



SUBSIDY CONTRACT

**for the implementation of the
project CB693 HEAT**

Central Baltic Programme 2014-2020



European Union
European Regional
Development Fund

Preamble

The subject matter of this contract is the legally binding agreement on implementation and management of the project CB693 HEAT (Participatory urban planning for healthier urban communities), approved with the identification, partners and budget information as set in Annex 1.

The contract refers to the Application Form as approved by the Steering Committee (Annex 2) and, in case of conditions, by the Managing Authority and set as approved by the Managing Authority in the eMonitoring System. The valid Application Form is always the one in the eMonitoring System. Any modifications are done and approved in the eMonitoring System and they replace the original Application Form.

The contract is signed between the Regional Council of Southwest Finland (hereinafter referred to as the Regional Council) acting as Managing Authority of the Central Baltic programme and the lead partner of the project.

Abbreviations

AA - Audit Authority

Central Baltic programme - Central Baltic Programme 2014-2020

EC - European Commission

ERDF - European Regional Development Fund

EU - European Union

FLC - First Level Control

JS - Joint Secretariat

LP - lead partner

MA - Managing Authority

MC - Monitoring Committee

PP - project partner

SC - Steering Committee

§ 1

Applicable legal framework

The LP guarantees that the project is implemented and managed in accordance of the valid regulations as well as the horizontal policies of the EU, the Programme Manual and valid national legislation.

EU Structural and Investment Funds regulations:

- Regulation (EU) No 1303/2013 referred to as “CPR Regulation”;
- Regulation (EU) No 1301/2013 referred to as “ERDF Regulation”;
- Regulation (EU) No 1299/2013 referred to as “ETC Regulation”.

Community rules:

- Rules for public procurement and entry into the markets;
- Protection of the environment;
- Equal opportunities between men and women;
- State aid/de minimis rules.

Respective national regulations:

- National rules applicable to the LP and PPs in their respective countries.

Programme documents:

- The Central Baltic Programme Document (CCI No 2014TC16RFCB014.), approved by the EC on 16.12.2014, setting the strategy and objectives of the programme;
- The Programme Manual. The LP/PPs must always follow the up-to-date Programme Manual that is published on the programme website www.centralbaltic.eu.

Principles to be applied:

- In case EU regulations are in place for a certain topic, these take precedence. In the absence of EU regulations, the programme MC may set programme-specific rules in the Programme Manual. In case none of the above has regulated a certain topic, national rules apply.

§ 2

Award of subsidy

1.

The SC has approved the project on 30.11.2017. The decision of the SC is based on the criteria set out in the Programme Manual and approved by the MC. In case the respective SC has set special conditions they have to be followed (Annex 2).

2.

On the basis of the SC decision an earmarked subsidy of 646.644,15 euro is awarded by the MA to the LP organisation of the project from the ERDF. The project budget is split between budget lines as specified in Annex 1.

The project financing is the sum of the total amount PPs own contribution in the participating Member States/Åland and the total ERDF co-financing awarded from funds of the Central Baltic programme. The ERDF co-financing is the maximum provisional amount.

The disbursement of ERDF funding is conducted in accordance with the project partner ERDF co-financing rate as approved in the Application Form.

Underspending in general will lead to proportional reduction of the programme funding. The final amount of the ERDF will be paid on the basis of the reported total eligible expenditure only.

3.

A lump sum for preparation costs is included in the project budget for all approved projects. The lump sum is 10 000 euro ERDF. The lump sum may include costs related to the preparation of the project application (meetings between partners, staff costs and costs related to preparing investment documents).

The conditions for the lump sums applied for by the project and approved by the SC are defined in Annex 1, where relevant.

4.

Considerable underspending of project funds will lead to cutting the project budget and ERDF funding respectively.

The assessment of project spending will be made based on the Project Report of the 3rd reporting period. The project is allowed to underspend up to 20% of its budget foreseen for these periods. Underspending beyond the set limits is only acceptable in cases where individual costs have been delayed due to reasons beyond the control of the PP(s).

If the project has underspent more than the allowed amount, the amount exceeding the set limit will be deducted from the project budget and ERDF funding. Where relevant, the LP will be contacted by the MA to clarify the spending of each period and the potential need for cutting the budget. In these cases a Subsidy Contract amendment will be made.

5.

Disbursement of the subsidy will be made subject to the condition that the national FLC process (Article 125(4) of CPR Regulation as well as the certification by the MA have been carried out adequately.

6.

If the EC fails to make funds available to the programme for whatever reason, the MA is entitled to withhold payments for as long as is needed or, as an ultimate tool, to terminate this contract.

7.

If the LP or the PP fails to meet the requirements of the co-financing as set out in this contract (§2 (2)) based on the approved Application Form the MA is either entitled to terminate this contract or reduce the amount of subsidy proportionately to the reduced co-financing depending on the case. The project expenditure must be visible in project accounting (cost centre) to enable the verification of accumulated own contribution. Any claim by the LP against the MA for whatever reason is excluded after the parties concerned have exchanged information on the matter and no mutual consent has been found within reasonable time.

8.

