



## Information note to the COCOF

### MAJOR PROJECTS IN THE PROGRAMMING PERIOD 2007-2013: THRESHOLDS AND CONTENTS OF COMMISSION DECISIONS

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

Its purpose is to clarify some elements concerning the provisions on major projects of Regulation (EC) No 1083/2006 (hereafter the "General Regulation") and of the Regulations specific to each Fund on the European Regional Development Fund (ERDF) and the Cohesion Fund (CF) for the period 2007-2013.

This note proposes guidance on: (i) the relevant provisions of the Regulations in setting the thresholds for identifying a major project; (ii) the content of the Commission decisions on major projects, especially as regard the description of the physical object of the major projects and the scope of the financial contents of these decisions.

#### 1. INTRODUCTION AND BACKGROUND

Under the programming period 2007-2013, the General Regulation envisages that the Commission should "*approve major projects included in the operational programmes (...), in order to evaluate their purpose and impact, as well as the arrangements for the planned use of Community resources*" (recital 49).

According to Article 78(4) of the General Regulation, the certifying authority of an operational programme may declare expenditure related to a major project once the project has been approved by a Commission decision under Article 41(2) of that Regulation. According to Article 41(1) of the General Regulation, the Commission will appraise major projects, "*if necessary consulting outside experts, including the EIB, in the light of factors referred to in Article 40, its consistency with the priorities of the operational programme, its contribution to achieving the goals of those priorities and its consistency with other Community policies*".

This *ex ante* assessment and the resulting Commission decision will concern major projects co-financed by the ERDF, as was the case for the previous programming period<sup>1</sup>.

This procedure will also concern major projects receiving assistance from the Cohesion Fund, which is an innovation in comparison to the rules applicable to that Fund in the previous legal framework<sup>2</sup>.

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<sup>1</sup> Articles 25 and 26 of Regulation (EC) No 1260/1999.

From a procedural and legal point of view, the provisions governing major projects in the 2007-2013 programming period differ in several respects from those previously applicable:

- the financial volume to be reached for the identification of major projects will vary according to the nature of the operation<sup>3</sup>, and will be lower *in the case of the environment*. For this reason it is necessary to give guidance how the rules foreseen in Article 39 of the General Regulation have to be implemented (section 2);
- the Commission's decision on a major project will define the physical object, the amount to which the co-financing rate for the priority axis applies, and the annual plan of financial contribution from the ERDF or the Cohesion Fund. It is therefore also necessary to clarify the scope of the Commission decision on major projects (section 3 of this note), as well as its contents, especially the description of the physical object (section 3.1.) and the issues related to the financial contribution from the Funds (sections 3.2 and 3.3).

## **2. THRESHOLDS FOR DETERMINING A MAJOR PROJECT UNDER ART. 39 OF THE GENERAL REGULATION**

Article 39 of the General Regulation provides that:

*"As part of an operational programme, the ERDF and the Cohesion Fund may finance expenditure in respect of an operation comprising a series of works, activities or services intended in itself to accomplish an indivisible task of a precise economic or technical nature, which has clearly identified goals and whose total cost exceeds EUR 25 million in the case of the environment and EUR 50 million in other fields (hereinafter referred to as major projects)".*

So, unlike the rules applicable to the ERDF for the 2000-2006 programming period, those operations which may be regarded as major projects in the 2007-2013 period - with the corresponding obligation on the Member State or managing authority they be submitted to the Commission for assessment and decision according to the rules laid down in Articles 40 and 41 of the General Regulation - are not subject to one single financial threshold<sup>3</sup>, but to thresholds which are adapted according to the nature of the operation:

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<sup>2</sup> Unlike the rules applicable to the ERDF, under Regulation (EC) No 1164/1994 as amended, the Commission adopted the same kind of grant decision for all projects, stages or groups of projects, irrespective of their financial volume. It is worth recalling that, under the new legal framework for 2007-2013, the Cohesion Fund

will be implemented under the same rules as the Structural Funds, and that the Commission will no longer adopt individual grant decisions.

