



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
REGIONAL POLICY

Brussels, 14/05/2008
REGIO D1/BC/kw/D(2008)700494

**MINUTES OF THE 15TH MEETING OF
THE COORDINATION COMMITTEE OF THE FUNDS,
BRUSSELS, 27 FEBRUARY 2008, 9.30-18.00**

Introduction

Rudolf Niessler, Director for the coordination of policy (DG REGIO), opened the meeting and presented a series of introductory points.

- ✓ The rolling agenda adopted at the January meeting for the first half of 2008 was available on CIRCA and always up to date. Therefore, Member States could have an overview of the planned agenda for the coming meetings.
- ✓ As announced at the last COCOF meeting, the state of play and the Work programme for 2008 of the SFC2007 would be presented at the April meeting (on 23 April 2008) by the informatics unit of DG REGIO. In this perspective, on 18th February, the Commission services launched a written consultation to invite the Member States to express questions or comments on the functioning of the SFC2007 system. The aim was to help services involved to properly respond to Member States' questions at the April meeting. As a SFC2007 helpdesk service already handled with practical questions, the Chairman stressed that it was important to focus comments, as much as possible, on issues which could interest all the Member States. Comments were expected by 29 February at the latest.
- ✓ More widely, the Chairman thanked the delegations for all the written comments sent. However, to make sure that Commission services were in a position to address them, he invited them to send comments as soon as possible. Sometimes, comments came the day before the meeting, which is more difficult to manage correctly.
- ✓ The COCOF secretariat was setting up a membership list. It was not yet achieved. This list would circulate when ready and the delegations would be invited to update it.
- ✓ Austria and Latvia pointed out the question of the status of COCOF documents when discussion is closed, as minor changes were made in the guidance note on annual summaries without the Member States being informed. The Chairman understood and shared their position, as any modification afterward can create confusion on the way implementation has to be undertaken. Therefore, in the CIRCA database, Member States could find a folder called "final documents" where are documents for which the discussion within the COCOF is closed. These documents are finalised, valid and the current statement of DG REGIO. They would not be discussed or modified any more, except if a change is proposed by the Commission to the COCOF Members.

- ✓ There is a need to clarify the COCOF rules on the linguistic regime as there is no provision on this point in the COCOF Rules of procedure. The Commission position is to make sure that all guidance or information notes would be available into the three working languages. Nevertheless, this did not mean that all the versions would be available for the discussion within the COCOF. Translations take time and the Commission services cannot ensure to deliver documents translated in time for discussion. For instance, the request for the translations of the note on Art. 55 was submitted to the General Directorate for Translation (DGT) on 15 February and they would not be available before 25 March.
- ✓ Finally, the Chairman proposed to launch a written procedure for the adoption of the ESF Technical Assistance financing decision for 2008. This would be the same decision as discussed in 2007. If there is no major reservation from the Member States, the decision would be assumed as approved by the COCOF. On the contrary opinion, the draft decision would be discussed at the next COCOF meeting in March. Member States did not express any opposition to follow this procedure.

1. Approval of the draft Agenda

The Chairman presented the draft agenda and invited the Member States to take the floor if they had comments on this point.

Belgium called for a presentation of the Commission Communication for an action plan to strengthen the Commission's supervisory role under shared management of structural actions, adopted after the report of the Court of Auditors.

Poland regretted the late publication of the Guidelines for the amendment of decisions on Cohesion Fund projects and wondered why the Guidance note on Cohesion Fund Closure, foreseen for this meeting, was withdrawn from the agenda. The Polish delegation asked if written comments on the draft minutes of the previous meeting are still welcomed. Finally, referring to one of the points mentioned by the Chairman, they questioned on the method that the Commission services would use to inform the COCOF Members on the changes made in documents before being finalised.

Austria requested for having as soon as possible the working documents discussed within the TCUM sub-committee for the preparation of the Green Paper on Territorial Cohesion. The Austrian delegation appreciated the work done by the COCOF secretariat to improve the use of the CIRCA database with reference number of documents, but asked for short descriptions of notes submitted for discussion to help the coordination work at national level. They shared the Polish comment on the information of the COCOF Members when a document is modified before being considered as final, and when it is revised afterward.

The Chairman agreed with the Belgium request and offered to discuss the Action Plan at a next meeting. He indicated that on the agenda, the title of the Point 6 was changed but it is the same document with the same goal. Comments on the draft minutes of the previous COCOF meeting are still welcomed. With regard to the finalisation of documents, in the folder called "Final documents", you find the final version of documents discussed within the COCOF with a clear heading. Before being finalised, a quick check of the documents with Track Changes would be implemented via email.

The Chairman noted that there was no comment on the Agenda. Therefore, it was approved.

2. Guidance note on INTERREG III Closure (2000-2006)

The Chairman gave the floor to **Mr Claude Tournier** (DG REGIO, Unit J3) to present amendments made on the note after the discussion at the January meeting

Mr Claude Tournier indicated that a first set of responses was given via the minutes of the January meeting. However, two issues remained open:

- ✓ Subsidiary paying authorities, agreed under Commission communication of 2 September 2004 (see OJ EU C226 of 10.09.2004, page 7) to be taken into account;
- ✓ Best practice to be mentioned as it is the nature of the note presented.

On the first point, as a result of internal discussion, an amendment (point 1.2 bullet 3) accepting this facility was proposed in the final version of the note. On the second point, as the nature of the guidance note did not require such a precaution, it was decided not to make such an amendment, meaning that each INTERREG programme may adapt the recommendations to its specific set up, provided the closure documents explain why it would be departed from the best practice recommendation.

Mr Tournier mentioned the additional comments received from Germany and Hungary, and tried to provide complete answers to them.

- ✓ Germany objected to the responsibility of the Managing Authority to guarantee the geographical and contented related distribution of article 4 checks. According to Germany this task was an obligation of the first level controllers and which needed to be independent from the Managing Authority (Annex 2, Item 1.1., hyphen 2).

DG Regio stated that this question was based on a linguistic and interpretative misunderstanding: The guidelines required that the Managing Authorities guarantees that controls cover the entire programming area. Furthermore, the first level controllers did not need to be independent from the Managing Authorities, but from the participating projects' sponsors which they are checking.

- ✓ Germany objected to the Paying Authority's obligation to ensure that the lead partner pays received ERDF amounts further to the other project partners. Germany believed that this procedure did not comply with the lead partner principle and that the Paying Authority's obligation is only to inform the lead partner on its obligation to pay the other project partners (Annex 2, item 1.1., hyphen 5). Moreover, Germany was not satisfied that this item is mentioned under item 1.1 and suggested mentioning it under 1.2 Paying Authorities.

DG Regio reminded that the obligations of the Paying Authority result from Article 32, 1, of Council Reg. 1260/1999 and Article 9 of Reg. 438/2001 [*The paying authority shall ensure that final beneficiaries receive payment of their contribution from the Funds as quickly as possible and in full.*] All project partners, not only the lead partner, were beneficiaries of the programme. It could be further noted that the Lead partner principle was accepted in the 2000-2006 project period, however it was not legally fixed in any EU Regulation of that period. - Regarding the order of items mentioned, DG Regio stated that the Interreg closure guidelines were an additional document to the general guidelines on closure of assistance and follows only the given structure.

