

## Use of flat rates defined in the FEAD Regulation

### I. Introduction

Food and/or basic material assistance operational programmes (OP I), co-financed by the Fund for European Aid to the Most Deprived (FEAD) make extensive use of flat rate financing provided for in Regulation (EU) No 223/2014<sup>1</sup> (FEAD Regulation) as a way to lower the administrative burden and simplify the management of operations. In the case of flat rate financing, specific categories of eligible costs, which are clearly identified in advance, are calculated by applying a percentage fixed *ex ante* to one or several other categories of eligible costs.

The aim of the current document is to outline the categories of eligible costs under OP I, which are calculated by applying a flat rate, and provide further guidance on what types of checks are expected in relation to them. The final chapter focuses on the flat rate defined for technical assistance, which is applicable to both OP I and social inclusion to the most deprived operational programmes (OP II).

### II. Costs of purchasing food and/or basic material assistance

Article 26(2) of the FEAD Regulation establishes the costs eligible for support from OP I. According to this provision, a percentage is applied to the costs for purchasing food and/or basic material assistance (**Article 26(2)(a) FEAD Regulation**) to calculate several other eligible categories of cost. Therefore, first and foremost, it is important to clarify which costs may be considered as costs of purchasing food and/or basic material assistance" (i.e which costs may be covered by Article 26(2)a).

The FEAD Regulation does not provide for a definition of "costs for purchasing food and/or basic material assistance. Therefore, these costs may cover, at least, the following:

-cost of the food and/or basic material assistance: As a general rule, given that in most cases the purchase is subject to public procurement, the costs of the food and/or basic material assistance should correspond to the price in the tender (actual costs incurred and paid by the beneficiary).

-cost for the delivery of food/basic material assistance either to the public body purchasing them or directly to the partner organisation.

### III. Flat rates under OP I

As explained above, most of the eligible costs under OP I are calculated on the basis of a flat rate which is applied to the costs of purchasing food and/or basic material

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<sup>1</sup> This document focuses on flat rates established by the FEAD Regulation. It is also possible, where applicable, to define flat rates, unit costs or lump sums at national level using one of the methodologies under Article 25(3)(a), (b) or (d) of the Regulation.

assistance. This section outlines the main eligible categories of costs calculated on the basis of a flat rate.

➤ **Costs of transporting food or basic material assistance and storage costs borne by the purchasing body**

Article 26(2)(b) FEAD Regulation determines that where a public body purchases the food or basic material assistance and provides them to the partner organisations, the costs of storing and transporting the food and/or basic material assistance to the storage depots of the partner organisations shall be calculated on the basis of a flat rate of 1% of the costs of purchasing food and/or basic material assistance referred to in point (a) or, in duly justified cases, costs actually incurred and paid.

As explained in section I, costs of transporting food or basic material assistance may be declared under point (a) of Article 26(2) FEAD Regulation. This is the case when they are included in the costs of purchasing food and/or basic material assistance.

Therefore, it is important to clarify the situations to which points (a) and (b) apply. The dividing line between Article 26(2)(a) and (b) of the FEAD Regulation is whether the tender for purchasing the food and/or basic material assistance covers the delivery of food to the partner organisations or not:

If the tender on the purchase of food and/or basic material assistance also covers the transportation of the assistance<sup>2</sup> to the partner organisations, the situation falls under Article 26(2)(a) FEAD Regulation. Therefore, in that case, all costs of purchasing food and/or basic material assistance should be declared under point (a).

If the tender does not cover the transportation of food to partner organisations (i.e the public body incurs costs for storage and/or subsequent transportation to the partner organisations) the situation falls under Article 26(2)(b) FEAD Regulation.

Where Article 26(2)(b) FEAD Regulation applies, the costs shall be calculated on the basis of a flat rate of 1% of the costs of purchasing food and/or basic material assistance. The provision, however, also gives the possibility for costs to be reimbursed on the basis of **real costs in duly justified cases**. When a Member State decides to declare expenditure on the basis of real costs, there should be a justification why it would cost the public body more than 1% of the costs for purchasing the assistance to store it and transport it to the partner organisations. Such a justification does not need any certification by an independent body

➤ **Administrative and/or transport and/or storage costs borne by partner organisations**

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<sup>2</sup> It should be noted that in certain cases the tender may specify the different costs covered by the contract - for the food and for the delivery to the partner organisation. All costs are considered costs of purchasing food and/or basic material assistance, irrespective of being specified in the contract or not because the delivery of the products to the partner organisation is instrumental to the purchase.