<sup>3</sup> It is worth recalling that under Regulation (EC) No 1260/1999, irrespective of their nature and objectives, major projects were those whose total cost in determining the contribution from the Structural Funds exceeded EUR 50 million (Article 25(b) of Regulation (EC) No 1260/1999).

- 25 million euros in the case of the environment;
- 50 million euros in the other fields.

The General Regulation does not contain a precise definition of those operations belonging to the category 'environment' within the meaning of Article 39. However, the environment is an essential priority for the implementation of Community cohesion policy for 2007-2013 which is described in several provisions contained in the specific regulations for each Fund, in particular:

- Under Regulation (EC) No 1080/2006 (hereafter the "ERDF Regulation"):

Article 4(4) for the Convergence objective:

*"Environment, including investments connected with water supply and water and waste management; waste-water treatment and air quality; prevention, control and fight against desertification; integrated pollution prevention and control; aid to mitigate the effects of climate change; rehabilitation of the physical environment, including contaminated sites and land and brownfield redevelopment; promotion of biodiversity and nature protection, including investments in NATURA 2000 sites; aid to SMEs to promote sustainable production patterns through the introduction of cost-effective environmental management systems and the adoption and use of pollution-prevention technologies";*

Article 5(2) for the Regional Competitiveness and Employment (RCE) objective:

*"Environment and risk prevention, and in particular:*

- (a) stimulating investment for the rehabilitation of the physical environment, including contaminated, desertified and brownfield sites and land;*
- (b) promoting the development of infrastructure linked to biodiversity and investments in NATURA 2000 sites, where this contributes to sustainable economic development and/or diversification of rural areas;*
- (c) stimulating energy efficiency and renewable energy production and the development of efficient energy management systems;*
- (d) promoting clean and sustainable public transport, particularly in urban areas;*
- (e) developing plans and measures to prevent and cope with natural risks (e.g. desertification, droughts, fires and floods) and technological risks;*
- (f) protection and enhancement of the natural and cultural heritage in support of socio-economic development and the promotion of natural and cultural assets as potential for the development of sustainable tourism".*

- Under Article 2(1)(b) of Regulation (EC) No 1084/2006 (hereafter the "Cohesion Fund Regulation"), assistance from the Cohesion Fund shall be given to actions in relation to:

*"The environment within the priorities assigned to the Community environmental protection policy under the policy and action programme on the environment. In this context, the Fund may also intervene in areas related to sustainable development which clearly present environmental benefits, namely energy efficiency and renewable energy and, in the transport sector outside the trans-European networks, rail, river*

*and sea transport, intermodal transport systems and their interoperability, management of road, sea and air traffic, clean urban transport and public transport".*

It follows that when the Member State, managing authority or the Commission comes to apply the thresholds in Article 39 of the General Regulation, the status of an operation as a major project cannot be established without having regard to the Fund and the Objective under which the Community aid is granted, since the type of environmental actions that may be financed differ both as between the two Funds and as between the objectives (Convergence/RCE).

In addition, the fact that, according the General Regulation, an operation can be financed by only one Fund and one Objective at a time<sup>4</sup> allows a differentiated approach in the thresholds to be applied.

For the 2007-2013 programming period, the scope of assistance from the Cohesion Fund in the environment sector has been broadened to energy efficiency, renewable energy, and sustainable transport operations outside the trans-European networks (such as operations concerning rail, sea and river transport, intermodal transport systems, traffic management and clean urban public transport)<sup>5</sup>. **These interventions are now all considered as environmental operations for the purposes of the Cohesion Fund Regulation.** Consequently, for all the operations which will be adopted within the fields of Article 2(1)(b) of the Cohesion Fund Regulation the threshold for the application of the provisions on major projects, pursuant to Article 39 of the General Regulation, is €25 million.