The subsidy has, where applicable, been granted under de minimis rule and therefore the relevant restrictions and obligations as set out in the Programme Manual based on EU regulations (must be followed). Relevant and applicable EU and national State aid regulations are to be followed (Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the functioning of the European Union to de minimis aid published in Official Journal of European Union on 24.12.2013 L 352/1). In addition of setting restrictions and obligations directly to the project partners (LP/PPs) this rule applies also to key stakeholders (e.g. private enterprises) participating in targeted project pilots (e.g. training, marketing, new product development etc.) receiving therefore channeled support via these activities (Cf. §5, LP liabilities).

9.

As set out in the Programme Manual, VAT does constitute an eligible expenditure only if it is genuinely and definitely borne by the PP and is shown in the bookkeeping as a project costs. It must be noted that if the VAT is recoverable by whatever means, it cannot be considered eligible, even if the beneficiary (PP) does not actually recover it. The LP/PPs have been obliged to define their VAT status in the approved Application Form and provide the necessary documentation to prove the VAT status. In case of any doubt the VAT will be deemed ineligible for that PP. In case the VAT status of the LP/PPs changes affecting the approved budget the JS/MA has to be informed and relevant documentation is to be provided to justify the change.

10.

The LP of the project is obliged to set up a Steering Group for the project immediately but at the latest within 1 month after signing this contract. The JS contact person shall be invited to all Steering Group meetings.

§ 3

Object of use, eligibility of costs and reallocation

1.

The subsidy is awarded exclusively to the LP for the implementation of the project as it is described in the Application Form approved by the SC and for preparation costs.

2.

The LP and PP shall implement the project with the requisite care, efficiency, transparency and diligence, in line with best practice in the field concerned and in compliance with this contract. For this purpose the LP and PP shall mobilise all the financial, human and material resources required for full implementation of the project as specified in the Application Form.

3.

Costs which qualify for a subsidy pursuant to § 2 Award of subsidy exclusively consist only of eligible costs as validated by the national FLC and certified by the MA according to the budget structure

of the approved Application Form. The eligibility of costs for ERDF is regulated by the compliance of the expenditure with the legal provisions of §1 Applicable legal framework, §7 Communication and publicity and of the Programme Manual). Partner Reports must be validated by the FLC and then a Project Report submitted by the LP to the JS in compliance with the procedure set out in the Programme Manual and the Guide for Project Implementation.

Costs for the project implementation are eligible if they have been paid out in between the start date and the end date of the project. In addition to the project duration, project preparation costs will be covered as a lump sum.

The project activities must be finalised 3 months before the end of the project. The last three months of the project are a so-called closure period, when only costs for project management (salaries, office and administration costs) for the LP can occur.

4.

During the project implementation the project may use the flexibility rule as described in the Programme Manual. The LP is entitled to apply for modifications (beyond the flexibility rule) to the budget or content during project implementation. Modifications should be done not more than 2 times. Such modifications require an official Modification Request to the JS/MA in accordance with the procedure set in the Programme Manual. The modified budget and/or content will enter into force only after decision by the MA/SC. This may require also a modification of the Subsidy Contract. The LP is obliged to clearly state the nature of modifications and the arguments behind each modification whether budget/financing or content related in the Modification Request submitted to the JS.

5.

If in justified cases the project requires a prolonged duration due to technical and administrative reasons, the LP will have to follow the instructions set out in the Programme Manual. The prolonged duration should not be more than 3 months and is to be applied at the latest six months before the approved end date of the project.

§ 4

Request for payments

1.

The LP may only request payments by providing proof of progress of the project as described in the approved Application Form. All reports are filled in in the eMonitoring System where also all checks are made. Instructions as laid in the Programme Manual, Guide for Project Implementation and other guides for reporting must be observed.

2.

The Partner Reports have to be submitted to the FLC 15 days after the end of the reporting period.

The Project Reports have to be submitted to the JS/MA 4 months after the end of the reporting period as stated in the Programme Manual. Later reporting with respect of the above mentioned deadlines must be approved specifically by the JS/MA on an ad hoc basis. In case an individual

report is delayed by more than one year, the MA may decide not to approve the costs included in that report.

In case the JS/MA has questions on the reports, projects will be given time to answer those questions. If no reply is received within the deadline, the JS/MA will proceed with the information that is available. Where the JS/MA does not have enough information to support the eligibility of the cost, it will be deemed ineligible.

3.

Based on the fact that payments by the EC to the MA will only be made in accordance with the corresponding budget commitments Article 136 of CPR Regulation the LP must request payments in accordance with approved Application Form. Payments not requested in time, in full or non-compliance with the procedure set in the Programme Manual and in other guidance for reporting may be lost if the programme experiences a de-commitment. The consideration whether payments are reduced due to the de-commitment process will be done at the end of each year of the approved project duration time. Any unjustified delay in reporting or in the clarification process of the Project Report, either by LP or by PP(s), can imply a reduction or suspension of the subsidy. A failure to comply with the requirements set for the proper audit trail (Cf. §3 (3) and §11) may also lead to reduction or suspension of the payments. The information on system of audit trail and list of bodies as described in §11 will be provided to the JS/MA at the latest prior to the first Project Report. A copy of the list must be included in the FLC documents sent to the FLC.

4.