- ✓ Germany objected to the change of the word "satisfy" (*Vergewisserung*) in the general guidelines on closure of assistance into "control" (*Ueberpruefung*) in the Interreg closure guidelines. (Annex 2, item 1.1., hyphen 6)

DG Regio agreed with Germany and confirmed that the issue raised is a translation error which needs to be corrected.

- ✓ Germany asked for more precise information regarding which "information" the Paying Authority had to receive from the Managing Authority (Annex 2, item 2, 1.2, hyphen 2)

DG Regio recalled that the Paying Authority satisfied itself that the conditions mentioned under article 9, 2, 438/2001 were met before issuing the declaration of expenses. However DG Regio was of the opinion that this declaration was the aim, but that how to get there was at the Paying Authority's sole discretion, as it depended on the various set up of INTERREG systems.

- ✓ Germany objected to any control obligation in any other country than its own (Annex 2, 1, hyphen 3).

DG Regio recalled that according to article 9, 2 of Reg. 438/2001, the Paying Authority satisfied itself regarding expenditure that it had been "incurred in operations that were selected for funding under the particular assistance concerned". The Regulation here did not know any borders and accordingly the above mentioned obligations did not stop at the borders. According to DG Regio, the Paying Authority had to judge in addition what kind of information it needed from the relevant neighbouring country (working paper, audit reports etc).

- ✓ Germany objected to the obligations of the Paying Authority mentioned in Annex 2, 2.2, hyphen 4. The obligations would go above the tasks attributed to the Paying Authority.

According to DG Regio this was a misunderstanding. The closure guidelines only required that the Paying Authority was informed on the controls carried out in the different regions. The Paying Authority did not need to re-perform checks on its own.

- ✓ Germany questions the meaning of the word "*Nachprüfung*" in annex 2, 1.3, hyphen 1. It is suggested that the word is changed into "*Nachverfolgung*" ("follow-up")
- ✓ Germany objected obligations in relation to the winding-up declaration. Germany believed that one winding-up declaration might consist of two or three different parts and that regarding other parts than its own the independent body can only carry out a control for completeness and obvious inconsistencies, but not substantive controls regarding content and quality (annex 2, item 2).

DG Regio thanked Germany for this question since the question repeated a general problem and showed the difficulties but also challenges that arose from the Interreg programme structure. The past had shown that serious problems arose when the different parts of the winding-up declaration had not been substantially tested. Therefore controls regarding content and quality might not stop at the borders when the aim of the Interreg programme was to go beyond the borders.

The Chairman thanked Mr Tournier for all the explanations given to the Member States and opened the floor for other comments.

Hungary thanked the Commission services for the efforts made to take all the comments into consideration. On chapter 1.2, bullet point 3, the Hungarian delegation proposed to modify the text and to change "including where appropriate the review of the work" by "based on the results", as they did not have any authority on other authorities.

Germany thanked the Commission services for answering their late comments. They stressed the point concerning control obligations on subsidiary paying authorities.

Greece recalled that at the last meeting, the Commission services said that in case of problem, the process was delayed and as a consequence, the payment of the balance of ERDF funding was also delayed. They asked for clarification on what the Commission considered as a problem (no declaration or delay?). The Greek delegation insisted to amend the introduction of the document to mention "best practice" as the nature of the document.

Slovakia supported Hungarian comments.

Czech Republic supported Hungarian and Slovakian comments as well. They agreed with the changes made in the note but they regretted that these changes did not really reflect the situation at national level. The Czech delegation proposed also to modify the introduction of the note.

Poland fully supported previous comments.

Austria raised two points. On the subsidiary paying authorities, the amendment was welcomed but to limit the provision at "satisfying itself" would resolve the matter. On the lead partner, the final beneficiaries' definition changed between programming periods. The Austrian delegation invited the Commission services to clarify this point, and for instance for motorways.

Luxemburg echoed Austrian position, in particular for the interpretation of the lead partner principle. The document was not optimum for the current point of view. It was better to see how they were defined. They recalled that we were at the end of the period. The timing had to be taken into account. These guidelines could serve for the next programming period.

The Chairman noted that there was no further request. He called for a pragmatic solution and invited Mr Tournier to respond.

Mr Tournier provided additional comments:

- ✓ On the basis of Article 274, the Commission services could not pay blindly when a closure document was not completed. The guidance note strongly insisted on timely and coordinated controls before the closure. Member States had to take their responsibility for the whole programme. It was a key issue for today. It was clear that the Commission services did not want to repeat again the situation met for some closures in 2003/ 2004.
- ✓ On the question if whether or not one body could certify the work done by another body: at closure, a Paying Authorities could not take the inputs and results of a subsidiary paying authority without knowing how they had been reached. All conclusions had to be checked for quality and reliability.
- ✓ On the lead partner principle, during the 2000-2006 programming period, we had no legal basis and the definition had been based on practice. In current programming period it was mentioned in the Regulation. All partners were considered as beneficiaries. The Paying Authorities had to keep track expenditures for all partners.

Hungary thanked for the response but noticed that there was no agreement at this stage. The Hungarian delegation would come back to the Commission later on.

Austria insisted on the lead partner principle and indicated that, as this refers to the internal organisation of the project, the theoretical definition was not important. This depended on who signed the contract. At this stage, the definition proposed was too complicated.

Mr Tournier recalled the provisions of Article 9(l) of the 1260/1999 Regulation (the beneficiaries are commissioning the work). This could not be ignored when the programme was finishing.

There was no more remark from the Member States. Then the Chairman thanked Mr Tournier and proposed to move to the next point on the agenda.

3. Note on the publication of the list of beneficiaries according to Article 4 and Article 7 of the Commission Regulation N°1828/2006

Mrs Flaminia Tacconi (DG REGIO, Unit B3) introduced the point and explained that after the discussion at COCOF November's meeting, the note was changed accordingly. As the note was already presented to the Member States, Ms Tacconi pointed out only its key points: importance of the definition of beneficiaries, the various categories of information to be published, and specific paragraph on IPA programmes. Finally, some examples of websites considered as good practice were added.

Then **the Chairman** opened the floor for comments.

Luxemburg had a question of principle on the definition of "public fundings". They wondered if only the amounts of funding from Structural Funds were published or if amounts of EU and national funding were published, as they considered there was no added-value to publish the figures with the national sources.

The Netherlands questioned also what was the most added value table presentation: with annual figures or on cumulative basis?

Malta asked for clarifying the term "beneficiaries" in the annex. For instance, could households be considered as beneficiaries?

Germany thanked for submitting this note on how implementing transparency obligations. They reported what their colleagues for agriculture told them as payments should be published. As for them, the public expected to have an overview of the money spent and projects achieved under the European Regional Policy, and would like to understand precisely what "amounts allocated" meant. It was clear that at the beginning of the programming period it might happen that nearly no payments were made and therefore the list would contain almost no information. As there were other funds involved, such as the Fish Fund, they did not want to pre-empt the discussion.

