficiary/Partner has to get at least three official answers from the Suppliers describing that requested goods/services produced in the eligible countries are not available on the market.
- Three official inquiry prepared by the Beneficiary/Partner and three official answers from the Suppliers have to be sent to the Joint Technical Secretariat 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 Joint Technical Secretariat will process the request for the derogation. The award of the derogation is decided on a case-by-case basis by the Joint Technical Secretariat and is temporarily for the justified period of time.

¹ In case of electronic equipment, which is typically produced outside the ENPI 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).

² Preparing the inquiry the Beneficiary/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, A11d)

**ANNEX 1: Annexe A2 Eligibility of programmes 2007-2013 and EDF after the review of the Cotonou Agreement in 2010
(GENERAL ANNEX of the Practical Guide to Contract procedures for EU external actions)**

- a.** Natural persons who are nationals of, or legal persons who are established in:
- a Member State of the EU:

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.
 - a country that is a beneficiary of this Regulation:

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.
 - a country that is a beneficiary of an Instrument for Pre-Accession Assistance set up by Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA):

Croatia, The former Yugoslav Republic of Macedonia, Turkey, Montenegro.
Albania, Bosnia, Serbia, including Kosovo.
 - a Member State of the EEA:

Iceland, Lichtenstein, Norway.
- b.** In duly substantiated cases participation of natural persons who are nationals of, and legal persons established in, a country having traditional economic, trade or geographical links with neighbouring countries.
- c.** All natural persons who are nationals of, or legal persons established in a country under reciprocity.
- d.** Reciprocal access in the least developed countries as defined by the OECD/DAC shall be automatically granted to OECD/DAC members.
- Least Developed Countries: Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Rep., Chad, Comoros, Congo Dem. Rep., Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Samoa, Sao Tome & Principe, Senegal, Sierra

Leone, Solomon Islands, Somalia, Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, Zambia.

OECD/DAC Member Countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Korea, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, United Kingdom, United States.

e. 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.

f. In duly substantiated exceptional cases participation of natural persons who are nationals of, and legal persons established in, countries other than those referred to in points (a) to (c).

g. Whenever Community 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 (c) 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.

h. Whenever Community 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 (c) as well as to all natural or legal persons who are eligible under the rules of such Member State, third country or regional organisation.

i. The above mentioned points shall be without prejudice to the participation of categories of eligible organisations by nature or by localisation in regard to the objectives of the action.

j. Where Community assistance under this Regulation is managed by a joint managing authority the procurement rules shall be those laid down in the implementing rules.