The approach of the ERDF Regulation to operations in the field of the environment differs depending on the objective concerned:

**For the Convergence objective, the €25 million threshold will apply only to the projects related to the fields mentioned in Article 4(4) of the ERDF Regulation.** Consequently, operations concerned with, for instance, prevention of risks (Article 4(5)), protection of the natural heritage in support of socio-economic development (Article 4(6)), energy investments (including in energy efficiency, and renewable energy – Article 4(9)) and integrated strategies for clean transport (Article 4(8)) **will not be considered to be environmental projects** for the purpose of applying the thresholds of Article 39 of the General Regulation. In order for operations in these domains, and in the other sectors mentioned in Article 4 of the ERDF Regulation, to constitute major projects, their total cost must therefore exceed €50 million.

Under the RCE objective, Article 5(2) of the ERDF Regulation is concerned with operations in "*environment and risk prevention*". Where these operations, including energy efficiency, renewable energy and clean and sustainable public transport, are to be financed under the RCE objective they will be major projects where their total costs exceed €25 million. In all the other areas of intervention mentioned in Article 5 of the ERDF Regulation, the threshold for identification of major projects will consequently be €50 million.

The situation can be summarized as follows:

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<sup>4</sup> According to Article 54(3) of the General Regulation (a) "*a priority axis may receive assistance from only one Fund and one objective at a time*" and (b) "*an operation may receive assistance from a Fund under only one operational programme at a time*". In addition, in Article 2(3) of the General Regulation an *operation* is defined as: '*a project or group of projects (...) allowing achievement of the goals of the priority axis to which it relates*'. Consequently, the same operation can not receive assistance from more than one single Fund, objective, OP and priority axis.

<sup>5</sup> Article 2(1)(b) of the Cohesion Fund Regulation.

<b>Thresholds and types of investment for identifying a major project in the environment, and other fields</b>			
	<b>Cohesion Fund</b>	<b>ERDF Competitiveness and employment objective</b>	<b>ERDF Convergence objective</b>
<b>Environment (total cost &gt; 25 M€)</b>	<ul style="list-style-type: none"> <li>→ Priorities under the Community environment action programme (namely water supply, waste water, solid waste)</li> <li>→ Energy efficiency</li> <li>→ Renewable energy</li> <li>→ Sustainable transport outside the TENs: rail, sea and river transport, intermodal transport systems, management of road, air and sea traffic, clean urban and public transport.</li> </ul>	<ul style="list-style-type: none"> <li>→ Rehabilitation of physical environment, including contaminated, desertified and brownfield sites and land</li> <li>→ Energy efficiency</li> <li>→ Renewable energy</li> <li>→ Clean urban and sustainable public transport</li> <li>→ Infrastructure linked to biodiversity and NATURA 2000 sites</li> <li>→ Plans against natural and technological risks</li> <li>→ Natural and cultural heritage</li> </ul>	<ul style="list-style-type: none"> <li>→ Water supply, waste water, waste management</li> <li>→ Air quality,</li> <li>→ Prevention, control and fight against desertification</li> <li>→ Pollution prevention and control</li> <li>→ Aid to mitigate the effects of climate change</li> <li>→ Rehabilitation of physical environment</li> <li>→ Promotion of biodiversity and nature protection</li> <li>→ Aid to SMEs to promote sustainable production patterns</li> </ul>
<b>Other fields (total cost &gt; 50 M€)</b>	<ul style="list-style-type: none"> <li>→ Transport projects within the TENs</li> </ul>	<ul style="list-style-type: none"> <li>→ Transport projects (except clean urban and sustainable public transport)</li> <li>→ Projects in other fields</li> </ul>	<ul style="list-style-type: none"> <li>→ All transport projects (including clean urban and sustainable transport)</li> <li>→ Projects in other fields (including risk prevention, energy investments)</li> </ul>

### 3. COMMISSION DECISIONS ON MAJOR PROJECTS

The provisions governing major projects in the 2007-2013 programming period differ from those previously applicable to the ERDF<sup>6</sup> and from the provisions applicable to projects funded under the Cohesion Fund (adoption of individual decisions concerning each project irrespective of its total cost<sup>7</sup>) under the 2000-2006 period.

