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J. Leimane

Brussels,
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16.07.2015.

Subject: **Reporting on irrecoverable amounts**

Ref: Your letter to DG EMPL of 2 March 2015 Ares(2015)900372
Reply by DG EMPL of 1 July 2014 Ares(2014)2170279

Dear Mr Āboltiņš

Following your letter to the Directorate General for Employment, Social Affairs and Inclusion (DG EMPL) of 2 March 2015 requiring explanation whether the paragraph 5 of the article 57 of the Council 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 1260/1999" (the General Regulation) applies also to projects co-financed from the European Regional Development Fund (ERDF) and the Cohesion Fund, please find below our position on your question.

It should be noted that no restrictions are mentioned in the paragraph 5 of the article 57 of the General Regulation, accordingly, this paragraph applies to all funds which are covered by this regulation, i.e., ESF, ERDF and Cohesion fund.

Article 57 of the General Regulation concerns the durability of operations co-financed under the programming period 2007-2013.

It foresees that an operation comprising investment in infrastructure or productive investment retains the contribution from the Funds only if it does not, within 5 years from its completion, undergo a substantial modification which could be caused among others by a cessation of productive activity and which affects the nature or the implementation conditions of the operation.

The fifth paragraph to article 57 was added to the General Regulation by the EU Regulation No 539/2010 of 16 June 2010, stating:

> *"Paragraphs 1 to 4 shall not apply to any operation which undergoes a substantial modification as a result of the cessation of the productive activity due to a non-fraudulent bankruptcy".*

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Nosūtīts pa e-pastu
13.07.2015.

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The resulting legal implications are:

1) in case of cessation of the productive activity due to a non-fraudulent bankruptcy during the durability period (i.e. after completion of the project), the Member State is exempted from making financial corrections on the basis of Article 57 of the General Regulation.

2) it is considered that in the case of non-fraudulent bankruptcy it is unlikely that the failure to recover the contribution resulted from the fault or negligence of the authorities of the Member State, and consequently, the share of the funds concerning the irrecoverable amounts is charged on the general budget of the European Union.

The Member State must however follow the national rules applicable to the recoveries. In case funding is actually recovered the Funds share must be reimbursed to the EU Budget on the basis of Article 61 (f) of the General Regulation.

Yours sincerely

Angela MARTINEZ SARASOLA