Any income as stated in the Programme Manual should have been included in the Application Form. All net revenue generated during project implementation shall be reported in the Project Report as described in the Programme Manual and other guidance given for filling in the application or reporting. The LP of a project is obliged to inform the JS/MA of any income generated within five (5) years after the project closure date. ERDF funding unduly paid will be recovered.

5.

Once the Project Report has been received and the admissibility check made by the JS/MA, a payment of 60% of the applied ERDF will be made to the LP, if necessary funds have been made available to the programme by the European Commission.

After content and financial assessment of the Project Report by the JS and certification and payment decision by the MA have completed successfully, the MA will transfer the remaining eligible ERDF funding to the LP without any delay and within 90 days, given the provision that necessary funds have been made available to the programme by the European Commission. The funds will be disbursed in euro (€) only and transferred to an account indicated by the LP. Any exchange rate risk will be borne solely by the LP.

6.

The MA is entitled to withhold any ERDF payment until all unclear issues related to the implementation, management and reporting are clarified and is also entitled to deduct any ineligible cost found during the certification process and as a result proportionately reduce the ERDF funding on project.

7.

The LP/PP(s) are committed to the eligible own contribution as indicated in the approved Application Form and are obliged to ensure the proper accumulation of eligible own contribution during the project implementation and inform the JS/MA immediately in case the accumulation for whatever reason is not possible and follow the JSA/MA instructions given on a case like this.

§ 5

Representation of project partner(s), liability

1.

The LP solely bears the overall financial and legal responsibility for the project and for the PP(s).

2.

The LP guarantees that it is entitled to represent the PP(s) participating in the project bearing the sole responsibility of delivering as well as receiving all the information relevant for the project management between LP and PP(s) and that it will establish with the PP(s) the division of the mutual responsibilities in the form of Partnership Agreement(s).

The LP is directly responsible for forwarding all relevant information and guidance given by the JS/MA to the PP(s).

3.

The LP guarantees that a Partnership Agreement is signed with all PPs, containing at least the following: 1) role and obligations of the individual partners in the partnership in project implementation (incl. description of activities of each project partner by reporting periods as indicated in the approved Application Form, 2) budgetary principles, 3) financial management provisions for accounting, reporting, financial control, 4) receipt of ERDF payments, 5) distribution of the ERDF funding between the project partners (partner budget tables annexed) according to the approved Application Form, 6) strive for balanced spending rate in accordance with the ERDF funding, 7) liability in case of failures in project delivery and project spending including provisions for changes in the work plan, 8) the partners financial liability and provisions for the recovery of funds in case of amounts incorrectly reported and received by the partner, 9) information and publicity requirements, 10) resolutions of conflicts in the partnership, 11) the ownership rights of the results between partners and in relation to the terms of the Subsidy Contract (§8). The list is not exhaustive and the LP and the PPs may add further items according to the project specific needs.

The JS/MA is not a party in the Partnership Agreement or in the disputes that may arise between the contracting parties or towards third parties.

The LP furthermore guarantees that all the mandatory permits required by EU or national legislation needed for the implementation of the project have been delivered to the JS/MA in due time as specified in the Programme Manual and that any precondition set by the respective SC has been met in accordance of the decision made (Annex 2).

4.

The LP guarantees furthermore that the whole partnership has complied with all requirements under the legal framework applicable.

The LP is liable towards the MA for:

- ensuring that all its PPs have a legal status which is in line with the definition of Programme Manual as it is in force on the date when this contract is signed;
- ensuring that all expenditure reported in the project report has been validated according to the procedures set in the Programme Manual;
- ensuring that the PPs fulfil their obligations under this contract and with respect of the requirements set by the legal references mentioned in §1 Applicable legal framework;
- failure to fulfill obligations under this contract by itself and by its PPs;
- maintaining and updating the list of bodies holding documentation in the audit trail;
- ensuring that state aid/de minimis rules are applied as instructed in the Programme Manual and that any organisation receiving ERDF and national public funding under the Central Baltic programme complies with the de minimis conditions (if this is not the case, the MA is entitled to recover the ERDF funding unduly paid);
- ensuring that if the VAT status of the LP/PP changes affecting the approved budget of the project this will be notified to the JS and supported by relevant documentation as instructed in the Programme Manual and other guidance (if this is not the case, the MA is entitled to recover the ERDF funding unduly paid);
- ensuring that adequate resources and time are reserved for the closure measures prior to the actual closure date indicated in the approved Application Form and in the Preamble.

5.

If the MA demands repayment of subsidy in accordance with this contract, the LP is liable to the MA for the total amount of the subsidy.

6.

The MA cannot under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of the LP or the PP(s) during the project implementation. The MA therefore cannot accept any claim for compensation or increase in payment in connection with such damage or injury.

7.

The LP and PP(s) shall assume liability to third parties including liability for damage or injury on any kind sustained by them while the project is being carried out. The LP and PP(s) shall discharge the MA of all liability associated with any claim or action brought as a result of a non-compliance of rules or regulations by the LP or PP(s) as result of violation of a third party's rights.

§ 6

Additional obligations

In addition to the obligations of the LP as already stated, the LP undertakes:

1.

