



The 2014-2020 Interreg Programme Management Handbook is composed of fact sheets. Each theme is covered by one fact sheet so that the reader can easily and quickly choose the relevant fact sheet.

Fact Sheet: **Complaints Procedure (Art. 74(3) CPR)**

1. What is it? What is the definition of the term / theme of this fact sheet?

‘Complaints procedure’ is, according to Art. 74(3) CPR, an effective arrangement for the examination of complaints concerning the ESI Funds.

2. Why we are discussing it?

During programme implementation, far-reaching decisions are taken first and foremost with the decision to fund or to reject a project application. Art. 74(3) CPR requires that *“Member States shall ensure that effective arrangements for the examination of complaints concerning ESI Funds are in place.”* Art. 74(3) CPR does not specify further any details of the complaints procedure to be set up; e.g., against which legally binding decision a complaint can be lodged. Rather, it leaves the responsibility for setting the scope, rules and procedures concerning a complaints procedure to *“the responsibility of the Member States in accordance with their institutional and legal framework.”*

3. Reference to the regulations and what is new in the 2014-2020 programming period compared with the 2007-2013 programming period

In 2007-2013, some programmes excluded any possibility for rejected project applicants to complain against a negative funding decision. As stated above, Art. 74(3) CPR now requires that in the 2014-2020 programming period there is a complaints procedure in place (however, not necessarily limiting complaints to negative funding decisions).

Legislative framework:

- CPR Regulation (EU) No 1303/2013 article 74(3)

4. Challenges and frequently asked questions

The requirement to set up a complaints procedure includes several challenges. Firstly, that in an Interreg context more than one Member State is involved in the decision-taking process. This leads to the question of the relation of a programme complaints procedure jointly agreed by several Member States to the national legal framework of the country the programme authorities (MA, CA) are located in. Secondly, the question of which legal body finally takes the formal, legally-binding decision which is questioned in the complaints procedure, most prominently, the positive/negative funding decision? And thirdly, the question on which grounds a complaint can be based? Only on technical-formal failures in the decision-taking process (like violations of the principles of transparency, fair and equal treatment, neglecting information, etc.), or on the opinion of the complaining party, the evaluation of the quality, strategic relevance, etc. (in comparison to other ‘competing’ applications) and hence the funding decision is perceived as “wrong”?

5. How they are addressed?

As Art. 74(3) CPR leaves all the flexibility and responsibility to the Member States as regards the scope, rules and procedures concerning the complaints procedure. There is no one single arrangement that fits all. However, together with representatives of Interreg programmes, of national responsible ministries and the



European Commission, INTERACT has worked out a draft Harmonised Implementation Tool (HIT) description of a complaints procedure and made it available on the INTERACT website.¹ The main idea behind this was to develop a unified complaints procedure within a programme for multi-country Interreg programmes, not replacing national court procedures, but in the best case scenario avoiding them.

6. How does it work in practise?

In short, the complaints procedure follows the following steps: the addressee of the legally-binding decision submits the complaint to the MA. Then the MA conducts a technical examination of the complaint and sends it to a Complaints Panel.² The Complaints Panel then reviews the complaint, not the funding decision, and decides whether or not the complaint is justified. If the panel finds the complaint justified, it sends the case back to the Monitoring/Steering Committee to review the project application and its evaluation. Meaning, the Complaints Panel will never take a decision on the project application itself (funding decision), but only if the complaint as such is justified or not. It is then up to the Monitoring/Steering Committee to reconsider its original decision. In the best case scenario, the case is thus solved. But naturally, the addressee of the decision has every right to follow national court procedures in the country where the Managing Authority is located. The latter cannot be excluded by the programme.

With this ‘programme-internal’ complaints procedure, a conflict with national legislation and national court procedures is avoided, as the programme complaints procedure is launched and completed before any national court procedure. The complaint is directed against the decision by the Managing Authority as the legal body issuing the positive (subsidy contract) or negative funding decision (rejection). For a legal complaints procedure it is relevant that the complaint is raised against a legal body. As a legally binding decision can be taken only by a legal body and as the Monitoring respectively Steering Committee are not legal bodies, but the Managing Authority is, it is the decision of the latter the complaint should be raised against. This, though, does not undermine the essential role the committee plays in the decision-taking process and the complaints procedure, as in the end the funding decision might be returned to and reviewed by the committee. Finally, the HIT Complaints Procedure can be based only on the fact that the outcome of the technical and/or quality evaluation of the project application, based on the selection criteria approved by the Monitoring/Steering Committee, does not correspond with the information provided by the Lead Partner during the project evaluation and selection process; and/or that the project evaluation and selection process failed to comply with specific procedures laid down in the Cooperation Programme, Programme Manual, Call documents etc. that materially affected or could have materially affected the decision.³

7. Good practice examples

The HIT Complaints Procedure is based on experience and input from different programmes, national responsible authorities, the European Commission and INTERACT. An overview of several, if not all, Cooperation Programmes and how they have set-up their complaints procedure and possibly also the first cases where these procedures were applied in reality, will then provide actual good practice examples.

8. Reference to other, more detailed papers

- HIT Complaints Procedure available at http://www.interact-eu.net/focus_on_etc_2014/2014_2020_interact_s_help_and_support/512/17407.

¹ http://www.interact-eu.net/tools_for_project_selection/tools_for_project_selection/589/17410

² The Complaint Panel is a body established by the programme to review the complaint. Details can be found in Art. 7 of the HIT Complaints Procedure.

³ A complaint against a decision of the MA or CA during project implementation based on the subsidy contract concluded between the MA and the Lead Partner follows the rules laid down in the subsidy contract. Complaints related to FLC, Second Level Control and Audit have to be lodged to the responsible national authority according to the applicable national rules.