

Eligibility of costs under LIFE 2014-2020

19th March 2012

BirdLife, EEB and WWF as well as many other environmental organisations across the EU are highly alarmed by the European Commission’s proposal to introduce changes to the eligibility rules of the LIFE programme. If adopted they would not only result in unequal treatment of Member States, but also risk to exclude large parts of civil society, many public authorities and small/medium sized enterprises from LIFE.

The proposal would discriminate precisely those organisations that so far make the programme one of the most successful and cost-efficient of all EU funds. Civil society actors are critical to improve public awareness, knowledge and acceptance of environmental issues and have proven effective ambassadors of EU added value. An important reason for the cost-efficiency of LIFE projects is the ability of NGOs to engage volunteers, and thus significantly multiplying the impact of the EU funds.

Analyses carried out across the EU show that many past LIFE projects, including very successful ones, could not have been realised under this conditions - even with a higher co-financing rate from the EU. For many small and medium sized organisations the changes proposed by the European Commission would make it impossible to participate in the future LIFE programme and thus jeopardise the programme’s success and cost-efficiency.

We propose to delete the provision in article 20 of the proposed Regulation (“VAT shall not be considered an eligible cost for projects referred to in Article 18.”)

We propose to make a specific reference in Art.20 as follows: “Permanent staff costs are considered as eligible cost.”

At the same time we regard it as necessary and urgent to maintain and increase the uptake and effectiveness of LIFE through higher co-financing rates.

Ensure eligibility of VAT costs

The European Commission (EC) proposes to exclude VAT costs from eligibility (Art.20 of the proposed LIFE Regulation) because these have, as stated in the Explanatory Memorandum “*proved burdensome in terms of monitoring and reporting*”. The EC claims this would be compensated through higher co-financing rates, resulting “*in similar levels of support for projects*”. The signing organisations strongly object to this view, based on evidence from across Europe.

- 1) According to information from our networks (currently responses from 13 Member States), **NGOs are normally not able to recover VAT in their Member State**. In some cases they are, however then they cannot do it in the context of non-profit activities such as LIFE. Under current rules, these costs are eligible under LIFE+, provided an adequate documentation is presented. Those NGOs that can reclaim VAT do not consider them eligible under LIFE.
- 2) Under the rules proposed by the European Commission for LIFE 2014-2020, NGOs would have to **mobilise resources outside of the project budget to cover VAT, which is normally very hard or impossible**, given most NGOs usually have no “free money” available and depend on specific fundraising. However, usually national donors and co-financers of LIFE projects (governments, foundations) base their contributions on %-age of eligible project costs and would not fund ineligible costs. From this follows, that a higher EU contribution to the project budget would not help here, **the calculation presented by the European Commission in this respect misses the core of the problem**.
- 3) **Many co-financers are currently decreasing their contributions to environmental projects** and it is very unlikely they would take on additional co-financing of costs that are not eligible under LIFE.
- 4) **VAT rates vary greatly across the EU**, between 17% (Luxembourg, Cyprus) and 27% (Hungary). Therefore beneficiaries would be treated unequally. In the context of trans-national projects, or when services or goods have to be purchased for projects across Member States, countries with high VAT rates would be disadvantaged.
- 5) Making VAT non-eligible **would result in beneficiaries reducing “VAT intensive activities”** including many dissemination activities (events, printed material, films etc.) and activities with practical outputs (e.g. practical nature conservation measures, for which purchase of machinery is essential).
- 6) Organisations that cannot reclaim VAT **would lose “attractiveness” as project partners**, even if the lead beneficiary could cope with the problem. Therefore the expertise and cost-effectiveness of small stakeholders, especially NGOs, would be lost for many LIFE projects, including for Integrated Projects.

Additional considerations:

