



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
REGIONAL AND URBAN POLICY

GUIDANCE NOTE TO THE COCOF

**AMENDMENT TO MAJOR PROJECT DECISIONS AND ITS IMPACT ON
THE EXCEPTIONS TO THE AUTOMATIC DECOMMITMENT**

DISCLAIMER:

"This is a working document prepared by the Commission services. On the basis of the applicable EU law, it provides technical guidance to the attention of public authorities, practitioners, beneficiaries or potential beneficiaries, and other bodies involved in the monitoring, control or implementation of the Cohesion policy on how to interpret and apply the EU rules in this area. The aim of this document is to provide Commission services' explanations and interpretations of the said rules in order to facilitate the implementation of operational programmes and to encourage good practice(s). However this guidance note is without prejudice to the interpretation of the Court of Justice and the General Court or decisions of the Commission."

1. INTRODUCTION AND PURPOSE OF THE NOTE

The note recalls the current framework and guiding principles and sets out the types of changes that may justify an amendment to major project decisions adopted during the programming period 2007-2013.

It should be underlined that priority should be given to the adoption of the remaining major projects for the 2007-2013 programming period and in particular to the clearing of the backlog of pending decisions. As regards the need for modification of major projects attention should be given to the phasing of approved major projects as highlighted in the COCOF note on this subject (COCOF 12/0047/02).

2. LEGAL BASIS AND REFERENCE DOCUMENTS

- Articles 39-41 of Regulation (EC) 1083/2006 as amended by Regulation (EU) 539/2010
- Annexes XXI and XXII of Commission Regulation (EC) 1828/2006 (replaced by Annex II of Commission Regulation (EU) 832/2010)
- COCOF note 08/006/06 on “Contents and threshold of Commission decisions”
- Internal Guidance note on “Modification and reprogramming of Operational Programmes 2007-2013” (ARES(2011)113930 of 24/10/2011)
- COCOF note 12/0047/02 on “Major projects spanning over two programming periods”
- COCOF note 07/0073/03 on “Major projects / aids schemes and the automatic decommitment rule”
- Commission Decision C(2013)1573 final of 20/03/2013 on “Guidelines on the closure of operational programmes adopted for assistance from the European Regional Fund, the European Social Fund and the Cohesion Fund (2007-2013)”

3. GUIDING PRINCIPLES FOR AMENDMENTS TO MAJOR PROJEC DECISIONS

3.1 Scope of the Commission decision on major projects

The scope of the Commission decision on major projects is clearly defined in Article 41(2) of Regulation 1083/2006 as amended by Regulation 539/2010. Its purpose is to define three elements: *“the physical object, the amount to which the co-financing rate for the priority axis of the operational programme or programmes applies, and the annual plan of financial contribution from the ERDF or the Cohesion Fund”*.

The COCOF note on *“Contents and threshold of Commission decisions”* describes in detail the content of each of these elements. In particular, the note explains that the description of the physical object should be sufficiently precise in order to identify the physical object and the nature of the project, but not so detailed that adaptations which can normally be expected in projects of this type would necessitate a modification of the

Commission decision. Any change of the physical object defined in the major project decision should be addressed in the annual implementation report. This may trigger a modification of the decision in order to phase the project or reduce its scope. The completion of the physical object of the project is to be addressed at closure.

The “*amount to which the co-financing rate for the priority axis of the operational programme or programmes applies*” is the so-called “decision amount”. The “decision amount” is at most equal to, but usually less than the total cost of the major project since it covers only eligible expenditure.

The decision amount is the maximum amount¹ of eligible expenditure that can be declared to the Commission for a contribution from the Funds to the major project. The Member State cannot declare more expenditure incurred for the implementation of the major project than the decision amount, but could declare less.

The annual plan or plans of financial contribution from the ERDF or the Cohesion Fund indicates the “annual financial contribution from the ERDF or the Cohesion Fund” to the major project. The annual amounts serve for the calculation of the exceptions to the automatic decommitment (as specified in Article 94 of Regulation (EC) 1083/2006).

3.2 *Responsibility of the Member State*

Once a major project decision has been adopted by the Commission, the national authorities (as specified in Article 60 of Regulation (EC) 1083/2006) are responsible for ensuring that the implementation of the major project is in conformity with the approved decision and meets the co-financing conditions under the relevant operational programme.

During implementation of the project and until the end of the eligibility period the Member State will have to inform the Commission at least in the annual implementation report (Cf. point 5 of Annex XVIII to Regulation (EC) 1083/2006), and provide adequate justification for any discrepancy compared to the original decision of the Commission.

3.3 *Evolving conditions during the implementation period*

During the implementation process of a major project, the conditions encountered on the ground may evolve (e.g. additional works, delays in the execution, need for phasing, increase/reduction of the estimated revenues/investment costs, additional technical/legal requirements entered into force after the submission, etc.).