Article 41(2) of the General Regulation provides that the decision of the Commission on major projects *"shall define the physical object (section 3.1), the amount to which the co-financing rate for the priority axis applies (section 3.2), and the annual plan of financial contribution from the ERDF or the Cohesion Fund (section 3.3)"*.

In general terms, the main goal of the Commission's major project decisions to be adopted based on Article 41(2) of the General Regulation will be the same as that for decisions taken under Regulation (EC) No 1260/1999 (which governed major projects under the Structural Funds during the 2000-2006 programming period): to allow the managing authority to implement the said major project within the relevant operational programme and declare the related expenditure to the Commission (Article 78(4) of the General Regulation). Indeed, the Commission's decisions on major projects are not financing decisions in the meaning of Article 75 of the Financial Regulation<sup>8</sup> and Article 90 of the Implementing Rules<sup>9</sup>.

However, taking into account that the contents of these decisions are different from those taken under the previous legal framework, and that financial management rules applicable to operations under the new period have evolved significantly, this Information Note will clarify their legal scope and consequences.

### **3.1. Description of the physical object**

The first element to be defined in the Commission decision is the physical object of the major project.

This description will be extracted from the information transmitted to the Commission pursuant to Article 40 of the General Regulation. This information is formalized in the application forms included in Commission Regulation (EC) No 1828/2006 (Annex XXI for infrastructure investments and Annex XXII for productive investments). These major project application forms thus constitute the basis upon which the Commission will appraise the major project before adopting its decision using the criteria set out in Article 41(1) of the General Regulation. Therefore, information submitted by the Member States in the application forms is of utmost importance for the decision to be taken by the Commission.

However, the Commission, in order to ensure a homogeneous approach, will standardise the description of the physical object contained in the Commission's decisions around the main essential characteristics of the operations.

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<sup>6</sup> Article 26(3) of Regulation (EC) No 1260/1999.

<sup>7</sup> Article 10(6) of Regulation (EC) No 1164/1994 as amended.

<sup>8</sup> Regulation (EC, Euratom) No 1605/2002 of 25 June 2002, as last amended by Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 (OJ L 390/2006 of 30 December 2006).

<sup>9</sup> Regulation (EC, Euratom) No 2342/2002 of 23 December 2002, as last amended by Regulation (EC, Euratom) 478/2007 of 23 April 2007 (OJ L 111/2007 of 28 April 2007).

The Commission proposes to follow a pragmatic approach that will ensure project description in the decision which is sufficiently precise in order to identify the physical object and the nature of the project, but not so detailed that minor adaptations of the type which can normally be expected in projects of this type would necessitate modification of the Commission decision.

This description of the physical object will constitute Annex I to the Commission decision. Obvious, any change as regards its contents arising during the implementation and prior to the completion of the project will require a modification of Commission's decision at the request of the Member State.

The lower level of detail included in the Commission decision will not affect the obligations of the Member State to provide the information foreseen in Article 40 of the General Regulation and in the application forms included in Commission Regulation (EC) No 1828/2006 (Annex XXI and XXII) and to monitor the major project during its implementation based on the detailed technical prescriptions and the available range of information as submitted in its application form (section 3.3).

Where a major project has been approved by the Commission, the national authorities are responsible for meeting all the normal conditions of co-financing and for the conformity of the operation in its final form with the approved decision. The Commission will have to be informed of any significant discrepancy during implementation of the project even if this discrepancy is not related to the elements formally included in the decision (section 3.3).

### **3.2 The amount to which the co-financing rate for the priority axis applies**

Unlike decisions on major projects in the 2000-2006 programming period taken under Article 26 of Regulation (EC) No 1260/1999, the decision which will be taken on the basis of Article 41(2) of the General Regulation will not confirm the level of Community assistance to be granted to a given major project. Instead, the Commission decision "*shall define (...) the amount to which the co-financing rate for the priority axis applies*" i.e. the maximum amount of eligible expenditure<sup>10</sup> that can be declared to the Commission for a contribution from the Funds to the major project. This maximum amount is that to which the provisions of Article 77 of the General Regulation on common rules for calculating payments will apply.

