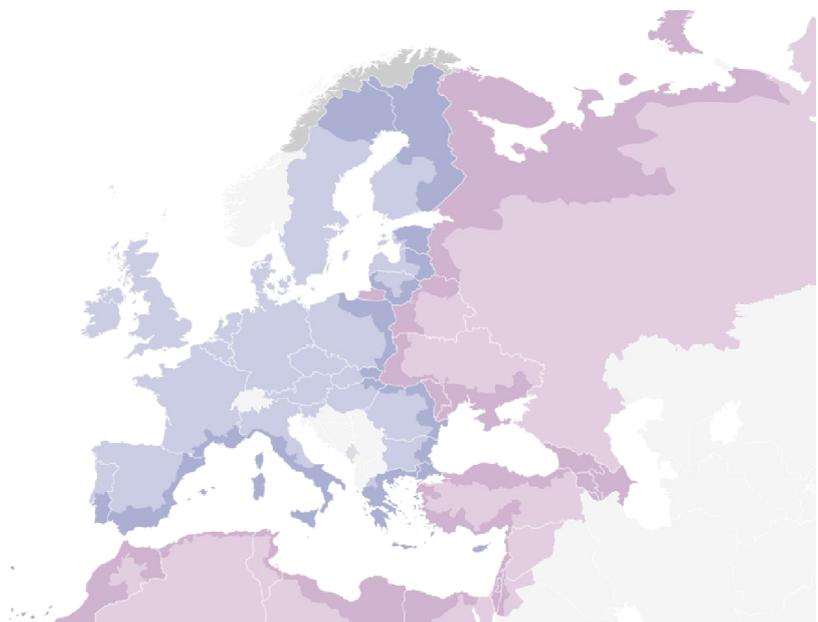


# The use of the direct award procedure in ENI CBC programmes

(GUIDANCE NOTE – August 2016)

## **DISCLAIMER**

This note has been developed by the TESIM project.  
It has not undergone revision by the European Commission and  
it does not necessarily reflect its views on the topics covered.  
It is therefore presented to programme practitioners  
**for illustrative purposes only.**



## Introduction

According to the ENI CBC Implementing Rules (ENI CBC IRs), grants shall in principle be awarded to projects selected through calls for proposals in conformity with the rules set out in the Joint Operational Programme (JOP). However, as it was the case during the ENPI CBC 2007-2013 programming period, in duly substantiated cases, the ENI CBC legal framework allows for awarding grants using the direct award procedure.

This note provides an overall outlook on the regulatory framework applicable to this procedure and looks specifically into the evaluation and award decision to apply in these cases. Likewise, the note provides information on retroactive costs, which may be now considered by programmes as eligible provided that certain requirements are satisfied.

### 1. Use of the direct award procedure

The principles of a direct award procedure are regulated by Article 41 of the ENI CBC IRs. The article defines: the type of bodies/ projects to which the procedure may be applied, the requirements for identification of Large Infrastructure Projects (LIPs) and projects other than LIPs proposed for selection without a call for proposals, the deadline for submission of a full application form for LIPs and the evaluation procedure.

#### **Article 41.1 of the ENI CBC IRs**

*Projects may be awarded without a call for proposals only in the following cases and provided this is duly substantiated in the award decision:*

- (a) the body to which a project is awarded enjoys a de jure or de facto monopoly;*
- (b) the project relates to actions with specific characteristics that require a particular type of body based on its technical competence, high degree of specialisation or administrative power*

Thus, this type of award is only applicable when either the **project applicant** is in a specific position, based on the absence of competition in the field in which it operates, or when **project activities** can be only implemented by a particular body. In any of these cases a proper justification for a direct award needs to be provided.

The definition of "de jure" or "de facto monopoly" can be found in the Practical Guide to Contract Procedures for EU External Actions (PraG). According to PraG 'de facto' or 'de jure' monopoly means that one of the grant beneficiaries:

- has exclusive competence in the field of activity and/or geographical area to which the grant relates pursuant to any applicable law; or
- is the only organisation (i) operating or (ii) capable of operating in the field of activity and/or geographical area to which the grant relates by virtue of all considerations of fact and law

In practice “de jure monopoly” will be the one that is protected from competition by government action whereas “de facto monopoly” exists due to the lack of competition in a particular field or geographical area.

