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CORRIGENDUM

Absence de l'acronyme

Annule et remplace le COM(2008)558 final du 15.9.2008

ajout de l'acronyme 2008/0186 (AVC) sur les pages 1 et 6.

Concerne toutes les versions linguistiques.

Proposal for a

COUNCIL REGULATION (EC)

amending Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund, in respect of certain revenue-generating projects

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Context of the proposal

- Grounds for and objectives of the proposal

The provisions of Article 55 of Regulation No 1083/2006 do not seem appropriate to projects co-financed by the European Social Fund (ESF), which essentially finances non-physical operations rather than infrastructure (which is ineligible). Few projects generate revenue, and, if they do, it is usually during the operation implementation phase only.

Furthermore, in the case of small operations co-financed by the ERDF/Cohesion Fund or operations co-financed by the ESF, the follow-up procedures to be complied with — revenue may be taken into account for up to three years after winding-up of the operational programme — would seem to be a disproportionate administrative burden compared with the amounts concerned, and an important risk factor in programme implementation.

- **General context**

The new financial management rules introduced by Regulation No 1083/2006 include provisions on the financial contribution from the Funds (Title V) and in particular on revenue-generating projects (Article 55).

According to Article 55(1) of the Regulation, ‘revenue-generating project’ means any operation involving an investment in infrastructure the use of which is subject to charges borne directly by users or any operation involving the sale or rent of land or buildings or any other provision of services against payment.

Bearing in mind the risk of over-financing revenue-generating projects, such projects have always been treated in a special way as regards co-financing by the Funds. The impact of revenue on the maximum level of Community support is that a calculation method is established for the projects concerned. This is the purpose of Article 55 of Regulation No 1083/2006.

- **Existing provisions in the area of the proposal**

During the previous programming period (2000-2006), this principle was implemented according to a flat-rate approach. Article 29(4) of Regulation (EC) No 1260/1999, as regards the 2000-2006 programmes (Structural Funds), stipulated in particular that for projects involving ‘investment in infrastructure generating substantial net revenue’, the maximum rate of Community co-financing could not exceed, for example (for Objective 1), 40% rather than the normally permitted maximum of 75%. The existence of ‘substantial revenue’ thus led to a reduction in the maximum rate of Community co-financing which was uniform and automatic. On the other hand, there was no restriction on Community support below this threshold of ‘substantial revenue’.

Following a proposal from the Commission, the Council has decided to adopt a more precise and more stringent approach for the 2007-2013 period, based on the calculation of maximum eligible expenditure rather than a flat-rate reduction of the rate of co-financing. Article 55 of Regulation No 1083/2006 is now applied to a broader range

of projects regarded as revenue-generating (defined in paragraph 1 of the Article), and not only to infrastructure investment projects generating ‘substantial net revenue’ as in 2000-2006.

Where the revenue generated by a project is insufficient to ensure the financial viability of the investment, the part of the investment which necessitates a subsidy constitutes the maximum level of expenditure eligible for Community co-financing.

- **Consistency with the other policies and objectives of the Union**

Not applicable.

2. **Consultation of interested parties and impact assessment**

- **Consultation of interested parties**

Consultation methods used, main sectors targeted and general profile of respondents

The Member States have been consulted informally on several occasions concerning the procedures for implementing the provisions of Article 55, the difficulties encountered in practice and the various options for counteracting them:

- consultation concerning the interpretative note on Article 55: the meetings of the Coordination Committee of the Funds on 27 February and 21 May 2008 provided opportunities to examine the extent of the flexibility permitted under the text of the Regulation;
- consultation concerning the possibility of amending the Regulation: the Member States were consulted twice, on 25 June 2008 at the meeting of the Coordination Committee of the Funds and on 3 July 2008 at the meeting of the Council’s Structural Measures Group.

Summary of responses received and how they have been taken into account

The outcome of all these consultations was that the Member States felt that solutions based on the interpretation of Regulation No 1083/2006 were not totally sufficient. A very large majority were therefore in favour of amending Article 55 (and Article 55 only).

- **Obtaining and use of expertise**

No recourse to external expertise has been necessary.

- **Impact assessment**

The Commission considered the leeway offered by the text of the Regulation itself with a view to resolving the difficulties expressed by the Member States by way of interpretation. The choice of a guidance note seemed to have the advantage of simplicity. However, although the guidance note prepared by the Commission provided a basis for exploring all the flexibility possibilities in implementing follow-up, it was unable to include the possibility of proportionality in calculating maximum eligible expenditure for small operations or the exclusion of ESF operations.

Furthermore, an amendment limited to Article 55 will allow the discussion to be focused on a provision of a technical nature and make it possible for the amendment to be adopted rapidly, so that any legal uncertainty will be strictly limited in time.

3. Legal elements of the proposal

- **Summary of the proposed measures**

The Commission is therefore proposing an amendment to Article 55(5) only, with the other provisions of Regulation No 1083/2006 remaining unchanged.

