## Acquisition of a CT scanner

Ref. 2017/S 249-526225

Date: 03/04/2018

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| Question: | Answer: |
| In accordance with article 10 para 3 from EU Regulation *236/2014* laying down common rules and procedures for the implementation of the Union's instruments for financing external action "For actions implemented in shared management, the relevant Member State to which the Commission has delegated implementation tasks shall be entitled to accept as eligible, on behalf of the Commission, tenderers, applicants and candidates from non-eligible countries as referred to in paragraph 2 of this Article, or goods from a non-eligible origin as referred to in Article 8(4)". Interreg-IPA Cross-Border Cooperation Romania-Serbia program is an action implemented in shared management, between a member state and a non-member state. The EU regulation no. *236/2014* is also known as CIR (Common Implementation Rules) for all the Union's instruments for financing external action, such as Cross-border programs or any national programs. Moreover, please find attached a document issued by European Commission services on rule of origin rule under the new programs. This document is also available at the following link https:llwebgate.ec.europa.eu/europeaid/prospectlinternal/noauth/externalDocumentDownload.htm?id=104074&lang=en  As per the document attached called "Rules on participation in procurement procedures and grants" (page 3) The CIR also provides for rules on how to reconcile its nationality rules with those of another entity or another Instrument involved in the project:  b) In the case of actions implemented under shared management with a Member States, countries that are eligible under the rules of that Member State are also eligible.  It is worthwhile to mention that the EU rule of origin is applying for purchasing goods above 100,000 Euro, but this rule is applied also in  connection with the provisions of the EU Regulation no. *236/2014,* which for programs with shared management is clearly stating that  the rules to be applied are the ones of the member state. The present procedure clearly exceeds the threshold of 100,000 Euro but has to be interpreted in the light of the EU Regulation no. *236/2014* for shared managed programs. In Romania - the member state which Serbia is sharing the management of the program with, there are no legally imposed restrictions of such case (rule of origin) for participating in public procurements. "  Question 1. As a consequence of the above-mentioned, we are writing clarification letter to check with this issue and to confirm that no EU rule of origin has to be applied in this case. Moreover, we would stress also that such an international open tender will be meaningless by applying the EU rule of origin since there is only one company that meets the EU rule of origin.  Under these circumstances the international open tender is actually transformed into a direct purchase. This really contradicts with the principle of sound competition which is promoted by the Practical Guide, governing the present procurement. Please confirm that Japanese origin of offered CT scanner is acceptable on this tender? | Considering Your inquiry regarding the eligibility of the supplies to be offered for our procurement of an CT scanner, ref. 2017/S 249-526225, we are sorry to inform you that supplies originating from Japan are not eligible for our procurement (if the offered costs more than 100.000 EUR) and for the entire INTERREG IPA CBC Romania-Serbia Programme.  Document “PUBLIC PROCUREMENT PROCEDURES FOR BENEFICIARIES ON INTERREG IPA CBC PROGRAMME ROMANIA – SERBIA” on page 16 states:  Origin  All supplies purchased under a procurement contract, or in accordance with a grant contract, financed under the EU budget or the EDF shall originate from an eligible country as per the corresponding Instrument. For the complete list of eligible countries please refer to Annex A2a to the PRAG. However, according to the CIR, when the value of the supplies to be purchased is below 100.000 € per purchase, the supplies do not have to originate from an eligible country. Therefore, the products can originate from any origin (full untying) if their value is below the threshold of the competitive negotiated procedure - EUR 100 000. The amount of any ancillary works and services is not taken into account.  The document “Annex A2a to the PRAG: RULES ON PARTICIPATION IN PROCUREMENT PROCEDURES AND GRANTS” on page 3 states:  3) for IPA II (CIR - Article 10)  Participation in the award of procurement contracts, grants and other award procedures for actions financed under the CIR for IPA II for the benefit of third parties shall be open to all natural persons who are nationals of, and legal persons who are effectively established in, one of the following eligible countries/ territories/beneficiaries:  (a) EU Member States (appendix 1)  Austria, Belgium, Bulgaria, Czech Republic, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.  (b) Beneficiaries listed in the Annex I of the IPA II (appendix 2)  Albania, Bosnia and Herzegovina, Kosovo\*, Montenegro, Serbia, Turkey, the former Yugoslav Republic of Macedonia.  \* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.  (c) European Economic Area (appendix 3)  (only non-EU MS are mentioned) Iceland, Lichtenstein, Norway.  (d) Partner countries and territories covered by ENI Instrument (annex I of ENI Instrument) (appendix 11)  Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Republic of Moldova, Morocco, occupied Palestinian territory (oPt), Syria, Tunisia, Ukraine.  (e) Countries for which Commission has adopted a decision approving the request for reciprocal access to external assistance.  Currently there are no such countries. |