



## **Commission draft information note concerning combination of Community Funding: guidelines for Member States**

### **I. Introduction**

When the Council reached political agreement on 11 December 2006 concerning the TEN-Regulation, the Commission issued a declaration on non-cumulation of Community funding (see Annex 1), in which the Commission undertook to issue guidelines to Member States on how the different funding instruments can be combined. The present document responds to that commitment. The relevant legal texts that form the basis for the principle of non-cumulation of Community funding are attached in Annex 2.

### **II. Legal Framework**

On the basis of the relevant legal texts, the following conclusions can be drawn:

1. It follows from the provisions of Regulation No 1605/2002, as amended by Regulation 1995/2006<sup>1</sup>, on the **Financial Regulation applicable to the general budget of the European Communities** that:
  - In no circumstances shall the same costs be financed twice by the EU budget.<sup>2</sup> Grants from the EU budget, such as TEN-grants, cannot be cumulated with other grants from the EU budget for the same part of a project.
  - Risk-bearing instruments of the Community or Community financial contributions to such instruments shall not constitute grants.<sup>3</sup> Hence, projects benefiting from a TEN-grant or projects of common interest<sup>4</sup> whose eligible costs are included in an Operational Programme co-financed by the Structural Funds and/or the Cohesion Fund, can also make use of the loan guarantee instrument that is foreseen by the TEN-Regulation.
2. It follows from the provisions of **Regulation (EC) n° 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund** and Regulation (EC) 1828/2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 that expenditure within a

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<sup>1</sup> OJ L 390, 30.12.2006, p. 1–26, Corrigendum OJ L 239, 1.9.2006, p. 248–250. Expected to be in force, at the latest, by 1 May 2007, see Art. 2 of Regulation 1995/2006

<sup>2</sup> Art. 111 Regulation No 1605/2002, as amended by Regulation 1995/2006, see Annex 2

<sup>3</sup> Art. 108(2) (b) Regulation No 1605/2002, as amended by Regulation 1995/2006, see Annex 2

<sup>4</sup> Provided that they fulfil the eligibility criteria set out in the TEN-Regulation

project that is part of an Operational Programme receiving financial assistance from the Structural Funds and/or the Cohesion Fund cannot benefit from TEN-grant funding.<sup>5</sup>

3. The **TEN-Regulation**<sup>6</sup> stipulates that the Commission may recover all or part of the sums already paid in the event of cumulation of Community aid (double financing) for a part of a project.<sup>7</sup> "Part of a project" is any activity<sup>8</sup> that is independent financially, technically or over time and which contributes to the completion of the project.<sup>9</sup>

Technically independent projects could be for example: Studies and works<sup>10</sup> for the same project or part of a project; infrastructure works and technical infrastructure equipment (e.g. the actual construction of the railway line is technically independent from ERTMS equipment or electrification of a railway line); different phases of construction (ground works, measures for environmental compensation), i.e. independent over time, or geographically independent parts of a project (pieces of infrastructure from A to B, C to D, etc.). Any technically independent project must also be separable from the financial point of view from other projects or parts thereof.

Hence, when expenditure, for example for ERTMS equipment or electrification of a railway line, is not receiving financial assistance from the Structural Funds and/or the Cohesion Fund, it could benefit from TEN-funding. The actual construction of the railway line could be funded by the ERDF or the Cohesion Fund. Projects could also be divided in geographical sections, which could be co-financed either by ERDF/Cohesion Fund or TEN-funding.

In applying the Regulation, the Commission will not allow the eligible costs of a part of a project already receiving a TEN- grant to be also included in an Operational Programme co-financed by the Structural Funds and/or the Cohesion Fund. The Commission will recover all sums already paid in the event of cumulation of Community aid (double financing) for a part of a project.

4. It follows from points 1 to 3 that it is permissible to include the eligible costs of a part of a project in one Operational Programme co-financed by the Structural Funds and/or the Cohesion Fund, and to apply for TEN-funding for a different part of the same project.

