

ENPI CBC Project Implementation in Ukraine

A guide to the national requirements in Ukraine
relevant for the implementation of projects
financed under ENPI CBC Programmes

July 2012



This project is funded by the EU



and implemented by a consortium led by MWH

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Regional Capacity Building Initiative

Supporting partner country participation in ENPI CBC Programmes 2007 - 2013



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ACKNOWLEDGEMENTS

This guide was produced by the Regional Capacity Building Initiative (RCBI)¹, an EU project designed to support participation by Ukraine and other Partner Countries² and Russia in the ENPI CBC programmes. This guide was written by RCBI Key Expert, Karine Leroy and by Ukrainian expert, Svetlana Kaltygina, as she was closely involved with supporting the Ukraine national authorities in the development and implementation of the ENPI CBC programmes.

¹ For more information on RCBI see the project website www.rcbi.info

² Armenia, Belarus, Georgia, Rep. of Moldova and Ukraine in ENPI East and Egypt, Israel, Jordan, Lebanon, Palestinian Territories and Tunisia in ENPI South.



INTRODUCTION

Ukraine participates in four programmes funded under the European Union's European Neighbourhood and Partnership Instrument Cross Border Cooperation (ENPI CBC)³: the Poland-Belarus-Ukraine, Romania-Ukraine-Republic of Moldova, Hungary-Slovakia-Romania-Ukraine and the Black Sea Basin ENPI CBC programmes.

As well as following ENPI CBC rules, ENPI CBC programme beneficiaries⁴ and partners⁵ implementing ENPI CBC projects in Ukraine will also need to meet a range of national requirements.

Implementation of ENPI CBC projects in Ukraine shall be based on the Framework Agreement⁶ and respective four underlying Financing agreements⁷ signed by the European Commission and the Government of Ukraine:

- Agreement on financing of the Joint Cross-Border Cooperation Programme "Poland – Belarus – Ukraine 2007 – 2013" (signed in pursuance of the Order of the Cabinet of Ministers of Ukraine №1614-p of 23.12.2009);
- Agreement on financing of the Joint Operational Programme of Cross-Border Cooperation "Hungary – Slovakia – Romania – Ukraine 2007 – 2013" (signed in pursuance of the Order of the Cabinet of Ministers of Ukraine №1615-p of 23.12.2009);
- Agreement on financing of the Joint Operational Programme of Cross-Border Cooperation "Romania – Ukraine – Republic of Moldova 2007 – 2013" (signed in pursuance of the Order of the Cabinet of Ministers of Ukraine №1617-p of 23.12.2009);
- Agreement on financing of the Joint Operational Programme of Cross-Border Cooperation "The Black Sea Programme 2007 – 2013" (signed in pursuance of the Order of the Cabinet of Ministers of Ukraine №1618-p of 23.12.2009);

With the following three annexes being an integral part of each Financing Agreement:

- General Conditions (Annex I),
- ENPI CBC implementing rules (Commission Regulation (EC) № 951/2007) (Annex II),

³ ENPI is the financing instrument for the EU's Neighbourhood Policy. Cross Border Cooperation is a key priority under ENPI and aims to reinforce cooperation between EU member states and Partner Countries along the external borders of the European Union. For more information on ENPI CBC see http://ec.europa.eu/europeaid/where/neighbourhood/regional-cooperation/enpi-cross-border/index_en.htm

⁴ The project beneficiary (lead partner) is the organisation which signs the grant contract with the ENPI CBC programme Joint Managing Authority

⁵ Project partners are the organisation/s which contribute to the implementation of the project as described in the project grant contract

⁶ More information on the Framework Agreement on http://zakon3.rada.gov.ua/laws/show/994_763

⁷ More information on the Financing Agreements on http://me.kmu.gov.ua/control/publish/article/main?art_id=178133&cat_id=178132

- Description of the Joint Operational Programme (Annex III).

Priorities and rules regarding calls for proposals and projects implementation are specified in Joint Operational Programmes for each Cross-Border Cooperation (CBC) Programme. *Practical Guide to Contract procedures for EU external actions (PraG)*⁸ is another important document laying down implementing procedures for cross-border cooperation projects⁹. At project level, detailed applicable rules and requirements are described in the Grant Contract and its annexes, that all project partners must receive a copy of and understand.

Specific Ukrainian national procedures and requirements also apply to the projects, as described below in this Guide.

8 More information on PraG:

http://ec.europa.eu/europeaid/work/procedures/implementation/practical_guide/index_en.htm

9 As mentioned in article 23 of Commission Regulation (EC) № 951/2007 on ENPI CBC implementing rules, which forms an integral part of the Financing Agreements (Annex II)



PURPOSE OF THIS GUIDE

This Guide provides comprehensive information on national requirements and procedures to be followed in Ukraine when implementing projects financed under the ENPI CBC Programmes. It complements guidelines provided by these programmes on the ENPI CBC rules to be followed.

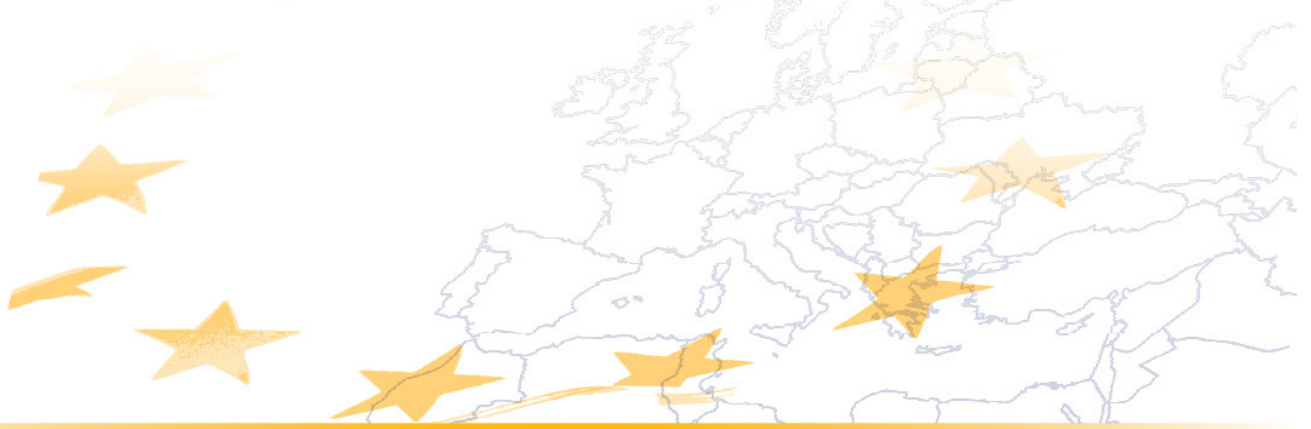
This Guide will be particularly useful for ENPI CBC project beneficiaries and partners in Ukraine. However it will also be helpful for ENPI CBC programme managers, ENPI CBC project partners from outside Ukraine and potential applicants/partners from inside and outside Ukraine who need to understand what is required to implement projects in Ukraine. Although designed for projects under ENPI CBC programmes, the Guide may also have information relevant for other international technical assistance programmes in Ukraine.