### **IMPORTANT!**

According to the guidance already received from the European Commission, each beneficiary receiving a grant through a direct award procedure must enjoy de jure/ de facto monopoly and needs to be “duly substantiated”.

## **2. LIPs and other projects to be selected with the use of direct award procedure**

Based on the experience of ENPI CBC 2007-2013 programmes, the identification, selection and implementation of large scale projects (LSPs) was a time-consuming process, which resulted in many delays and even required project and programme prolongation. This is why the ENI CBC IRs request the identification of these projects already in the JOP and define strict deadlines for their submission and contracting.

### **Article 41.2 of the ENI CBC IRs**

*A final list of large infrastructure projects proposed for selection without a call for proposals shall be included in the programme. After adoption of the programme, but not later than 31 December 2017, the Managing Authority shall provide the Commission with the full project applications including the information referred to in Article 43 together with the justification for a direct award.*

The direct award procedure may be applied not only in the case of LIPs but also for other type of projects which do not fall under the definition of LIPs specified in Article 2 of the ENI CBC IRs but meet the requirements of Article 41 of the ENI CBC IRs. These could be both soft or investment projects. In the later case the budget share allocated to acquisition of infrastructure must be **below 2,5 million EUR**.

### Article 41.3 of the ENI CBC IRs

*An indicative list of projects other than large infrastructure projects proposed for selection without a call for proposals shall be included in the programme. The Joint Monitoring Committee may decide to select additional projects without a call for proposal any time after the adoption of the programme. In both cases, the Commission's prior approval shall be sought. For this purpose, the Managing Authority shall provide the Commission with the information referred to in Article 43 together with the justification for a direct award.*

The main differences concerning the implementation of LIPs and projects other than LIPs selected using direct award, are listed in the table below:

	LIPs under direct award	Other direct award projects
<b>Identification</b>	Had to be identified before the approval of the JOP, final list of projects provided in the JOP	Can be selected by the Joint Monitoring Committee (JMC) also after the approval of the JOP
<b>Deadline for submission of the full application to the EC</b>	31 December 2017	No specific deadline
<b>Deadline for contracting</b>	30 June 2019	31 December 2021
<b>Size of the infrastructure component</b>	At least 2,5 M EUR	Below 2,5 M EUR

At the same time, the following provisions apply to both types of projects:

	LIPs under direct award	Other direct award projects
<b>Use direct award</b>	Has to be duly substantiated in the award decision	
<b>Approval procedure</b>	Two-step procedure	
<b>EC involvement</b>	Prior EC approval to be sought for each step	
<b>Deadline for finalisation of project activities</b>	31 December 2022	

### 3. Evaluation of projects to be selected with the use of a direct award procedure

According to article 41.4 of the ENI CBC IRs, all projects (LIPs and projects other than LIPs) that will be selected without a call for proposals will have to undergo a **two-step selection procedure: evaluation of the project summary and of the full project application.**

#### Article 41.4 of the ENI CBC IRs

*The projects proposed for selection without a call for proposals shall be approved by the Commission based on a two-step procedure, consisting in the submission of a project summary followed by a full project application. For each step, the Commission shall notify its decision to the Managing Authority within two months of the document submission date. This deadline may be extended where necessary. Where the Commission rejects a proposed project, it shall notify the Managing Authority of its reasons.*

Opposite, the ENI CBC legal framework does not provide any detail regarding the selection procedures which shall be developed at programme level. These must anyway take into account the provisions of the approved JOP and respect the principles of transparency, equal treatment, non-discrimination, objectivity and fair competition.



Irrespective of the two step character of the selection process, it is suggested that each step consists of similar evaluation sub-steps to those applied for projects which shall be selected in open calls for proposals (i.e., administrative and eligibility check and quality evaluation).

It is up to the programme to decide on the most appropriate order/sequence for carrying out these steps. At the same time, programmes are free to decide which selection criteria will be verified on which evaluation step (e.g., whether to carry out a full administrative and eligibility check already at a project summary phase or split it into two steps).

Please find below a set of requirements (eligibility-administrative-quality) based on the provisions of the ENI CBC IRs and the experiences of the ENPI CBC programmes, that can be used as a basis for the selection criteria of direct award projects<sup>1</sup>.

