

DEROGATION

Interreg IPA CBC
Italy–Albania–Montenegro Programme

PROGRAMME MANUAL

Derogation on original documents for COVID-19 emergency

Version:

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Contacts

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REGIONE PUGLIA

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Simplification Scheme for reporting of expenditures due to the COVID-19 outbreak

The COVID-19 outbreak has affected Member States in a sudden and dramatic manner and will have implications on the implementation of EU programmes, including Interreg IPA CBC. The Commission has proposed a Coronavirus Response Investment Initiative (CRII) to flexibly respond to the rapidly emerging needs. Furthermore, the Commission is open to discuss with Member States the best possible ways to use the European Structural and Investment Funds to mitigate the impact of the coronavirus crisis and intends to assign top priority to adopting all decisions needed for the fast deployment of funds.

The European Commission has proposed concrete measures to address the COVID-19 emergency, within the cohesion and enlargement policies, with proposals to amend the Regulations on European Structural and Investment Funds ([COM\(2020\)/112](#), [COM\(2020\)/113](#), [COM\(2020\)/114](#)).

Several Member States have raised the question whether the outbreak can be regarded as an instance of **force majeure**. That general principle of law is of restricted scope and describes a situation in which a person is completely prevented from complying with an obligation regardless of his will. In European Union law, the notion of force majeure generally presupposes circumstances which a) are abnormal and unforeseeable, b) are beyond the control of the one claiming 'force majeure', and c) could not have been avoided despite the exercise of all due care. Where Union law refers to reasons of force majeure, all three conditions set out by the Court of Justice have to be fulfilled and properly demonstrated on a case-by-case basis. Force majeure may be conceived even more restrictively under national law (e.g. art. 1256 of Italian Civil Code).

There may be instances in which circumstances resulting from the COVID-19 outbreak qualify as a force majeure event and thus constitute a valid justification for the incapacity to comply with an obligation. However, it is not clear that the outbreak is necessarily to be regarded as a force majeure event in all cases. Instead, the Commission considers that careful analysis and flexibility should be given to all cases where there is failure by beneficiaries to fulfil obligations in a timely manner for reasons related to the COVID-19 outbreak (for example, the unavailability of staff due to quarantine in a country because of the outbreak). Equally, the Commission will follow the same principles in assessing the compliance of Member States with their obligations.

In any case, all due care must be taken to avoid, mitigate and minimise the consequences of the event. Where the execution of contracts is impeded because of COVID-19, for example, due to unavailability of key staff or products or subcontracted works or services because of the impact of the COVID-19, which may be regarded as force majeure, the Managing Authority should exercise its discretion in permitting substitute performance or delayed performance to be defined case by case.

Therefore, the current emergency is having an impact on working methods and projects implementation in all our countries. This exceptional situation requires us to adopt some derogation procedures.

Furthermore, it should be recalled that any new contract and/or modifications of the existing contract(s) under the operations at stake have to be in line with public procurement rules, where applicable.

For this reason and in order to address the obstacles in collecting required documentation due to the restrictions of movement imposed during the COVID-19 emergency, the Managing Authority proposes some flexibility rules applicable to the reporting procedures:

with express derogation to the Programme Manual (i.e. Chapter 4 Implementation):

- in all cases where the original signature on documents may not be obtained, the use of e-signature is allowed and encouraged, in compliance with specific national rules and electronic protocols and provided that authenticity certificates are made available together with the signed document;
- in all cases where the e-signature is not possible and where it is not possible to collect, to scan and submit documents, which need an official signature in original (e.g. timesheets, official assignment, payslips, original contract, certificates, etc...), or which need a stamp (e.g. stamped invoices, stamped travel documents, etc.), the same documents are exceptionally admitted also without signature/stamp, provided that they are accompanied by a declaration by the legal representative (or its delegated person) attesting origin and authenticity¹, including applicable stamp, to the purpose of verification. The same applies to documents submitted in original hard copy to Programme bodies.

The formation and collection of the signed/stamped originals is reserved for an earliest possible deadline, when the restrictions for the COVID-19 emergency end, in any case before project closure or upon request of any Programme body².

The flexibility rules are exceptional and temporary and they will be in force as long as the emergency state established by the Government remain in effect.

The JS or NIPs may promptly notify the Beneficiaries, when the emergency state is ended.

¹ See template in annex.

² Documents to be uploaded on the eMS in the attachment section of the report, as an exception to the general rule of using the attachment section related to each single expenditure item.

ANNEX
TEMPLATE FOR A DECLARATION ON AUTHENTICITY OF DOCUMENTS

The undersigned(Name Surname), born in(Place),.....(Country) on(Date), legal representative of (name of the organisation of the project partner) (or delegated by the legal representative with delegation dated - to be attached-), aware of the legal penalties of civil and criminal law, in case of false declarations, while drafting or using public statements, as recalled by art. 76 of Italian DPR no. 445 of 28/12/2000, under own responsibility,

DECLARES

that following documents correspond to its origin and are authentic, to be duly signed or stamped with (add stamp description-text) in original,
-.....;
-.....;
(add list of documents),
and they may not be provided with signature/stamp, because of current *force majeure* circumstances, i.e. the restrictions of the emergency situation of the COVID-19.

He she commits to provide these originals at the earliest possible deadline, when the restrictions for the COVID-19 emergency end, in any case before project closure or upon request of any Programme body.

He/she gives his/her consent to use this data to the sole purpose of management verifications or audits of the Interreg IPA CBC Italy-Albania-Montenegro, pursuant to article 37 of the IPA Implementing Regulation of the European Commission (EU) No 447/2014.

(signature) (*)

Place and date

* Copy of valid identity document of the signatory to be attached