Consequently, where Article 41(2) provides that the Commission's decision will "*define (...) the amount to which the co-financing rate for the priority axis applies*" this means that the Commission will reimburse expenditure related to that major project by applying the co-financing rate for the priority axis to the expenditure certified in the same way as expenditure for any other operation under that priority axis pursuant to Article 77 of the General Regulation.

In case of revenue-generating projects within the meaning of Article 55 of the General Regulation, this amount will not exceed the 'funding-gap' i.e. the current value of the investment costs less the current value of the net revenue<sup>11</sup>.

### **3.3 The annual plan of financial contribution from the ERDF or the Cohesion Fund**

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<sup>10</sup> The amount mentioned in the Commission's decision will correspond to eligible expenditure of the project. That amount will then have to be distinguished from the total costs, which can be higher and are those taken into account for the identification of major projects when the Member State, the managing authority or the Commission applies the thresholds set out in Article 39 of the General Regulation.

<sup>11</sup> See Annex XXI and XXII of Commission Implementation Regulation (EC) No 1828/2006 and Information note to the COCOF No 07/0074/00-EN on Article 55 of the General Regulation (EC) No 1083/2006.

The *annual plan of financial contribution from the ERDF or the Cohesion Fund* will, as part of the Commission decision, correspond to the annual plan provided in the application form (section H. 3 of Annex XXI or XXII of Commission Regulation) submitted by the Member State or the managing authority. It must be provided as part of the information required under Article 40(h) of the General Regulation: "*the indicative annual plan of the financial contribution from the ERDF or the Cohesion Fund for the major project*".

The total of the annual amounts included in the annual plan will be the result of applying the co-financing rate for the priority axis of the operational programme to which the major project belongs to the amount defined in the decision (i.e. '*the amount to which the co-financing rate for the priority axis applies*'). The *annual plan* is the reference point for the implementation of Article 94 of the General Regulation since it will contain the annual amounts by which the amounts potentially concerned by automatic decommitment (N+2/3 rule)<sup>12</sup> will be reduced.

These annual amounts do not necessarily correspond to the effective financial contribution from the ERDF or the Cohesion Funds to the major project since, as explained in section 3.2, it is not the purpose of Commission's decision under Article 41(2) of the General Regulation to fix the level of Community assistance to a given major project. The public contribution, including the Fund contribution, to a given operation will be fixed in the conditions agreed between the managing authority and the beneficiary.

The annual plan of financial contribution from the ERDF or the Cohesion Fund which will be contained in Annex II to the Commission's decision on a major project can only be adjusted (1) by modifying the co-financing rate at priority axis level (modification of the decision approving the operational programme and consequently of all the decisions concerning major projects concerned by that priority axis), or (2) by revising the amount to which this co-financing rate applies (modification of the individual major project decision)<sup>13</sup>.

### **3.4. During the implementation phase**

During the implementation of the major project, Article 65 of the General Regulation requires the monitoring committee to "*satisfy itself as to the effectiveness and quality of the implementation of the operational programme (...)*". More specifically, the monitoring committee "*shall periodically review progress made towards achieving the specific targets of the operational programme (...)*" and "*shall examine the results of implementation, particularly the achievement of the targets set for each priority axis (...)*".

The review of progress and the examination of the results of implementation referred to in Article 65 of the General Regulation refer to operational programmes in general. However, these provisions also apply to the follow-up of implementation of major projects contained in these operational programmes.

The follow-up of implementation of major projects will be made on the basis of (i) the description of the physical object included in the Commission decision (as described in section 3.1. of this note), and (ii) the information submitted by the Member State to the Commission pursuant to Article 40 of the General Regulation in the application form (Annexes XXI or XXII to Commission Regulation (EC) No 1828/2006). The follow-up will rely, in particular, on the

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<sup>12</sup> See Information note to the COCOF n° XXX on major projects/aid schemes and automatic decommitment rule for the period 2007-2013.