### A) Eligibility of applicants and of the project:

No	Requirement	Yes	No	NA <sup>2</sup>	Comment <sup>3</sup>
1	<b><u>Project partnership</u></b> Project involves beneficiaries from at least one of the participating Member States [names of the Member States participating in the programme can be included] and one of the participating partner countries [names of the partner countries participating in the programme can be included]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2	<b><u>Applicant organisation</u></b> Programme requirements as to the legal and monopoly status (justification for the use of the direct award procedure in line with article 41.1 of the ENI CBC IR), nationality, type of institution of the applicant organisation are fulfilled [further details can be inserted if relevant]. The applicant organisation is located in the programme eligible area [add exceptions, if applicable].	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3	<b><u>Project partner organisations</u></b> Programme requirements as to their legal and monopoly status (justification for the use of the direct award procedure in line with article 41.1 of the ENI CBC IR), nationality and, type of institution are fulfilled [further details can be inserted if relevant]. The partner organisation(s) is/are located in programme eligible area [add exceptions, if applicable].	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
4	<b><u>Applicant and partners not being in exclusion situations</u></b> Applicant and partners do not fall under any of the exclusion situations set out in [add reference to the guidelines or other documents (e.g., applicants declaration, partnership statement) where the list of situations is available]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5	<b><u>Project is implemented in the programme area</u></b> Project activities will be implemented in the programme area, the only exception being [add any exception if applicable]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<sup>1</sup> Please note that there are universal selection criteria applicable to all CBC projects. This means that selection criteria for direct award projects are in many cases similar to those applicable for projects to be selected in open calls for proposals.

<sup>2</sup> NA = Not applicable. Certain criteria might not be relevant for all projects within one programme.

<sup>3</sup> If follow up is needed (in case of unfulfilled criterion), option NO should be ticked and the requirement could be described in the "comments" field.

6	<p><b><u>Applicable for LIPs only:</u></b></p> <p>Project is of an infrastructure character, where a budget share of at least <b>EUR 2,5 million</b> is allocated to acquisition of infrastructure</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
7	<p><b><u>For all infrastructure projects:</u></b></p> <p>Assurance that the project shall not be the subject of substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives (e.g., in a form of statement)</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
8	<p><b><u>Time limits for project implementation</u></b></p> <p>Project duration does not exceed the maximum duration of [insert number of months] months.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
9	<p>Project activities will be finalised before 31 December 2022 [insert other date if relevant]</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
10	<p><b><u>Financial limits for project implementation</u></b></p> <p>Project budget/ grant value budget is within the limits of [insert the minimum and maximum project budget/ grant value], and the limits set for the budget lines [insert] are observed.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
11	<p>If simplified costs are foreseen: Do [insert type of cost] costs not exceed 60,000 EUR per beneficiary and 100,000 EUR in total [alternatively add the limit defined in the programme]?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
12	<p><b><u>Project contributes to achievement of programme priorities</u></b></p> <p>Does the project contribute to the achievement of the objectives set for the programme. List of programme objectives and priorities is available [insert reference to the relevant section of guidelines]</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
13	<p><b><u>No double funding of activities</u></b></p> <p>Activities foreseen in the project do not duplicate other projects.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
14	<p><b><u>Compliance with State aid provisions</u></b></p> <p>Using the relevant chapter of the guidance for applicants, the State aid provisions are not applicable. If applicable: Please use the self-assessment checklist on State Aid, [Annex X to the Application Form]</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
15	<p><b><u>Availability of co-financing</u></b></p> <p>Minimum amount of project co-financing by its beneficiaries of at least [insert the minimum percentage] % from the total eligible project budget is ensured.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

