

## 2018/REGIO/16

**BY EMAIL (AS ATTACHMENT TO THE EMAIL)**

**Date: 23 March 2018**

**Subject: Question in relation to Article 70 and PCP/PPI constructions**

Origin of the question: IT desk

Articles: Article 70 CPR, ARES(2014)2208638, ARES(2014)3991474.

Priority: NORMAL

### **Background provided**

In the framework of the Regional Operational programmer Sardinia 2014-2020, within Axis 1 "scientific research, technological development and innovation", action 1.3.1 provides "Strengthening and qualifying the demand for innovation of the Public Administration through the support of actions of pre-commercial public procurement and innovation procurement".

The questions originate from "Sardegna Ricerche", an agency established by the Region of Sardinia to promote research and technology transfer from universities to industry and the development of the knowledge-based local economy.

### **Questions**

1. Art.70 requires that at least 85% of the amount of research and development operations must be executed in the Region". In the case of implementation of innovation procurement actions, PCP (pre-commercial public procurement) and PPI (public procurement of innovative solutions), financed by ERDF, with regard to ERDF Regional Operational Program 2014/2020, in order to ensure the eligibility of the allocated expenditure of the Action 1.3. Axis I: would Article 70 be violated (applying the principle of non-discrimination and consequently admitting all economic operators to compete) if the threshold of 85% of R&D services executed in Sardinia is not reached?

2. Regarding the innovation procurement actions under the ERDF: the public contracting authority, launching PCP/PPI and conducting the experimentation related to phase III of PCP, is a regional entity; is this enough to guarantee that economic relapses and intended impacts are in Sardinia even if there is no obligation for the participating companies, including foreign ones to carry out 85% of services in the Region of Sardinia, pursuant to art. 70 of Regulation (UE) 1303/2013?

3. Could you confirm that it is not necessary, in this case of public procurement actions, to activate the authorization procedure of the Monitoring Committee (MC) foreseen for the R&D contracts that are carried out outside the regional territory, in accordance with the provisions of art. 70?

## Reply

Geographic limitations related to the location of the suppliers or the implementation of the R&D services by the suppliers should not be included in the tender documentation on the basis of Article 70 CPR. Such limitations would not be in compliance with the fundamental principles of the Treaty and would lead to the expenditure being later found ineligible (*See results of the consultation with the Legal Service in connection with a similar case in the Puglia region in 2014 (ref. ARES(2014)2208638, ARES(2014)3991474)*). Taking this into account, the questions of the Italian authorities can be answered as follows:

1. Article 70(1) CPR sets out as a general rule that *"operations supported by the ESI Funds (...) shall be located in the programme area"*. Article 70(2) CPR sets out that *"the managing authority may accept that an operation is implemented outside the programme area but within the Union, provided that"*, among others, *"(b) the total amount allocated under the programme to operations located outside the programme area does not exceed 15 % of the support from the ERDF, Cohesion Fund and EMFF at the level of the priority<sup>1</sup> (...)"*. **It is therefore important to highlight that the 15% ceiling is not set out at the level of the operation, but should be complied with at the level of the priority axis for the ERDF.**

It is not clear from the background description provided how the 'operation' is defined in the case at stake and consequently what the location of the operation is. The location of the operation would depend on the concrete content of the operation. The fact that it involves activities like prototype testing that may not be carried out within the programme area does not necessarily mean that the operation as a whole cannot be considered as being located in the programme area.

2. Again, the reply to the question depends on how exactly the operation is designed. It should also be recalled that the 15% limit (when applicable) applies at the level of the priority and not at the level of the operation. The conditions applicable to these operations must respect individually the fundamental principles of the Treaty as set out above.

There is no rule in the CPR on the location of the beneficiaries. Thus, a beneficiary located either within or outside the programme area may implement an operation within the programme area or for the benefit of the programme area. Furthermore, the location of the suppliers to the beneficiary would not necessarily influence the location of the operation. Therefore the fact that the beneficiary (i.e. the contracting authority) is a regional entity is not enough in itself to guarantee that economic relapses and intended impacts are in Sardinia.

Article 125 CPR states that *"(3) as regards the selection of operations, the managing authority shall (...) (c) ensure that the beneficiary is provided with a document setting out the conditions for support for each operation including the specific requirements concerning the products or services to be delivered under the operation (...)"*. It is to the

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<sup>1</sup> The provision was changed in the context of the omnibus for operations supported under TO 1, but the ceiling remains applicable under para. 2.

managing authority therefore to make sure that the relevant documentation (e.g. call for proposals, grant agreement) contains adequate requirements to ensure that the services delivered by the beneficiary, and consequently the services procured by the beneficiary from the suppliers, are intended to benefit Sardinia.

3. As explained above, this depends on the concrete content of the operation. The operation in the PCP/PPI construction at stake may be located in the programme area – irrespective of the location of the suppliers. In such a case, the provisions of Article 70(2) CPR would not apply. The use of the derogation under Article 70(2) CPR (i.e. implementation outside the programme area) however would require an agreement from the MC.