To ensure that a separate cost centre is opened for the project in the accounting centres of LP, each PP and to ensure that any received subsidy can be clearly identified and repaid if necessary due to irregularities.

2.

To sign the Partnership Agreement with all partners immediately at the start of the project.

3.

To ensure within the partnership that all the costs of LP, each PP are paid out by the respective partner and from the respective partner's own cost centre.

4.

To pay the partners' share of ERDF to the partners without delay.

5.

To inform the MA immediately if project costs are reduced in a way that has an impact on the approved Application Form, or one of the disbursement conditions ceases to be fulfilled, or any circumstances arise which entitle the MA to reduce payment or to demand repayment of the subsidy wholly or in part.

6.

To provide the JS/MA with any information requested without any delay and to forward all information given by the JS/MA to the partners.

7.

To provide necessary data for the eMonitoring System of the Central Baltic programme in compliance with this contract according to the JS/MA instructions as well as ensure that the partners understand that each user is responsible for keeping safe the user name and password and all activities done with the user name.

8.

To inform MA/JS without any delay about any envisaged changes of the Partnership Agreement.

9.

To take all necessary precautions to avoid conflict of interests (incl. PP) and inform JS/MA without any delay with the situation constituting or likely to lead to any such conflict. There is a conflict of interests where the impartial and objective exercise of the functions of any person under this

contract is compromised for reasons involving family, emotional life, political or national affinity, and economic interest of any other shared interest with another person.

§

7

Communication and publicity

1.

Any notice of publication by the project, including at a conference or a seminar, must specify that the project has received a subsidy from the programme funds, in compliance with the requirements set in the Programme Manual. In any public material used to promote or disseminate the project activities whether printed or electronically available the use of the programme logo and the EU emblem (flag) together with reference to the EU and ERDF is mandatory as set out in the Programme Manual.

2.

The JS/MA shall be authorized to publish, in whatever form and on or by whatever medium, including the internet, the following information:

- the name of the LP and its PP(s);
- the purpose of the subsidy;
- the total project budget and ERDF funding;
- the geographical location of the project;
- the information of the Project Reports and the Final Report.

The LP is obliged to inform the JS/MA on possible sensitive/confidential (e.g. business or personnel related) issues that cannot be published in programme newsletters and website.

3.

The LP and each PP is obliged to ensure that at least basic information about the project (aims, partners, amount of funding and its source, description of activities) is available on the internet during project implementation. Once the project has ended this information must include the main results and outputs available for dissemination. All project partner organizations must display in their premises at least one information poster (minimum size A3) informing about the project and the received EU funding.

§ 8

Durability and ownership of results

1.

In accordance with Article 71 of CPR Regulation the LP shall ensure that PPs (including LP) in infrastructure of productive investment projects shall repay the ERDF funding if within five (5) years of the final payment to the beneficiary or within the period of time set out in State aid rules, where applicable, it is subject to any of the following:

- a cessation or relocation of a productive activity outside the programme area;

- a change in ownership of an item of infrastructure which gives to a firm or a public body an undue advantage;
- a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives.

For projects comprising investment in infrastructure or productive investment the period for repaying contributions is ten (10) years after the final payment to the LP if the productive activity is relocated outside the EU, except where the beneficiary is an SME.

Projects without investments in infrastructure or productive investments shall repay the ERDF contribution if they are subject to an obligation for maintenance of investment under the applicable State aid rules and they undergo a cessation or relocation of a productive activity within the period laid down in those rules.

The LP is obliged to notify the MA of any such changes described beforehand for the MA to be able to determine which of the above-mentioned applies and the sums to be recovered.

2.

The LP ensures that the arrangements in ownerships, titles and industrial and intellectual property rights on the outputs of the projects are in accordance of §8 (1).

3.

The LP ensures via Partnership Agreement that results and outcomes of the project are joint property of all project participants (LP and PP(s)). Consequently, the LP safeguards that each project participant shall grant a simple, non-exclusive right of use of any produced work to all other project participants. The LP also ensures that while granting these rights to project partner(s) the specific national rules and instructions relevant for the ownership rights of the project outcomes and results are taken into account when necessary.

4.

The LP ensures that the results of the project especially any study or analysis produced during the implementation shall be made available to the public in order to guarantee a widespread publicity of the project's outcomes in accordance of the approved Application Form and Partnership Agreement.

5.

The LP ensures via Partnership Agreement that the rules stating the ownership principles of purchased office equipment (as stated in the Programme Manual) of LP and each PP after project closure have been taken into account and that the remaining value of the purchased equipment subject to measures after the closure is in accordance with the conducted depreciation taking into account the relevant national specifications. In case income is generated due to transfer of ownership rights of the purchased office equipment the LP is obliged to report to the JS/MA and it will proportionately reduce the amount of the ERDF funding. Sums unduly paid shall be recovered.

§ 9

Generation of revenues

1.

The programme asks projects to report net revenue. Net revenue is defined as cash inflows directly paid by users for the goods and services provided by the project, such as charges borne directly by the users for the use of infrastructure, sale or rent of land or buildings, or payments for services less any operating costs and replacement costs of short-life equipment incurred during the corresponding period. Rules set by the EU Structural and Investment Fund regulations and the Programme Manual are applied.