### **III. Guidelines**

In order to prevent cumulation of Community funding, it is necessary to ensure that these conclusions can be effectively implemented, and their implementation verified by the Community institutions. The following guidelines will therefore apply to the funding of projects:

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<sup>5</sup> See Annex 2

<sup>6</sup> In the version of the Common Position text adopted by Council on 22 March 2007 (Council Document 17032/2/06 REV 2)

<sup>7</sup> Art. 13(2)(b) TEN-Regulation

<sup>8</sup> i.e. action in the sense of Regulation 1605/2002

<sup>9</sup> Art. 2 (4) TEN-Regulation, see Annex 2

<sup>10</sup> As defined in Art. 2 (8) and (9) TEN-Regulation

1. It is important that project promoters reflect as early as possible on which projects, or parts thereof, they intend to present for TEN-funding and that they reflect on this while elaborating their applications for funding from Operational Programmes.
2. When an applicant plans to combine funding instruments for different parts of projects, this should be indicated in the application for funding under the Operational Programme and in the application for TEN funding. The applicant will clearly indicate in its application for funding which part of the project is co-financed by which instrument. Applicants for TEN-funding are required to indicate this clearly in their applications for funding as well as the beneficiaries of TEN- funding in subsequent associated Project Status Reports.
3. When making an application, the applicant(s) and the Member State(s) concerned shall ensure by all appropriate means that the project's eligible costs are not included in any Operational Programme co-financed by the Structural Funds and/or the Cohesion Fund.
4. The managing authority of an operational programme co-financed by the Structural Funds or the Cohesion Fund shall ensure that the costs that are financed by grants from another Community Financial Instrument are not declared under that operational programme. To do so, it is recommended to the managing authority that it shall:
  - ask in the grant application of the project whether an application for financing under the TEN-programme has been requested or obtained, and
  - check<sup>11</sup>, before paying the final balance of a project, that this is in fact the case (in order to address the situation where a project has obtained a TEN financing in the course of its implementation).
5. Projects benefiting from a TEN-grant **or** projects of common interest<sup>12</sup> whose eligible costs are included in an Operational Programme co-financed by the Structural Funds or the Cohesion Fund may also make use of the loan guarantee instrument foreseen in the TEN-Regulation.
6. Member States should inform project promoters by all appropriate means and at all stages of the procedure about the principle of non-cumulation of aid, the contents of these guidelines and about the resulting obligations. Member States should inform the Commission without further delay about cases where they suspect double financing.

Project promoters should be aware that the TEN- Regulation provides for the Commission's Anti-Fraud Office (OLAF) to undertake on-the-spot site controls and checks. The Commission, or any representative authorised by it, can provide for monitoring and financial controls. The Court of Auditors can undertake audits, where appropriate, on the spot.

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<sup>11</sup> Article 13 (2) of the Commission implementing regulation (EC) n° 1828/2006) establishes that the verification of the Managing Authority shall cover procedures to avoid double-financing of expenditure with other Community or national schemes and with other programming periods.

<sup>12</sup> Provided that they fulfil the eligibility criteria set out in the TEN-Regulation

## **Annex 1: Declaration on non-cumulation**<sup>13</sup>

*"The question of cumulation of Community funding of various financing sources on the same project has been a constant preoccupation of the Commission. The Court of Auditors has highlighted this issue in its reports on the implementation by the Commission of the trans-European networks.*

*"In the context of operational programmes receiving financial assistance from the Structural Funds and/or the Cohesion Fund, Community financial instruments other than those Funds cannot provide a substitute for the required national co-funding.*

*"Expenditure within a project that is part of an operational programme receiving financial assistance from the Structural Funds and/or the Cohesion Fund cannot benefit from other Community funding. It follows that when expenditure, for example for ERTMS equipment or electrification of a railway line, is not receiving financial assistance from the Structural Funds and/or the Cohesion Fund, it could benefit from TEN-funding. The actual construction of the railway line could be funded by the ERDF or the Cohesion Fund. Projects could also be divided in geographical sections, which could be co-financed either by ERDF/Cohesion Fund or TEN-funding.*