In addition, the German delegation preferred the table to offer a permanent list that could just be ongoing updated. Therefore, they called for modifying the title of the table: "Table covering the financial Year X" could be replaced by "List of beneficiaries - last update". In addition, on the columns called "amount allocated", they asked for deleting "in Year X". The amount mentioned would be for the whole programming period. Finally, the provisional timeframe of the operation was not required. Germany proposed to mention the total amount paid at the end of the project in

the right end column and not in the column “amounts allocated”, as different sums concerning commitments and payments could lead to confusion.

Estonia stated that transparency was a very important issue. A first publication was made in 2004 and they committed to continue. It was important to give an overview to the public. In this perspective, they preferred the previous presentation. For instance, the timeframe proposed was totally irrelevant for media and public. There was a need for clarification. Sometimes, it was better to limit the quantity of information given.

Latvia preferred the previous version and called for simplification as there were risks of creating confusion if the context of projects changed.

Austria reminded that this discussion already took place last December. The data to be published came from the monitoring system. The right approach was to update amounts allocated every year and not to publish annual amounts. There was a unique regional website homepage in Austria as regional authorities and the national level had to guarantee access to information. Finally, there was a need to discuss which way was the most appropriate to update commitments in relation with any evolution within projects.

Belgium proposed to indicate cumulated amounts and not year by year, in order to avoid confusion.

Spain was in line with previous comments from Germany and Estonia with regards to the annex. They called for no indication of duration.

Greece shared German and Estonian opinion. Time indication must remain really indicative.

Cyprus agreed with previous speakers. For the presentation of the annex, they proposed to start with the name of beneficiaries and then, the project concerned.

Denmark expressed also the need for simplification, in particular in the Annex. Instead of using the term "beneficiary", they suggested mentioning "partners" and "lead partners". They considered that amongst examples of good existing websites (part 5), the one mentioned on page 6 on territorial cooperation was actually what was needed to respond to transparency obligations. Finally, if total public funding was important to be published, it was interesting as well to indicate other sources such as local authorities.

France welcomed the idea to publish only cumulate amounts, especially for multi-annual projects.

United Kingdom called for some simplification in the annex. For instance, they proposed to write down in page 3, paragraph 3, that "the public should be informed" instead of "should be warned".

Ireland indicated that they were still discussing at national level about the practical implementation of these rules. They sent written comments in November but were still waiting for a reply. For instance, they asked about the provisions to be applied when private companies receive public funds and when this information was considered as commercially sensitive. There was a competitiveness impact which demanded a specific application. They called for a simpler annex and more focused on public attention. It was part of the broader communication package that the Commission services insisted on. Finally, on the definition of public funding, they would send comments.

The Chairman invited the Commission services to respond.

Mrs Tacconi thanked the Member States for the interesting questions submitted and proposed a set of responses:

- ✓ There was confusion on whether Member States had to publish annual amounts or cumulated public amounts. Last November, when the draft note was discussed for the first time in the COCOF, two options were proposed for publication: the allocated amount to the operation or annual payments; and the total amount paid. On the basis of comments received, a compilation was made. Two amounts have to be published: the one initially allocated, and the one paid when the operation is closed. The Commission services insisted on publishing the amount effectively paid.
- ✓ The idea to update the table instead of publishing a new version annually was interesting but had to be verified within Commission services before being agreed.
- ✓ It was agreed that when an operation would be completed, the final payment would be indicated instead of allocated amount.
- ✓ In the annex table, the order followed for columns could be changed. The main objective was to facilitate the monitoring by the public.
- ✓ On the nature and the scope of "public funding", the regulation provisions must be respected. Member States could not be requested for information that they could not provide. On the co-financing part, if it was possible to previously distinguish ERDF and ESF, it was useful but the challenge was mainly to be able to compare the situation in all the Member States.
- ✓ For the amount of public funding, only the public eligible funding counts.
- ✓ A Regulation was currently in preparation to provide orientations in order to reach the transparency objectives for agriculture field and for the rural development. There was a need for mentioning annual payments as measures concerned were financial direct supports to farmers. Therefore, the different approaches between Structural Funds and the EAGGF were acceptable.
- ✓ It was true that too many information published could create confusion and risk to miss the objective of transparency. However, what was requested in the annex was the compulsory basis to be provided.
- ✓ On the publication of commercially sensitive information, for instance when SMEs were concerned, there were regulatory provisions on this issue.

The Chairman thanked the Commission services for responding all the questions. He invited the Member States to send their comments on the public fundings' question by email.

Luxemburg agreed with this proposal and mentioned that they had already published the list of beneficiaries and this was available on their national website.

The Chairman proposed to move to the next point on the agenda.

4. Note on Article 55 of the general Regulation (EC) N°1083/2006

The Chairman introduced the discussion by mentioning that long discussions were needed internally to reach an attempt which allowed a proper understanding of the regulation. This guidance note was very important as Article 55 was one of those articles which drastically changed from the previous programming period. For instance, the funding gap applied for all projects generating revenue and not only when there were substantial revenues.

Mr Bernard Lange (DG REGIO, Head of Unit D1) presented a PowerPoint (available in the CIRCA database) on the Article 55.

The Chairman gave the floor to the Member States to comment or ask questions.

Latvia referred to state aid issues and noted that the last paragraph stated: "This part of Article 55 is self-explanatory: the requirements laid down by Article 55(1) to Article 55(5) do not apply to projects subject to state aid rules within the meaning of Article 87 of the Treaty." They asked if this meant that the funding gap principle was no way applicable to projects subject to state aid rules.

Having anticipated reduced EU co-financing due to revenue-generation and other reasons, Latvia had lowered OP priority co-financing rates. This was part of formula, which meant that projects would receive even lower EU co-financing. Latvia wondered if they had used inappropriately the an appropriate approach to calculating the co-financing rate and whether the right approach was to remain at 85% of the EU co-financing rate at priority level. Latvia also found, it was also unclear whether this rate was the same as the maximum rate for the priority axis mentioned in Article 53(6).

Finally, in case if 5 years after the end of project stem beyond closure, there was a certain risk in establishing net revenue after the end of the programming period and this could result in financial corrections which were not acceptable. Latvia would suggested that the Member States responsibility monitoring revenue-generated ended for the closure of a programme, or the Commission drew guidelines for Member States actions in particular situations, such as extrapolating revenues to deduct before closure.

The Chairman invited Mr Bernard Lange to respond immediately to these key questions.

Mr Lange indicated that the link with state aids issues was covered by Article 55(6). If a state aid regime was notified, other provisions did not apply. However, Member States were constrained by the state aids' provisions (maximum ceiling for public aids). However, other funding sources could be imagined with different maximum ceiling in the framework of the competition policy. This was the managing authority's choice.

As regards co-financing rates Mr Lange confirmed that, there were no regulatory provisions confirming a co-financing ceiling per operation. One could go up to 100%. However, at the end of the programme, the average rate had to match as closely as possible the priority axis rate.

The Chairman opened the floor for other comments.

Poland indicated that the Commission's guidelines on Article 55 were long-expected as they were necessary to address many questions from Member States about interpretation of the Article's provisions. They found no satisfaction in the fact that Polish concerns about the proposed provisions expressed strongly during the negotiations had been proven right. Although even if the basic logic of article was understandable, the detailed consequences of the article were not understood, and beneficiaries were afraid that wrong application of the provisions might have serious financial repercussions. There was also major uncertainty in implementing agencies about whether already existing interpretations were final or might change during implementation, endangering the financial viability of a project or its promoter.

