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Eligibility of project ER274 SetoWWTP costs and deadlines

The Estonia-Russia Cross-Border Cooperation Programme 2014-2020 was initiated as part of the European Neighbourhood Instrument 2014-2020. However, due to the war that started in 2022, cooperation with the Russian Federation was suspended, and the Programme implementation continued unilaterally as the Estonian EU External Border Programme. Setomaa Management Ltd. participated as the Lead Beneficiary in the 6th call for proposals of the Estonian EU External Border Programme with the project ER274 "Improving sewage treatment in Setomaa WWTPs" (SetoWWTP).

The basis for opening the 6th call for proposals included various legal acts, including:

Regulation (EU) 2022/2192 of the European Parliament and of the Council. This regulation established special provisions for, among other things, the European Neighbourhood Instrument, under which the Estonian EU External Border Programme falls, in the event of a disruption to the programme's implementation. Under Article 6(2) of the regulation, the deadline for concluding contracts was extended: *The managing authority may sign contracts, other than contracts for large infrastructure projects, after 31 December 2022, provided all project activities financed by the programme end by 31 December 2023.*

Commission Implementing Regulation (EU) 2020/879, amending Implementing Regulation (EU) No 897/2014 as regards specific provisions to align the provisions for the implementation of cross-border cooperation programmes financed under the European Neighbourhood Instrument with specific measures in response to the COVID-19 pandemic. According to Article 1(3) in Article 18(3) of the Implementing Regulation (EU) No 897/2014 the eligibility period for projects is extended by one year until 31 December 2023. With Article 1.(7)(b) Article 48(2a) is added, stating: *2a. Notwithstanding Article 19(1), costs shall not be eligible for Union financing if they are paid after 31 December 2023.*

Article 288 of the Treaty on the Functioning of the European Union stipulates that *a regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.* This principle ensures the uniform application of EU regulations across the Union, avoiding discrepancies in interpretation and implementation that may arise with national laws, *but*

shall leave to the national authorities the choice of form and methods. In the current case, the eligibility deadline and conditions are very clearly defined to ensure their uniform implementation across Member States.

The 6th call for proposals guidelines of the Estonian EU External Border Programme, the Project Implementation Guidelines, and Article 20.1.1 b) of the SetoWWTP support agreement stipulated that *all costs incurred should be paid as latest on 31 December 2023.*

Furthermore, the programme's Joint Technical Secretariat repeatedly informed applicants and later project beneficiaries about the end date for eligible costs (31 December 2023) during seminars, consultations, and in writing. The call for proposals information was also available on the programme's website.

Setomaa Management Ltd. failed to comply with the final deadline for the eligibility of project costs by paying project-related expenses after 31 December 2023, specifically on 16 January and 12 February 2024.

On 5 June 2024, the programme's Managing Authority and Joint Technical Secretariat consulted with the European Commission representative during the 17th meeting of the programme's Joint Monitoring Committee on this matter. All parties agreed that the same rules apply to all projects and that the regulation is unequivocal – costs paid after 31 December 2023 are not eligible.

Also, it is not possible to seek reimbursement for the SetoWWTP project costs from the Government of the Republic's reserve, as targeted funds to cover ineligible external aid costs may only be requested and allocated in the following cases:

- Irrecoverable claims to the extent that is not covered by the external aid provider;
- Non-significantly small claims that are not pursued on grounds of expediency and are not covered by the external aid provider;
- In special cases arising from the implementation system, where it is decided not to pursue the claim against the aid recipient or where there is no basis for doing so, and the costs cannot be submitted to the external aid provider for reimbursement.

In this case, none of the allowed options apply. According to Chapter 8 of the Project Implementation Guidelines, the Managing Authority, Joint Technical Secretariat, and *First Level Control (FLC)/auditors have discretionary power to recover the amounts unduly paid together with any interest on late payments from the LB. In general ineligible costs that are detected during verification of project reports are deducted (from the project payment) in the relevant reporting period without making financial correction decision and reducing the project budget.*

The programme uses the eMS information system, in which project applications and reports for approved projects are submitted. The reporting process is also controlled in this information system, and the first-level control certificates are made available to the beneficiaries in the same system. In accordance with Chapter 8 of the Project Implementation Guidelines, the *circumstances and reasoning for deduction or financial correction are described in the eMS in the FLC Certificate.*

The SetoWWTP project certificate was confirmed in the eMS information system on 20 March 2024, and it has been accessible to the beneficiary in the system since that date. As the Lead Beneficiary, Setomaa Management Ltd submitted the consolidated project report on 22 April 2024, using the data from the given certificate.

The 6th call for proposals guidelines of the Estonian EU External Border Programme p 10.7. provides that the Managing Authority shall recover the amounts unduly paid together with any interest on late payments from the lead beneficiary. The Project Implementation Guidelines p 8 provides that a financial correction decision with reducing the project budget shall be made for expenditure that is considered as a financial irregularity and are the breach of Programme rules.

Estonian EU External Border Programme made an advance payment of €170,100.00 to the SetoWWTP project, but the eligible costs of the project amount to €168,059.20, of which the grant (90%) is €151,253.28. Therefore, the Lead Beneficiary, Setomaa Management Ltd, is required to repay €18,846.72 to the programme.

Due to the fact that the programme eligibility deadline is 30 September 2024, we kindly ask you to make the voluntary payment of the abovementioned amount by 27 September 2024. We will also prepare the financial correction decision, which will take this action also into account while deliberating.

Please be informed, that the response to this letter will be considered as your use of the right to be heard and your comments/explanations will be added to the financial correction decision.

Yours sincerely,

(signed digitally)

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