



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
REGIONAL POLICY

**REVISED GUIDANCE NOTE ON**

**MAJOR PROJECTS IN THE PROGRAMMING PERIOD 2007-2013:**  
**THRESHOLD AND CONTENTS OF COMMISSION DECISIONS**

***DISCLAIMER:***

*"This is a document prepared by the Commission services. On the basis of the applicable EU Law, it provides technical guidance to the attention of public authorities, practitioners, beneficiaries or potential beneficiaries, and other bodies involved in the monitoring, control or implementation of the Cohesion policy on how to interpret and apply the EU rules in this area. The aim of this document is to provide Commission's services explanations and interpretations of the said rules in order to facilitate the implementation of operational programmes and to encourage good practice(s). However this guidance note is without prejudice to the interpretation of the Court of Justice and the General Court or evolving Commission decision making practice."*

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

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

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

This note proposes guidance on: (i) the application of a single threshold for major projects; (ii) the content of the Commission decisions on major projects, especially as regard the description of the physical object of the major projects and the scope of the financial contents of these decisions, and (iii) other considerations, as regards State aids, the time for submission of applications, and the way to take into account exchange rate fluctuations for Member States outside the Euro area.

## 1. INTRODUCTION AND BACKGROUND

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

Under the original version of Article 78(4) of Regulation (EC) No 1083/2006 the possibility to declare expenditure on major projects was subject to their prior assessment and adoption by the Commission. However, as one of the concrete measures of a "Recovery Package"<sup>1</sup> the provision has been amended in order to support investments and promote growth and employment in the context of the financial and economic crisis faced from the course of 2008 and to accelerate the implementation of major projects co-financed by the Funds under the 2007-2013 programming period<sup>2</sup>.

Article 78(4) as amended<sup>3</sup> enables, since its entry into force on 9 April 2009, the certifying authority of an operational programme to declare expenditure related to a major project before the project has been approved by a Commission decision under Article 41(2) of Regulation (EC) No 1083/2006. This flexibility should facilitate a smooth implementation of major projects despite the remaining obligation to have them appraised and approved by a Commission decision in accordance with Article 41 of the Regulation. If the Commission refuses to approve a major project, as it is foreseen in Article 41(3) of Regulation (EC) No 1083/2006, the Member State will have to deduct any expenditure previously declared to the Commission in relation to such project from the statement of expenditure submitted following the notification by the Commission of the refusal to adopt the major project<sup>4</sup>.

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<sup>1</sup> COM(2008) 800 of 26 November 2008

<sup>2</sup> See recital 9 of Regulation (EC) No 284/2009 amending Regulation (EC) No 1083/2006.

<sup>3</sup> Regulation (EC) No 284/2009, OJ L94 of 8 April 2009

<sup>4</sup> See Article 1(4)(c) of Regulation (EC) No 284/2009: "*When, in application of Article 41(3), the Commission refuses to make a financial contribution to a major project, the expenditure declaration following the adoption of the Commission decision must be rectified accordingly*"

With a view to facilitate, simplify and clarify the rules governing the Cohesion Policy, Article 39 as amended sets a uniform threshold of EUR 50 million applicable to all major projects<sup>5</sup> (section 2 of this note). In addition, it enables a single major project to be co-financed by more than one operational programme (section 4 of this note).

According to Article 41(1) of the General Regulation, the Commission will appraise major projects. This *ex ante* assessment and the resulting Commission decision concerns major projects co-financed by the ERDF, as was the case for the 2000-2006 programming period.

This procedure also concerns major projects receiving assistance from the Cohesion Fund, which is an innovation in comparison to the rules applicable to that Fund in the previous legal framework<sup>6</sup>.

From a procedural and legal point of view, the Commission's decisions on major projects in the 2007-2013 programming period differs from what was applicable in the previous programming period:

The Commission's decision on a major project will define the physical object, the amount to which the co-financing rate for the priority axis / axes applies, and the annual plan of financial contribution from the ERDF or the Cohesion Fund. It is therefore also necessary to clarify the scope of the Commission decision on major projects (section 5 of this note), as well as its contents, especially the description of the physical object (section 5.1.) and the issues related to the financial contribution from the Funds (sections 5.2 and 5.3).

**As a consequence of the simplification exercise mentioned above, Articles 39 and 41 of the General Regulation are amended as follows:**

**Article 39** as amended provides that:

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

Article 41(1) and (2) as amended provides that:

*"1. The Commission shall appraise the major project, if necessary consulting outside experts, including the EIB, in the light of the factors referred to in Article 40, its consistency with the priorities of the operational programme or programmes concerned, its contribution to achieving the goals of those priorities and its consistency with other Community policies.*

*2. The Commission shall adopt a decision as soon as possible but no later than three months after the submission by the Member State or the managing authority of a major project, provided that the submission is in accordance with Article 40. That decision shall define the physical object, the amount to which the co-financing rate for the priority axis of*

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<sup>5</sup> Regulation (EU) No 539/2010 OJ L158 of 16 June 2010

<sup>6</sup> It is worth recalling that under Regulation (EC) No 1260/1999, irrespective of their nature and objectives, major projects were those whose total cost in determining the contribution from the Structural Funds exceeded EUR 50 million (Article 25(b) of Regulation (EC) No 1260/1999).