Article 26(2)(c) FEAD Regulation determines that the administrative and/or transport and/or storage costs borne by the partner organisations are eligible and shall be calculated at a **flat rate** of 5% of the costs of purchasing food and/or basic material assistance referred to in Article 26(2)(a) FEAD Regulation. Alternatively, if food products are obtained through stocks in accordance with Article 16 of Regulation (EU) No 1308/2013, 5% of their accounting value will be eligible to cover administrative and/or transport and/or storage costs borne by the partner organisations.

➤ **Costs of accompanying measures, undertaken and declared by partner organisations**

Article 26(2)(e) FEAD Regulation determines that the costs of accompanying measures, undertaken and declared by the partner organisations, delivering assistance directly or under cooperation agreements to the most deprived are eligible and shall be calculated at a **flat rate** of 5% of the costs of purchasing food or basic material assistance<sup>3</sup>.

**All of the above flat rates are fixed and do not need any justification on the rates. The Member State has to decide, depending on the national specificities, capacity of partners, etc. whether to cover or not these types of costs at all from the FEAD operational programme. In case they are supported by the FEAD programme, the costs shall be calculated on the basis of the flat rates<sup>4</sup>, unless otherwise specified in Article 26(2) FEAD Regulation**

**IV. When can the amounts, calculated by applying flat rates under Articles 26(2)(b), 26(2)(c), and 26(2)(e) FEAD Regulation be declared to the Commission?**

Pursuant to Article 32(4)(a) FEAD Regulation managing authorities have the obligation to verify that the co-financed products and services have been delivered. This obligation also applies to the services that will be reimbursed on the basis of the fixed flat rates. That is why it is necessary for the delivery or distribution to actually take place before the Member State can declare the corresponding amounts to the Commission (see also Article 33 (a) FEAD Regulation on the obligations of the certifying authority).

In particular, Member States may apply for reimbursement for the amounts under the flat rates at the following moments:

- After the assistance has been delivered from the public body to the partner organisations, in the case of the costs calculated on the basis of the flat rate set out in Article 26(2)(b) FEAD Regulation;
- After the assistance has been distributed to the distribution centres and/or end-recipients, in the case of the costs calculated on the basis of the flat rate set out in

<sup>3</sup> Similar to the current possibility under Article 26(2)(c), the Commission Proposal to amend the Financial Regulation (COM(2016)605 final) introduces the possibility to reimburse the costs of partner organisations for accompanying measures at a flat-rate of 5% of the value of food products obtained from intervention stocks.

<sup>4</sup> The managing authorities could choose that not all partner organisations will receive the 5%, but the 5% is presented as the maximum.

Article 26(2)(c) and (e) FEAD Regulation (based on the presumption that the accompanying measures are undertaken with the distribution of the assistance).

NB. If assistance from a single contract is transported and distributed on several occasions throughout the year, after each distribution the Member States may apply for the corresponding eligible amounts. For example, if support is distributed in equal quantities twice during the year, it is possible to apply for  $\frac{1}{2}$  of the eligible amounts under the flat rates after each distribution.

#### **V. What happens to the amounts calculated under a flat rate when a financial correction is applied to the purchasing costs?**

**Current version of Article 26** FEAD Regulation: A financial correction to the purchasing costs will automatically lead to a reduction of the eligible costs calculated on the basis of a flat rate (Article 26(2)(b), (c), and (e) FEAD Regulation) as the purchasing costs are the basis for this calculation.

For a given accounting year the reduction of the eligible costs can be implemented either through a withdrawal<sup>5</sup> in the subsequent payment application if already certified to the Commission, or through a deduction in the accounts if the final application for interim payment has already been submitted.

**Omnibus Regulation:** the Commission has proposed to amend the FEAD Regulation through the Omnibus Regulation<sup>6</sup>. One of the changes proposed by the Commission and agreed by the co-legislators<sup>7</sup> is an amendment to Article 26, which will break the automatic link between the purchasing costs and the corresponding flat rates when the operations are implemented by different bodies. The newly proposed paragraph in Article 26 FEAD Regulation provides that a reduction of the eligible costs referred to in paragraph (2)(a) due to non-compliance with applicable law by the body responsible for the purchase of food and/or basic material assistance, shall not lead to a reduction of the eligible costs of other bodies set out in Article 26(2)(c) and (e) FEAD Regulation. This provision will serve as a safeguard for the grants to partner organisations, as a reduction of the purchasing costs of a public body due to non-compliance with applicable law (i.e. procurement legislation) will not lead to a reduction of the eligible costs of the partner organisations, for purposes of the flat rate calculations.