Throughout the Guide, you will find references to a variety of legislative acts and forms, most important of which are provided in the Annexes to the Guide. Other relevant documents can be found on the websites of the official bodies. Links to these documents are provided throughout the guide.

The Guide is designed to be a reference manual with users being able to find practical support on particular topics when it is needed.

The information in this Guide is focused on requirements in Ukraine. The ENPI CBC requirements and procedures to be followed can be found in the relevant programme implementation manuals.





Part 1

Project start-up



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All the activities related to attraction and utilization of international technical assistance in Ukraine shall be coordinated by the Ministry of Economic Development and Trade of Ukraine (MEDTU). In pursuance of its tasks set forth in the Regulations on the Ministry of Economic Development and Trade of Ukraine, the MEDTU shall perform state registration/re-registration of international technical assistance projects in Ukraine (including CBC projects), keep the state register of such projects, monitor their progress and ensure holding to the terms of their implementation.

The MEDTU is a national authority of Ukraine that coordinates CBC activities (as indicated in CBC Joint Operational Programmes). The MEDTU shall provide relevant clarifications on preparation and implementation of CBC projects to Ukrainian organizations participating in these projects¹⁰

**Legal
framework**

- 1) Framework Agreement between the Government of Ukraine and the Commission of European Communities ratified by the Law of Ukraine № 360-VI of 03.09.2008 Published at the Parliament web-site: http://zakon3.rada.gov.ua/laws/show/994_763
- 2) Financing Agreements of Joint Operational Programmes (four Agreements) Published at the MEDTU web-site:
http://me.kmu.gov.ua/control/publish/article/main?art_id=178133&cat_id=178132
- 3) Resolution of the Cabinet of Ministers of Ukraine No 1111 of 8.12.2010 “On Approval of the Procedure for preparation and implementation of projects under the European Union’s European Neighbourhood and Partnership Instrument Cross Border Cooperation Programme” (see Annex 1)

**Contact
details**

Ministry of Economic Development and Trade of Ukraine
Web-site: <http://me.kmu.gov.ua>
Department for Cooperation with International Financial Organizations and Coordination of International Technical Assistance
Telephone for contacts : +380 44 226 20 66, 253 04 31
Address for letters: 12/2 Grushevskogo Str., Kyiv, 01008

¹⁰ According to the Resolution of the Cabinet of Ministers of Ukraine No 1111 of 8.12.2010



1. PROJECT REGISTRATION

In accordance with the Resolution of the Cabinet of Ministers of Ukraine No 153 of 15.02.2002 all international technical assistance projects (including CBC projects) are subject to obligatory state registration performed by the MEDTU.

Legal framework

- 1) Resolution of the Cabinet of Ministers of Ukraine No 153 of 15.02.2002 “On Establishment of a Unified System for Attracting, Utilization and Monitoring of International Technical Assistance” with amendments introduced by:
 - 2) Resolution No 902 of the Cabinet of Ministers of Ukraine (902-2007-n) of 11.07.2007
 - 3) Resolution No 30 of the Cabinet of Ministers of Ukraine (30-2011-n) of 19.01.2011
 - 4) Resolution No 1301 of the Cabinet of Ministers of Ukraine (1301-2011-n) of 07.12.2011
 - 5) Resolution No 623 of the Cabinet of Ministries of Ukraine (623-2012-n) of 04.07.2012
- Published at the Parliament web-site: <http://zakon2.rada.gov.ua/laws/show/153-2002-n>

State registration of projects is a very important procedure, being confirmed by the project registration card bearing a stamp of the MEDTU and basic information about the project. State registration shall constitute grounds for further exercise of the right for obtaining relevant benefits provided for under the legislation and by international agreements of Ukraine.

Application for providing state registration of the project shall be addressed to the MEDTU by:

- Ukrainian organization/institution that is the project Lead Partner (Beneficiary), i.e. that signed the Grant Contract with a duly authorized European Commission agency (corresponding to ENPI CBC Programme Joint Managing Authority); and / or
- Ukrainian organizations/institution that is the project Partner i.e. that signed a partnership statement/agreement with the project Lead Partner (Beneficiary).



Please note! The difference in terminology of the documents

Grant Application Form/ Grant Contract	Resolution of the Cabinet of Ministers of Ukraine No 153 of 15.02.2002	Resolution of the Cabinet of Ministers of Ukraine No 1111 of 8.12.2010
Lead Partner/ Beneficiary	'Contractor'	Lead Partner
Partner (legal entity – resident)	'Recipient' (legal entity – resident)	Partner
	'Beneficiary' – central executive authority, Council of Ministers of the Autonomous Republic of Crimea, regional state administrations, municipal state administrations of Kyiv and Sevastopol, interested in achievement of the project results.	

i Please note that in the following pages of this Guide the terminology defined in the Ukrainian legislative framework will prevail, though with the use of apostrophes to avoid confusion.

<p><i>List of documents required for project registration</i></p>	<ol style="list-style-type: none"> 1) Application letter for providing state registration of the project from each Ukrainian project partner: 'Contractor' (legal entity – resident) and/or 'Recipients' (legal entity – resident) - see Annex 6; 2) Application letter from the Joint Managing Authority (JMA) or Joint Technical Secretariat (if duly authorized by the JMA) of the CBC Programme; 3) Letter from the responsible state executive authority, supporting the implementation of the project, confirming its consent to become the project 'Beneficiary' and expressing the interest in the project results (in free format); 4) A copy of the Grant Contract between the CBC Programme JMA and the 'Contractor', certified by the JMA or Joint Technical Secretariat (if duly authorized by the JMA); 5) Plan of procurement for goods, works and services provided in the framework of the project, certified by the 'Contractor' (as a rule) and agreed by 'Beneficiary', and drawn up in the format (see Annex 2) in two hard copies and one electronic copies; 6) A copy of the Partnership Agreement, certified by the project 'Contractor' or 'Recipient'; 7) A copy of the Grant Application Form with Annexes <p>Please note: All documents required for providing state registration of projects shall be submitted in their original language with obligatory translation into Ukrainian, certified by the translation agency or directly by the 'Contractor'/'Recipient'.</p>
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The MEDTU shall consider submitted documents within 15 working days starting from the date of their receipt, and decide on providing state registration of the project.

State registration of the project shall be confirmed by the registration card drawn up in due format (see Annex 3). In project registration card the Ukrainian organization/institution that is the project Lead Partner shall be indicated as a `Contractor` and also as a `Recipient` .