*the operational programme or programmes concerned applies, and the annual plan or plans of financial contribution from the ERDF or the Cohesion Fund".*

## **2. UNIFORM THRESHOLD FOR DETERMINING A MAJOR PROJECT**

Because of the Fund-specific Regulations, the ERDF and the Cohesion Fund and, within the ERDF, the Convergence and Regional Competitiveness and Employment objectives include varying definitions of what constitute "environmental" projects. The original version of Article 39 of the General Regulation included two different thresholds to be reached for the identification of major projects according to the nature of the operation (i.e. EUR 25 million in the case of environment and EUR 50 million in other fields). By consequence, due to this double threshold, depending on the Fund and objective the same project was subject to different thresholds.

The simplification brought to the revised Article 39 introduces a uniform threshold of EUR 50 million applicable to all major projects. As a result Member States are no longer expected to submit to the Commission environmental projects below the EUR 50 million threshold.

For environmental projects applications with a total cost between EUR 25 and 50 million that fulfil the provisions of Article 40 of Regulation (EC) No 1083/2006, for which the Commission has not issued a decision by the date of entry into force of the Regulation (EU) No 539/2010, Member States will indicate to the Commission if the latter should pursue its assessment and issue a decision or if the major project application should be withdrawn.

## **3. MONITORING OF ENVIRONMENTAL PROJECTS BETWEEN EUR 25 AND EUR 50 MILLION OF TOTAL COSTS**

Given the importance for the Union of the investments in the environment, and as mentioned in recital 3 of Regulation (EC) No 1083/2006<sup>7</sup>, as amended, the Commission recommends to Member States to publish information for projects between EUR 25 million and EUR 50 million total cost by including these projects in national websites accessible to the general public, before they are officially approved at national level by the competent authorities. Member States also have to inform the Commission about the implementation progress of these projects in the annual reports on operational programmes, as referred to in Article 67 of Regulation (EC) No 1083/2006 and in particular in point 5(a) of Annex XVIII to Regulation (EC) No 1828/2006 as amended. Further, the Commission services could also monitor (project visits, audits, etc.) environmental projects between EUR 25 million and EUR 50 million total cost.

In order to facilitate the monitoring and reporting, Regulation (EC) No 1828/2006 requires a limited reporting on the key issues linked to their implementation. In particular, in case of ongoing projects, it is recommended to report on the physical progress in the implementation of different stages of projects (it is recommended to use the template set out in point D.1 of Annexes XXI and XXII to Regulation (EC) No 1828/2006), and on financial progress (it is recommended to use the same template as in Point H.2.2 of Annexes XXI and XXII to Regulation (EC) No 1828/2006). In case of completed projects, Member States should provide the following information: list of completed projects, including the date of completion, total

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<sup>7</sup> *"Given the differences between the Funds and the objectives with regard to the definition of environment, it is appropriate, for the reasons of coherence and consistency, to apply only one threshold for the purpose of definition of major project. Given the importance of the investments in the environment, including those under the threshold provided in this Regulation, the Member States should ensure appropriate monitoring of all these investments and inform the Commission in the annual implementation reports on operational programmes."*

final investment costs, including the sources of financing (it is recommended to use the same template as in Point H.2.2 of Annexes XXI and XXII to Regulation (EC) No 1828/2006), and key output and result indicators, including, where relevant, the core indicators.

The table below should help to identify which environmental projects between EUR 25 and 50 million of total costs should be considered for monitoring and reporting:

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

#### **4. CO-FINANCING OF A MAJOR PROJECT BY ONE OR MORE OPERATIONAL PROGRAMMES**

The second simplification element introduced by the modification to Regulation (EC) No 1083/2006 consists of creating the possibility that a single major project is co-financed by more than one operational programme. This is of particular relevance for projects of nation-wide scope or importance for the Union, which straddle several regions, and which

**in the absence of this possibility would have to be artificially separated in multiple projects.**

**The certifying authorities of the operational programmes concerned will certify the expenditure incurred by the major project linked to the operational programme they are responsible for. The amendment of Regulation (EC) No 1083/2006 does not affect major projects co-financed under the European territorial cooperation objective, for which the relevant managing authority may already submit applications using Annexes XXI and XXII as for any other major project.**

## **5. COMMISSION DECISIONS ON MAJOR PROJECTS**

The provisions governing major projects in the 2007-2013 programming period differ from those previously applicable to the ERDF<sup>8</sup> and from the provisions applicable to projects funded under the Cohesion Fund (adoption of individual decisions concerning each project irrespective of its total cost<sup>9</sup>) under the 2000-2006 period.

Article 41(2) of the General Regulation provides that the decision of the Commission on major projects *"shall define the physical object (section 5.1), the amount to which the co-financing rate for the priority axis of the operational programme(s) concerned applies (section 5.2), and the annual plan of financial contribution from the ERDF or the Cohesion Fund (section 5.3)"*.

