



INFORMATION NOTE TO THE COCOF

MAJOR PROJECTS / AID SCHEMES AND THE AUTOMATIC DECOMMITMENT RULE FOR THE PERIOD 2007-2013

I. Introduction

The Community legislation governing major projects and aid schemes for the 2007-2013 programming period significantly differs from that in place for the 2000-2006 programming period.

The principal change made for the current period is the inclusion of Cohesion Fund projects in operational programmes. Consequently, the "n+2"/"n+3" (hereafter, "n+2") rule will apply in the same manner as to the ERDF, and the eligibility period of expenditure under **major projects** will be that of the operational programme to which they belong. In addition, the information transmitted for each major project by the Member States under Article 40 of Regulation (EC) N° 1083/2006 includes an annual financial scheme which, pursuant to Article 41(2) of the same Regulation (see information note to the COCOF n° 08/0006/01-EN), will appear in Annex II of the Commission Decision on that major project.

As regards **aid schemes**, which had to appear in the measures of the programme complements in the 2000-2006 programming period, their enumeration is not required in operational programmes. However, the managing authority must, before granting assistance to operations which fall within Article 87 of the EC Treaty, make sure that they have been authorised by the Commission.

For the 2000-2006 programming period, the application of the "n+2" rule to the major projects/aid schemes was the subject, on the one hand, of Communication C(2002) 1942 of 17 May 2002 on the implementation of the "n+2" rule, which was amended by Communication C(2003) 2982 of 8 August 2003, and, on the other hand, of the CDRR-03-0024-02-FR note of 9 July 2003 which clarified details of its implementation.

II. The legal framework for the period 2007-2013

1. For the 2007-2013 programming period, the provisions concerning automatic decommitment are laid down in Articles 93 to 97 of Regulation (EC) N° 1083/2006. Article 93 fixes the general principles of automatic decommitment, including that related to the closure of the programming period (Article 93(3)). Regulation (EC) N° 1083/2006 also contains more specific rules concerning the treatment of major projects/aid schemes regarding the application of automatic decommitment:

- i) Article 94 provides that: *"when the Commission takes a decision to authorise a major project or an aid scheme, the amounts potentially concerned by automatic decommitment shall be reduced by the annual amounts concerned by such major projects or aid schemes.*

For these annual amounts, the starting date for the calculation of the automatic decommitment deadlines referred to in Article 93 shall be the date of the subsequent decision necessary in order to authorise such major projects or aid schemes."

The "annual amounts concerned", which must be taken into account to implement the second subparagraph of Article 94, are the annual amounts preceding the year of the Commission Decision on the major project or the aid scheme. Thus the reduction of the amounts potentially concerned by automatic decommitment only takes place from the date of adoption of the Commission decision and not from the date of submission of the major project to the Commission.

Therefore, Article 94 provides not only that there shall be a reduction of the amounts potentially concerned by the automatic decommitment in respect of the major projects and aid schemes, but clearly lays down the amounts to be taken into account for that reduction, namely "annual amounts concerned by such major projects and aid schemes".

- ii) In accordance with Article 41(2) of Regulation (EC) N° 1083/2006, the Commission Decision concerning the major project covers – inter alia – "the annual plan of financial contribution from the ERDF or the Cohesion Fund" (see information note to the COCOF n° 08/0006/01-EN). That annual plan identifies the amounts corresponding to the years prior to the Commission Decision on the major project which will be taken into account by the Commission to implement Article 94 of Regulation (EC) N° 1083/2006.
- iii) As regards aid schemes that require a Commission decision, it is recommended that the Member State present to the Commission an annual commitment plan. The plan must not include annual commitments relating to that aid scheme for the years prior to the year when the aid scheme is notified to the Commission.

Where such an aid scheme does not give rise to a Commission decision during the year of the notification, the annual commitment(s) preceding the year of the Commission decision on the aid scheme will constitute the annual amount(s) to which the provisions of Article 94 of Regulation (EC) N° 1083/2006 apply.

Where the Member State does not present an annual commitment plan, the annual amounts will be established by the Commission on a pro-rata basis for the years covered by the aid scheme. As a result, this distribution of annual amounts would not concern the years prior to that in which the aid scheme was notified to the Commission.

Where a given aid scheme is common to several operational programmes, the annual commitments concerned by the aid scheme will need to be divided between the programmes in question. That division must be transmitted to the Commission at the latest in the year of approval of the aid scheme by a Commission decision.