The procurement plan shall be placed on the official MEDTU web-site. One copy of the registration card together with one copy of the procurement plan shall be sent to the State Tax Service in order to provide information on tax benefits.

i *Projects are subject to re-registration in case of variations related to the 'Contractor', project title, objectives, content, cost estimation and duration of implementation.*

In case of cost estimation or duration of implementation change: re-registration of the project shall be performed in accordance with the same procedure as established for registration and with the following documents:

<i>List of documents required for project re-registration</i>	<ol style="list-style-type: none"> 1) Application letter for providing state registration of the project from each Ukrainian project partner: 'Contractor' (legal entity – resident) and/or 'Recipients' (legal entity – resident) - see Annex 6; 2) Application letter from the Joint Managing Authority (JMA) or Joint Technical Secretariat (if duly authorized by the JMA) of the CBC Programme; 3) A copy of Addendum to the Grant Contract between the CBC Programme JMA and the 'Contractor', certified by the JMA or Joint Technical Secretariat (if duly authorized by the JMA)
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'Contractor' and/or 'Recipient' apply to the MEDTU with the following documents:

<i>List of documents required for project re-registration</i>	<p>In case of variations related to the 'Contractor':</p> <ol style="list-style-type: none"> 1) Application letter for providing re- registration of the project from each Ukrainian participant of the project: 'Contractor' (legal entity – resident) and/or 'Recipients' (legal entity – resident); 2) Application letter from the Joint Managing Authority (JMA) or Joint Technical Secretariat (if duly authorized by the JMA) of the CBC Programme; 3) A copy of Addendum to the Grant Contract between the CBC Programme JMA and the 'Contractor', certified by the JMA or Joint Technical Secretariat (if duly authorized by the JMA); 4) A copy of the Partnership Agreement, certified by the project 'Contractor' or 'Recipient'.
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In case of variations related to the 'Recipient':

- 1) Application letter for providing re- registration of the project from each Ukrainian participant of the project: 'Contractor' (legal entity – resident) and 'Recipients' (legal entity – resident);
- 2) Application letter from the JMA or Joint Technical Secretariat (if duly authorized by the JMA) of the CBC Programme;
- 3) A copy of the Partnership Agreement, certified by the project 'Contractor' or 'Recipient';

In other cases:

- 1) Application letter for providing re- registration of the project from each Ukrainian participant of the project: 'Contractor' (legal entity – resident) and/or 'Recipients' (legal entity – resident);
- 2) Application letter from the JMA or Joint Technical Secretariat (if duly authorized by the JMA) of the CBC Programme;
- 3) Letter from the responsible state executive authority, confirming its consent to become the project 'Beneficiary' and expressing the interest in the project results (in free form);
- 4) A copy of Addendum to the Grant Contract between the CBC Programme JMA and the 'Contractor', certified by the JMA or Joint Technical Secretariat (if duly authorized by the JMA);
- 5) A copy of the Partnership Agreement, certified by the project 'Contractor' or 'Recipient';
- 6) A copy of the Grant Application Form with Annexes



2. VERIFICATION OF EXPENDITURES AND AUDIT

Lead Partner and Partners of the project shall ensure a transparent and effective system of internal control of expenditures incurred in the framework of the project. It is envisaged that every CBC project shall provide for a financial manager responsible for the implementation of the relevant accounting system and preparation of financial reports.

In accordance with the European Commission rules set forth in *Practical Guide to Contract procedures for EU external actions* (PRAG) and with the General Conditions to the Grant Contract, financial reports shall be supplemented by an expenditure verification report in order to ensure verification of the project costs.

The expenditure verification report must be produced by an auditor that is a member of the International Federation of Accountants (IFAC) or that commits to undertake his engagement in accordance with the IFAC standards and ethics. The auditor examines whether the costs declared by the project partners are real and eligible in accordance with the Grant Contract as well as issues an expenditure verification report in compliance with the format presented in Annex VII to the standard Grant Contract. Remuneration for the auditors shall be covered by the project partners within the eligible project costs.

Project Partners shall jointly decide on the procedure to be applied for performing verification of the project expenditures. They can select different auditing companies and sign separate agreements with them, or appoint one auditing company – with its representative offices in each country participating in the project – that will sign an agreement with the ‘Contractor’.

In order to find an experienced auditor in Ukraine you may address the Federation of Professional Accountants and Auditors of Ukraine (FPAAU), which is a member of IFAC and represents the profession of accountant and auditor at international level. For more information about the FPAAU please visit their web-site: <http://ufpaa.org>

At the same time, Ukrainian Beneficiaries/partners should be prepared to grant access also to auditors sent by JMA or the EC, and to archive their documents accordingly. According to the CBC Programmes regulations each CBC Programme JMA shall annually produce an audit plan for the projects financed within its framework. Control will be exercised via study of documents or on-site verification of projects, selected by the JMA on the basis of random statistical sampling method, in pursuance of international standards and taking into account specific risk factors. The audit will be performed by external auditing companies contracted by the JMA. The EC may also carry out audit for **seven years** after the date of the final payment to the project.

3. MONITORING AND REPORTING

- Cross-Border Cooperation Programmes provide for a multilevel monitoring of results at the programme and project level.
- CBC Programme Joint Managing Authorities perform the programme monitoring in general.
- CBC Programme Joint Technical Secretariats using the reports prepared by the project partners monitor the implementation of each CBC project.
- The MEDTU jointly with the project Beneficiaries perform monitoring of the CBC projects:
 - current monitoring during the project implementation period,
 - final monitoring at the final stage of project.
- Monitoring procedures are stipulated in the Resolution of the Cabinet of Ministers of Ukraine No 153 of 15.02.2002.

Legal framework

- 1) Resolution of the Cabinet of Ministers of Ukraine No 153 of 15.02.2002 “On Establishment of a Unified System for Attracting, Utilization and Monitoring of International Technical Assistance” with amendments introduced by:
 - 2) Resolution No 902 of the Cabinet of Ministers of Ukraine (902-2007-n) of 11.07.2007
 - 3) Resolution No 30 of the Cabinet of Ministers of Ukraine (30-2011-n) of 19.01.2011
 - 4) Resolution No 1301 of the Cabinet of Ministers of Ukraine (1301-2011-n) of 07.12.2011
 - 5) Resolution No 623 of the Cabinet of Ministries of Ukraine (623-2012-n) of 04.07.2012
- Published at the Parliament web-site: <http://zakon2.rada.gov.ua/laws/show/153-2002-n>


In order to ensure performance of current monitoring the project Ukrainian ‘Contractor’ (legal entity – resident) and/or ‘Recipient’ (legal entity - resident) shall submit to the MEDTU (with copies to the project ‘Beneficiary’) the following documents:

List of documents to be submitted

- 1) Semiannual project monitoring card drawn up using standard format (see Annex 4);
- 2) Copies of the minutes of meetings held by steering committees and expert groups set up for the purpose of supporting project activities if provided for by the project;
- 3) Annual report on the project implementation progress (using format of semiannual project monitoring card – see Annex 4)

In order to ensure performance of final monitoring the project Ukrainian ‘Contractor’ (legal entity – resident) and/or ‘Recipient’ (legal entity – resident) shall submit to the MEDTU (with copies to the project ‘Beneficiary’) the final report on the achieved results in compliance with the criteria established at the project start (using format of semiannual project monitoring card – see Annex 4).