*"When granting TEN-subsidies, the Commission will therefore check whether the projects have not received funding from the Structural Funds or the Cohesion Fund.*

*"After consultation of the Court of Auditors, the Commission will also issue guidelines to Member States on how the different funding instruments can be combined.*

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<sup>13</sup> Annex to the amended proposal for a Regulation of the European Parliament and of the Council laying down general rules for the granting of Community financial aid in the field of trans-European transport and energy networks ("TEN-Regulation"), COM(2007)152 (Council Document 7086/07 ADD 1)

## **Annex 2: Relevant legal texts**

### **1. Regulation (EC, Euratom) No 1605/2002, as amended by Regulation 1995/2006<sup>14</sup>, on the Financial Regulation applicable to the general budget of the European Communities:**

- Article 111 stipulates the following:

"Each action may give rise to the award of only one grant from the budget to any one beneficiary, except where the relevant basic acts authorise otherwise.

"A beneficiary may be awarded only one operating grant from the budget per financial year. The applicant shall immediately inform the authorising officers of any multiple applications and multiple grants relating to the same action or to the same work programme.

"In no circumstances shall the same costs be financed twice by the budget."

- Article 108.2 stipulates that:

"The following shall not constitute grants within the meaning of this Title (...):

- b) loans, risk-bearing instruments of the Community or Community financial contributions to such instruments (...); (...)
- e) expenditure implemented as part of shared, decentralised or joint management (...)"

### **2. Regulation (EC) n° 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999**

- The provisions concerning the Cohesion policy (Article 54 (5) of Regulation (EC) n° 1083/2006) foresee that "an expenditure co-financed by the Funds shall not receive assistance from another Community financial instrument."
- Article 13 (2) of the Commission Regulation (EC) n° 1828/2006 setting out the implementing rules for 2007-2013 lays down that the verification of the Managing authority shall cover procedures to avoid double-financing of expenditure with other Community or national schemes and with other programming periods.
- Furthermore, in the context of operational programmes receiving financial assistance from the Structural Funds and/or the Cohesion Fund, Community financial instruments other than those Funds cannot provide a substitute for the required national co-funding. This results from Article 53 of Regulation (EC) n° 1083/2006 which lays down that:

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<sup>14</sup> Expected to be in force, at the latest, by 1 May 2007

"The contribution from the Funds, at the level of operational programmes, shall be calculated with reference to:

- (a) either the total eligible expenditure including public and private expenditure;
- (b) or the public eligible expenditure."

- Article 2 (5) of Regulation (EC) n° 1083/2006 defines public expenditure as "any public contribution to the financing of operations whose origin is the budget of the State, of regional and local authorities, of the European Communities related to the Structural Funds and the Cohesion Fund and any similar expenditure. Any contribution to the financing of operations whose origin is the budget of public law bodies or associations of one or more regional or local authorities or public law bodies acting in accordance with Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (1) shall be regarded as similar expenditure."

### **3. Amended proposal for a Regulation of the European Parliament and of the Council laying down general rules for the granting of Community financial aid in the field of trans-European transport and energy networks<sup>15</sup> ("TEN-Regulation")**

- Article 2.4 defines "part of a project" as "any activity that is independent financially, technically or over time and which contributes to the completion of the project".
- Article 13.2 and 13.2.b) stipulate that "the Commission may recover all or part of the sums already paid in the event of cumulation of Community aid for a part of a project."
- Article 14 stipulates:  
"Protection of the Community's financial interests  
1. The European Anti-Fraud Office (OLAF) may undertake on-the-spot site controls and checks in accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities.  
2. The conditions governing the granting of Community financial aid may, in particular, provide for monitoring and financial checks to be undertaken by the Commission or any representative authorised by it, and for audits to be undertaken by the Court of Auditors, where appropriate on the spot.  
3. The Member State concerned and the Commission shall immediately exchange all relevant information concerning the results of the checks undertaken."

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Common Position text adopted by Council on 22 March 2007 (Council Document 17032/2/06 REV 2)