



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
REGIONAL POLICY

### Information note to the COCOF

#### Guidelines for the amendment of decisions taken by the Commission for Cohesion Fund projects on the basis of Regulation (EC) n° 1164/1994 as amended<sup>1</sup>

1. Article 13(1) of Regulation (EC) No 1164/1994 establishing a Cohesion Fund provides that “projects must be adjusted on the basis of the results of monitoring and evaluation.” Article F(5) of Annex II to Regulation (EC) No 1164/1994 provides that: "On the basis of the results of monitoring, and taking account of the comments of the monitoring committee, the Commission shall adjust the amounts and conditions for granting assistance as initially approved, as well as the financing plan envisaged, if necessary on a proposal by the Member State. The decision granting assistance shall include appropriate arrangements for making the modifications, differentiating between them on the basis of their nature and importance.”
2. For the purposes of smooth implementation, sound financial management and, in particular, of timely reduction of the RAL (“reste à liquider”), in the case of projects approved from 1 January 2000 onwards, **the Commission initially took the view in 2002 that it would in principle authorise only one amendment on a case-by-case basis<sup>2</sup>**. The problems encountered during the implementation of such projects justify modifying this approach.
3. As regards the possibility of modifying grant decisions, it has to be recalled that since 31 December 2006 **commitments made under Regulation (EC) No 1164/1994 (or under Regulation (EC) No 1267/1999 for "ex-ISPA" projects) can no longer be modified**. In consequence, the Commission cannot adopt new grant decisions or modifying decisions resulting in an increase of the Community assistance allocated to a given project, stage or group of projects.
4. In the case of a **group of projects**, when a modification relates to one or more projects of the group of projects, further duly justified modifications may in exceptional circumstances be considered by the Commission concerning projects of that group which were not part of the previous modification.
5. With regard to **ex-ISPA projects**, the Commission will consider to making one further modification<sup>3</sup>. This allows projects adopted under ISPA to benefit from two possible modifications, while being brought into line with the guidelines in force for the Cohesion Fund.

<sup>1</sup> The guidelines also concern the measures adopted by the Commission on the basis of Regulation (EC) n°1267/1999 (hereinafter "ex-ISPA projects")

<sup>2</sup> As presented at the Cohesion Fund information meeting with the Member States on 27 June 2002

<sup>3</sup> Letter sent to the Member States on 9 March 2005 with Guidance documents – See Guidance document n°5 "Transition from ISPA to Cohesion Fund", point 9 "Amendment of projects"

6. In all cases (applications for minor or major amendments, CF/ex-ISPA projects) situations of *force majeure* and/or error by the Commission may justify further amendments to grant decisions.
7. In addition, in order to take into account problems encountered during the implementation of projects a **second amendment** (or third in the case of "ex-ISPA" projects) of grant decisions **may be approved by the Commission** in the following cases:

**7.1 Extension of the final date of eligibility**, provided that the following conditions are met:

- ✓ The extension of completion date must be duly justified;
- ✓ The extension is based on a realistic updated work schedule;
- ✓ The extension requested is proportionate to the delays encountered by the project and, in any event, does not go beyond 31 December 2010<sup>4</sup>.

**7.2 Modification of the physical object due to cost savings** provided that the following conditions are met:

- ✓ Completion of the components related to the original decision is ensured. This is a pre-requisite: The Member State has to assess whether the request really corresponds to "cost savings". The reduction of the initial physical object in order to introduce new components cannot be regarded as "cost savings".
- ✓ It does not invalidate the main results of the initial Cost Benefit Analysis;
- ✓ Compliance with the Directives on environmental impact assessment and public procurement is ensured;
- ✓ The expenditures added as a result of the new works are eligible for a contribution from the Cohesion Fund (in accordance with Article 7(3) of Regulation 16/2003, expenditure for newly added components is eligible only from the date on which the Commission receives the request for amendment of the decision granting assistance to the project);
- ✓ The project will be executed within the timeframe planned in the original decision or the extension is realistic and proportionate, enabling completion of the new works while remaining achievable before the end of 2010.
- ✓ The effect of adding new components is not to allow the replacement of ineligible expenditure excluded following an audit of the Commission or the European Court of Auditors.

**7.3 Modification of the physical object in order to co-finance cost overruns due to inflation (where real inflation had been higher than forecast inflation)<sup>5</sup>** provided that the following conditions are met:

- ✓ The situation can not be solved differently, i.e. within the current contractual relationship with the companies in charge of the works (contingency, price variation clauses, etc.);
- ✓ The reduced project remains operational / functional in itself;
- ✓ The reduced project fulfils the main overall objectives of the initial decision;
- ✓ The main results of the Cost Benefit Analysis remain valid, or the CBA must show that even with increased costs the project is still financially sound and socio-economically viable;
- ✓ Compliance with the Directive on environmental impact assessment is ensured;

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<sup>4</sup> As explained in letter of 9 March 2005 to the Permanent Representatives

<sup>5</sup> Inflation rates at national level concerning specific sectors of relevance for the projects concerned (like energy, building materials, etc.) may be taken into account

- ✓ The explanation of why the Commission should consider the cost increases acceptable must be included by the Member State, on the basis of a comprehensive analysis of the situation concerning the extent of cost increase and the reasons underlying them;
- ✓ A commitment to execute (as phase 2) the uncompleted part of the project as originally planned, either with national financing or with ERDF/CF co-financing under the 2007-2013 period on the basis of a deadline agreed with the Commission. The operation shall be divided into at least two distinct, identifiable, financial and physical or development stages corresponding to the two "forms of assistance" concerned. This division is required to ensure transparent implementation, monitoring and cancellation of the "old" CF projects and to avoid the same works being financed twice from Community funds.

**7.4 Modification of the physical object in order to make possible the replacement of irregular expenditure detected and withdrawn by the national authorities.** In the cases where the control systems in a Member State detect irregularities and the Member State has corrected them itself, the Member State can replace the ineligible expenditure by other eligible expenditure from the same project, or another project in the same group of projects covered by a single decision.

If the "gap" created by the withdrawal of the ineligible expenditure cannot be fully or partially replaced by other eligible expenditure from the same project, the Member State may reduce the loss resulting from the corrections it has made by seeking a modification of the grant decision. The Commission, taking into account the effective functioning of the national control system, could agree to modify the grant decision provided that the proposed modification of the physical object is duly justified on the basis of Article F (5) of Annex II to Regulation (EC) No 1164/1994 and that the objectives of the initial grant decision remain unchanged. If a previous modification has previously been approved by the Commission for any other reason, a second modification could be considered by the Commission on the basis of the above conditions.

8. Modifying decisions taken by the Commission for the following reasons constitute an exception to the principles set out in the present guidelines, in the sense that they will not be taken into account when determining the number of modifications that the Commission will consider adopting for a given project, stage or group of projects:
  - 8.1 Extension of the period concerned for the implementation of the "M+24" rule: when the modification concerns solely the extension of the "M+24" period;
  - 8.2 Cases of cost savings until 31 December 2006: solely to allow the reduction of grant (and facilitate the reallocation of freed credits);
  - 8.3 Change of the body responsible for implementation or of the paying authority or of the intermediate body mentioned in Annex I of the grant decision provided that this change has no impact on the implementation of the project under the conditions defined in the decision.

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