

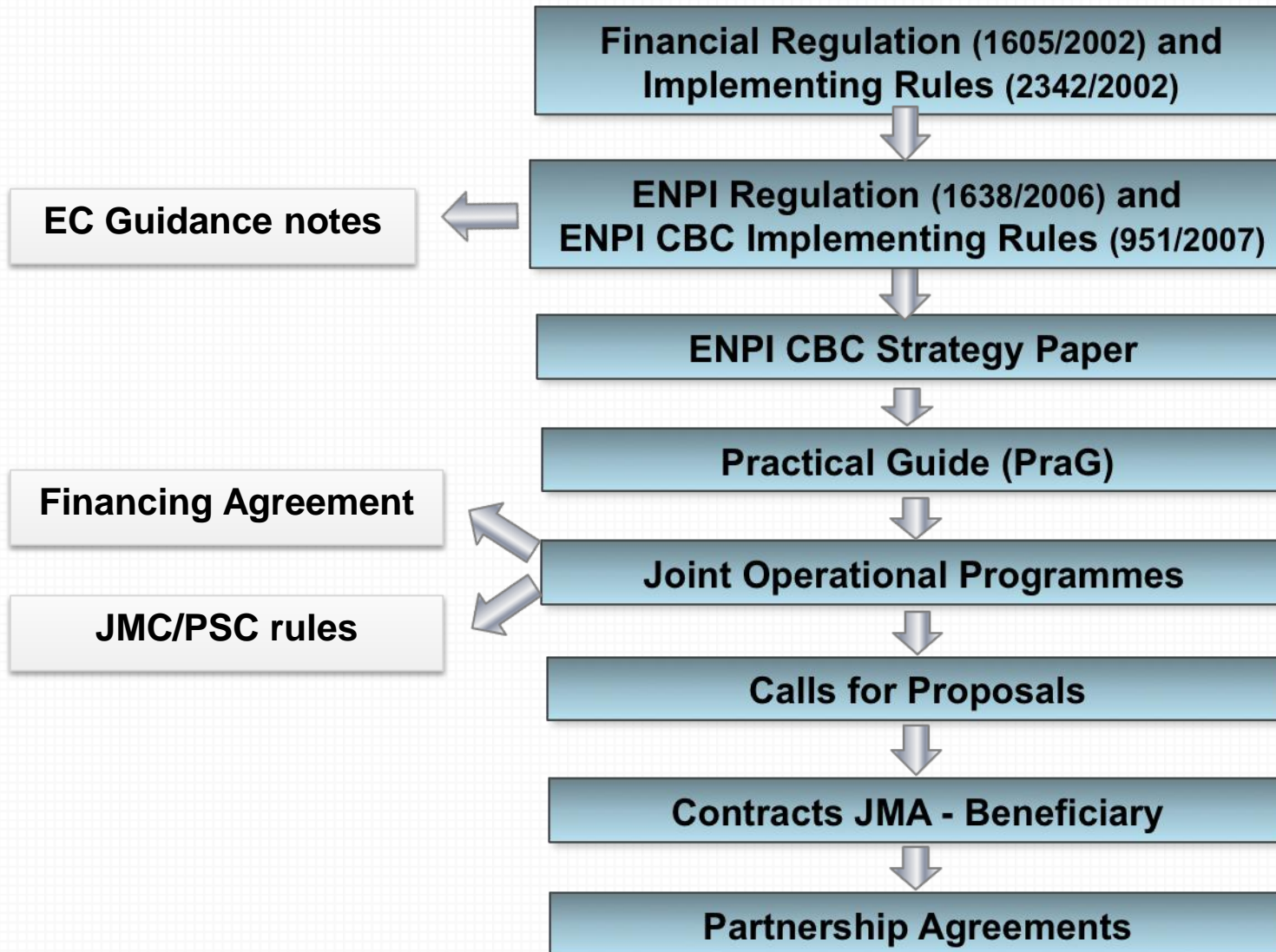
Legal Framework

**Seminars for auditors and financial
managers/accountants**

Riga, Tartu and Pskov, April 2012



Overview of ENPI CBC legal framework



Financial Regulation (1605/2002) and Implementing Rules (2342/2002)

Set the scope of grants, the procedure for awarding them and the arrangements for payment and controls.

Grants are direct financial contributions, by way of donation, from the budget in order to finance:

- either an action intended to help achieve an objective forming part of an EU policy;
- or the functioning of a body which pursues an aim of general European interest or has an objective forming part of an EU policy.

Grants are awarded subject to the principles of transparency and equal treatment.

They may not be cumulative or awarded retrospectively and they must involve co-financing.

Nor may the grant have the purpose or effect of producing a profit for the beneficiary.

All grants awarded must be published annually with due observance of the requirements of confidentiality and security.



Financial Regulation (1605/2002) and Implementing Rules (2342/2002)

TITLE VI Grants

Chapter 2: Award principles

art. 165 Non profit rule: *in the case of a grant for an action, profit means a surplus of receipts over the costs incurred by the beneficiary when the request is made for final payment;*

Art. 165a Co-financing principle;

Art. 172 External co-financing

Art. 172a Eligible costs

Art. 175a Eligibility criteria



Financial Regulation (1605/2002) and Implementing Rules (2342/2002)



TITLE VI Grants

Chapter 4 Payments and control

Art. 180 Supporting documents for requests for payment

A certificate on the financial statements and underlying accounts, produced by an approved auditor, or, in the case of public bodies, by a competent and independent public officer, may be demanded by the authorizing officer responsible in support of any payment on the basis of his risk assessment.