NB. The amendment should apply retroactively.

If the partner organisation is not at fault for a reduction of the purchase costs (and quantity delivered remains the same), the calculation of the flat rate will be based on the full purchase cost eg in the event that issues have been identified with the public procurement procedure for the purchase of the assistance.

<sup>5</sup> More detailed information can be found in [Guidance for Member States on Amounts Withdrawn, Amounts Recovered, Amounts to be Recovered and Irrecoverable Amounts](#), available on CIRCABC.

<sup>6</sup> COM(2016)605 final

<sup>7</sup> Although the Commission's proposal hasn't yet been formally adopted by the co-legislators there is already a political agreement between the Council and the European Parliament on the amendments concerning the FEAD.

## VI. What kind of checks are expected from the Member States with regard to the activities paid on the basis of flat rates?

Reimbursement of amounts calculated on the basis of flat rates requires that management verifications and audit for these amounts focus on outputs instead of actual costs incurred in operations. That is why authorities, including Commission auditors, will **not** verify the real costs incurred under the categories of expenditure calculated by applying a flat rate, as provided by Article 26(2)(b), 26(2)(c) and 26(2)(e) FEAD Regulation. Checks of the amounts paid to partner organisations will be limited to verifying the correct application of the flat rates on the purchasing costs under Article 26(2)(a) FEAD Regulation and to verifying the correctness of the purchasing costs<sup>8</sup>.

The managing authority has to verify that the products and services co-financed by the FEAD have been delivered<sup>9</sup>. In the case of the amounts calculated on the basis of flat rates this entails:

- In the case of costs calculated on the basis of the flat rate set out in Article 26(2)(b) FEAD Regulation (i.e transport and storage costs by the purchasing body), checks will include verifying:
  - documents proving the delivery<sup>10</sup> of assistance by the public body to the partner organisations
  - that the transportation costs to the partner organisations are not included as part of the contract for the purchase of food in the price of the assistance purchased. This is the case when the supplier delivers the food directly to the partner organisations, in which case, Art. 26(2)(b) FEAD Regulation cannot be invoked as it would imply a double declaration of such costs.
- In the case of costs calculated on the basis of the flat rate set out in Article 26(2)(c) FEAD Regulation (i.e. administrative and/or storage and/or transport costs by partner organisations), checks will cover the obligations of the partner organisations as set out in the document setting out the conditions for support, which fall within the scope of the flat rate. This will typically include a check:
  - for the transportation of assistance along levels of the distribution chain until the distribution centres of the partner organizations (the ones, which are in direct contact with end recipients),
  - for the storage:

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<sup>8</sup> Article 3 of Commission Delegated Regulation (EU) No 532/2014: "Detailed minimum requirements for the audit trail (e) in relation to costs determined in accordance with Article 26(2)(b), (c), (e) and 26(3) second part, of Regulation (EU) No 223/2014, the audit trail shall allow the eligible direct costs or cost declared under other categories of costs to which the flat rate applies to be substantiated.

<sup>9</sup> Article 32(4)(a) Regulation (EU) No 223/2014 (FEAD); Annex I of Delegated Regulation (EU) No 532/2014, List of data to be recorded and stored in computerised form in the monitoring system, lines 21-25

<sup>10</sup> Management verifications should substantiate the costs to which the flat rates apply, including the quantity and the specifications, according to the contract, of the products delivered to the warehouse/distribution point.

- Reconciliation of entry/exit register with the transportation documents (consistency control)
  - Reconciliation of entry/exit register with the physical storage (inventory control)
  - Verification that the stored products are those delivered, as per the contract (to check that there is no substitution of the products delivered to the partner organisation)
  - Verification that the storage conditions are adequate to the products delivered (e.g. fridge),
  - for the administration: other obligations of the partner organisations under this flat rate (i.e. application of the mechanism for identification of the most deprived<sup>11</sup>, publicity requirements, etc.)
- Finally, with regard to the costs calculated on the basis of Article 26(2)(e) FEAD Regulation (accompanying measures by partner organisation), the FEAD Regulation does not define exhaustively the types of accompanying measures eligible for support, as the Member States are expected to tailor them based on the needs of the target group. That is why under Article 26(2)(e) FEAD Regulation the documents necessary for verification of the provision of accompanying measures will depend on the types of measures foreseen in the document setting out the conditions for support. It is important that this document clearly defines what activities distributing partner organizations have to undertake given the amount available for this purpose. Organisations will have to demonstrate that accompanying measures have taken place for the target group.