2.

For all projects regardless of the size of the total budget, the net revenue received from the project activities will proportionally reduce the ERDF co-financing. The net revenue shall be included in the Application Form, or at the latest reported in Partner Reports if not foreseeable. The obligation to report net revenue does not end once the project has ended.

§ 10

Right of termination

1.

In addition to the right of termination laid down in § 2 (7) the MA is entitled depending on the case, totally or partially to terminate this contract by a registered letter and, where relevant, to demand total or partial repayment of funds, if

- a. the LP has obtained the subsidy through false or incomplete statements; or
- b. the project has not been or cannot be implemented, or it has not been or cannot be implemented in due time; or
- c. a change has occurred in the project that has put at risk the achievement of the results planned in the Application Form; or
- d. the project outputs and results are severely out of line with those promised in the Application Form;
- e. the LP has failed to submit required reports or proofs, or to supply necessary information, provided that the LP has received a written reminder setting an adequate deadline and explicitly specifying the legal consequences of a failure to comply with requirements, and has failed to comply with this deadline; or
- f. the LP has failed to immediately report events delaying or preventing the implementation of the project funded, or any circumstances leading to its modification; or

- g. project reporting does not follow the set schedules, making it impossible to determine that the project is being implemented according to plan and it will achieve the set objectives, results or outputs; or
- h. the LP has impeded or obstructed controls and audits; or
- i. the LP is not fulfilling its LP obligations, including communication with the JS/MA; or
- j. the subsidy awarded has been partially or entirely misapplied for purposes other than those agreed upon; or
- k. insolvency proceedings are instituted against the assets of the LP or insolvency proceedings are dismissed due to lack of assets for cost recovery, provided that this appears to prevent or risk the implementation of the programme objectives, or the LP closes down; or
- l. subject to the provisions of § 14 (2, 3) Assignment, legal succession, the LP wholly or partly sells, leases or lets the project to a third party;
- m. or it has become impossible to verify that the Final report is correct and thus the eligibility of the project; or
- n. the LP has failed to fulfil any other conditions or requirements for assistance stipulated in this contract including Annex 2 and the provisions it is based on, notably if these conditions or requirements are meant to guarantee the successful implementation of the programme objectives.

2.

If the MA exercises its right of termination and decides to terminate funds, the LP is obliged to transfer the repayment amount to the MA. The repayment amount is due within one month following the date of the letter by which the MA asserts the repayment claim based on the information received from the MA/JS; the due date will be stated explicitly in the order for recovery.

3.

If the MA exercises its right of termination, offsetting by the LP is excluded unless its claim is undisputed or recognized by declaratory judgment.

4.

If the MA exercises its right of termination, the amount repayable shall be subject to interest, starting on the day the payment was made and ending on the day of actual repayment. The interest rate will be determined in accordance with Article 147 of CPR Regulation.

5.

If any of the circumstances indicated in §10 Right of termination Article 1 occur before the full amount of subsidy has been paid to the LP, payments may be discontinued and there shall be no claims to payment of the remaining amount.

6.

Any further legal claims shall remain unaffected by the above provisions.

§ 11

Archiving of project documents

1.

The LP/PPs are at all times obliged to retain for audit purposes all official files, documents and data about the project on customary data storage media (in the form of photocopies, microfiches and electronic versions) in a safe and orderly manner for 4 years after the closure of the project by the MA. Longer statutory retention periods stated by national law remain unaffected. The LP/PP(s) are obliged to store the invoices and to keep them clearly traceable in the bookkeeping for the FLC and audit purposes and maintain records of invoices and bodies holding documentation in the audit trail in accordance with Article 140 of CPR Regulation. The maintained and updated records/lists are made available to the JS/MA (Cf. §4 (3)).

§ 12

Controls and audits

1.

All the costs in each Project Report submitted by the LP to the JS must be validated by the national FLC according to the procedure described in the Programme Manual and in compliance with the requirements set in §1 Applicable legal framework.

2.

The AA of the Central Baltic programme, the responsible auditing bodies of the EU and, within their responsibility, the auditing bodies of the participating EU Member States as represented in the Group of Auditors or other national public auditing bodies are entitled to audit the proper use of funds by the LP or by the PP(s) or arrange for such an audit to be carried out by authorised persons. The procedure for these controls, called Second Level Control, is described in the Programme Manual.

3.

The LP as well as PP(s) will produce all documents required for the above controls and audit, provide necessary information and give access to its business premises.

4.

The MA has a right to withhold the payments to the LP until all the required information and documentation have been delivered.

5.

In case the AA issues statements on the national control systems and defines problems of systemic character the MA has a right to withhold the payments to the LP until this case has been solved.

§ 13

Recovery of ineligible expenditure

1.

If any expenditure is considered ineligible by the MA according to regulatory framework mentioned in § 1 Applicable legal framework, a two stage-procedure will apply. The first phase consists of amicable process and in case amicable process proves to be ineffective a judicial procedure follows.

2.

The amicable phase is initiated by the MA based on available financial information of the project by sending out to LP an official letter asking for written response on the case giving the LP the possibility to clarify open questions and in relevant cases provide argumentation on its own behalf. After the LP has responded and provided relevant information it will be examined by the MA.