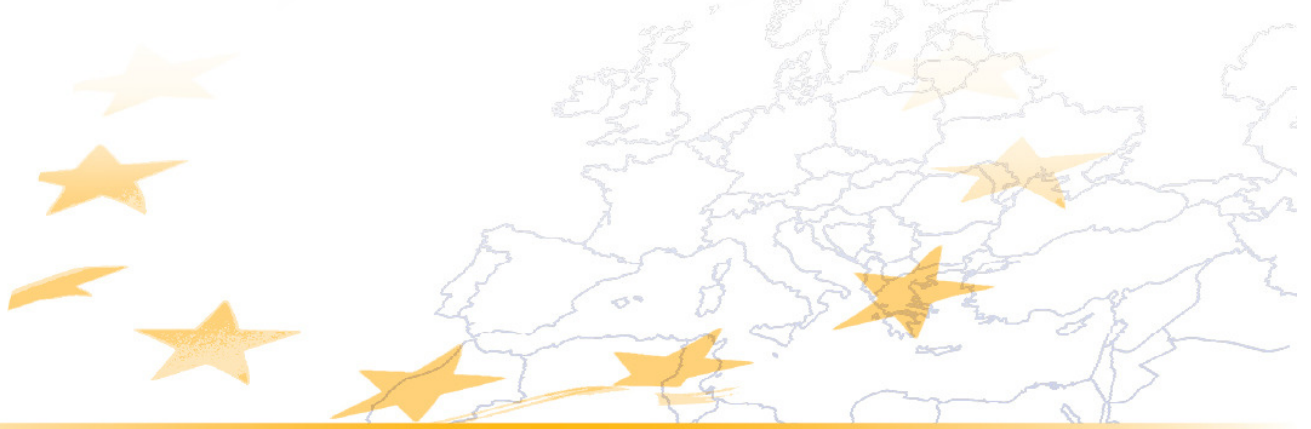


 *A failure to submit the above mentioned monitoring documents to the MEDTU shall be deemed as unsatisfactory implementation of the project.*

The project 'Beneficiary' shall analyze and submit to the MEDTU its conclusions and results of current and final monitoring with respect to:

- achievement of the expected results;
- impact of the project implementation results on the development of relevant sector or region;
- proposals on the further implementation of the project.





Part 2

Project financial management



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★ Introduction

The Lead Partner of the project, which signs the Grant Contract with the corresponding ENPI CBC Programme JMA, shall assume the overall legal and financial responsibility for the project implementation towards the JMA, being directly accountable to the JMA for the overall use of the grant funds and co-financing in general.

Every Project Partner shall be responsible for carrying out the assigned activities and implementation of its part of the project budget as indicated in the Partnership Agreement between the Lead Partner and other Project Partners. Each project partner should fully understand the rules related to eligibility of costs, as they will remain responsible for the ineligible costs they incur and may be subject to recovery procedures.

Legal framework

Resolution of the Cabinet of Ministers of Ukraine No 1111 of 8.12.2010 “On Approval of the Procedure for preparation and implementation of projects under the European Union’s European Neighbourhood and Partnership Instrument Cross Border Cooperation Programme”
(see Annex 1)



4. OPENING A BANK ACCOUNT

Ukrainian organization/institution – Lead Partner or Partner of the CBC project – may need to open a foreign currency bank account for implementation of the project in one of the duly authorized banks of Ukraine in conformity with the procedure established by the legislation.

Legal framework

Resolution of the National Bank of Ukraine No 492 of 12.11.2003 p. “On Approval of the Instructions to the Procedure for Opening, Use and Closing of Accounts in National and Foreign Currency”

Ukrainian organization, which is financed from the state budget (hereinafter referred to as ‘Budgetary organization’), shall open a foreign currency bank account in an authorized bank and submit the bank statement on opening of the account to the relevant body of the State Treasury.

These procedures are regulated by special resolutions:

Legal framework

1) Resolution of the Ministry of Finance of Ukraine No 1223 of 30.09.2011 p. “On Approval of the Procedure for the State Budget Maintenance in terms of Expenditures and Operations related to Receipt and Reimbursement of Credits allocated out of the State Budget Funds” (article 14).

Resolution of the State Treasury of Ukraine No 205 of 04.11.2002 p. “On Approval of the Procedure for Treasury Maintenance of the Local Budgets” (paragraph 4.9).

Pursuant to the project grant implementation the budgetary organization at the same time shall open corresponding bank accounts in national currency, namely special registration accounts, at the relevant bodies of the State Treasury as required by legislation.

Legal framework

Resolution of the State Treasury of Ukraine No 221 of 02.12.2002 p. “On Approval of the Instructions to the Procedure for Opening and Closing of Accounts in National Currency in the Organs of the Treasury”

The budgetary organization shall submit to the State Treasury the estimation of costs provided for under the project, prepared in compliance with the project budget.

The grant received by the budgetary organization shall be included in the income of either state or local budget. Consequently, the costs shall be used in line with the procedure set forth by the budget legislation and by the decision on local budget. In accordance with the list of revenue-based financing groups of budgetary institutions the grant refers to the other sources of revenue-based financing of budgetary institutions.






**Legal
framework**

Resolution of the Cabinet of Ministers of Ukraine No 659 of 17.05.2002
“On Approval of the List of Revenue-Based Financing Groups for Budgetary Institutions,
Requirements on their Establishment and Ways of Use”

Budgetary organizations shall perform operations related to using the grant funds in accordance with the Procedure for the state budget maintenance in terms of expenditures and operations related to receipt and reimbursement of credits allocated out of the state budget funds, and the Procedure for treasury maintenance of local budgets approved by the State Treasury.

**Practical
tips**

-  *Note that opening a separate bank account (or sub-account) for the project is not compulsory according to contractual obligations¹¹, as long as the expenditure relating to the project can be easily identified and traced, and that Beneficiary/partner accounts provide details of the interest accruing from the pre-financing paid by the JMA.*
-  *You will need to use/ open a EUR account in case you are the project Beneficiary, as the grant will be transferred to you in EUR. In case you are a project Partner, it is up to you and your project Beneficiary to agree on the currency used for grant money transfers. In case the project Beneficiary is in the EU, you may also agree within the partnership – and in agreement with your programme JMA – that one of the Ukrainian partners (e.g. non state organisation) receives the money transfer in EUR from the EU Beneficiary and transfers it further In UAH to the other Ukrainian partners (e.g. public organisations). Please note that in case the project Beneficiary and the project partner are both public organisations in Ukraine, the money transfers between them can be done only in UAH.*
-  *It is advisable nonetheless to use/ open a currency account in EUR when possible - even if you are not the Beneficiary - so you can limit currency exchange rate differences (currency exchange losses are not eligible costs!) by keeping the money received in EUR and making EUR-UAH conversions concurrently with transactions to your Ukrainian suppliers.*

¹¹ See art. 16 of your Grant contract General Conditions (Annex II)



5. RECEIVING AND TRANSFERRING PAYMENTS INSIDE AND OUTSIDE THE TERRITORY OF UKRAINE

The JMA shall transfer the grant funds to the Lead Partner on the basis of the signed Grant Contract in parts according to the following scheme: initial pre-financing installment, further pre-financing installments and the balance (final payment). Amounts of payments shall be fixed by the Grant Contract and by the Partnership Agreement.