- iv) as regards the certification of expenditure, Article 78(4) of Regulation (EC) N° 1083/2006 lays down that *"in the case of major projects as defined in Article 39, only expenditure related to major projects already adopted by the Commission may be included in statements of expenditure"*. The certifying authority must ensure accordingly that no payment request sent to the Commission contains expenditure

related to major projects before their approval by the Commission. If such expenditure were included in a payment request sent to the Commission prior to the adoption of the Commission decision pursuant to Article 41(2) of Regulation (EC) N° 1083/2006, it would be ineligible for reimbursement and the corresponding payment request would be considered unacceptable in accordance with Articles 78(4) and 86(1)(a) of Regulation (EC) N° 1083/2006.

III. Application to major projects/aid schemes

The Commission proposes therefore to apply the exemption from the rule of automatic decommitment to the commitment amounts prior to the Commission Decision related to the State aid or to the major project in the manner set out in this Information Note. As a result, when implementing Article 94 of Regulation (EC) N° 1083/2006 the Commission will take the "annual amounts" preceding the year of the Commission Decision on the major project or the aid scheme into consideration, while expenditure related to such major projects or aid schemes may, once they have been the subject of a decision of the Commission, be included by Member States in statements of expenditure.

The annual commitment of the year of that Decision and the successive commitments are concerned by the "n+2" rule in the same way as any other operation and will therefore benefit from no exemption.

The annexes comprise several examples for 2007-2013 programmes which contain a major project (annex I) or an aid scheme (annex II) that is subject to a later Commission Decision. These examples demonstrate the necessary developments in respect of the cumulated statements of expenditure "without risk of decommitment" and the year during which the approval decision was taken. These examples are sub-divided to cover the situation of the Member States under both the "n+2" and "n+3" rules (Article 93(2) of Regulation (EC) N° 1083/2006).

These examples also illustrate that, in order to avoid the risk of decommitment, the national authorities should make provision in time to anticipate the expenditure levels to be certified to the Commission. This advice applies to the transfers related to the major projects/aid schemes. It is of particular importance to those Member States referred to in Article 93(2) of Regulation (EC) N° 1083/2006 which will shift from the "n+3" regime to the "n+2" regime in 2010. This shift could possibly increase the risk of decommitment in the event that those Member States do not carry out expenditure in time.

Annex I: Major projects and automatic decommitment : numerical examples

1) First example n+2

| Year | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | (2015) |
|--|------|------|------|------|---|------|--|------|--------|
| | | | | | Date of the Commission decision on the major project | | Year n+2 for the major project adopted in 2011 | | |
| Annual commitment OP | 100 | 100 | 100 | 100 | 100 | 100 | 100 | | |
| Cumulative declaration of expenditure without n+2 risk ¹ | | | 100 | 200 | 300 | 400 | 500 | 600 | 700 |
| Annual ERDF or CF commitment Major projects | | | 20 | 20 | 30 | 40 | 40 | | |
| Cumulative declarations of expenditure without n+2 risk ² | | | 100 | 200 | 280 | 360 | 500 | 600 | 700 |

¹ In the absence of a major project or an aid scheme decision

² For decisions concerning a major project or an aid scheme, application of the exemption of the automatic decommitment rule to the commitment amounts prior to the decision related to the State aid or to the major project.

2) First example of n+3³

| Year | 2007 | 2008 | 2009 | 2010 | 2011 Date of the Commission decision on the major project | 2012 | 2013 Year n+2 for the major project adopted in 2011 | 2014 | (2015) |
|--|------|------|------|------|---|------|--|------|--------|
| Annual commitment OP | 100 | 100 | 100 | 100 | 100 | 100 | 100 | | |
| Cumulative declaration of expenditure without n+3 risk ⁴ | | | | 100 | 200 | 300 | 500 | 600 | 700 |
| Annual ERDF or CF commitment Major projects | | | 20 | 20 | 30 | 40 | 40 | | |
| Cumulative declarations of expenditure without n+3 risk ⁵ | | | | 100 | 200 | 280 | 460 | 600 | 700 |

³ Member State concerned by Article 93(2) of Regulation (EC) N° 1083/2006

⁴ In the absence of a major project or an aid scheme decision

⁵ For decisions concerning a major project or an aid scheme, application of the exemption of the automatic decommitment rule to the commitment amounts prior to the decision related to the State aid or to the major project.