3.

Unless no relevant new information is provided by the LP the official recovery procedure will be launched by the MA with a registered letter (Order of Recovery based on the administrative decision including the appeal instructions) addressed to the LP organisation informing the LP on the arguments on which the repayment claim is based and requesting the repayment of the necessary amount of funds already paid out to the LP. The LP is obliged to conduct the repayment without any delay after the letter by the MA has been received by the LP organisation; the due repayment date will be stated explicitly in the order for recovery. The LP is obliged to notify the approval/non-approval of the repayment in written without any delay after receiving the letter from the MA and inform clearly whether the LP is appealing against the administrative decision by the MA in accordance with the appeal instructions.

4.

In case the LP either refuses or is unable to start the repayment process by the deadline set by the MA without any reply and justification in written the MA will issue another official letter (a reminder) claiming the funds. In this case the repayment is due immediately after officially receiving the second MA letter; the due date will be stated explicitly in the order for recovery. The LP is again obliged to notify the approval/non-approval of the repayment in written without any delay after receiving the second letter by the MA.

5.

In case the LP does not conduct repayment by the deadline(s) set by the MA and has provided appropriate arguments as well as appealed against the decision by the MA within the set timeframe the both parties aim to find a mutual consent on the repayment procedure before the case is brought to the Board of the Regional Council. This procedure aims to find a suitable refunding schedule for the LP or - in case the MA detects a need to correct its own administrative decision on the recovery based on new information and after consultation with the MA and AA - to find sufficient grounds for compromise solution, for instance, taking the form of curtailed recovery order.

6.

In case the LP has originally appealed against the administrative decision of the MA in accordance with the appeal instructions the case will be first handled by the Board of the Regional Council and then in relevant cases the judicial phase will take place in the competent jurisdiction in Turku, Finland in accordance with the Finnish legal framework.

In case the LP has refused to refund in accordance with valid recovery order the procedure will continue in the competent jurisdiction of the first instance in Turku, Finland in accordance with the Finnish legal framework initiated by the MA.

7.

In case the factors behind the recovery procedure show violation of the Subsidy Contract (§10), the MA will consider the termination of the contract as a last resort.

8.

The rate of the late interest applied to the amount to be recovered will be calculated in accordance with Article 147 of CPR Regulation.

§ 14

Assignment, legal succession

1.

The MA is entitled at any time to transfer its rights and duties under this contract. In case of assignment the MA will inform the LP without delay.

2.

The LP is allowed to transfer its duties and rights under this contract only after prior written consent of the MA and the respective SC.

3.

In cases of legal succession, e.g. where the LP or a PP changes its legal form, the LP or PP is obliged to transfer all duties under this contract to the legal successor. The LP shall notify the MA about any change beforehand in written.

§ 15

Concluding provisions

1.

This contract shall take effect on the date it is signed by both parties covering the approved duration time of the project and shall expire only after the Final Report and Project Report has been approved by the JS/MA and the payment has been certified and paid out by the MA. The

specific requirements set by §1 Applicable legal framework concerning e.g. archiving, ownership rights, generation of revenues, audit trail, audit and publicity measures are valid for the LP and PPs beyond the expiration date of the Subsidy Contract.

The programme uses the eMonitoring System for reporting, applying for project modifications and other procedures related to the implementation of the project. Each user is responsible for keeping safe the user name and password and for all activities done with the user name.

2.

All correspondence with the MA under this contract must be in writing and in English.

3.

All correspondence with the MA must be sent either through the eMonitoring System or to the following address:

Regional Council of Southwest Finland
Department for Regional Development
Regional Development Director Tarja Nuotio
P.O. Box 273
FIN-20101 TURKU, FINLAND
e-mail: tarja.nuotio@varsinais-suomi.fi

4.

All programme related relevant information for the LP and PPs is available in www.centralbaltic.eu in English.

5.

If any provision in this contract should be wholly or partly ineffective, the parties to the contract will replace ineffective provision by an effective provision which comes as close as possible to the purpose of the ineffective provision. This procedure is conducted in written form by the parties concerned. In case of differences that are not ruled by this contract the parties concerned will agree on aiming to find a mutual consent on the issue.

6.

Amendments and supplements to this contract and any waiver of the requirement of the written form must be in written form and will be made through the eMonitoring System.

7.

The appeal process as legislated in the Finnish Local Government Act (Chapter 11) in cases where the LP is unsatisfied on decisions made by the MA/AA has two stages:

1. The LP from the participating Member States/Åland of the Central Baltic Programme may appeal against the acts of the MA/AA by sending the demand for rectification to the board of the Regional Council. The board will handle the rectification as soon as possible (depending on the meeting schedule of the board). The request is to be addressed to:

The Board of the Regional Council of Southwest Finland
P.O. Box 273
20101 TURKU
FINLAND

2. In case the LP is unsatisfied with the ruling of the Board the LP from the participating Member States/Åland of the Central Baltic programme may also appeal to the Administrative Court of Turku in the first instance (www.oikeus.fi). This procedure takes place only after the Board of the Council has ruled on the case.

The detailed appeal instructions for both procedures are annexed to the respective decisions of the MA/AA as well as the Board of the Regional Council.