The Polish delegation disagreed with the Commission's interpretation of Article 55(4) with respect to monitoring provisions for revenues projects generating. The proposed scope of monitoring, which would last at least until 2020 would impose a disproportionate and unjustified burden on beneficiaries. Such reporting might even become practically impossible when as would in most cases, the activities (and revenues) of a beneficiary become increasingly attributable to elements not related to the original EU project. Monitoring of revenues would be costly and would require that all Member States to maintain the appropriate administrative capacity long

after the current budgetary period ended. The Commission services should carefully assess whether the additional cost of detailed monitoring of all revenue and the loss of transparency in EU procedures, was really justified to prevent public institutions receiving slightly higher support than necessary. For this reason Poland asked the Commission services to seriously consider using its right to propose amendments to modify the existing regulations in order to simplify and avoid legal uncertainty arising from the current provision. It would be simpler and less costly if the European Commission could establish the share of co-financing for each of such categories of revenue generating projects based on the normally expected profitability of various categories of investments.

In the view of the Polish delegation, the note contained some useful parts, but largely rephrased in Working Document n°4 accepted by COCOF in October 2006. However some substantial deficiencies had to be thoroughly re-evaluation of addressed before the note could be used. Poland provided four main examples:

1. The numerical example for grant corrections not only contained misleading generalizations, but also seemed to contain an error due to the inconsistent use of discounting.
2. The note was incomplete and some important pieces of information were missing. The most obvious omissions were as follows:
 - ✓ No section on operational costs (and lack of a clear distinction between revenue and net revenue, which still seemed to be used interchangeably),
 - ✓ Treatment of energy efficiency investments (e.g. investments in insulation of public buildings, such as universities),
 - ✓ Guidelines on residual value.
3. The proposed procedures for monitoring revenue, in particular the threshold of 10%, had not been properly justified and were inconsistent with the level of uncertainty around forecasted net revenue. Poland stressed that the Regulation clearly referred to estimation of revenue. From the statistical point of view forecasted (estimated) net revenue was a random variable and comparing with the with the realisation of the random variable the way proposed by the Commission, without taking into account the parameters of the probability distribution, made no sense. The variance of profits for an operation, with perhaps the exception of some regulated monopolies, normally exceeded significantly the proposed threshold of 10%. In addition, the asymmetric nature of corrections, which reduced financial assistance in the case of higher-than-expected profits but provided no such automatic increase if expectations were proven to be too optimistic, could put a beneficiary in a situation in which ex ante the expected value of the assistance always felt short of the amount required to close the financial gap. The beneficiary would have to factor in the possible correction in the financial analysis, further complicating the estimation. Poland expected the revised note would to clearly state that the allowable variation in net revenue might be established ex ante taking into account the nature of an investment.
4. The note should also stress that, except for a limited number of ‘greenfield investments’, establishing actual revenue once a given project was completed was not an exact science similar to standard revenue accounting. It required economic modelling and estimating (not calculating) a level of net revenues compared to a hypothetical situation in which the project would have not been implemented. The note failed to explain this to implementing authorities and beneficiaries and might even lead to a misleading impression that calculation of actual income could be done in a straightforward manner.

Finally, Poland added a series of more detailed comments.

Czech Republic stated that Poland has already covered. However, they wished to add some further comments due to the fact that inconsistencies had appeared between this draft guidance note and Working Document n° 4 and at the same time, important issues were not addressed. Inconsistencies were particularly unfortunate to the extent that the Czech Republic had already implemented the approach set out in Working Document n° 4 especially for the Environment OP. They identified in particular:

1. The draft note's calculation and the method of terminology differed from Working Document n°4, although the result was the same. It was essential to harmonize the terminology (revenue, net revenue, substantial net revenue, operational costs). They proposed adding a chapter with definitions of the terminology used.
2. The draft note on Article 55 did not provide a satisfactory answer to some questions of a fundamental nature, for instance which operating costs should be taken into account for calculating of the funding gap, difference between revenues and net revenues, what procedure should be applied if real costs were less than anticipated, and the rationale for using 10% threshold in the case of refunding.
3. The methodology for calculating of the funding gap should take account of the future use of the profit generated. If revenues are used exclusively for future development of state infrastructure (for instance the state-owned transport infrastructure), these net revenues (or the relevant part of) should not be included in calculation of the financial gap.
4. The example on railways was inappropriate, as fares paid by travellers were irrelevant to the owner of the infrastructure, since they could not be considered users of it.

Czech Republic stated that additional written comments would be sent.

Greece thanked for the detailed presentation and expressed three comments. Regarding the issue of monitoring the revenues of each project for a 3-year period after the final closure of the corresponding Operational Programmes, aiming to the definition of probable deduction from the initially declared (to the EC) financing (i.e. eligible expenditure) and correspondingly the refunding to the EU, Greece made the following comments: an analysis which was based on input data (i.e. investment cost, revenues, expenses) for an, actually, 10-year period approximately (e.g. 2007-2016), ended in sufficient results, regarding the accuracy of the forecasts. It was estimated that the suggested (by the Commission services) additional monitoring for a 3-year period after the OP closure, had nothing to add to this sufficiency of the analysis results.

Furthermore, the analysis within a technico-economical (t-e) study, regarding, at least, the applied practice in Greece, for the late 5-6 years, based on a national circular, included sensitivity-risk analysis with many combinations (for the investment cost, the net revenues and the discount rate). Consequently, if the most adverse results were taken into consideration then there were extremely many possibilities for accurate forecasts. They mentioned that their circular method as a good practice had also been adopted by other (mainly new) Member States.

Based on the above mentioned observations, and given that the t-e studies were updated ever and again, throughout a CSF Programming Period, anyhow, Greece considered that the 3-year revenue monitoring after the OP closure, would not offer anything more towards the accuracy of the forecasts. Additionally, it might be stressed that the experience from system audits, which had been held, up till now, either by the National Audit Authority (EDEL) or the Commission audit services, had not revealed detection of such revenue forecasting inaccuracy that any modification of results (net revenues, EU grant rate) be required, due to that reason.

Finally, Greece considered that any probable organisation of the managing OP authorities and/or the Final Beneficiaries, towards a systematic monitoring of the whole revenue generating model etc., for a 3-year period after the OPs closure, would lead to be a heavy procedure and generate serious administrative cost for the Member States.

Estonia welcomed the efforts of the Commission services to offer guidance on the implementation of Article 55, as it was one which affected the implementation of the Structural Funds to a great extent. Estonia agreed that the logic of using financial analysis to ascertain the actual funding needs of the beneficiary was sound in principle. They also believed that if a beneficiary was to gain substantial profit from the investment than that profit should be taken into account in calculating the appropriate grant. They thus believed that thorough financial analysis was vital in the case of large investments.

However Estonia found that even in the case of the ERDF and the Cohesion Fund, this article should be applied with the proportionality of the intervention in mind. Financial analysis was itself an exercise which was complex and expensive for small beneficiaries. The added administrative burden of checking and correcting their calculations, monitoring of revenues and control had also to be taken into account. It had to be asked whether small operations had the potential to generate such (net) revenue as to justify the cost of financial analysis, monitoring and controls over a period of many years. In their view, this was hardly ever the case.