Once having received the payments from the JMA the Lead Partner shall transfer the corresponding amounts of the grant funds to the Partners in accordance with the Partnership Agreement.. It shall also return to the JMA at the end of the project the amount transferred for the project implementation and not used for the intended purposes, if any.

Legal framework

Resolution of the National Bank of Ukraine No 492 of 12.11.2003
“On Approval of the Instructions to the Procedure for Opening, Use and Closing of Accounts
in National and Foreign Currency”

When the Lead Partner is a budgetary organization, it shall transfer the grant funds to the project Partners upon authorization of the State Treasury and in accordance with the approved costs estimation.

Rules related to the operations of receiving and using of international technical assistance currency by the budgetary organizations is regulated by Resolution of the State Treasury of Ukraine No 126 of 24.07.2001 “On Approval of the Procedure for Recording of Operations in Foreign Currency”.

i *The funds received as initial pre-financing installment shall be used for implementation of the project tasks, while the balance (or final payment) shall be used for statutory purposes of the organization as compensation of expenditures related to the project implementation.*




6. FOREIGN CURRENCY EXCHANGE REGULATIONS

Ukrainian organization participating in the CBC project on the territory of Ukraine shall arrange payments in national currency of Ukraine (Ukrainian hryvnya – UAH). In order to receive money in UAH the organization shall refer to the bank, in which the project foreign currency account is opened. The bank sells the requested amount of currency at the exchange rate fixed on the Interbank Currency Exchange. In this case, there are no special regulations on exchange of the project funds in foreign currency.

The budgetary organization performs a foreign currency sale operation upon authorization of the State Treasury, allocates the corresponding amount in UAH on a special account at the State Treasury and further reflects this operation in its financial reporting to the State Treasury.

Bookkeeping of the project expenditures and financial reporting shall be performed by the Ukrainian organization in national currency and in accordance with the legislation of Ukraine.

On the other hand, financial reports submitted to the corresponding ENPI CBC project JMA shall comply with the programme and EU requirements, providing for the data in the reporting forms to be presented in both national and foreign currency. The final amount of payments must be expressed in Euro, using the official exchange rate laid down and published by the European Commission at: <http://ec.europa.eu/budget/inforeuro>. In order to define the exchange rate for a certain reporting period an arithmetic average of exchange rates for the given reporting period should be applied (unless otherwise provided in the contract Special Conditions)¹².

 *Currency exchange losses are not eligible costs and thus cannot be covered by the grant.*

Therefore exchange rates differences that occur in the accountancy of organisations should be allocated to the increase or reduction of their income and expenditure, and further negative differences should be written off to the increasing of their expenditure.

¹² Please note that the average exchange rate of the reporting period should normally be applied, e.g. for a project financial report covering the period March to November, the EC monthly exchange rate of the relevant 9 months should be extracted from Inforeuro, added up then divided by 9. This average exchange rate is then applied to all project transactions incurred during the reporting period (without considering in the report the actual exchange rate of those transactions). It shall therefore be understood as a translation of costs into EUR for the purpose of project financial reporting towards the JMA, rather than a conversion.

7. PROJECT ACCOUNTING REQUIREMENTS

Ukrainian organizations keep their accounting records and maintain internal financial reporting in accordance with current legislation of Ukraine.

Legal framework

Law of Ukraine No 996 of 16.07.1999 - XIV "On accounting and financial reporting in Ukraine"

Accounting and financial reporting procedures shall be performed in national currency of Ukraine. Accounting and financial reporting methodology is developed by the Ministry of Finance of Ukraine, which adopts national accounting regulations (standards) and other regulatory acts on accounting and maintenance of financial reporting.

Financial rules of CBC projects require that the project management (Lead Partner) ensures overall supervision over the project costs in terms of their eligibility and compatibility with the project tasks. All Project Partners are recommended to apply unified approaches towards their accounting procedures.

Every financial transaction must be confirmed by corresponding supporting documents. The Project Partners shall keep the original documents and it is advised to also provide the Lead Partner with copies for preparation of the project financial reports and archiving. All supporting documents shall be archived as they might be requested for the purpose of further checks, audits and monitoring after the end of the project (that can take place up to 7 years after the final grant payment is received).

Practical tips

- ☞ *Ukrainian Beneficiaries/Partners are recommended to provide two types of bookkeeping:*
 - *Regular bookkeeping in their own accounting system according to national requirements (all project expenses must be reflected in Beneficiary/partner internal bookkeeping!) with:*
 - *Accounting performed in UAH*
 - *All documentation on transactions kept in Ukrainian (translated if needed)*
 - *Project managerial accounting in accordance with project budget lines and positions*
- ☞ *All relevant contracts, invoices and bills should contain a clear reference to the project. Proper invoicing and relation of internal bookkeeping to the project managerial accounting should allow to separate financial documents related to the project from all other documents.*
- ☞ *For municipal/regional authorities it is advised to adopt a municipal/regional target programme covering the project period and reflecting the project activities, expected expenditures and sources of income (including grant and co-financing) so as to earmark them in the Treasury.*

8. TAX EXEMPTION

Ukrainian organizations/institutions participating in the CBC projects are entitled to tax exemptions provided for by international agreements signed by Ukraine, namely:

Legal framework

Framework Agreement between the Government of Ukraine and the Commission of European Communities ratified by the Law of Ukraine № 360-VI of 03.09.2008

Pursuant to Article 3 – Provisions on taxation and customs duties - “Activities totally or partially financed by the Community funds are not subject to taxation, customs duties or any other analogical charges”

The following two cases are subject to tax exemption:

- If goods brought (sent) to the territory of Ukraine are required for implementation of activities under the CBC project. In this case the imported goods are exempted from customs duties and entry fee, taxes and any other analogical charges.
- If the CBC project implementation provides for procurement of goods and services, with the place of their destination being located on the territory of Ukraine. In this case provision of goods and services is exempted from VAT (regardless of whether the contract/purchase has been concluded with Ukrainian or foreign organization).

Contact information

Ministry of Economic Development and Trade of Ukraine,
Department for Cooperation with International Financial Organizations and Coordination of International Technical Assistance
Tel.: +380 44 226 20 66, 253 04 31

i State registration of the CBC project is a precondition for exercising the right for tax or customs exemptions.

★ Exemption from customs duties

Legal framework

Order of the Ministry of Economy of Ukraine N 291 of 05.09.2007

“On Approval of the Procedure for Confirmation of Tax Exemptions in the Process of Customs Clearance of Goods Brought in the Framework of International Agreements on Providing Technical Assistance to Ukraine”

The Procedure is applied to the goods brought (sent) to the customs territory of Ukraine in the framework of the CBC projects and intended for the project ‘Recipients’ identified in the project registration card.