The unsatisfied LP is obliged to demand for rectification against the decisions of MA/AA conducted on the basis of this contract as well as on the applied legal framework (§1) within the timeframe of 7+14 working days after receiving the information on the decision.

All decisions made by the MA and AA can be appealed against.

Prior to the official rectification/appeal process the LP is obliged to contact the relevant authority for consultation on the case to ensure that proper information is applied by the parties involved.

8.

This contract is governed by the laws of the Republic of Finland. The place of jurisdiction is Turku, Finland.

Signatures:

Place and date: Turku 29.8.2019


.....
Signature

Tarja Nuotio

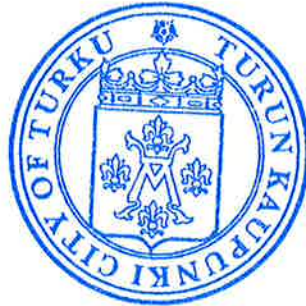
Regional Development Director
Regional Council of Southwest Finland
Department for Regional Development

Place and date: 21.10.2019

Signature

Pekka Sundman

Director
City of Turku



Stamp of the organisation (If a stamp is not used according to the internal procedures, please state it)

Annex 1: Project identification

Annex 2: A protocol note of the respective Steering Committee meeting

Annex 3: Demand for rectification instructions

CB693 HEAT, Subsidy Contract Annex 1

Project identification

Sub-programme	Central Baltic sub-programme	
Programme priority	P2 Sustainable use of common resources	
Specific objective	2.3. Better urban planning in the Central Baltic region	
Project acronym	HEAT	
Project title	Participatory urban planning for healthier urban communities	
Project number	CB693	
Name of lead	Turun kaupunki	
Project duration 35.93 Month	Start date	2018-04-01 00-00-00
	End date	2021-03-31 00-00-00

List of partners

Partner name	Street	House number	Postal code	City	Lead partner
Turun kaupunki	Yliopistonkatu	27a	20100	Turku	X
Itämeren alueen Terveet Kaupungit ry	Vanha Suurtori	7	20500	Turku	
Varsinais-Suomen liitto - Varsinais-Suomen kestävän kehityksen ja energia-asioiden palvelukeskus (VALONIA)	PL	273	20101	Turku	
Turun ammattikorkeakoulu	Joukahaisenkatu	3 A	20520	Turku	
Jūrmalas pilsētas dome	Jomas	1/5	LV-2015	Jurmala	
Balti Uuringute Instituut	Lai	30	51005	Tartu	
Tartu Linnavalitsus	Raekoja plats	3	51003	Tartu	
Cykelfrämjandet	Virkesvägen	26	120 30	Stockholm	

Total Budget per Budgetline

Staff costs	Office and administration	Travel and accommodation	External expertise and services	Equipment	Infrastructure & works
464.769,80	69.715,41	62.579,25	226.739,52	0,00	0,00

Periods

@Period Number	@Duration (months)	@Start Date	@End Date	@Reporting Date
0	13	2016-08-01	2017-09-01	2020-12-31
1	6	2018-04-01	2018-09-30	2019-01-31
2	6	2018-10-01	2019-03-31	2019-07-31
3	6	2019-04-01	2019-09-30	2020-01-31
4	6	2019-10-01	2020-03-31	2020-07-31
5	6	2020-04-01	2020-09-30	2021-01-31
6	6	2020-10-01	2021-03-31	2021-07-31

Text

Date

Body issuing the subsidy contract

9.5

HEAT, ID: 693

The project complies with the basic requirements and may therefore be funded. When deciding about the selection for funding, the Steering Committee is advised to take into account the weak sides of the project:

Implemented pilot actions are not new solutions but are based on current local needs. The pilots and other supporting actions could be also implemented locally. International co-operation brings added value mostly in form of experience exchange. Project partners are working on different levels of society, and it is difficult to see how a joint and integrated impact to planning will be achieved. Partnership is not very balanced.

The project is rather fragmented as pilot activities are very different in the municipalities or the actual pilot remains unclear or rather wide. This gives the impression that common interest is somewhat vague. The project budget is quite poor in quality.

PROPOSAL:

To consider to approve the project HEAT in Priority 2, SO 2.3 with a maximum ERDF co-financing of 722 541,41 EUR with the following conditions and technical corrections:

1. One wrong output, belonging to 2.1 projects has been chosen and should be removed.
2. The investment WP should be removed as it is not a logical part of the project and does not support project goals.
3. The output indicators must be corrected. Project should clearly define how many integrated urban plans it will contribute to.
4. The project's combined ERDF rate shall not exceed 78,5%. The partnership may decide itself on the ways to ensure that the limit for combined ERDF rate is not exceeded.
5. Budget:
 - LP, P2, P3 - no FLC costs are budgeted for the partners. This should be clarified
 - A thorough check and fixing the sub-budget lines is needed, as the descriptions are not clear and calculation methods are missing.
 - Almost all staff cost are planned for management.
 - LP, P6 and P7 - explain financial manager.
 - LP - clarify web-site cost of 13 000 euros.
 - P2 - clarify Consultant work for the Vision of the transport network system of SWE Finland 25 000 euro.
 - P3 - clarify External consultation and expertise 14 500 euro
 - P4 - clarify Expertise - visualization 6 500 euro; Infrastructure and works 58 500 euro; explain why there are now staff cost budgeted.
 - P5 - Baltic Institute - salaries are too high; clarify IT expertise - workshops and networking website 10 000 euro
 - P6 and P7 should clarify possible overlaps in staff and external expertise.
 - P6 - clarify Thematic plan and development strategy of bicycle roads 65 000 euro vs 2 planning experts in staff costs
 - P7 - clarify External expertise and services - communication 10 046 euro vs communication expert in staff costs

In addition the project may be asked by the JS to make other minor technical corrections or correct outputs and preparation cost levels that come up during the clarification process.