¹ The COCOF Guidance note on «Contents and threshold of major project decisions» (COCOF 08/0006/06) underlines the notion of the “amount to which the co-financing rate for the priority axis applies” (Art.41(2) of the GR) as a “maximum amount of eligible expenditures”.

4. POLICY LINES WITH REGARD TO THE AMENDMENTS TO MAJOR PROJECT DECISIONS

4.1 *The physical object*

Changes to the physical object of the project as described in Annex I to the decision during implementation concerning elements included in the original Commission decision may entail an amendment to the decision.

Since the co-financed major project should be implemented, completed and put in operation in conformity with the Commission decision, any request for modification of the physical object of the major project will be subject to a case-by-case assessment by the Commission services, in particular in case of phasing of major projects in line with the Guidelines on Closure 2007-2013. Point 1 of the table page 7 below gives examples of cases where a change in the physical object may require an amendment.

The Member State should provide in the final report information of any significant problems encountered in implementing major projects and measures taken to overcome them. The Commission will assess reasons and consequences of the eventual non-compliance of the implemented major projects with the Commission decision (financial and/or physical implications) and may apply financial corrections.

4.2 *Changes affecting the “decision amount”*

- Changes in eligible costs or in revenues (e.g. due to a change of the physical object, re-evaluation of the eligibility rules at national level), need to be examined in relation to their impact on the decision amount. The COCOF Guidance on “Contents and threshold of major project decisions” (COCOF 08/0006/06) underlines the notion of the “amount to which the co-financing rate for the priority axis applies” (Art. 41(2) of the GR) as a “maximum amount of eligible expenditures”. Changes in the decision amount are subject to the following rules:
 - A modification is only triggered in those cases where changes of physical object, eligibility rules, or legislation/technical standards at EU or national level lead to an increase of the decision amount.
 - Cases of *force majeure* can also justify a modification of the decision (e.g. natural or technological disaster). However, events that could reasonably be anticipated during the implementation of a project will not be considered as *force majeure* (e.g. archeological findings, delays or restart of tendering, inflation, variations in the exchange rate, increase in the price of raw materials, etc.). These hazards should be covered by an appropriate amount of contingencies.
 - Simple cost overruns without a change in physical object do not represent an acceptable reason for modification of the decision amount.
 - Savings during the project implementation (e.g. through the tendering process) are not to be addressed by a major project modification. They will simply result in less eligible expenditure declared and paid.

- In addition, in case of phasing, the decision amount shall be reduced proportionally to the physical object financed under the next programming period.
- Deductions due to additional sources of net revenues are done at the latest at the time of submission of the closure documents in application of Article 55(4) of Regulation (EC) 1083/2006 (See also COCOF 07/0074/09).
- As clarified in 2010 (COCOF note 08/0006/06), decisions on major projects do not need to cap the decision amount to the maximum amount of public support under state aid rules, in order to offer the possibility to the Member State to co-finance the totality of the public contribution to the major project subject to state aid rules. Decisions regarding major projects can be modified on request of the Member State to take advantage of this option.
- Changes in the decision amount need to be reflected in a change in the financing plan, but only on a pro-rata basis, in proportion to the variation of the decision amount (see point 4.4).

4.3 The co-financing rate for the priority axis of the relevant operational programme and the annual plan of financial contribution from the Funds

Amending decisions on underlying operational programmes which modify the co-financing rate of a priority axis of an operation programme may lead to a single decision² amending all decisions concerning major projects under that priority axis.

Changes of the decision amount or of the co-financing rate have an impact on the annual plan³.

Accordingly, it should be allowed to increase the annual tranches of the financing plan in proportion to the increase of the co-financing rate of the priority axis.

However, the Member State should ensure that the public contribution including the increased EU contribution to the project respects the applicable State aid rule (i.e. the maximum public aid granted, as included in table G.1 of the application forms).

4.4 Impact of the modifications of major project decisions on the exceptions to the automatic decommitment

The amounts which must be taken into account as exceptions to the automatic decommitment rule are the annual amounts as indicated in the annual plan of financial contribution from the ERDF and the Cohesion Fund to the major project, up to the year

² Future amending decisions may also cover amendments to all major projects supported under the OP concerned. Should such amending decisions already have been adopted for a given operational programme, a subsequent single decision may upon request cover all major projects under that OP.

³ It creates an inconsistency between the decision amount and the amount reimbursed by the Commission to the Member State on the basis of the increased co-financing rate at priority axis level and creates a surplus for the Member State. In addition, as regards state aid it would create an inconsistency since the co-financing rate of the priority axis is explicitly referred to in the decision on major projects.

of the Commission decision (amounts for that year being excluded). The annual amount in the financial plan of the major project for year N will therefore reduce the amount at risk of automatic decommitment for year N, which will come under review in year N+2 or N+3 (COCOF Note 07/0073/03).

