



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
REGIONAL POLICY

Note of the Commission Services No. 6

Treatment of old Cohesion Fund projects - implementation of Article 5 (2) of Council Regulation (EC) No 1084/2006

This note has been prepared by the Directorate-General for Regional Policy.

A draft of this note was discussed on 31 January 2007 in the Committee for the Coordination of the Funds (COCOF).

The note sets out the reading that the Directorate-General will give to the relevant articles of the Regulations on this issue in their dealings with Member States.

Introduction

The Commission has been consulted by various Member States on the interpretation to be given to Article 5(2) of Council Regulation (EC) No 1084/2006 establishing a Cohesion Fund and repealing Regulation (EC) n° 1164/1994 ("Cohesion Fund Regulation")¹. In particular, the questions concern the interaction of that provision with paragraphs 1 and 3 of Article 56 of Regulation 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) n° 1260/1999 ("General Regulation")².

1 – Interaction of Article 5 (2) of the Cohesion Fund Regulation with article 56 (1) of the General Regulation (Eligibility of expenditure)

Article 5(2) of the Cohesion Fund Regulation states that "*applications for major projects within the meaning of Articles 39, 40 and 41 of Regulation (EC) No 1083/2006 made to the Commission under Regulation (EC) No 1164/94 shall remain valid provided that such applications are supplemented, where necessary, so as to comply with the requirements of this Regulation and the abovementioned Articles of Regulation (EC) No 1083/2006 within not more than two months as of 1 January 2007*".

As a result of this provision, an application for the Cohesion Fund assistance submitted under Regulation (CE) n° 1164/1994, but not approved by the end of 2006, remains valid and is converted into a submission of a major project under the General Regulation

¹ OJ L. 210 of 31.07.2006, p. 79

² OJ L. 210 of 31.07.2006, p. 25

where it fulfils the criteria of Article 39 of that Regulation. That submission can be the object of a Commission decision under article 41 (2) of the General Regulation once any complementary information required under article 40 of that regulation is provided before 1 March 2007 (details concerning the complementary information to be submitted is provided in point 3 of this note), and after adoption of the relevant Operational Programme.

However, even if the applications are valid, such major projects should be eligible under one identified operational programme. In this respect, article 56 (1) of Regulation 1083/2006 provides that "*Expenditure, including for major projects, shall be eligible for a contribution from the Funds if it has actually been paid between the date of submission of the operational programmes to the Commission or from 1 January 2007, whichever is earlier (...)*".

It results from that provision that the eligibility of expenditure related to any project co-financed within the 2007-2013 programming period will start from the date of submission of the relevant operational programme or from 1 January 2007 (whichever is earlier).

This general rule also applies without any exception to projects which will benefit from the transitional measures of article 5(2) of the Cohesion Fund Regulation which, in any event, can not be regarded as eligible from the date of their previous submission under regulation (EC) n° 1164/1994.

2 – Interaction of Article 5 (2) of the Cohesion Fund Regulation with article 56 (3) of the General Regulation (Selection of the operations by the national authorities)

Article 56 (3) of the General Regulation states that "*Expenditure shall be eligible for a contribution from the Funds only where incurred for operations decided on by the managing authority of the operational programme concerned or under its responsibility, in accordance with criteria fixed by the monitoring committee.*"

This provision is intended to ensure that all operations receiving financial assistance from the Funds in the 2007-2013 programming period have been selected to be part of an operational programme and respect its criteria.

However, taking into account the limited duration foreseen for its application ('*within not more than two months as of 1 January 2007*'), the "effet utile" of Article 5(2) of the Cohesion Fund Regulation would be limited if the required procedure by Article 56(3) should be fulfilled. The provision of article 5 (2) is intended to avoid national authorities having to re-submit pre-2007 Cohesion Fund applications as submissions of major projects under the new rules and thereby to gain the time that would be lost in submitting those projects afresh.

The Commission then considers that those projects are not required to undergo selection in compliance with the requirements of article 56(3) of the General Regulation prior to their submission to the Commission.

By consequence, and pursuant to article 41(1) of the General Regulation, the consistency of the major project with the operational programme and its priorities will be carried out by the Commission when adopting the major project decision when the relevant operational programme has been submitted.

3 – Information to supplement for projects submitted under the old Cohesion Fund Regulation in order to comply with the provisions of the General Regulation on major projects

In order to supplement the initial applications prior to 1st March 2007, the Member state or relevant managing authority should ensure that:

- the structured datasets of the major project application 2007-2013 (Annex XX to the Commission regulation (EC) n° 1828/2006 ³), should be filled in by the national authorities and transmitted to the Commission;
- the original application shall be supplemented to reflect the grant calculation method relevant for the 2007-2013 major projects (in any event a complete Section H of the major project form 2007-2013 in Annex XXI to the Commission Implementation Regulation should be provided);
- other questions not addressed in the old Cohesion Fund application 2000-2006 should be answered.

If needed, a compared version of the application forms (old Cohesion Fund forms under Reg. N° 1164/94 and new format for Major projects 2007/2013) is available on request in order to facilitate the identification of the information which has to be supplemented in order to be in line with the requirements of the new general Regulation.

Finally, as regards the practical aspects of supplementing these applications, given that the electronic exchange of data (SFC 2007) for major projects will not be available before 1st March 2007, the complementary information has to be submitted on paper. When the electronic data exchange system becomes operational, the National Authorities will record these data pursuant to articles 66(3) and 76(4) of the General Regulation and the corresponding provisions of the Commission Implementing Regulation.

³ OJ L. 371 of 27.12.2006, p. 1