## B) Administrative requirements

No	Requirement	Yes	No	NA <sup>4</sup>	Comments <sup>5</sup>
1	<p><b><u>Correct format of the project summary form</u></b></p> <p>The correct project summary/full application form for direct award projects was applied. The application form is in the required format: [insert the type of file requested, e.g. *.doc*.xls, editable pdf document].</p> <p>In case of on-line submission, the file was properly filled in [please add the necessary verification, e.g. that an unique checksum has been attributed by the application software]</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2	<p><b><u>Language of the project summary and annexes</u></b></p> <p>The project summary/full application form is filled in [please insert the language(s)]. Please note that the following annexes can be submitted in national languages of the partners [please specify]. [If applicable, add additional requirements, e.g. regarding summary translation of documents submitted in national languages].</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3	<p><b><u>Consistency of the Application Form</u></b></p> <p>Information presented in all application package documents (application form and annexes) is consistent (e.g., names of the applicant and partners are used in a consistent manner throughout the entire application).</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
4	<p><b><u>Completeness of the Application Form</u></b></p> <p>All applicable sections of the project summary/full application form are correctly filled in</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5	<p><b><u>All obligatory annexes are prepared according to programme criteria</u></b></p> <p>All annexes to the project summary/ full application form are filled in: [please list all compulsory annexes] into the forms annexed to the application in accordance with the provided instructions.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6	<p><b><u>Partnership statements are filled in and signed by all partners</u></b></p> <p>All requested information in the statements is included. Partnership Statements of all partners are available. <b>NB!</b> Please take into account that getting original signed statements may take time, so start the process timely.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
7	<p><b><u>All necessary documents are signed by an authorised signatory</u></b></p> <p>The following documents are duly filled in and signed by an authorised signatory representing the project applicant: [please list all documents that require a signature].</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<sup>4</sup> NA = Not applicable. Certain criteria might not be relevant for all projects within one programme.

<sup>5</sup> If follow up is needed (in case of unfulfilled criterion), option NO should be ticked and the requirement could be described in the "comments" field.

### C) Quality check

Projects selected for funding, irrespective of the selection procedure (call for proposals or direct award), must demonstrate a high technical and managerial quality, sound intervention logic together with consistency between its objectives, results and activities. Moreover, it must help in making a contribution to achieving the objectives of the programme and those set out for each thematic objective (TO) and priority. Key features of a “good” ENI CBC project are: cross-border partnership, effective co-ownership, common benefits and cross border impact. The selected projects should clearly demonstrate compliance with these criteria.

Taking into consideration the fact that direct award projects shall not be the subject of competition procedures applicable to open calls for proposals, the quality check in this case shall have a form of verification whether the respective quality criteria are met or not (awarding points for particular sections of the evaluation grid is not relevant).

No	Requirement	Yes	No	Comments <sup>6</sup>
1	<i>The applicant and partners have the necessary capacity for project implementation.</i>	<input type="checkbox"/>	<input type="checkbox"/>	
2	<i>The project is compliant with the selected TO/ priority and contributes to the achievement of programme objectives and indicators.</i>	<input type="checkbox"/>	<input type="checkbox"/>	
3	<i>The project demonstrates a clear cross-border effect. It contributes to the strengthening of cross- border cooperation (provides benefits for both sides of the border, creates the basis to develop cross-border cooperation/ demonstrates clear links to future cross-border cooperation, etc.).</i>	<input type="checkbox"/>	<input type="checkbox"/>	
4	<i>The level of involvement of all partners in the project implementation is satisfactory.</i>	<input type="checkbox"/>	<input type="checkbox"/>	
5	<i>Target groups, final beneficiaries and geographic coverage are well defined.</i>	<input type="checkbox"/>	<input type="checkbox"/>	
6	<i>The project activities and results are well defined and consistent (i.e., implementation of activities leads to achievement of the results).</i>	<input type="checkbox"/>	<input type="checkbox"/>	
7	<i>The project’s intervention logic is well designed and there is sound consistency between its objectives, results and activities.</i>	<input type="checkbox"/>	<input type="checkbox"/>	
8	<i>Indicators identified at the level of outputs and results are objectively verifiable.</i>	<input type="checkbox"/>	<input type="checkbox"/>	
9	<i>The logical framework is well designed.</i>	<input type="checkbox"/>	<input type="checkbox"/>	

<sup>6</sup> If follow up is needed (in case of unfulfilled criterion), option NO should be ticked and the requirement could be described in the “comments” field.

