



TESIM

Technical support to the implementation and management of ENI CBC programmes

Guidelines for auditors on civil law contracts in Ukraine

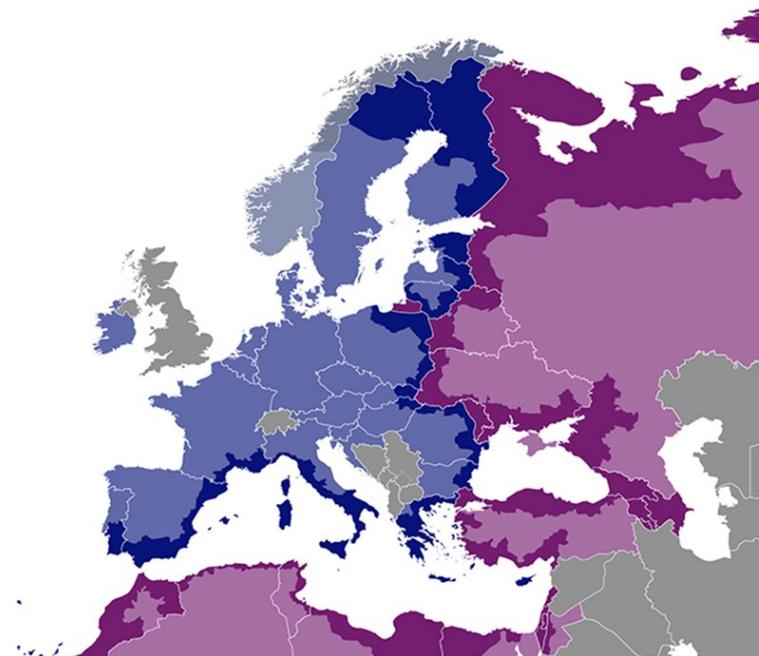
Eligibility of payments under the civil law contracts in ENI CBC programmes

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Introduction

The purpose of this document is to provide guidance to the auditors who are responsible for verifying the eligibility of expenditure on projects implemented in the Poland-Belarus-Ukraine (PBU), Hungary-Slovakia-Romania-Ukraine (HSRU), Romania-Ukraine (RO-UA) and Black Sea Basin (BSB) ENI CBC Programmes. This guidance explains how payments to individuals under civil law contracts can be accepted in the different programmes.

1. Background

Payments to individuals can be allocated in the project budget under the budget heading "Staff costs" or under the budget heading "Services":

- The budget heading "Staff costs" covers the labour costs by employment contracts,
- The budget heading "Services" covers the costs of services provided by legal persons and individuals under all contracts other than labour contracts.

IMPORTANT!

Incorrect cost allocation under a budget heading may cause cost ineligibility.

A) Labour contracts

In Ukraine, labour relations are regulated by the Labour Code, and the payment of wages is regulated by the Law of Ukraine "On Remuneration of Labour".

Article 21 of the Labour Code of Ukraine stipulates that a labour contract is "*an agreement between an employee and the owner of an enterprise, institution, organisation, or its authorised body, under which the employee undertakes to perform work stipulated by such agreement, subject to internal labour regulations, and the owner of the enterprise, institution, organisation, or its authorised body or individual undertakes to pay the employee a salary and provide labour conditions necessary for performance of the work*".

Article 24 of the Labour Code specifies the procedure for concluding a labour contract. A labour contract is concluded only "*after an order or directive to hire the employee has been issued*".

A labour contract may be either open-ended (i.e., concluded for an indefinite period) or concluded for a fixed term, as agreed by the parties, or for the duration of certain work. A labour contract for an indefinite period is entered into in cases where the employment relationship cannot be established for a determined period due to the nature of the work to be performed or the conditions of its performance, or the interests of the employee, as well as in other cases provided for in the legislation.

Documents based on which the labour contract is concluded, and the labour remuneration is paid:

- **Staff schedule:** this is an organisational and administrative document that contains the organisational structure, a list of positions in the company, with an indication of the number of employees holding these positions and the amount of their remuneration.
- **Timesheet:** the timesheet is used to record the working time of all categories of workers, monitor their compliance with the established working time regime, obtain data on the hours worked and calculate wages. It is also used for compiling statistical reports on labour.