<i>List of documents required for obtaining a certificate on confirmation of exemptions</i>	<ol style="list-style-type: none">1) Application letter from the 'Recipient' containing the following information: application purpose, title of the CBC project, number of project registration card, number of invoice, general invoiced value of goods, purpose of transfer/customs regime, customs authority (in the operation area to which the 'Recipient' belongs);2) List of goods in Ukrainian signed on every page by an authorized person on behalf of the 'Recipient' and certified by a stamp;3) Original invoice and supporting documents with a stamp of customs on the border, or copies of the above mentioned documents certified in accordance with the established procedure (by the translator or directly by the 'Contractor'/'Recipient');4) A copy of the project registration card.
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Certificates on confirmation of exemptions are issued by the MEDTU in the format presented in the annex to the given Procedure (please see Annex 5) together with the List of goods to be brought (sent) to the customs territory of Ukraine within the framework of the project implementation.

★ VAT exemption

Legal framework

- 1) Resolution of the Cabinet of Ministers of Ukraine No 153 of 15.02.2002 "On Establishment of a Unified System for Attracting, Utilization and Monitoring of International Technical Assistance" with amendments introduced by:
- 2) Resolution No 902 of the Cabinet of Ministers of Ukraine (902-2007-n) of 11.07.2007
- 3) Resolution No 30 of the Cabinet of Ministers of Ukraine (30-2011-n) of 19.01.2011
- 4) Resolution No 1301 of the Cabinet of Ministers of Ukraine (1301-2011-n) of 07.12.2011
- 5) Resolution No 629 of the Cabinet of Ministries of Ukraine (629-2012-n) of 04.07.2012

Ukrainian organization is entitled to exercise its right to tax exemption on the basis of the project registration card and plan of procurement of goods, works and services to be purchased out of the project funds.

The MEDTU sends one copy of the procurement plan together with one copy of the project registration card to the State Tax Service in order to provide information on tax benefits.

The registration card should contain a record including the following information:

- reference to relevant articles of the international agreement of Ukraine on the foreseen exemptions;
- confirmation of providing the procurement plan;
- official website address of the MEDTU, where the procurement plan and list of organizations applying for tax exemption are placed;

http://www.me.gov.ua/control/publish/article/main?art_id=184485&cat_id=178157

In case the above mentioned record has been made at the registration card, goods, works and services to be purchased by the Ukrainian organization out of the project funds shall be consigned (executed, supplied) without VAT.

i *The procedures as regards VAT exemption for Ukrainian participants of international technical assistance projects (including CBC projects) may be changed to be highlighted on the site of the MEDTU .*

**Practical
tips**

- ☞** *In case of difficulties in getting suppliers to accept VAT exemption, it is advisable to purchase small amounts (e.g. computers) from companies subject to simplified tax procedures (small suppliers that are not VAT payers)*
- ☞** *Note that for grant contracts signed under PraG 2010 (updated March 2011) non-reclaimable taxes may be considered as co-financing by the Beneficiary/Partner in the project budget. Check with your ENPI CBC programme in case of doubt.*



9. HUMAN RESOURCES AND EXPERTS

In order to calculate costs of staff and expertise involved in the CBC project tasks, the financial manager of the participating organization/institution shall:

- Prepare the list of human resources planned to be involved in the project implementation (including internal staff of the organization and external experts),
- Collect all the internal documents regulating employment issues of the organization and the activity of external experts within the framework of the project (orders, agreements, contracts etc),

Please note that the Grant Contract distinguishes between:

- Remuneration for staff of the organisation participating in the CBC project employed under **labour** contracts (full/part time, already in institution or specifically recruited). These costs shall be provided for in the project budget under the budget line 'Human resources'.
- Remuneration for **experts not employed under a labour** contract involved in the project, considered as service suppliers. These costs are included in the budget line 'Other costs and services' and subject to procurement procedures (like any contract for services).

★ Calculation of costs and working time record for staff of the organizations participating in the project employed under labour contract

Calculation and record of labour remuneration costs shall be performed by the Ukrainian organization/institution in accordance with the current legislation, the organisation internal regulations and staff agreements/contracts (in particular as regards working time).

Labour remuneration costs, reflected in the project financial reports, shall correspond to actual gross salaries including social security charges and other remuneration-related costs (contributions to the Pension Fund, tax on personal income...), whether included in the salary slips or paid directly by the employer. Salaries and costs should normally correspond to those usually borne by the Ukrainian organisation/institution (unless it is justified by showing that it is essential to carry out the project and approved by the JMA)¹³.

Working time record documents ("Timesheets") of employees of the Ukrainian organisation/institution participating in the project shall correspond to the actual working time reflected in their work performance registers ("Table").

¹³ See art. 14.2 Grant Contract General Conditions (Annex II)

★ Involvement of external experts (local and international)

Tasks planned under the project may be assigned either to staff of the organisations – project Partners as described above, or to external experts (national and international).

In accordance with the current legislation of Ukraine performance of works or provision of services by an individual person shall be based either on labour contract or other legal grounds, namely civil law contract (employment agreement). Employment agreement is a document laying basis for performance of work of any type, concluded between the organization and its non-staff employees.

While drafting an ‘employment agreement’ (civil law contract), civil (and not labour) law regulations must be applied. Consequently, Article 50 of the Labour Code of Ukraine is not applicable to individual persons being a party to the ‘employment agreement’ (civil law contract).

In actual practice the above mentioned civil law contract may be referred to in Ukraine as ‘Work performance contract’ or ‘Service contract’.

In pursuance of Chapter 63 of the Civil Code of Ukraine any service contract can be concluded given that it does not contradict the substance of obligation. According to Article 901 of the Civil Code of Ukraine under the service contract one party (Contractor) undertakes upon the assignment of another party (Client) to provide services, being consumed in the process of pursuing a certain action or performing a certain activity, and the Client undertakes to pay the Contractor for the above mentioned services unless otherwise provided by the contract.

The contract shall be done in any written form and is considered to be concluded when signed by the contracting parties.

Failure to perform or improper performance of the Contractor’s obligations under the service contract entails civil liability, which shall be applied in conformity with the rules set forth by the Civil Code of Ukraine (forfeit penalty, fine, late payment charge, compensation of losses, etc.).

i *Employment agreement does not provide for entering any record on work performance in the work record book, while the period of work performance is included in the employment tenure, which qualifies for labour pension solely under the condition of payment of insurance contributions (Article 56 of the Law of Ukraine “On Pension Provision” № 1788-XII of 5.11.1991). Persons performing works under employment agreements are entitled to participate in the compulsory state social insurance system on a voluntary basis.*

★ Travels and missions

Travel and subsistence costs for staff related to implementation of the project tasks are considered eligible in accordance with the General Conditions of the Grant Contract. The above mentioned costs consist of two categories: 1) travel expenses (e.g. tickets price reimbursement, car expenditure, visa,

etc.) and 2) subsistence costs, including expenses for accommodation and meal. In this manner the two categories of expenses shall be reflected in the CBC project budget and financial reports.

i While calculating subsistence costs the CBC project Partners shall refer to the regulations provided for by their national legislation. Travel and subsistence costs should not exceed those normally borne by the organisation/institution.