3) Second example of n+2

| Year | 2007 | 2008 | 2009 Date of the Commission decision on the major project | 2010 | 2011 Year n+2 for the major project adopted in 2009 | 2012 | 2013 | 2014 | (2015) |
|--|------|------|--|------|--|------|------|------|--------|
| Annual commitment OP | 100 | 100 | 100 | 100 | 100 | 100 | 100 | | |
| Cumulative declaration of expenditure without n+2 risk ⁶ | | | 100 | 200 | 300 | 400 | 500 | 600 | 700 |
| Annual ERDF or CF commitment Major projects | 20 | 20 | 30 | 40 | 40 | | | | |
| Cumulative declarations of expenditure without n+2 risk ⁷ | | | 80 | 160 | 300 | 400 | 500 | 600 | 700 |

⁶ In the absence of a major project or an aid scheme decision.

⁷ For decisions concerning a major project or an aid scheme, application of the exemption of the automatic decommitment rule to the commitment amounts prior to the decision related to the State aid or to the major project.

4) Second example of n+3⁸

| Year | 2007 | 2008 | 2009 Date of the Commission decision on the major project | 2010 | 2011 | 2012 Year n+3 for the major project adopted in 2009 | 2013 | 2014 | (2015) |
|---|------|------|---|------|------|--|------|------|--------|
| Annual commitment OP | 100 | 100 | 100 | 100 | 100 | 100 | 100 | | |
| Cumulative declaration of expenditure without n+3 risk ⁹ | | | | 100 | 200 | 300 | 500 | 600 | 700 |
| Annual ERDF or CF commitment Major projects | 20 | 20 | 30 | 40 | 40 | | | | |
| Cumulative declarations of expenditure without n+3 risk ¹⁰ | | | | 80 | 160 | 300 | 500 | 600 | 700 |

⁸ Member States concerned by Article 93(3) of Regulation (EC) N° 1083/2006.

⁹ In the absence of a major project or an aid scheme decision.

¹⁰ For the decision concerning a major project or an aid scheme, application of the exemption of the automatic decommitment rule to the commitment amounts prior to the decision related to the State aid or to the major project.

**Annex II: Aid schemes and automatic decommitment:
numerical examples**

1) Example of n+2

| Year | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | (2015) |
|---|------|--|--|------|------|---|------|------|--------|
| | | Year of the notification of the aid scheme to the Commission | Date of the Commission decision on the aid scheme | | | Year n+3 for the aid scheme adopted in 2009 | | | |
| Annual commitment OP | 100 | 100 | 100 | 100 | 100 | 100 | 100 | | |
| Cumulative declaration of expenditure without n+2 risk ¹¹ | | | 100 | 200 | 300 | 400 | 500 | 600 | 700 |
| Annual ERDF or CF commitment aid scheme | | 20 | 20 | 20 | 20 | 20 | | | |
| Cumulative declarations of expenditure without n+2 risk ¹² | | | 100 | 180 | 300 | 400 | 500 | 600 | 700 |

¹¹ In the absence of a major project or an aid scheme decision.

¹² For the decision concerning a major project or an aid scheme, application of the exemption of the automatic decommitment rule to the commitment amounts prior to the decision related to the State aid or to the major project.

2) Example of n+3

| Year | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | (2015) |
|---|------|--|--|------|------|---|------|------|--------|
| | | Year of the notification of the aid scheme to the Commission | Date of the Commission decision on the aid scheme | | | Year n+3 for the aid scheme adopted in 2009 | | | |
| Annual commitment OP | 100 | 100 | 100 | 100 | 100 | 100 | 100 | | |
| Cumulative declaration of expenditure without n+3 risk ¹³ | | | | 100 | 200 | 300 | 500 | 600 | 700 |
| Annual ERDF commitment Major projects | | 20 | 20 | 20 | 20 | 20 | | | |
| Cumulative declarations of expenditure without n+3 risk ¹⁴ | | | | 100 | 180 | 300 | 500 | 600 | 700 |

¹³ In the absence of a major project or an aid scheme decision.

¹⁴ For the decision concerning a major project or an aid scheme, application of the exemption of the automatic decommitment rule to the commitment amounts prior to the decision related to the State aid or to the major project.