The documents confirming the amount of labour costs incurred by the enterprise's employees are the *payroll settlement* or *pay-slips*.

Conclusions

- Labour relations are regulated by the Labour Code of Ukraine.
- Conclusion of a labour contract is executed by the order or directive of the owner or the body authorized by him/her on hiring employees.
- Documents confirming the amount of wage costs are *staff schedule*, *time sheet*, *payroll settlement*, and *pay-slips*.

B) Civil law contracts

A civil law contract, i.e., an agreement to perform work or provide services, can be concluded between a natural person and a company. These relations are regulated not by the Labour Code, but by Chapter 20 of the Commercial Code of Ukraine. Types of civil law contracts are defined by the Civil Code of Ukraine. The key difference between the labour contract and the civil law contract is that the subject matter of the civil law contract is a certain result of the work, and not the process of the work or certain functions of the performer like in a labour contract.

The civil law contract differs from the labour agreement in the following way:

- the subject of the agreement is a certain specific result of the work, but not the permanent functions of the performer.
- an individual who provides services or performs work under a civil law contract **is not included in the timesheet or staff schedule, as he or she is not an employee of the organisation.**
- relations terminate with the termination of the contract and for other reasons established by the contract (by agreement of the parties, etc.);
- the employer is not required to provide the person working according to civil contract with a working place, equipment, create a safe working environment, provide protective clothing and materials.

The fact of work performance must be confirmed by drawing up a primary document: an **act of work performed, an act of acceptance of services rendered**. The name of this document allows

different variations, but the essence remains the same: the document (act) has to certify the fact of transfer of the result, which was required by the contract, by one party (the executor) and acceptance of this result by the other party - the customer. **An act of acceptance of services rendered and an act of work performed have all features of an invoice.** Therefore, the payment according to civil contract is made against invoice, not against a timesheet.

Conclusions:

- Civil relations are regulated by the Commercial Code of Ukraine and Civil Code of Ukraine.
- Conclusion of a civil contract does not require the order or directive of the owner or the body authorized by him/her on hiring employees.
- The documents confirming the amount of payment are the act of acceptance of services rendered and an act of work performed.

2. Sources of misunderstanding for beneficiaries and auditors

All payments to individuals who are not entrepreneurs are taxed equally in Ukraine. For this reason, some beneficiaries might have included the costs of payments under civil law contracts under the budget heading "Staff costs". It should be noted that the ENI CBC programmes 2014-2020 have not developed a uniform approach to the recognition of such costs. Each programme has a different approach, which **auditors shall consider when carrying out audits.**

NOTE TO BENEFICIARIES

Beneficiaries shall carefully study the programme rules and, in case of doubts, consult with the programme under which budget heading this type of costs must be allocated. In case if a beneficiary discovers that the payments under civil law contracts were allocated under the wrong budget heading, a request for budget amendment may be necessary depending on the thresholds set by each programme.

Auditors must take into account that the same nature of costs may be recognised differently in the projects of different programmes, even if beneficiaries are located in the same oblast of Ukraine.

IMPORTANT!

In the case of civil law contracts, the **Ukrainian procurement legislation must be respected** regardless to which budget heading the costs are allocated.

3. Programme rules

3.1. Poland-Belarus-Ukraine

According to the Programme Manual, Part 1- Applicant (p.55), budget heading "Staff costs" shall include costs related to the project management (e.g., costs of project coordinator, project manager, financial manager, project manager assistant, etc). Staff already employed in the organisation on the basis of labour contracts could be assigned to action by written orders of the head of organization to carry out new tasks related to the project.

Budget heading "Staff costs" includes costs of management staff members employed by the lead beneficiary/beneficiary organisation, who are formally engaged to work on the project on: labour contract- full-time basis, labour contract- part-time basis, and contracts other than a labour contract.

Therefore, payments to individuals under civil law contracts may be allocated to the budget heading "Staff Costs" and recognised as eligible by the auditors if those costs have all the features of labour costs. For example, a person contracted under civil contract performing services at beneficiary's premises, following internal labour schedule, a beneficiary providing a contracted person with place of work (workstation) etc.