Despite a major project modification, the initial decision remains the act giving the Member State legal certainty on the funds' contribution to the major project. Accordingly, the exception to the automatic decommitment ceases as of the year of adoption of the initial major project decision by the Commission.

If there is an increase or a decrease of the decision amount, a modification of the financing plan should be made on a pro-rata basis. The pro-rata change should apply to each annual amount of EU contribution included in the financing plan. The modified exception to the automatic decommitment becomes effective only once the modification of the major project decision is adopted by the Commission. A numerical example is presented in an Annex to this note.

The increase should not be automatic, but only upon request of the Member State. The decrease will be carried out by the Commission on the basis of the phasing request.

This approach takes into account the fact that, for major projects, Member States can declare expenditure for the major project while simultaneously benefiting from an exception to the automatic decommitment rule. Member States cannot, therefore, repeatedly tailor the financial plan and modification decisions in such a way as to avoid automatic decommitment altogether and thus render the concept of automatic decommitment ineffective.

Upon request from a Member State, in line with the procedure described under point 5 below, the adjustment of the co-financing rate for all major projects concerned by a modification of the co-financing rate at priority level should be addressed in a single decision modifying both the programme co-financing rate and the related major projects (see point 4.3).

Since the annual plan is the reference point for the calculation of the exception to the automatic decommitment rule, the increase of the co-financing rate of an OP has an impact on the exception only if the financing plan(s) of the major project(s) have been modified by Commission decision by the end of the year. Therefore, the submission of a subsequent plan is not taken into account until the corresponding decision is adopted.

4.5 Other elements

- Changes of an editorial nature concerning the major project (e.g. "title of the project), or clarifying the wording in the project description without impact on the scope of the project, do not require an amendment to the major project decision when there are no other changes.
- Typing errors in a decision on a major project can be addressed by a corrigendum when necessary.

- The transfer of a major project to a different priority axis requires an amendment of the decision only when the two priority axes are financed by a different Fund or when a different co-financing rate applies.
- The modification of other elements linked to the operational programme such as the title of the priority axis, the name of programme authorities of the body responsible for implementation can be changed when they are covered by an amending decision concerning the relevant operation programme, but they should not give rise on their own to a specific amendment of the decision when there are no other changes.

The table below summarizes the main cases where a modification of a major project decision is necessary:

TYPE OF CHANGES	CASES WHERE A MODIFICATION IS NECESSARY
1. Definition of the physical object	<p>→ Changes in the physical object affecting the nature of the project, its main characteristics or scope</p> <p>→ phasing of the major project</p>
2. Financial elements and their impact on the decision amount and/or on the annual financing plan	<p>→ Change in the total cost if it leads to an increase of the “decision amount” (in the cases described under Point 4.2)</p> <p>→ modification of the co-financing rate</p> <p>→ phasing of the major project</p>
3. Reprogramming of the OP concerned	<p>→ transfer of a major project between two priority axes financed by a different Fund or with different co-financing rates</p>

5. PROCEDURAL ASPECTS

Depending on the nature of the modification, Member States should submit a revised application form through SFC2007 in order to request the amendment to a major project decision. The revised application form should be updated on the elements concerned by the amendment requested. This may entail an updated Cost-Benefit Analysis (CBA), Environmental Impact Assessment (EIA) studies, permits, technical justifications, etc. In certain cases, an assessment of the impact of the modification on the CBA, EIA, etc. may be sufficient.

The Commission services, which are directly concerned by the modification, will appraise the revised application form.

In the case of phasing of projects, it is recommended that Member States establish by the end of 2013 which major projects are to be divided into phases so that the project can be completed in its entirety within the 2014-2020 programming period. However, as indicated in section 2.3 of the Closure Guidelines 2007-2013, the submission of a list of phased major projects should be submitted at the latest by 30 June 2015. The Commission will assess the Member States' proposals with a view to agree on the new timetables and to amend the major project decisions.

ANNEX

MODIFICATION OF THE FINANCING PLAN (ANNEX II TO THE MAJOR PROJECT DECISION) NUMERICAL EXAMPLE:

Original financing plan:

Total EU contribution amounts to 200 M€

	2009	2010	2011	2012	2013	TOTAL
EU CONTRIBUTION	20	20	50	100	10	200
%	10%	10%	25%	50%	5%	100%

Revised financing plan:

The total EU contribution is increased by 50 M€ to 250 M€. The revised annual amounts are calculated pro-rata to the weight of each annual amount in the original financing plan, applied to the increase in EU co-financing (i.e. 50M€):

	2009	2010	2011	2012	2013	TOTAL
EU CONTRIBUTION	25 (=20+10% x 50)	25 (=20+10% x 50)	62.5 (=50+25% x 50)	125 (=100+50% x50)	12.5 (=10+5% x50)	250
%	10%	10%	25%	50%	5%	100%