Estonia therefore shared Poland's comments and given that resources for monitoring and controls were limited suggested that these scarce resources should be directed to measures and operations where substantial revenue generation was possible and likely. In this manner, a significant impact could be achieved with minimal strain on the Community budget or national resources.

Finally, they indicated that in practice, applying the funding-gap method gave raise to many questions from the beneficiaries and the consultants hired to perform the analysis. As it was very important to understand clearly the application of the method (notably the incremental approach and the approach of outstanding historical costs), it should be explained in more detail. For example the method could be explained thoroughly for example in the updated version of the CBA Guide. Further explanations about the incremental method with concrete examples would be needed, including cases where the investment made related to an existing infrastructure, e.g. expansion and renovation of an existing infrastructure.

Belgium agreed with Estonia's comments. The logic of Article 55 was solid but there were difficulties in implementing due to a lack of clear norms for the reference period and for the discount rate for small projects. Objective rules were needed.

In addition, Belgium delivered that the note introduced modifications to the interpretation of various provisions for the project officers in the guidance document adopted in August 2006. This must be clarified.

Cyprus shared Greece's concerns about monitoring and related costs for the Member States. They added some technical questions. In the case of projects covered by Article 55(3), deductions of the revenue received should be made before the closure of the programme (where this was within the 5 year limit after the completion of the project) and refunds should be made thereafter (until completion of the 5 year period). Cyprus expected that some considerable time would elapse between submission of the final payment claim and the official closure of a programme. It was possible during this time lapse, that the Member State might identify some revenue that should lead to deductions, which deductions would not however be possible since the final payment claim would have been submitted. Cyprus would thus like to make know how this revenue should be treated. Should the final payment claim be resubmitted to handle the deduction or should there

be a refund? The same practical problem should arise in relation to projects covered by Article 55(2) if an important discrepancy was identified in the period between submission of the final payment claim and closure of the programme.

Hungary regretted that the note did not refer to e-government projects, as this domain raised various questions related to revenue. For instance, should subscriptions to operators be considered as rights or revenues? Moreover, neither Working Document n°4 nor the recent guidelines provided clear information about the requirement of carrying out a cost-benefit analysis in case of all revenue-generating projects. In certain cases, e.g. smaller projects, the burden of performing a sensitivity analysis, a risk analysis, an economic analysis and a financial analysis was too high. Had there been any assessment of the level of administrative burden this imposed (since not only substantial net revenue was to be taken into account in contrast to the past)? Hungary believed that proportionate requirements should be set (e.g. certain thresholds depending on the size and/or nature of the project) for CBA requirements (e.g. in case of smaller projects, the financial analysis should have to be preformed) and monitoring requirements.

In addition, Article 55.1 related to operations generating revenue. Consequently a project either fell into this category or not. This raised the question of whether integrated projects/operations consisting of different types of expenditure fall under state aid rules, Article 55 or neither? (E.g. an integrated urban rehabilitation project – which from an economic and social perspective was considered as indivisible – might include development of public spaces which did not fall under Article 55, development of public sports facilities which would fall under Article 55, as well as aid to the local enterprise sector which would fall under the state aid rules). Should in this case the whole integrated operation be considered as an aid scheme (which would not be true), or should the different types of expenditure be separated and treated according to the rules applicable to each? In the latter case would this mean having different projects or different sub-budgets of the same project divided up according to the applicable rules and with different rates of contribution?

Hungary also asked to ask for further clarification as regards the consequences of revenue diverging from previous estimates. Article 55(3) was applicable only if it was not objectively possible to estimate revenue in advance. Article 55(4) was applicable up to 3 years after closure. It therefore seemed so that managing authorities had to monitor whether an operation generated revenue in all cases whether or not it was objectively possible to estimate the revenue in advance up to 5 years after completion of the operation and at the latest up to three years after closure of the programmes. However Article 55(4) only dealt with refunding obligations to the general budget of the European Union which was not fully in line with the provisions set out in paragraph 2 of point 4.1. which stated that where an objective estimation was possible and there were significant changes in the conditions the maximum eligible expenditure might be increased or decreased accordingly. Therefore the question arose whether it was possible in this 3 year period or in general in the maintenance period to increase under certain circumstances the maximum eligible expenditure by providing extra funds after the closure of the project?

Further more, according to point 4.4., a refund – in line with Article 55(4) – had to be provided if there was a +10% variation in net revenue. The question was what should this 10% be compared to the whole of the net revenue estimated for the 15-30 year reference period. Since the reference period of these projects was usually longer than the period up to closure of the programme how this calculation was possible?

Hungary would send further written comments.

As there were no further requests to speak and the Chairman proposed to break for lunch.

Lunch break

As the invitation of the Chairman Mr Lange responded to Member States' comments as follows:

- ✓ As regards EU co-financing rate for an operation, managing authorities were free to fix the rate, and could even go up to 100%. This rate could be different from the axis rate, including for major projects.
- ✓ Article 55.2 stated that it was only the net revenue which had to be considered.
- ✓ The 10% rate was indicated as the threshold for funds. When the difference in terms of net revenue was lower than 10% of the estimated revenue, no refund was required for. If the rate was higher, refunds might require, but this was no automatic. In addition this applied to non-forecast elements only. For instance in case of inflation, there was no requirement for funds.
- ✓ The Regulation did not contain any provision for the situation that net revenues were lower than expected. Therefore the monitoring system to allow re-allocations was crucial.
- ✓ The Commission services were unwillingness for to modify the content of the CBA guide. If Member States had noted examples of divergence, they were invited to send them to the COCOF secretariat in order to harmonize the two documents.
- ✓ There was no specific regulatory provision for small projects generating revenue. However, the principle of proportionality existed in the General Regulation and had to be taken into account for small projects. In addition, the funding gap calculation did not apply when net revenue was negative.
- ✓ For railway or motorway operations, managing authorities had to undertake a comprehensive financial analysis and not a partial one, in order to avoid any conflict of interest or favour for operators. The same applied to water sector.
- ✓ The reserve for unexpected situations did not count in the Funding Gap calculation.
- ✓ When investments were made to improve the energy efficiency of a project, this would increase the total amount of expenditures but at the same time, operating costs would decrease with over energy expenditure. These variations could affect the funding gap calculation positively.

Germany shared Poland's comments on proportionality and monitoring and added a series of comments with regard to infrastructure projects, especially in the area of transport. In the case of transport infrastructure projects, the ex-post review of financial analyses should take account only of changes in tariffs rather than also in demand fluctuations. As regards transport infrastructures, the long-term demand trend very much depended on socio-economic indicators and network developments and therefore was not subject to individual investment decisions. For the same reason, the threshold for triggering financial corrections should be raised in the case of transport infrastructure investments, since a change in demand of 10 % might - also in view of the relevant forecast periods (forecasts up to 2025 were taken into account for the ERDF Federal Transport Operational Programme) - still be regarded as an accidental fluctuation rather than a systematic distortion Germany therefore proposed a threshold of 30 % compared to the forecast for transport infrastructures.