Additionally, subsistence costs calculated per overnight stay on mission must not exceed the rates set out by the European Commission and published at the website: http://ec.europa.eu/europeaid/work/procedures/implementation/per_diems/index_en.htm

**Legal
framework**

- 1) Tax Code of Ukraine (subparagraph 140.1.7, article 140);
- 2) Resolution of the Cabinet of Ministers of Ukraine No 98 of 2.02.2012 "On the amount and composition of expenditures for missions of civil servants and other persons sent on missions by enterprises, establishments and organizations either totally or partially financed from the budget funds"

The methodology for calculation of expenditures for missions of individual persons in Ukraine is determined by the Tax Code of Ukraine and specified for particular categories of employees by corresponding Resolutions of the Cabinet of Ministers of Ukraine.

All Ukrainian organizations totally or partly financed from the state/local budget have to apply the Cabinet of Ministers of Ukraine Resolution No 98 of 2.02.2012, which fix the conditions for subsistence costs on mission.

Other organisations have to use the approach stipulated by the Tax Code of Ukraine.

Ukrainian legislation and regulatory acts provide for the following specific terms:

- Travel costs,
- Accommodation costs,
- Daily allowances (including meal and other sundry expenses of individual persons). Daily allowances rates for each country are set forth in the above mentioned Resolution of the Cabinet of Ministers of Ukraine.

i Travel and accommodation costs shall be confirmed by corresponding documents, which certify the actual amounts of such expenditures. Daily allowances do not require financial documentary confirmation but only the proof of stay on project-related mission.

**Practical
tip**

☞ For external experts working on the basis of Contract for Work or a Paid Services Contract, per diems and other travel costs should be included in the service contract with the expert and calculated within the total amount of the contract for procurement procedure.



10. PROCUREMENT OF EQUIPMENT, SUPPLIES AND SERVICES

Implementation of almost every CBC project provides for procurement of equipment or services from organisations which are not project Partners. Procurement procedures and rules are described in the Grant Contract (namely in Annex IV – Procurement by grant Beneficiaries in the context of European Community external actions).

In this regard the two following procurement rules must be respected:

- **Rule of origin** provides for that all equipment purchased by the project Partners shall originate from the EU Member States, or ENPI countries, or countries of the Instrument for Pre-Accession Assistance or EEA countries (see table below).
- **Rule of nationality** means that sub-contracts for procurement of equipment and services in the framework of the CBC projects shall only be awarded to natural persons and legal entities from the EU Member States, or ENPI countries, or countries of the Instrument for Pre-Accession Assistance or EEA countries (see table below).

<i>Rule of origin and rule of nationality countries listed in the ENPI Regulation</i>	
<i>EU Member States</i>	Portugal, Spain, France, Italy, Malta, Greece, Cyprus, Bulgaria, Romania, Poland, Czech Republic, Slovakia, Hungary, Slovenia, Austria, Germany, Lithuania, Latvia, Estonia, Finland, Sweden, Denmark, The Netherlands, Belgium, Luxemburg, United Kingdom and Ireland
<i>ENPI Partner Countries</i>	Russia, Belarus, Ukraine, Moldova, Georgia, Armenia, Azerbaijan, Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Occupied Palestinian Territories, Syria and Tunisia
<i>IPA Countries</i>	Croatia, Turkey, Albania, Bosnia, Montenegro, Serbia, Kosovo and FYROM
<i>EEA</i>	Norway, Iceland and Liechtenstein

In compliance with the Financing Agreements on the Joint Operational Programmes of Cross-Border Cooperation signed between the EU and the Ukrainian government, the project Partners are entitled to apply their national regulations to procurement procedures (organising tenders, drafting tender documentation etc) though they must adapt them in order to ensure the respect of the rule of origin and nationality.

Annex IV to the Grant Contract also stipulates that tender documentation must be drafted in accordance with 'best international practice'. If they do not have their own documents or if they are concerned these may be non compliant, Beneficiaries may consult and use the PraG¹⁴ models.

A special study on comparing the procurement procedures determined in PraG and those established by the current legislation of Ukraine were summarized in a Guide on secondary procurement in ENPI CBC programmes, which can be found at: www.interact-eu.net/downloads/4478/guide.pdf

The above mentioned document provides conclusions, presented in the format of table - matrix, on every rule and procedure established by Ukrainian legislation in terms of their consistency with the European rules. On the basis of these conclusions recommendations are given on the application of certain procedures and rules.

① Ukrainian legislation on procurements does not provide for the above mentioned "rule of origin" and "rule of nationality". Nonetheless, Ukrainian project participants shall respect the "rule of origin" and the "rule of nationality" in accordance with the Grant Contract, even when using their co-financing, so that these costs are considered eligible costs for the grant budget. As a result, procurement documentation needs to be adapted.

*① Plan of procurement of goods, works and services provided in the framework of the project, which must be submitted to the MEDTU in the process of state registration of the project, shall be placed on the official MEDTU web-site¹⁵ for future VAT exemption:
http://me.kmu.gov.ua/control/publish/article/main?art_id=179484&cat_id=178157*

¹⁴ PraG = Practical Guide to Contract procedures for EU external actions

¹⁵ in pursuance of the Resolution of the Cabinet of Ministers of Ukraine No 153 of 15.02.2002



11. OWNERSHIP OF EQUIPMENT, INVESTMENTS, INTELLECTUAL PROPERTY AND PROJECT RESULTS

Ownership of, and title and industrial and intellectual property rights to, the project results, reports and other documents, as well as ownership of equipment and supplies within the CBC projects are regulated primarily by the Grant Contract (art. 7 of Annex II “General Conditions” sometimes modified by Grant Contract Special Conditions).

All details related to the project ownership issues can be included further in the Partnership Agreement. In this document the project Partners are entitled to describe and specify their rights at the beginning and at the end of the project, notably as regards the intellectual property rights.

In the framework of the partnership agreement, the Partners may authorise the Beneficiary to pay the expenses directly to the subcontractors in order to purchase equipment or to produce materials or other outputs. In this case the expenditure may have to be included in the Beneficiary’s budget and reported as its own expenditure. At the end of the project, these equipment and outputs can be transferred to the Partners according to the grant contract rule “transfer of ownership”¹⁶. In this case copies of the proofs (delivery – acceptance certificates) of transfers, the purchase cost of which was more than EUR 5,000 per item, must be attached to the project final report.

The transfer of tangible assets to Ukrainian organizations/institutions shall at the same time comply with the national regulations. It should be supported by the relevant documents confirming the receipt and placing the equipment on the balance sheet.