NB. In some Member States that implement OP I the costs of accompanying measures are not covered by the FEAD programme. The offer and provision of accompanying measures, however, remains compulsory<sup>12</sup>, except where assistance is provided to deprived children in childcare or comparable facilities. That is why the managing authority has to check whether the partner organisations undertake accompanying measures themselves or in cooperation with other organisations, irrespective of their source of financing.

**The checks to be performed by the managing authorities above imply that the actual costs of the partner organisations for the above categories of costs are not to be checked as they will be calculated on the basis of a flat rate. The managing authority should set up systems and procedures to ensure that all documents regarding the conditions for application of the flat rates (as proposed above) are held<sup>13</sup>, to ensure an adequate audit trail.**

**The management and control systems have to provide for sufficient administrative and on-the-spot management verifications that take account of the nature of the financed activities. Managing authorities should pay particular attention to perform regular on-the-spot checks during the implementation phase.**

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<sup>11</sup> For more detailed information about audit activities linked to the FEAD end recipients please consult the *Guidelines on the FEAD audit trail, simplified audit procedures and food losses*, available in CIRCABC.

<sup>12</sup> Article 7(4) second subparagraph FEAD Regulation

<sup>13</sup> Article 32(4)(d) FEAD Regulation

## VII. What are the consequences for the audit trail of operations?

The minimum requirements for the audit trail are laid down in Article 3 of Commission Delegated Regulation (EU) No 532/2014. With regard to the OP I flat rates in particular the audit trail will include the documents referred to in Section VI above.

An auditor may attend a distribution point for FEAD assistance, but may only observe the process of distributing the assistance and not engage in interviewing the end-recipients. As audits of operations are performed on expenditure declared to the Commission, it means that by the time an operation is audited, the assistance will have already been distributed and will no longer be at the premises of the partner organisations. Thus, the audit procedures should focus on the verification and assessment of the available supporting evidence of the effective functioning of the management and control system which includes, de facto, substantive testing to confirm any assumptions made in the assessment of the set-up of the management and control systems.

That is why auditors will make use of **system audits** to verify whether Member States have robust management and control systems, which ensure compliance with the FEAD Regulation, including as regards the actual distribution of assistance, the identification mechanism of the end-recipients by the partner organisations in line with European and national eligibility rules, and the provision of accompanying measures. Given the above (particularly the time lag between the distribution and the COM audit work) and respecting the principle of proportionality, the COM audit will check compliance of European and national rules, relying whenever possible, on the work done by the Audit Authorities in application of the single audit principle. It should be noted, however, that the specific restrictions set out in Article 58(2) of the FEAD Regulation regarding the audit trail at the level of end-recipients concern the audit work only and, therefore, management verifications are not limited by these restrictions. Therefore, the managing authority and/or intermediate body concerned should implement the necessary management verifications to ensure the effective delivery of the aid to the target population.

## VIII. How can the managing authority perform a representative sample for management verifications?

Partner organisations should be subject to management verifications. In the case of numerous partner organisations/distribution centres, the managing authority could use a sampling methodology<sup>14</sup>, for obtaining a representative sample, including a risk based sample, for the purpose of management verifications.

## IX. What is the idea behind the flat rate defined in Article 26(3) of the FEAD Regulation?

In technical assistance operations it is possible to apply a flat rate of up to 15% to the eligible direct staff costs to cover the indirect costs<sup>15</sup>. This means that where technical

<sup>14</sup> Guidance on sampling methods for audit authorities – EGESIF\_16-0014-00, 20/01/2017

<sup>15</sup> For definitions of direct and indirect costs, as well as staff costs, please refer to *Guidance on Simplified Cost Options (SCOs): Flat rate financing, Standard scales of unit costs, Lump sums*, available [here](#).

assistance is used to finance direct staff costs, a flat rate of up to 15% may be applied to these costs without justification for calculating the indirect costs.

The 15% is the maximum rate defined in the FEAD Regulation. The Member States may use this rate or a lower one without the need to carry out a specific calculation for establishing that rate.

Simplifying the justification of the indirect costs entails careful verification of the direct staff costs. Any reduction of the amount of the direct staff costs will affect proportionally the amount accepted for the indirect costs.

**Example:** An example could be where technical assistance is used to finance the costs of the organisation. Direct staff costs can be claimed on real cost basis or as unit costs, with a flat rate of 15% applied to this for the indirect costs of the organisation. In this case the managing authorities would need to justify the direct staff costs, but not the indirect costs (telephone, heating, etc).

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