Furthermore, not only changes in net revenue, but also changes in investment costs should be taken into consideration in the case of transport infrastructure investments. This was only logical, since the costs were also taken into account for calculation of the financing deficit. In addition, Germany proposed to restrict the interpretation of revenue monitoring to ex-post evaluation of the projects (e.g. before the end of the eligibility period as well as three years after programme closure) rather than to provide for permanent data collection. This was necessary since the financial analyses for transport infrastructure projects were based on model calculations which could be updated only at greater intervals in view of cost-benefit issues.

Germany added further comments on charges for individual training and consulting services. These charges should not be classified as revenue the meaning of Article 55. Projects the framework of which events, consultations or seminars on individual topics were offered to companies gave rise on personnel and non-personnel costs. Non-personnel costs included, among others, rental costs for premises and material costs. ERDF funds, public national funds and private funds (participation fees) could be used for financing in order to guarantee that the companies involved in the projects had a strong interest in successful implementation. The financing plan naturally took account of private funds (participation fees) in order to avoid over-financing. If fees were to be considered revenue, co-financing rates would have to be calculated on the basis of lower costs and the organisations (chambers of commerce/crafts) executing project would consequently have to bear higher costs. This would overburden them.

As DG Regio had already confirmed the above-described interpretation, Germany proposed that charges for individual training and consulting services which were provided in existing buildings were not considered as revenue in the frame of Article 55; they were rather part of the (private) co-financing.

Germany stated mentioned that written comments would follow as well.

Malta thanked the Commission services for its presentation and agreed with the concept that projects with strong revenue potential should not receive full public funding. However, they shared Poland's comments and were experiencing major difficulties in implementing this article properly. In this regard, Malta would like to propose that some other form of methodology (keeping in mind the principles of simplification and proportionality) was devised to take account of the principle behind Article 55.

Malta would like to establish some form of flat rate for different categories of projects with revenue-generating implications. This flat rate would ensure compliance with the principle that projects with revenue-generating implications were not supported by public money (or at least not entirely) as well as avoid complications of calculations and monitoring. Malta believed that the Commission services would probably be best placed to provide this guidance on to flat rates since they had some experience of projects supported by Cohesion Policy in the past. In order to address the concerns of Member States that might wish to retain the system proposed in the note, Malta believed that Member States could be given a choice - either to implement the flat rate or to take the risk of applying a higher rate with all the complications of monitoring and potential recoveries.

Malta asked also whether the calculation of revenue should take into account foregone revenue (e.g. savings made for an organization by installing of renewable energy infrastructure).

Moreover, when a project was operated via a concession, the rent received could also be considered as revenue according to Article 55.

Romania reiterated the Czech Republic's and other previous comments and their stated support to the Estonian proposal on small projects.

Slovakia shared the Czech Republic's comments. There were not only overlaps with the CBA Guidance but also inconsistencies. They also supported Poland and Estonia's comments on monitoring and proportionality.

France wondered if the European Social Fund was also covered by the provisions of Article 55. They shared the request to introduce a proportionality principle for small projects. The French delegation would send further comments later on as well.

Belgium wondered if international accountancy norms could be applied here, based on the fair value philosophy, or if a more conservative approach should be adopted.

Ireland indicated that they had similar concerns and shared previous comments or questions. In particular, they called for proportionality in the case of small projects.

The Chairman invited Mr Bernard Lange to respond to this second round of comments.

Mr Lange provided the following replies:

- ✓ The frequency of monitoring was the responsibility of the managing authority in order to follow the generation of revenue.
- ✓ The request to withdraw demand fluctuations from the financial analysis was noted.
- ✓ Again, the mechanism of the threshold of 10% was applied largely. For example, demand elasticity vis-à-vis prices could be taken into account.
- ✓ As regards cost analysis under Article 55.4, there was a need for further internal discussion.
- ✓ When the operation concerned a training action in an existing building, it was questioned whether there was a real investment.
- ✓ The monitoring, the Commission services only followed major projects.
- ✓ The concession the response issue would come later.
- ✓ Again, if Member States identified inconsistencies with the CBA guide, they were invited to send them to the COCOF secretariat.
- ✓ Overlaps were inevitable with other notes dealing with certain aspects of Article 55 provisions, as this note tried to provide a comprehensive analysis.
- ✓ Article 55 provisions covered operations co-financed by the ESF as well.
- ✓ The possible use of international accountancy norms had to be clarified.

The Chairman thanked Mr Lange and indicated that as a result of this first round of debate, the Commission services would look into the matter of exploring possibilities for simplification, in particular as concerns monitoring. A proposal should be ready for a next round of discussion at the April meeting. In the meantime, the Member States would be invited to send their additional comments.

5. Note on the N+2 Procedure and Major Projects/aid schemes of the General Regulation (EC) N°1083/2006

Mr Bernard Lange (DG REGIO, Head of Unit D1) presented a PowerPoint (available in the CIRCA database) on the major projects / aid schemes and the automatic decommitment rule for the period 2007-2013.

The Chairman gave the floor to the Member States to comment or ask questions.

Latvia did not understand why in the numerical example given in the annexes, the cumulative declaration of expenditure without decommitment risk was 600 and not 530. In addition, they wondered how the Commission would be informed of the State Aid regimes as all of them were not notified. They would like to know if advance payments were possible. In the tables, years were mentioned but not the exact date of the Commission decision. They questioned if the commitment was implemented the same year.

Poland asked for confirmation to be sure they had understood correctly the interpretation proposed by the Commission services: the annual plan presented by the Member State with the

declaration was directly encompassed without any changes in the Commission decision. The Member State was free to allocate the annual amounts to cover the financial needs of the programme. In addition, they considered that the n+3 rule did not apply for specific projects and this until 2015 whatever the annual commitment. Finally, they wondered when amounts were defined: at the declaration's submission or at the project request.

The Chairman invited Mr Bernard Lange to respond immediately to these key questions.

Mr Bernard Lange confirmed that they were crucial points. He could agree with all of them, except the last comment.

- ✓ He confirmed that the annual plan would be the one proposed by the Member State and put without any modifications in the Commission decision. However he indicated that it was a commitment plan and not a plan for payments. The plan proposed by the Member State was indicative and became valid in the decision. Mr Lange confirmed that a Member State could allocate amounts as it wanted. The rule provided real flexibility but with a time limit.
- ✓ The automatic decommitment rule did not apply for annual amounts committed in the Operational Programmes. This exemption appeared only when the Commission decision was adopted. When a submission for a major project took time, even in the case where the file could be acceptable, nothing would be done before the decision. Therefore the Member States had to take into account the time needed by the Commission services to assess applications.
- ✓ In the example provided, in 2014, it was 600 and not 530 because "2014 = 2011 +3 years". The exemption disappeared at the end of the third year following the decision of the Commission on the major project and in 2011, the n+2 rule applied.
- ✓ Advanced payments were considered as certified eligible expenditures. This point was not mentioned in the note in order to simplify the numerical example as much as possible.
- ✓ Concerning the date of the approval of the decision by the Commission, if the decision came in December, then the year concerned was the same year. These were elements to be taken into consideration in Member States' strategies for the submission of their major projects applications.

The Chairman opened the floor for another round of comments.

Italy called that this debate concerned the financial aspect of the major projects and its impact on the declaration process in order to avoid any automatic decommitment. They therefore wished to clarify one point on this issue. According to them, the Regulation made no link between the approval of expenditures and the calculation of amounts to be reported in order to avoid automatic decommitments. This point therefore had to be clearly mentioned in the note.

