

Interreg IPA CBC Italy–Albania–Montenegro Programme

PROGRAMME MANUAL

3.3 Financial guarantee for private partners

<i>Current version</i>	01
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Introduction

According to Art. 37 of the Commission Implementing Regulation (IPA IR) (EU) No 447/2014 recalling Art. 125 paragraph 3 letter d) of Reg. 1303/2013 common provisions of ESI funds, the Managing Authority shall make sure that the Beneficiary has financial and operational capacity. Therefore, the Managing Authority provides for a financial guarantee applying to private lead partners in order to satisfy that the beneficiary has the financial capacity to fulfil the conditions required in the Subsidy Contract, in particular in case of financial corrections due to irregularities or systemic irregularities or payment suspensions.

In case private bodies are involved as lead partners, they shall provide the MA a financial guarantee according to EU standards¹ for an amount corresponding to the whole EU pre-financing amount for the duration specified in the subsidy contract, as a pre-condition for the MA to sign the Subsidy Contract.

The purpose of the guarantee is to make a bank or a financial institution as irrevocable collateral security for, or first-call guarantor of, the grant beneficiary/project partner's obligations.

This financial guarantee shall be provided by an approved bank or by a financial institution² legally established in one of the Partner States. The costs related to the financial guarantee is an eligible expenditure. Amounts blocked in bank accounts shall not be accepted as financial guarantees. The guarantee shall be released after the project closure, in accordance with the conditions laid down in the Subsidy Contract.

Legal references: Reg. 1303/2013 art. 125

¹ In case of private partners located in IPA Partner States, the identified private bank or public financial institution can provide the guarantee if it offers equivalent security and characteristics as those offered by a bank or financial institution established in an EU Member State. The MA reserves the right to require a certification by a bank or financial institution legally established in EU Member State.

² For private non-profit partners located in Albania, the national body legally responsible to act as guarantor may be the Ministry of European Integration, which guarantees for any amounts of Union pre-financing received by partners, by confirming in writing to the MA to undertake the liability towards the MA, i.e. to reimburse any unduly paid amounts of pre-financing received by private non-profit partners located in Albania, if not yet repaid to the MA by the partner.

ANNEX 1: MODEL OF FINANCIAL GUARANTEE

Model of financial guarantee defining the minimum requirements of the guarantee to be issued by a financial institution (bank, insurance company or public body) - to be printed on the Guarantor headed paper

Guarantee beneficiary - Creditor:
Interreg IPA CBC Italy-Albania-Montenegro Managing Authority
Regione Puglia
Dipartimento Sviluppo Economico
Corso Sonnino
Bari, Italy
VAT-Number

§ 1. Subject

Financial Guarantee for the benefit of [name of the LP institution] acting as Lead Partner of the Project [number and acronym] selected for funding within the Interreg IPA CBC Italy-Albania-Montenegro Programme 1st Call for standard projects.

§ 2. Legal basis

The legal provision for the issue of the present financial guarantee (hereinafter referred to as "Guarantee") is based on the Applicants Manual for the First call of the Interreg IPA CBC Italy-Albania-Montenegro Programme and other relevant programme rules, approved by the Programme Joint Monitoring Committee.

§ 3. Payment

The [name of the institution providing the guarantee] (hereinafter referred to as "Guarantor") hereby irrevocably assumes a guarantee obligation pursuant to art. 1936 of the Italian Civil Code up to a maximum of [pre-financing amount]. The Guarantor herewith irrevocably undertakes to make payments to the Beneficiary upon the Guarantee Beneficiary's first demand up to the above amount, without any examination of the legal grounds and waiving any defenses, within 10 working days from the receipt of the written demand of the Guarantee Beneficiary (hereinafter referred to as the "Letter of Demand"). Partial drawings on this Guarantee are permitted. This Guarantee may be called in at any time by the Guarantee Beneficiary during the period specified under § 4 by sending the Letter of Demand, which shall also include a statement that the lead partner has failed to fulfill its obligations under the Subsidy Contract and specifying the amount being claimed in EUR.

The Guarantor will execute the guarantee only on presentation of such a document signed by the Guarantee Beneficiary. It is herewith expressly stated that no further requirements are necessary for drawing the Guarantee, and that the Guarantor shall not be in a position to withhold payment of the demanded amounts from the Guarantee Beneficiary or require any further documents or declarations from any party.

§ 4. Duration and termination of the Guarantee

The Guarantee shall expire after the final payment to [name of the LP institution] related to the Project Final Report as defined in the Subsidy Contract.

If the final date of the project is extended for whatever reason and the final payment is postponed, a new or an extended guarantee for the same amount shall be provided. The duration of this extended or new guarantee shall be reasonably determined by the Guarantee Beneficiary with a reasonable safety margin.

§ 5. Applicable Law and Jurisdiction

This Guarantee and the effect given to it are governed exclusively by Italian law.

Any dispute relating to this Guarantee or to any payment made in the context thereof shall be exclusively decided by the competent court in Bari. Legal proceedings will be in Italian.

§ 6. Miscellaneous

Any modification and amendment to this Guarantee shall be made in writing. All notices and declarations pursuant to this Guarantee shall be made in writing.

All costs, if any, resulting from the establishment of this Guarantee, including, but not limited to, all advisors' fees, shall be borne by such party where they occurred.

All stamp duties arising in connection with the establishment or performance of this Guarantee (if any) shall be borne by the Guarantor.

[Name of Guarantor/responsible person]

[Stamp and date]