

## Application of Directive 91/271/EEC on urban waste water treatment and finance from the Structural Funds

### Guidelines on applications for assistance in the context of infringement procedures

#### A - General

1. The regulations governing the Structural Funds and the Cohesion Fund ('the Funds') state that operations financed by those Funds must be in conformity with the provisions of the EC Treaty, with instruments adopted under it and with Community policies and actions, including the rules on environmental protection and improvement (Article 12 of Council Regulation (EC) No 1260/1999 laying down general provisions on the Structural Funds and Article 8 of Council Regulation (EC) No 1164/94 establishing a Cohesion Fund).
2. As a rule, the Funds may not continue to part-finance operations which are the subject of infringement procedures (Article 32(3)(f) of Regulation (EC) No 1260/99 and – less categorically – Article H of Annex II to Regulation (EC) No 1164/94.
3. However, in cases falling within the scope of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment ('the Directive'), a more nuanced approach may be adopted. The construction or improvement of water treatment facilities always brings the situation more closely into line with the minimum requirements of this Directive, even if additional measures are then required for full compliance.
4. On the other hand, it would not be acceptable for the part-financing of an operation (e.g. a secondary treatment facility) to continue when the Court of Justice had confirmed, following a case brought by the Commission under Article 226 EC, the inadequacy of this in relation to the requirements of the Directive (eg a tertiary treatment facility), and the Member State concerned is late in ensuring compliance.
5. These guidelines set out the policy which the Commission intends to adopt to implement the above provisions and principles. However, the fact that the Commission does not suspend, cancel or recover part-financing for a facility regarded as useful but inadequate may not in any circumstances be interpreted – in the course of an infringement procedure – as acknowledgement that the level of protection proposed by the Member State is adequate and complies with the Directive.
6. Furthermore, even if the Directive does not prevent part-finance, the Funds must be willing and the construction of the treatment facility must form part of a measure or operation which has gone through the normal approval and programming procedure.
7. The classification, after the date laid down by the Directive, of an area as 'sensitive' within the meaning of the Directive or the challenging by the Commission of the current classification by the Member State of a particular area will have no repercussions on the part-financing by the Funds of expenditure undertaken on projects being carried out or existing facilities part-financed in the past.

8. If the Court of Justice finds that an infringement affects a part-financed project, the Commission will consider what steps to take in the light of the text of the judgment and having regard to the date of implementation of the project (see point 10 below).
9. The Commission will apply the guidelines below to applications for assistance concerning Cohesion Fund projects made from the date of dispatch of this letter. They will also apply from that date to major projects covered by assistance from the Structural Funds which have to be submitted individually to the Commission for approval in advance under Article 26 of Regulation (EC) No 1260/1999.
10. In the case of operations part-financed under the Structural Funds which do not require prior notification under Article 26 of Regulation (EC) No 1260/1999, whether approved by the Member State in question before or after dispatch of this letter, the national or regional authorities and the managing authorities should ensure implementation of these guidelines no later than 31 October 2003.

**B. Definition of possible situations regarding new applications for assistance in the context of an infringement procedure against a Member State for failure to comply with Directive 91/271/EEC<sup>1</sup>.**

- a) When a Member State gives a binding undertaking to bring treatment into line with the requirements of the Directive, the Commission regards as acceptable the part-financing of the level of treatment proposed by the Member State in the first place, provided that the further treatment required by the Directive is implemented as soon as possible. The Commission may recover the part-financing if this commitment is not honoured.
- b) If the Member State contests the need for a further level of treatment:
  - Where the Commission accepts the scientific arguments put forward by the Member State, the investment for the level of treatment planned by the Member State will be eligible for part-financing.
  - If, however, the Commission does not accept the scientific arguments put forward by the Member State, it will not oppose part-financing of the investment for the level of treatment proposed by the Member States provided it supplies the Commission with technical details proving that it would be feasible in practice to bring the facility to the level considered necessary by the Court of Justice and that it can show in this respect that it has taken the precautionary measures required (availability of land, water connections, etc.). The Commission will suspend interim payments to reimburse expenditure on the measures in question (i.e. measures to protect water quality) until it receives that information.

<sup>1</sup> This must be an infringement procedure directly relating to the project or programme – application for assistance – submitted for a Commission decision.

As a result, the text of the decision, either by the Commission approving a major project or by the Member State approving a project, must, where the project in question falls within the scope of the Directive, contain the following clause:

*'This decision is taken subject, on the one hand, to the characteristics of the project being such that it can, if necessary, be brought into compliance with the conclusions of any study which the Commission has undertaken or might undertake pursuant to Article 226 of the Treaty, and, on the other hand, to the commitment by the Authority to bring the project into compliance as soon as possible after the judgment of the Court of Justice based on that Article.'*

The inclusion of such a clause in the text of the decision implies that the national authorities have designed their infrastructure and taken the precautionary measures required to permit compliance at a later date with the results of the above procedure.

It should be noted that this clause does not oblige the Commission to part-finance any upgrades or further facilities. However, it does allow it to block applications for interim payments or the balance, either in full or in part, if compliance is not achieved. Furthermore, – on the basis of Article 39 of Regulation (EC) No 1260/1999 or, in the case of the Cohesion Fund, Article H of Annex II to Regulation (EC) No 1164/94 – the Commission can recover all the part-financing if the Member State does not comply with the Directive within a reasonable time. This remains a possibility even if the Commission does not begin, or has not yet begun, the procedure under Article 226 of the Treaty.

- (c) If the Member State does not respond within the time allowed to the letter giving notice or the reasoned opinion from the Commission, consideration of the application for part-financing or the part-financing itself will be suspended.

### C - Maintenance clause

The Member State ensures that the treatment stations are operating properly at the level required by the Directive. When it submits the final report, the Member State must certify that treatment operations are proceeding in line with the statutory requirements and give a brief outline of the steps taken to ensure that the facility continues in service and is maintained. In any case, the Member State is required to implement the Directive even if there are no further funds available to part-finance improvements to the facilities.

The Commission may also make financial corrections in respect of projects which are not operating properly and in accordance with the rules in force.