Czech Republic wondered why the logic for the calculation of the n+2 rule was so different from what was indicated in 2004.

Greece asked for more indication in the note on the approval of major projects by the Commission. In the present note, it was mentioned that "the national authorities should make provision in time to anticipate the expenditure levels to be certified to the Commission." Concretely, this also depended on the Commission services. As far as major projects were concerned, the Member States could not use their own financing. Any delay could have heavy impact for the Member State. Therefore they requested more information on the time framework and the process followed by the Commission between the submission and the decision.

Slovakia shared the Czech comment on the n+2 rule and the Belgium one on the timeframe.

Poland thanked the Commission services for the positive answer given to their previous questions. They referred to the Greek question as the Regulation gave three months at the latest after the submission of the declaration as a deadline for the Commission. Therefore, a preliminary commitment was possible.

Latvia supported Czech and Slovak comments on provisions in the last programming period. For state aids, they questioned on the year from which the decommitment rule was applied. They asked for adding the CDRR Guidelines for the previous programming period in the annex.

Estonia mentioned that they did not receive the document. Therefore they would send written comments later. However, they worked to assess risks related to these provisions at the end of 2007. They pointed out that the Regulation mentioned "annual amounts" and not amounts after the decision.

Czech Republic referred to the information note mentioned in page 2 paragraph ii as there was no reference. They wondered why.

The Chairman noted that there was no further request for the moment. He invited Mr Lange to respond.

Mr Lange considered that the majority of doubts were now overcome and only few points had to be detailed.

- ✓ Some Member States referred to a 2003 document on the N+2 rule. Actually, these were the first Commission proposals for the 2007 – 2013 programming period. These were not valid any more given the significant modifications introduced later in the course of the negotiations. Member States had to refer only to what the Council decided.
- ✓ Examples and tables were correct. There were not more than two arrows in tables. The exemption took place only when the Commission decision was adopted.
- ✓ If a state aid regime was foreseen, a Member State could not allow aids before the Commission had approved the regime. However, before the Commission decision for a major project, expenditures could be engaged. And as soon as the decision was adopted, declarations with high level of expenditures were possible.
- ✓ Other examples could be added in the annex. Member States were invited to indicate which ones.
- ✓ The CDRR 2003 Guidelines on the "n+2" rule could be added in annex but they were already available in the Circa database.
- ✓ Again, there was no need to discuss the 2004 Commission proposals for financial plan between submission and decision. These proposals were not adopted.
- ✓ Referring to the Italian comment, indications were provided in the first paragraph of page 3: "As a result, when implementing Article 94 of Regulation (EC) N° 1083/2006 the Commission would 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 Chairman invited the Member States to make final comments.

Latvia disagreed with the Commission interpretation of Article 94. For the Latvian delegation, the exemption should be taken forward all through the planning period without the limitations imposed by the Commission as the respective Article of the Regulation did not foresee any period

limitation as suggested in the examples given in the note. Therefore they requested to revise the note accordingly.

Mr Lange indicated that for state aids, the Member State was invited to present an annual plan of its commitments for the regime. There would be an exemption if the decision took place after in a year coming after the adoption of the regime. Then, annual amounts would benefit from the exemption.

Latvia commented that this was a theoretical view.

For **Mr Lange**, if a country notified a state aid regime in 2009 and submitted a commitment plan for the 2009 – 2011 period, and if the Commission took its decision in 2011, then these were the annual amounts before the decision which could benefit from it.

Czech Republic disagreed with this interpretation as they considered that the Article 94 stated that for these annual amounts, the starting date for the calculation of the automatic decommitment deadlines referred to in Article 93 would be the date of the subsequent decision, referring to all annual amounts in the financial plan as "these" referred to the annual amounts concerned by such major projects or aid schemes from paragraph 1 of the article 94.

Denmark referred to tables in annex and considered with these examples that there was no solution except to commit amounts in the year of the decision.

Slovakia shared the Czech comment on the interpretation of Article 94. They did not understand why there were only two arrows in tables.

Mr Lange responded to react to these comments:

- ✓ He indicated that the article 94 existed because there were neither assurance of validity for certified expenditures in a major project, or aids awarded by a state aid regime, before the Commission decision. Therefore there was a need to extend the automatic decommitment rule. As soon as the Commission approved the major project, there was no need for an exemption regime anymore.
- ✓ In the annex, another example could be added for state aids, for instance notified in 2009 and approved in 2011. The only difference between a state aid regime and a major project, was the fact that for the first one, there were no annual amounts before the application, as for the second one, annual amounts existed before the application.

Slovakia confirmed their disagreement with the interpretation of Article 94 as for instance, in the transport domain, it is hard to implement.

Latvia understood the reason why such an interpretation was followed for the Article 94. It was for the Commission to take the decision on this issue. However, the Member States did not have to be penalised by the date of the decision's adoption. They wondered why this could not be changed for a more appropriate solution.

Mr Lange indicated that it was a question of strategy. Sometimes, the major project was nearly achieved when it was notified. The commitment plan did not represent the commitments taken on the ground. An important annual financing plan was possible before the implementation of provisions from Article 94.

The Chairman kept the idea to add another example in the note in order to clarify the rule. He noted the reservations made by several countries on the interpretation of Article 94. The

Commission services would consult the Legal service on this point. Then, he proposed to move to the next point on the agenda.

6. Guidelines for the amendment of decisions on the Cohesion Fund

The Chairman stressed that the closure of the Cohesion Fund programmes was a major forthcoming task. Up to now and during the implementation phase of Cohesion Fund projects, the Commission has allowed as general rule one modification of Cohesion Fund projects. In the context of the preparation of the closure process, Directorate General for Regional Policy has undertaken a review of problems encountered during implementation and which could have important implication for the level of the closure. The timely and effective solutions to the problems may justify an amendment of the Cohesion Fund Decision. Therefore the Commission has elaborated the Guidelines for the amendments of decisions on the Cohesion Fund.

Mrs Angela Martinez Sarasola (DG REGIO, Deputy Head of Unit D1) presented a PowerPoint (available in the CIRCA database) on the guidelines for the amendment of decisions on the Cohesion Fund.

The Chairman gave the floor for the Member States to comment or ask questions.

Hungary wondered why the note presented was not the one foreseen in the previous Work Programme, called "Guidance note on Cohesion Fund Closure". Firstly, they asked for clarification of the programming period. Secondly, they asked for clarification on *force majeure* circumstances. Finally, the Hungarian delegation referred to Point 7.1 and in particular to the fact that the extension of the final date of eligibility had to be based on a realistic updated work schedule.

Poland expressed reservation as the note had been sent with a very short notice. However, they formulated four comments or questions:

- ✓ On Point 4, the Polish delegation wondered whether rules for group of projects apply for one project or only for group of projects.
- ✓ Are the rules for amendment indicated in the note also applicable for ISPA projects?
- ✓ On Point 7.3, last before end bullet point, the text on motivation is not very clear and should be reworded.
- ✓ Finally, on Point 7.4, one example could be given for a better understanding of the condition.