The amendment consists in replacing the provision on proportionality in monitoring small operations (total cost below €200 000) by the non-application of the provisions of Article 55 to operations co-financed by the ESF and to operations co-financed by the ERDF or Cohesion Fund where the total cost is less than €1 000 000. It is also proposed that this should apply retroactively from 1 August 2006.

- **Legal basis**

Adopted on 11 July 2006, Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 establishes common rules applicable to the three Funds. Based on the principle of shared management between the Commission and the Member States, the Regulation introduces a new programming process and new rules on the management (including financial management), monitoring, follow-up and assessment of projects.

- **Subsidiarity principle**

The proposal concerns an area that falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons.

An amendment limited to Article 55 will allow the discussion to be focused on a provision of a technical nature and make it possible for the amendment to be adopted rapidly, so that any legal uncertainty will be strictly limited in time. The threshold to be established must be low enough so as not to jeopardise the general scheme of Article 55 of Regulation No 1083/2006, which follows the principles of sound financial management. The threshold of €1 000 000 has been set in order to limit the proportion of Community funding operations which would be excluded from the scope of Article 55.

Such an amendment shows that there is a genuine wish to simplify the management of the Funds, and it will certainly have a positive impact on the rate of programme implementation, as the management of small operations co-financed by the ERDF/Cohesion Fund and operations co-financed by the ESF will be significantly facilitated and simplified. The amendment will also facilitate the implementation of more innovative projects, especially in the fields of the environment, social inclusion, energy and research.

- **Choice of instruments**

Proposed instrument(s): regulation.

Other instruments would not have been appropriate for the following reasons.

The Commission considered the leeway offered by the text of the Regulation itself with a view to resolving the difficulties expressed by the Member States by way of interpretation. However, although the guidance note prepared by the Commission provided a basis for exploring all the flexibility possibilities in implementing follow-up, it was unable to include the possibility of proportionality in calculating maximum eligible expenditure for small operations or the exclusion of ESF operations.

4. Budgetary implications

The proposal has no implications for the Community budget.

5. Additional information

- **Simplification**

The proposal simplifies the legislative framework and the administrative procedures applying to the public authorities (national or European).

In the light of the objectives of the cohesion policy, the Commission considers it necessary to rectify the difficulties by adopting an amendment to Regulation No 1083/2006 limited to Article 55(5) and comprising only two points: exclusion of operations co-financed by the ESF from the scope of Article 55, and establishing of a threshold below which projects co-financed by the ERDF or Cohesion Fund would be similarly be excluded from the scope of Article 55, both for the purposes of calculating maximum eligible expenditure and for monitoring. The other provisions of Article 55 remain unchanged.

The amendment consists in replacing the provision on proportionality in monitoring small operations (total cost below €200 000) by the non-application of the provisions of Article 55 to operations co-financed by the ESF and to operations co-financed by the ERDF or Cohesion Fund where the total cost is less than €1 000 000.

- **Repeal of legislation**

The adoption of this proposal will mean that certain legislative provisions must be repealed.

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amending Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund, in respect of certain revenue-generating projects

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 161 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the assent of the European Parliament²,

Having regard to the opinion of the European Economic and Social Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Whereas:

- (1) The regulatory framework for the 2007-2013 programming period was prepared and negotiated with the aims of consolidating the simplification of programming and management of the Funds, the effectiveness of assistance provided by them and subsidiarity in their implementation.
- (2) A more precise and more stringent approach based on the calculation of maximum eligible expenditure has been put in place for the processing of revenue-generating projects covered by Article 55 of Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999⁵.
- (3) A number of difficulties have been highlighted in connection with the application of the provisions of this Article, including a disproportionate administrative burden,

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

⁵ OJ L 210, 31.7.2006, p. 25. Regulation as amended by Regulation (EC) No 1989/2006 (OJ L 411, 30.12.2006, p. 6).

especially for operations co-financed by the European Social Fund and small operations financed by the ERDF or Cohesion Fund.

- (4) These difficulties may have adverse consequences in terms of operation management, especially for projects in areas of Community priority such as the environment, social inclusion, research, innovation or energy, and in terms of the number of errors in applying the provisions of Article 55. The said Article must therefore be simplified.
- (5) This simplification must apply to all projects receiving assistance from the Structural Funds or Cohesion Fund during the 2007-2013 programming period. Retroactive application is therefore necessary.
- (6) It is necessary to amend Regulation (EC) No 1083/2006 accordingly,

HAS ADOPTED THIS REGULATION

Article 1

In Article 55 of Regulation (EC) No 1083/2006, paragraph 5 is replaced by the following:

‘5. Paragraphs 1-4 of this Article shall apply only to operations which are co-financed by the ERDF or Cohesion Fund and the total cost of which exceeds €1 000 000.’

Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

It shall apply with effect from 1 August 2006 to all operations receiving assistance from the Structural Funds or Cohesion Fund during the 2007-2013 programming period.

This Regulation is binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...]

For the Council
The President
[...]