10	The expected results of the project are of sustainable character.	<input type="checkbox"/>	<input type="checkbox"/>	
11	The proposed budget is transparent and adequately related to the planned activities.	<input type="checkbox"/>	<input type="checkbox"/>	
	The budgeted expenditures are necessary for the implementation of the project activities.			
12	The capacity building component is sufficiently described and linked to the infrastructure component of the project <sup>7</sup> .	<input type="checkbox"/>	<input type="checkbox"/>	
13	Monitoring and evaluation arrangements are sufficient for the type of project/ partnership.	<input type="checkbox"/>	<input type="checkbox"/>	
14	The planned information and communication activities ensure that appropriate information is communicated to the public.	<input type="checkbox"/>	<input type="checkbox"/>	
	Visibility measures are relevant to the project activities.			
15	The project sufficiently addresses the following cross-cutting issues, where relevant: democracy and human rights, environmental sustainability, gender equality and HIV/AIDS.	<input type="checkbox"/>	<input type="checkbox"/>	
16	The project is ready for implementation. The evaluation of the project readiness can be carried out on the basis of the opinion of the expert in charge of evaluating the external infrastructure component of the project, who shall check the project readiness on the basis of the following annexes <sup>8</sup> :			
	<ul style="list-style-type: none"> <li>➤ A full feasibility study including: the options analysis, the results, and independent quality review;</li> <li>➤ Environmental Impact Assessment (EIA) in compliance with the Directive 2011/92/EU of the European Parliament and of the Council;</li> <li>➤ Evidence of ownership by the beneficiaries or access to the land;</li> <li>➤ Building permit<sup>9</sup>;</li> <li>➤ Other annexes required by the national legislation in force</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	

### IMPORTANT!

- Please note that it is up to the programme to decide on the level of details which shall be assessed during each evaluation step (project summary/ full project application). The same refers to the stage on which the annexes shall be submitted.
- Article 43 of the ENI CBC IRs on content of the projects refers to the full project application.

<sup>7</sup> The capacity building component should be understood as a soft component related to the infrastructure investment. The exceptional cases when this soft component may be lifted refer to cases when it can (and shall) be demonstrated that the soft component would not bring any added value

<sup>9</sup> Exceptionally and in duly justified cases, the Managing Authority may accept a later submission of the building permit.

#### 4. Approval of LIPs and other projects to be selected with the use of direct award procedure

Based on the check conducted either by internal assessors<sup>10</sup> or by external experts, first the project summary and then the full application shall be sent to the JMC for approval. The decision of the JMC should have the form of a written recommendation for the respective project. The JMC may also impose some requirements to each project, reflecting how it complies with the criteria presented in JOP/guidelines for direct award projects. The project summaries and completed full application forms, **including a justification for the use of a direct award procedure** and together with all necessary supporting documents and JMC recommendations, shall be then submitted to the European Commission, that shall check first of all the relevance of the project summary and then full application form, if necessary in cooperation with other Directorate Generals, and make the final decision on project funding.

#### 5. Retroactive award

The ENI CBC IRs give the possibility for programmes to award the grant retroactively, that is, the start of implementation date is prior to the date of the award. In any case, the date has to be set after the submission of the first step of the award procedure, that is, the submission project summary. This option in the Implementing Rules cannot be mixed with preparation costs, mentioned in article 48.4.

##### **Article 48.3 of the ENI CBC IRs**

*A grant may be awarded retroactively in the following cases:*

- (a) where the applicant can demonstrate the need to start the project before the contract is signed. Costs eligible for financing shall however not have been incurred prior to the date of the submission of the grant application; or*
- (b) for costs related to studies and documentation for projects including an infrastructure component.*

*No grant may be awarded retroactively for projects already completed.*

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<sup>10</sup> Employees of the Managing Authority or of the Joint Technical Secretariat.

In addition, and if allowed at the programme level, beneficiaries will have a possibility to finance all costs related to, for example, the preparation of technical documentation, feasibility study and other specific documents necessary for the implementation of project activities.

**IMPORTANT!**

- ENI CBC IRs do not provide any details concerning the starting date of the eligibility for retroactive costs. This is why the exact period of eligibility for this type of costs shall be set at programme level.
- Programmes may also consider setting a maximum limit (in form of an absolute amount or percentage) for retroactive costs.
- Costs related to studies and documentation for projects may include costs for staff, travel and accommodation, office and administration, external expertise and services.
- Please note that projects awarded with the use of direct award procedure can only benefit from the provisions of article 48.3 of the ENI CBC IRs.
- Article 48.4 of the ENI CBC IRs is applicable only to projects selected through calls for proposals.