In the case of a grant for an action or of an operating grant, the certificate shall be attached to the request for payment. The certificate shall certify, in accordance with a methodology approved by the authorizing officer responsible, that the costs declared by the beneficiary in the financial statements on which the request for payment is based are real, accurately recorded and eligible in accordance with the grant agreement.



ENPI Regulation (1638/2006) and Implementing Rules (951/2007)



ENPI Regulation (1638/2006)

Art. 21: participation in tenders and contracts (rule of origin and nationality, procurement rules);
Art. 22: pre-financing (interest).

Implementing Rules (951/2007)

Art. 23: contractual procedures;
Art. 36: eligibility of costs for projects;
Art. 39: national control systems;
Art. 40: bodies participating in projects;
Art. 41: nature or projects;
Art. 43: duration of JOP;
Art. 45: keeping of documents.



What is 'PraG'?

- Working tool
- Describes procedures and related standard documents and contract templates to be used for ENPI CBC
- Specificities of the Programme to be taken into account (e.g. Special Conditions to the contract , specific rules defined in the JOP)



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

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Practical Guide and General annexes

The Practical Guide is the first sole working tool, which explains the contracting procedures applying to all EU external aid contracts financed from the European Union general budget (Budget) and the 10th European Development Fund (EDF).

2008 Practical Guide and general annexes. Applicable for 1 January 2009. For 2007 annexes, please consult the archives.

[Practical guide to contract procedures for EC external actions \(updated version after Lisbon Treaty\)](#) [704 KB] [de](#) [es](#) [fr](#) [pt](#)

[Summary of changes to the PRAG 2008](#) [505 KB] [fr](#)

[Corrigendum](#) [57 KB]

Contracting

- [Practical Guide](#)
- [Eligibility](#)
- [Per Diems](#)
- [General annexes](#)
- [Services annexes](#)
- [Supplies annexes](#)
- [Works annexes](#)
- [Grants annexes](#)
- [International Organisations, National Agencies and other donors](#)

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General annexes as well as a specific set of annexes regarding grants



PRAG-Chapter 6 GRANTS

6.2.3 Eligibility criteria

Rule of nationality; exceptions to the rule of nationality; grounds for exclusion;

6.2.5 Transparency

6.2.6 Equal treatment

6.2.7 Non-cumulation

6.2.8 Non retroactivity

6.2.9 Co-financing

6.2.10 Non profit

6.7 Modifying grant contracts

6.8 Procurement by grant beneficiaries



Lead partner's responsibilities

- lays down the arrangements for its relations with the Partners participating in the Action in an agreement (Partnership Agreement) comprising, inter alia, provisions guaranteeing the sound financial management of the funds allocated to the Action, including the arrangements for recovering amounts unduly paid
- ensures the implementation of the entire Action;
- responsible for transferring the ENPI contribution to the Partners participating in the Action.
- responsible for the verification of project's expenditures by an approved auditor in accordance with PRAG and submission of requests for payment to the Joint Technical Secretariat on the basis of the Grant Contract;
- ensures that the expenditure presented by the Partners participating in the Action has been paid for the purpose of implementing the Action and corresponds to the activities agreed between the Partners participating in the Action;



Partnership Agreement

1. Compliance with Programme legal basis
2. Full name and address of the Beneficiary and its legal status;
3. Full name and addresses of each Partner
4. Description of partners' role in the project (Beneficiary or Partner)
5. Subject of the Partnership Agreement
6. Duration of the Partnership Agreement
7. Responsibilities of the Beneficiary and other partners;
8. Rights and obligations;
9. Method of the decision making and communication in partnership
10. Division of tasks between the Partners *in accordance with the project's schedule*;
11. Description of the cooperation with external entities
12. Budget and Payments
13. Reporting and monitoring responsibilities;
14. Recovery of funds;
15. Financial Control and Audit;
16. Information and Promotion;
17. Assignment, legal succession (including intellectual property, etc);
18. Revenue generation;
19. Non-fulfilment of obligations, delay, withdrawal;
20. Modifications and termination of the agreement;
21. Dispute Resolution;
22. Applicable law
23. Others



Your contract outline (1)

- **Special conditions**
 - Article 1 – Purpose
 - Article 2 - Implementation period of the Action
 - Article 3 - Financing the Action
 - Article 4 - Narrative and financial reporting and payment arrangements
 - Article 5 - Contact addresses
 - Article 6 – Annexes
 - Article 7 - **Other specific conditions applying to the Action**



Your contract outline (2)

- **Annexes:**
 - Annex I: Grant Application Form
 - Annex II: General Conditions applicable to European Community-financed grant contracts for external Actions
 - Annex III: Budget for the Action
 - Annex IV: Contract-award procedures
 - ...



Your contract outline (3)

...

- Annex V: Standard request for payment and financial identification form
- Annex VI: Model narrative and financial report
- Annex VII: Model report of factual findings and terms of reference for an expenditure verification of an EC financed grant contract for external actions
- Annex VIII: Model financial guarantee



What comes first?

- **The provisions of the Special Conditions take precedence over ALL the Annexes: check art. 7 for additions/derogations!**
- **Annex II (General Conditions applicable to European Community-financed grant contracts for external Actions) takes precedence over the other annexes**

Read first those 2 documents carefully!