The replies provided by the project must give the MA the information needed to determine their eligibility and relevance for the project.

The conditions and technical corrections set in the funding decision have to be fulfilled within three months after receiving the official SC decision and before signing the subsidy contract.

DECISION:

To approve the project HEAT in Priority 2, SO 2.3 with a maximum ERDF co-financing of 722 541,41 EUR with the following conditions and technical corrections:

1. One wrong output, belonging to 2.1 projects has been chosen and should be removed.
2. The investment WP should be removed as it is not a logical part of the project and does not support project goals.
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The replies provided by the project must give the MA the information needed to determine their eligibility and relevance for the project.

The conditions and technical corrections set in the funding decision have to be fulfilled within three months after receiving the official SC decision and before signing the subsidy contract.

FINAL PROTOCOL Q
ERDF project funding decisions of
the Central Baltic Programme
2014-2020

§	DATE	ISSUE
41	29.8.2019	Subsidy Contract Amendment for project HEAT, ID: 693 I hereby decide to approve the Subsidy Contract Amendment dated 25.4.2019 for the abovementioned project. The changes are executed in the partnership of the project.
Signature:		 Tarja Nuotio Regional Development Director Regional Council of Southwest Finland Department for Regional Development
Annex:		Protocol note of the Steering Committee Decision



Right to demand for rectification	<p>Anyone dissatisfied with a resolution may make a written demand for rectification.</p> <p>A demand for rectification may be made either by the person to whom the decision is directed or by a person whose rights, duties or benefits are directly affected by the decision (an interested party). By resolution of the Federation of Municipalities authority, a demand for rectification can also be made by a member municipality of the Federation and its member.</p>								
<p>Demand for rectification authority</p> <p>Demand for rectification and its initiation</p>	<p>Authority to whom the demand for rectification is being made, street address and postal address</p> <p>The Board of the Regional Council of Southwest Finland P.O. Box 273, Ratapihankatu 36 FI-20101 TURKU</p> <p>e-mail: kirjaamo@varsinais-suomi.fi</p> <p>A demand for rectification must be made within 14 days of being served the resolution. Member municipalities and their members are regarded as having received information on the resolution when the register is declared open to general view. An interested party is regarded as having received information on the resolution after seven days from the date of sending the letter, during the period indicated by the advice of receipt or during a separate period entered on the certificate of service, unless otherwise demonstrated.</p> <p>On the basis of the act on charges levied for services by courts of law and certain judicial administration authorities (1455/2015), the petitioner is charged a litigation fee of 260 euros in the administrative court.</p>								
Setting the register on view	Date 30.8.2019								
Serving of notice to the interested party¹⁾	<table border="1"> <tr> <td data-bbox="405 1211 943 1323">x Delivered notice with letter (Local Government Act 139 §)</td> <td data-bbox="943 1211 1418 1323">Interested party City of Turku</td> </tr> <tr> <td data-bbox="405 1323 1418 1435">Given to the post office for delivery, date / Server of notice</td> <td></td> </tr> <tr> <td data-bbox="405 1435 943 1547">Relinquished to interested party Locality date and signature of server of notice</td> <td data-bbox="943 1435 1418 1547">Interested party Signature of recipient</td> </tr> <tr> <td data-bbox="405 1547 1418 1666">In another manner, how By mail</td> <td></td> </tr> </table>	x Delivered notice with letter (Local Government Act 139 §)	Interested party City of Turku	Given to the post office for delivery, date / Server of notice		Relinquished to interested party Locality date and signature of server of notice	Interested party Signature of recipient	In another manner, how By mail	
x Delivered notice with letter (Local Government Act 139 §)	Interested party City of Turku								
Given to the post office for delivery, date / Server of notice									
Relinquished to interested party Locality date and signature of server of notice	Interested party Signature of recipient								
In another manner, how By mail									
Content of demand for rectification and delivery	The demand with grounds must become evident from the demand for rectification and it must be signed by the author. The demand for rectification must be delivered to the demand for rectification authority prior to termination of the demand for rectification period.								
Additional information	Regional Development Director Tarja Nuotio tel.: +358 40 5063 715 – Fax: +358 2 2100 901 e-mail: tarja.nuotio@varsinais-suomi.fi – www.varsinais-suomi.fi								

To be annexed to resolution / extract

1) Extract to be filled in if the resolution is given as special serving of notice as information to an interested party designated in Local Government Act 137 §. Darkened area to be filled in also with the authority receiving a duplicate.