Greece also expressed reservation as the note was sent with a very short notice. They would send written comments. They wondered if the condition indicated in Point 7.2 could be applied for various projects when cost savings cannot be used entirely for the project concerned.

Spain thanked for explanations and expressed a positive opinion on the proposal. They asked about the timing on the implementation of the Guidelines.

Belgium asked if the PowerPoint could be put on CIRCA, and were interested in the provisions to modify ineligible expenditures identified by control authority at national level, for the 2007 – 2013 period.

Portugal agreed with Spain and wondered if progress can be made by presenting situations case-by-case without waiting for the final version.

Mrs Angela Martinez Sarasola responded with a set of comments:

- ✓ The title of the note is not the same as the one mentioned in the previous Work Programme but has been drawn up in the context of the closure. In the context of the presentation of the Communication of the closure of the Cohesion Fund projects, the Member States contested the one modification rule and the Commission has reflected on this.
- ✓ The *force majeure* criteria are defined by the Community Court of Justice and are interpreted in a very restricted manner. They include three main elements: unusual and exceptional circumstances, external dimension and avoidance.
- ✓ Concerning the programming period, these Guidelines are applicable for the 2000-2006 Cohesion Fund projects.
- ✓ Point 4 provisions only apply for group of projects.
- ✓ Ex-ISPA projects are concerned as well, as indicated in Point 7.
- ✓ As regards the possibilities to modify the grant decisions, it was recalled that, as from 31 December 2006, commitments made under Regulation (EC) N°1164/1994 of the Cohesion Fund can no longer be modified.
- ✓ In the cases where the control systems in the Member States have detected irregularities and the Member States have corrected them themselves, the Member States could replace 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 could not be fully or partially replaced by other eligible expenditure from the same project, the Member State could be given the possibility to reduce the loss resulting from the corrections made by the Member State itself by seeking a modification of the grant decision.

Poland indicated that they had to discuss with colleagues at national level. In the meantime, the Polish reservation remained valid.

Greece shared the Polish position.

The Chairman noted that most of the Member States welcomed the flexibility offered to amend the Cohesion Fund programmes. The Commission services were waiting for additional comments. However the Chairman considered the discussion on the note as closed, unless if a major reservation was made.

7. Information note on the interpretation of the Lead beneficiary principle under Articles 19 and 20 of Regulation (EC) N°1080/2006, especially concerning joint bodies such as European Grouping of Territorial Co-operation (EGTCs).

Mr Dirk Peters (Unit B3, DG REGIO) introduced the note and pointed out, in particular, that an EGTC can be either a beneficiary or a lead beneficiary in a territorial co-operation project. Since an EGTC brings together authorities or organisations from at least two Member States to act on behalf of those authorities or organisations, the EGTC as legal person meets the partnership requirements by itself. Therefore the use of an EGTC (acting as "sole" beneficiary) should be considered as satisfying the requirements of Article 19.

Then the Chairman invited the Member States to comment.

Italy indicated that the "other legal bodies" addressed in point 3 are not easy to identify. They invited the Commission services to improve the definition by giving examples.

Denmark agreed with the interpretation given in points 1 and 2, but shared the comment made by Italy on point 3. In addition, they referred to Article 16 of Regulation (EC) No. 1080/2006 and pointed out that even being considered as "sole" beneficiary, control authority of both countries will be implicated. However, Article 17(3) of that Regulation states that "if the lead beneficiary does not succeed in securing repayment from a beneficiary, the Member State on whose territory the beneficiary concerned is located shall reimburse the certifying authority for the amount unduly paid to that beneficiary." Therefore, this Member State concerned will always be the one where the EGCT is registered.

Germany thanked the Commission for this note. On point 3, they proposed not to be too restrictive since cross border organization such as foundations, could also be considered as similar as EGTCs. They considered that there was a need for clarification.

The Chairman invited Mr Peters to respond to Member States' comments.

Mr Peters gave the following indications:

- ✓ On point 3, as there was a huge variety of entities, it was difficult to enter into details. Examples could be given but they would not be exhaustive. The main point was that a single legal body other than an EGTC could be eligible, set up by at least partners from two countries, especially by regional or local authorities. The Commission services did not want to limit the scope compared to existing legal entities.
- ✓ Articles 16 and 17 had to be read in conjunction with provisions of the current Regulation on the EGTC. An EGTC was a specific entity which can manage projects with another Member State. According to Article 20, the lead beneficiary had to be identified. For amounts unduly paid, there were very strict rules applied to EGTCs. It was the responsibility of its members and not of the Member States.

Italy thanked for this reply which clarifying the point and proposed to modify the text accordingly.

There were no more remarks from the Member States. The Chairman thanked Mr Peters for his presentation.

8. Establishment of communication officers network, called Inform

Mrs Ana-Paula Laissy (Head of Unit B1, DG REGIO) presented the note signed by Mr Dirk Ahner, Director General for Regional Policy, on the communication officers network, called INFORM, defined by Article 10 of the Regulation (EC) N°1828/2006.

Member States were asked to nominate one formal representative per Member State, preferably from the central institution which coordinated function for the information activities on cohesion policy. The network, which would also be open to all communication officers on the voluntary basis, would cover both ERDF and Cohesion Fund issues.

The first meeting of the network is foreseen on 11 June in Brussels.

The Chairman invited the Member States to ask any questions they might have to respond to this request.

Austria mentioned that some Members are federal States. In this context, should they nominate a federal representative or a non-governmental expert? The Austrian delegation asked whether a reimbursement of two people was foreseen in this case.

Luxemburg asked if this network would address INTERREG IV issues. If so, the link with the national level would not be easy to manage.

The United Kingdom indicated that they needed an internal consultation before responding to the Commission request. However they wondered if there were one or two groups to set up.

The Netherlands welcomed the initiative and expressed their interest in taking part in it.

Mrs Laissy answered Member States' questions with the following points:

- ✓ In terms of rules for travel reimbursement, general rules apply allowing for the reimbursement of travel expenses for governmental participant, and travel and one night accommodation for non-governmental expert per Member State.
- ✓ The representatives of information officers from the territorial cooperation programmes would also be invited to the network's meetings and activities.
- ✓ This network is not a new initiative as an informal group, Structural Funds Information Team, already worked between 2002 and 2006. During the "Telling the story. Communicating Cohesion Policy together" conference, which took place in November 2007, communication officers expressed their wish that the new network continues to work in a similar way, i.e. preserving an open and informal character.

As there were no more questions from the Member States, the Chairman thanked the Commission staff for their presentation and explanations.

Conclusion

Before closing the meeting, the Chairman indicated several points for future COCOF meetings:

- ✓ The next two meetings of the TCUM would be held on 3 March and on 20 May. A full report was foreseen for June. The Green Paper on territorial cohesion would normally be adopted in September or October. A joint working party between the COCOF and the TCUM was planned afterward. In the meantime, an information point on the progress of the Green Paper and TCUM activities would be presented at the next COCOF meeting in March.
- ✓ The Action Plan to strengthen the Commission's supervisory role under shared management of structural actions would also be presented at the next meeting.
- ✓ In addition, the draft agenda of the next meeting would include a new discussion on the list of beneficiaries and the presentation of the note on major projects for the 2007 – 2013 period.

Finally the Chairman thanked the delegations for an excellent discussion.

* * * * *