- 7) The European Commission's concern that VAT certificates provide a huge administrative burden and that the system is prone to errors or fraud is doubted by the undersigning organisations. However, even if these statements were justified, we feel it would be **disproportional and not justified** to solve the issue at the cost of a significant amount of successful LIFE projects that would be prevented from taking place, as civil society stakeholders would refrain from applying for them under the new rules.
- 8) **In other EU funds VAT costs are eligible if the beneficiaries can proof that VAT cannot be recovered.** In the proposals for the Common Provisions Regulation for all CSF funds (ERDF, ESF, Cohesion Fund, EARDF, EMFF) for 2014-2020, art.59(3)c, the European Commission proposes
“VAT should be ineligible, However, VAT amounts shall be eligible where they are not recoverable under national VAT legislation and are paid by a beneficiary other than non-taxable person as defined in the first subparagraph of Article 13(1) of Directive 2006/112/EC, provided that such VAT amounts are not incurred in relation to the provision of infrastructure.”
- 9) **The European Parliament has recently expressed its position that non-reclaimable VAT should be eligible in EU funds:**
“The following costs shall be considered as eligible by the competent authorising officer by delegation: ... (c) value added tax (‘VAT’) paid by, and which cannot be refunded to, the beneficiary according to the applicable national legislation....” (EP Plenary 26/10/ 2011, 1st Reading “Financial rules applicable to the annual budget of the Union“, amendment 173, on art.117a-3c)
- 10) **The European Parliament's Resolution of 13 October 2011 on the future of VAT (2011/2082(INI)) states in art. 19:**
“... Underlines that non-profit-making organisations play a vital and very beneficial role in furthering democracy, growth and prosperity in Europe; calls on the Commission to propose a mechanism allowing Member States wishing to strengthen civil society to generally exempt from VAT all or most of the activities and transactions carried out by these organisations; stresses that at least the smaller non-profit-making organisations should be covered by such a mechanism;”
- From the above it should follow that VAT should not be excluded from eligible costs of EU funds unless and until the above action – exempting non-profit organisations from VAT – has been introduced in all Member States.
- 11) There are many **other ways of simplification**, that have been proposed by stakeholders at many occasions in the past.
- 12) **An increasing effective co-financing rate for LIFE projects is urgently necessary** to secure, and increase the uptake of LIFE under current eligibility rules. In many Member States the crisis of public budgets will make it very hard to raise any public co-funding for LIFE projects in the future, therefore the EU budget contribution needs to be as high as possible to ensure Community policy priorities and legislation can still be implemented in these countries. **A higher co-financing rate must not be neutralised by changes of the eligibility rules.**

Ensure eligibility of permanent staff costs

The European Commission proposes in the Explanatory Memo to the Regulation to limit or exclude eligibility of costs for permanent staff not specifically recruited for the project, to reduce the monitoring and reporting burden and problems experienced with errors and fraud in time-sheets. The EC claims this change could be compensated through higher co-financing rates, resulting “*in similar levels of support for projects*”

Similar to, and even worse in combination with, the change of rules related to VAT, this change would have a severe negative impact on quality and feasibility of LIFE projects and prevent many governmental and non-governmental organisations from applying for LIFE funding. Contrary to the EC’s approach the question of permanent staff is not primarily a financial issue, but touches on questions of **labour legislation, work quality, sustainability of work** and last but not least the **ethical and social question whether short-term contracts should be preferred over permanent ones.**

- 1) Quality and feasibility of **LIFE projects in many cases depend strongly on the expertise and experience of permanent staff**, which is the case equally in public authorities, enterprises and NGOs. Therefore the proposal to exclude permanent staff from eligibility would seriously hamper the achievement of high quality results through LIFE projects, which have made the programme so successful in the past. Many donors in general including potential co-financers of LIFE projects, but also other EU funds, assume and expect that financed project staff is permanent, as only they can ensure high quality of a project.
- 2) In most cases, staff required for the implementation of a LIFE project is not employed solely just for one project, but works part-time also for other projects (with different start and end dates) and/or core activities of the organisation. The change proposed by the Commission would force **short-term employment of (in many cases part-time) staff of usually lower quality and experience, increasing labour and administration costs** and thus prevent most organisations from submitting project applications.
- 3) In many cases **problems can be foreseen with labour legislation**, if staff has to be employed only for, and for the duration of, specific projects.
- 4) Project based short term contracts might simplify work for auditors, but **do not solve the problem of misuse of EU funds**. Also contracted experts could try to have several contracts and double finance their work, charge more than 8 hours per day etc.

Additional considerations:

- 5) In **other EU funds**, permanent staff costs are eligible as well.
- 6) **Other EU funds show that simplification is possible without making staff costs ineligible.** INTERREG IV A and IV C accept costs of permanent and non-permanent staff. A declaration of tasks and time allocation in percent of each person involved in the project is required, signed by the CEO /Managing Director. No individual time registrations are required, instead reporting is based on activities and outputs.
- 7) It would be important to clarify the **definition of “permanent staff”** and which kind of employment forms the Commission wants to exclude from eligibility under LIFE (e.g. only civil servants of public authorities, or any kind of staff that as worked in or for an organisation before the project start).
- 8) An **increasing effective co-financing rate for LIFE projects is urgently necessary** to secure, and increase the uptake of LIFE under current eligibility rules. In many Member States the crisis of public budgets will make it very hard to raise any public co-funding for LIFE projects in the future, therefore the EU budget contribution needs to be as high as possible to ensure Community policy priorities and legislation can still be implemented in these countries. **A higher co-financing rate must not be neutralised by changes of the eligibility rules.**

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