

**REGULATION (EC) No 397/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 6 May 2009**

**amending Regulation (EC) No 1080/2006 on the European Regional Development Fund as regards the
eligibility of energy efficiency and renewable energy investments in housing**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 162 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

(1) With a view to enhancing Europe's longer-term sustainable growth potential, the Commission adopted, on 26 November 2008, a Communication on a European Economic Recovery Plan which considers the importance of undertaking investments improving energy efficiency of the buildings, including the housing sector.

(2) The European Regional Development Fund (ERDF) supports interventions in the housing sector, including energy efficiency, only in favour of Member States that acceded to the European Union on or after 1 May 2004, where the conditions set out in Article 7(2) of Regulation (EC) No 1080/2006 of the European Parliament and of the Council ⁽³⁾ are met. Such support for energy efficiency and renewable energy investment in the housing sector should be made available for all Member States.

(3) Support should be provided to those investments which take place in the framework of public schemes in line with the objectives of the Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services ⁽⁴⁾.

(4) In order to ensure that the objectives of the cohesion policy as set out in Article 158 of the Treaty are met, interventions should support social cohesion.

(5) The European Court of Auditors recommended in its 2007 annual report that the legislative authorities and the Commission be prepared to reconsider the design of future expenditure programmes by giving due consideration to simplifying the basis of calculation of eligible costs and making greater use of lump-sum or flat-rate payments instead of reimbursement of 'real costs'.

(6) In order to ensure the necessary simplification in the management, administration and control of operations that receive an ERDF grant, particularly when linked to a result-based reimbursement system, it is appropriate to add three additional forms of eligible costs, namely, indirect costs, lump sums and flat-rate standard scales of unit cost.

(7) In order to ensure legal certainty in relation to the eligibility of expenditure, these additional forms of eligible costs should be applicable to all grants from the ERDF. Retroactive application should therefore be necessary with effect from 1 August 2006, which is the date of entry into force of Regulation (EC) No 1080/2006.

(8) Regulation (EC) No 1080/2006 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Article 7 of Regulation (EC) No 1080/2006 is hereby amended as follows:

1. the following paragraph shall be inserted:

'1a. In each Member State, expenditure on energy efficiency improvements and on the use of renewable energy in existing housing shall be eligible up to an amount of 4 % of the total ERDF allocation.

Member States shall define categories of eligible housing in national rules, in conformity with Article 56(4) of Regulation (EC) No 1083/2006, in order to support social cohesion.'

2. the introductory phrase of paragraph 2 shall be replaced by the following:

'2. Expenditure on housing, except for energy efficiency and the use of renewable energy as set out in paragraph 1a, shall be eligible only for those Member States that acceded to the European Union on or after 1 May 2004, where the following conditions are met:'

⁽¹⁾ Opinion of 25 February 2009 (not yet published in the Official Journal).

⁽²⁾ Opinion of the European Parliament of 2 April 2009 (not yet published in the Official Journal) and Council Decision of 5 May 2009.

⁽³⁾ OJ L 210, 31.7.2006, p. 1.

⁽⁴⁾ OJ L 114, 27.4.2006, p. 64.

3. the following paragraph shall be added:

'4. In the case of grants the following costs shall be expenditure eligible for a contribution from the ERDF, provided that they are incurred in accordance with national rules, including accountancy rules, and under the specific conditions provided for below:

- (i) indirect costs, declared on a flat-rate basis, of up to 20 % of the direct costs of an operation;
- (ii) flat-rate costs calculated by application of standard scales of unit cost as defined by the Member State;
- (iii) lump sums to cover all or part of the costs of an operation.

The options referred to in points (i), (ii) and (iii) may be combined only where each of them covers a different category of eligible costs or where they are used for different projects within the same operation.

The costs referred to in points (i), (ii) and (iii) shall be established in advance on the basis of a fair, equitable and verifiable calculation.

The lump sum referred to in point (iii) shall not exceed EUR 50 000.'

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

However, Article 1(3) shall apply with effect from 1 August 2006.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 6 May 2009.

For the European Parliament
The President
H.-G. PÖTTERING

For the Council
The President
J. KOHOUT