3.2. Hungary-Slovakia-Romania-Ukraine

According to the Project Implementation Manual of HSRU (p. 33-36), staff costs include the salaries of dedicated project staff and personnel employed by the beneficiaries executing project related tasks of internal management or internal expertise. Staff can either be already employed personnel of the beneficiaries or new recruited personnel after signing the Grant Contract. In all cases, staff costs need to comply with the national legislation of the country the beneficiaries reside in. Staff costs include salaries, employer's and/ or employee's social security charges and other remuneration-related costs. Social security charges refer to all obligatory social security and pension related payments, incurred and paid by the employer. Staff costs cannot be paid against invoice.

The programme has specific guidance for beneficiaries in case of contracting project management under civil law contracts¹:

Costs related to project management can be externalized in exceptional justified cases approved by the JTS. This option is valid mainly for public bodies, such as executive committees of municipal councils, hospitals and educational institutions which are restricted by the norms of the legislation in extending the organizational structure or other institutions having exceptional, compelling circumstances. In this case, the costs related to the project management should be assigned under the section of the Budget 4 "Services" and be formed as contracts based on civil law. No externalization of the costs related to project management is possible to companies, only to individual entrepreneurs.

¹ The term "externalized staff costs" is used in the Project Implementation Manual of HSRU for the situation when project management is contracted under civil law contracts.

Project Implementation Manual HSRU

When allocating certain positions to internal staff, the beneficiaries have to pay attention that similar roles are not subcontracted too. Such a situation could raise questions on overlapping costs. For example, a legal expert is already budgeted in the project as external services and an internal employee of the beneficiary is dedicated for a similar role under "Staff costs". In this case it is recommended that the legal expertise is subcontracted as well, unless an exceptional case requires otherwise.

Therefore, payments to individuals under civil law contracts must be allocated to the budget heading "Services" and must be approved by the Joint Technical Secretariat in order to be recognised as eligible by the auditors.

3.3. Romania-Ukraine

According to the provisions of the RO-UA Programme, service contracts cannot be allocated under the heading "Human Resources", only labour contracts or appointment decisions are allowed. Payments to individuals under civil law contracts made under budget heading "Human Resources" **are not eligible**.

Therefore, payments to individuals under civil law contracts must be allocated to the budget heading "Services" in order to be recognised as eligible by the auditors.

3.4. Black Sea Basin

According to the Project Implementing Manual (p.43-47), staff costs, covering internal management or internal expertise, are eligible provided that they are paid for employees who are directly employed by the concerned beneficiary and who execute project related tasks. Staff can either be already employed or be employed by the beneficiary specifically for the project after the conclusion of the Grant contract.

Project Implementation Manual BSB

- A) In case the lead beneficiary and/or beneficiaries subcontract the project management **entirely**, no cost of any staff employed shall be claimed by any lead beneficiary/beneficiary for project management activities. **Note that these costs are ineligible under the budget heading "Staff Costs"**.
- B) *In case the lead beneficiary and/or beneficiaries subcontract the project management **partially**, tasks of the employed staff with project management responsibilities shall not overlap or coincide with the tasks of the subcontracted provider.*

Salaries reported and justified with **invoices/service reception reports** are not eligible!

Therefore, payments to individuals under civil law contracts must be allocated to the budget heading “Services” in order to be recognised as eligible by the auditors.

4. Summary

The summary of the eligibility rules for the payments to individuals under civil law contracts is provided in the table below:

Programme	Eligibility rules	Source for the additional information
PBU	Payments to individuals under civil law contracts might be accepted under the budget heading “Staff Costs” if those costs have all the features of labour costs.	Programme Manual, Part 1- Applicant (p.55) https://www.pbu2020.eu/en/pages/340
HSRU	Payments to individuals under civil law contracts must be allocated to the budget heading “Services” and must be approved by the Joint Technical Secretariat.	Project Implementation Manual of HUSKROUA (p. 33-36) https://huskroua-cbc.eu/documents/project-implementation-documents
RO-UA	Payments to individuals under civil law contracts must be allocated to the budget heading “Services” .	https://ro-ua.net/en/about-the-programme/implementation.html
BSB	Payments to individuals under civil law contracts must be allocated to the budget heading “Services” .	Project Implementing Manual (p.43-47), https://blacksea-cbc.net/projects-implementation/