<sup>13</sup> Without prejudice to the obligations laid down in Article 55(2) of the General Regulation for revenue-generating projects.



key output indicators submitted in the framework of the project description (point B.4.2.b) of Annex XXI or point B.4.2.d) of Annex XXII), the project timetable (point D.1) and the elements included in the financing plan (point H). When necessary (if output indicators cannot be used for monitoring), a limited number of monitoring indicators must be agreed between the Member State and the Commission to enable a proper monitoring of the major project.

Annual and final reports on the implementation of each operational programme will include, pursuant to Article 67(2)(a) of the General Regulation, information on "*the progress made in implementing the operational programme and priority axes in relation to their specific, verifiable targets, with a quantification, wherever and whenever they lend themselves to quantification, using the indicators referred to in Article 37(1)(c) (...)*". According to this latter provision, targets shall be quantified using key output and result indicators<sup>14</sup>. Information related to any significant discrepancy should be provided by the Member State.

In addition, point 5 of Annex XVIII to Commission Regulation (EC) No 1828/2006 foresees specific reporting on major projects whereby the annual implementation and final reports must contain information on (1) progress in the implementation of major projects, (2) progress in the financing of major projects, and (3) any change in the indicative list of major projects in the operational programme.

In the framework of the annual examination of programmes (Article 68(1) of the General Regulation), the Commission and the managing authority must, on the basis of the annual and final report, examine both the progress made in implementing the operational programme to which a major project is linked, and the progress made by the major project, namely taking into account the above-mentioned indicators.

#### **4. OTHER CONSIDERATIONS**

In the cases of major projects subject to the rules on State aid, the amounts included in the Commission's decisions (*amount to which the co-financing rate for the priority axis applies* and *annual plan of financial contribution from the ERDF or the Cohesion Fund*) will always have to be calculated so as to respect the applicable aid ceilings (i.e maximum public aid intensities) allowed for the major project in the relevant State aid rules.

This obligation will be easily satisfied for any major project within operational programmes where the contribution from the Fund is calculated with reference to public eligible expenditure since, in this case, the *amount to which the co-financing rate for the priority axis applies* fixed in the Commission's decision on the major project cannot be higher than the aid ceilings applicable under the relevant State aid rules.

In case of major projects within operational programmes where the contribution from the Fund is calculated with reference to total eligible expenditure, the *amount to which the co-financing rate for the priority axis applies* fixed in the Commission's decision on the major project will not show the level of public contribution to that major project. However, managing authorities have the obligation to respect the applicable State aid rules when deciding on the public contribution to the major projects.

Finally, concerning the submission of information on major projects by the Member States, Article 40 of the General Regulation does not lay down when the application for a major project

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<sup>14</sup> See Commission working document number 2, Annex 1  
[http://ec.europa.eu/regional\\_policy/sources/docoffic/2007/working/wd2indic\\_082006\\_en.pdf](http://ec.europa.eu/regional_policy/sources/docoffic/2007/working/wd2indic_082006_en.pdf)

has to be submitted to the Commission, and when requests for modification of Commission's decision on major projects have to be submitted if modification is needed. However, the wording of Article 40, in particular indents (d) and (h), implies that the submission should be made either prior to the implementation, or at an early stage of implementation, otherwise terms such as "*a timetable for implementing the project*" and "*the financing plan showing the total **planned** financial resources and the **planned** contribution from the Funds*" would become meaningless. It is therefore expected that applications for major projects will be transmitted sufficiently far in advance in order to avoid difficulties if the Commission refuses to approve the said major project.

In the case of revisions of costs or cost increases during the implementation of an operation (including cases where the cost increase is due to variations of the exchange rate of the national currency towards the Euro), when this increase causes this operation to reach the thresholds for the identification of a major project, the managing authority has to submit an application for a major project. Even though this can occur at any time during the implementation period of the relevant operational programme, the submission should be made as soon as possible and in any event before the final date of eligibility of expenditure laid down in Article 56(1) of the General Regulation. The submission of the major project to the Commission has no implication in the implementation of the project. However, expenditure incurred from the moment the project becomes a major project until the adoption of a Commission decision on it, cannot be certified to the Commission.