¹⁶ See art. 7 of General Conditions to Grant Contract (Annex II)



12. ADMINISTRATIVE COSTS

As a rule the project budget provides for so called 'administrative costs'. In accordance with the General Conditions of the Grant Contract such expenditures are considered eligible indirect costs within the framework of the CBC projects.

Administrative costs are calculated as a fixed percentage not exceeding 7% of the total amount of direct eligible costs provided for by the project budget, as agreed during the project contracting phase.

Please note! Administrative costs are estimated by a flat-rate funding that does not require to be supported by specific accounting documents¹⁷.

Nonetheless, JMAs may request clarifications when negotiating the Grant Contract (before signing it), in particular to check whether some of the costs covered by the flat-rate for indirect costs do not include costs that are already included in another budget heading as direct costs (for instance in cases where 'office costs'¹⁸ are included as direct costs in the project budget).

In this regard, the following approaches can be used to reflect the actual amount of administrative costs. Note that programmes may have specific requirements on applicable methodologies to estimate administrative costs.

Beneficiaries (Lead Partners) and Partners can provide space in their office for the activities of the project team. The following example of calculating costs for project office space can be used when no separate office for the project is rented.

- Total area of the building (S total) equals to 1000m²
Total usable area (office area) (S total usable) equals to 700m²
- Building Utilization Index (BUI) is defined as the ratio of the total building area to the total usable area:
$$BUI = S \text{ total} / S \text{ total usable} = 1000/700 = 1.43$$
- Space occupied by the project office (S project) equals to 40m² (as defined on the basis of a company's internal order on assignment of premises)
- Total area used for the project purposes (S total project):
$$S \text{ total project} = S \text{ project} \times BUI = 40 \times 1.43 = 57.2 \text{ m}^2$$

¹⁷ See art. 14 on eligible costs of Grant Contract Annex II (General Conditions)

¹⁸ Please note that, when justified and necessary, a specific project office can be established for the project. It will in this case not be part of administrative costs but be included in project direct costs under 'office costs'.

- Project share in the building utility costs is defined as a ratio of the total area (S total project) to the total building area (S total):
$$\text{Project Index (PI)} = S \text{ total project} / S \text{ total} = 57.2 / 1000 = 0.0572$$
- The amount of utility costs compensated by a project equals to the amount of utility costs for the calculation period for the building in general, multiplied by the Project Index,
e.g. $2.000 \times 0,0572 = 114,4$

Similar approaches, when general costs are allocated on a percentage or pro-rata basis, can be used to estimate other administrative costs, such as consumables, telecommunication, internet costs, electricity, office cleaning, etc.

- e.g.1) monthly bill for **telecommunication costs** = X EUR; 4 people out of 5 are engaged in the project implementation (i.e. 80% of organization staff) working 50% of time. => $X \cdot 0.8 \cdot 0.5 = 0.4X$.
- e.g.2) monthly bill for **consumables** = Y EUR. The project implementation requires high/medium/low use of consumables for A, B, C, D purposes. Therefore we plan to use XX% of the monthly supplies, which makes it $Y \cdot XX\%$.



13. DEVELOPMENT OF INFRASTRUCTURE

In order to participate in a CBC call, projects including infrastructure components may need to carry out a considerable amount of preparatory activities **at the very stage of project proposal development**, as specified by each ENPI CBC programme:

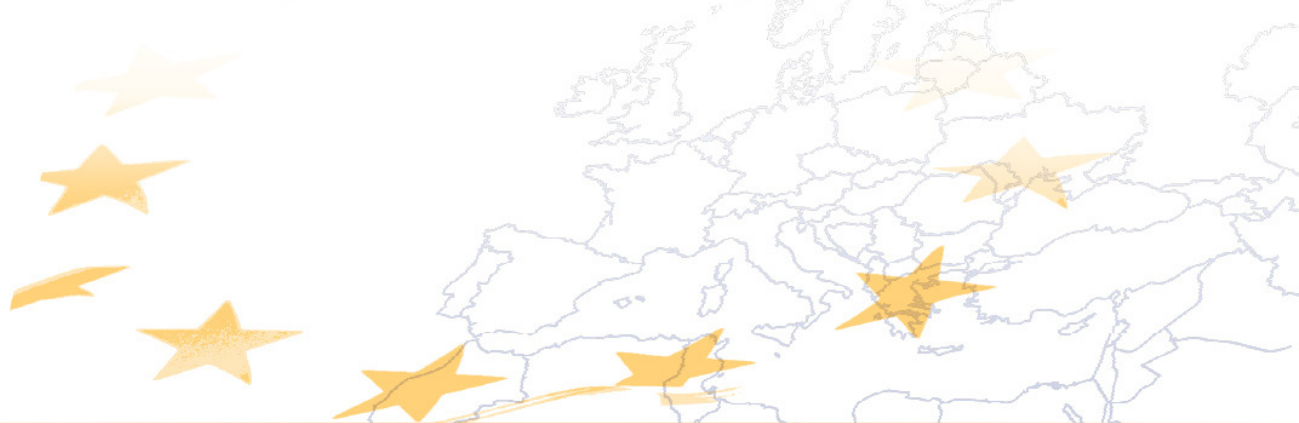
- Feasibility study,
- Environmental impact assessment (which means to conduct analysis of possible impact of the project results on the environmental conditions), provided that it is required by Ukrainian legislation
- Building permission (if it is provided for by the project) or its equivalent,
- Proof of ownership, trusteeship, rental or right of common of land/buildings etc
- Project technical documentation (for example, construction or reconstruction plan).

The above mentioned documents shall be drafted in accordance with the requirements of national legislation of Ukraine.

Legal framework

- 1) Order of the State Committee for Construction No 8 of 20.01.2004 “Building Codes”
- 2) Law of Ukraine “On Ecological Expertise” No 45/95 of 05.02.1995
- 3) Law of Ukraine “Regulation on Urban Development” No 3038 –VI of 17.02.2011

i *The CBC Programmes provide for a separate category of so called “large-scale projects” which are determined by the CBC participating countries following special procedures, as distinct from those selected after announcement of calls. The infrastructure component constitutes the main part of such projects. In the process of implementation of large-scale projects Ukrainian partners shall apply similar rules and procedures.*



Part 3 **Annexes**



This project is funded by the EU



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List of annexes

- Annex 1 – Resolution of the Cabinet of Ministers of Ukraine No 1111 of 8.12.2010
“On Approval of the Procedure for preparation and implementation of projects under
the European Union’s European Neighbourhood and Partnership Instrument Cross
Border Cooperation Programme”*
- Annex 2 – Plan of procurement for goods, works and services provided in the framework of
the project (format)*
- Annex 3 – Registration card of project (format)*
- Annex 4 – Project monitoring card (format)*
- Annex 5 – Certificate on confirmation of exemption issued by the MEDTU (format)*
- Annex 6 - Application letter to the MEDTU for providing project state registration
(recommended content)*