In general terms, the main goal of the Commission's major project decisions to be adopted based on Article 41(2) of the General Regulation remains the same as that for decisions taken under Regulation (EC) No 1260/1999: to allow managing authority(ies) to implement the relevant major project. The Commission's decisions on major projects are not financing decisions in the meaning of Article 75 of the Financial Regulation<sup>10</sup> and Article 90 of the Implementing Rules<sup>11</sup>.

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

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

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

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

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<sup>8</sup> Article 26(3) of Regulation (EC) No 1260/1999

<sup>9</sup> Article 10(6) of Regulation (EC) No 1164/1994 as amended.

<sup>10</sup> Regulation (EC, Euratom) No 1605/2002 of 25 June 2002, as last amended by Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 (OJ L 390/2006 of 30 December 2006).

<sup>11</sup> Regulation (EC, Euratom) No 2342/2002 of 23 December 2002, as last amended by Regulation (EC, Euratom) 478/2007 of 23 April 2007 (OJ L 111/2007 of 28 April 2007).

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

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

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

In case of a major project co-financed by more than one operational programme the parts falling under each operational programme or pro-rata allocation should be indicated in the application form (Point B.4.1).

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

## **5.2. The amount to which the co-financing rate for the priority axis / axes applies**

Unlike decisions on major projects in the 2000-2006 programming period taken under Article 26 of Regulation (EC) No 1260/1999, the decision which will be taken on the basis of Article 41(2) of the General Regulation will not confirm the level of Union assistance to be granted to a given major project. Instead, the Commission decision "*shall define (...) the amount to which the co-financing rate for the priority axis of the operational programme(s) concerned*

*applies*" i.e. the maximum amount of eligible expenditure<sup>12</sup> that can be declared to the Commission for a contribution from the Funds to the major project. This maximum amount is that to which the provisions of Article 77 of the General Regulation on common rules for calculating payments will apply.

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

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<sup>12</sup> The amount mentioned in the Commission's decision will correspond to eligible expenditure of the project. That amount will then have to be distinguished from the total costs, which can be higher and are those taken into account for the identification of major projects when the Member State, the managing authority or the Commission applies the thresholds set out in Article 39 of the General Regulation.

In the cases where a major project is co-financed by more than one operational programme, the amount set out in the Commission decision on the major project should be split among the different operational programmes concerned; and the relevant co-financing rate for the priority axis of each operational programme will be respectively applied. As an example, a major project whose decision amount is 100 EUR million is split between two operational programmes: OP1 corresponds to 60% of the share of the major project's amount and OP2 to 40%. The co-financing rate for the relevant priority axis in OP1 is 75% and is 50 % in OP2. The Community contribution will then be equal to:  $(60 \times 75\%) + (40 \times 50\%) = 45 + 20 = \text{EUR } 65 \text{ million}$ . The result of this calculation will be included in Table H.2.1 of Annexes XXI and XXII to Regulation (EC) No 1828/2006.

In case of revenue-generating projects within the meaning of Article 55 of the General Regulation, this amount will not exceed the 'funding-gap' i.e. the current value of the investment costs less the current value of the net revenue<sup>13</sup>.

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

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

In case of major projects co-financed by more than one operational programme, annual financing plans should be presented separately for each operational programme.

The total of the annual amounts included in the annual plan will be the result of applying the co-financing rate for the priority axis of the operational programme(s) to which the major project belongs to the amount defined in the decision (i.e. '*the amount to which the co-financing rate for the priority axis of the operational programme(s) concerned applies*'). The *annual plan* is the reference point for the implementation of Article 94 of the General Regulation since it will contain the annual amounts by which the amounts potentially concerned by automatic decommitment (N+2/3 rule)<sup>14</sup> will be reduced.

These annual amounts do not necessarily correspond to the effective financial contribution from the ERDF or the Cohesion Fund to the major project since, as explained in section 5.2, it is not the purpose of Commission's decision under Article 41(2) of the General Regulation to fix the level of Union assistance to a given major project. The public contribution, including the Fund contribution, to a given operation will be fixed in the conditions agreed between the managing authority and the beneficiary.

The annual plan of financial contribution from the ERDF or the Cohesion Fund which will be contained in Annex II to the Commission's decision on a major project can only be adjusted (1) by modifying the co-financing rate at priority axis level (modification of the decision approving the operational programme and consequently of all the decisions concerning major projects

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<sup>13</sup> See Annex XXI and XXII to Commission Regulation (EC) No 1828/2006 and Guidance note to the COCOF No 07/0074/00-EN on Article 55 of Regulation (EC) No 1083/2006.

<sup>14</sup> See Guidance note to the COCOF n° COCOF 07/0073/03 on major projects/aid schemes and automatic decommitment rule for the period 2007-2013.



concerned by that priority axis), or (2) by revising the amount to which this co-financing rate applies (modification of the individual major project decision)<sup>15</sup>.

#### **5.4. During the implementation phase**

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

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

The follow-up of implementation of major projects will be made on the basis of (i) the description of the physical object included in the Commission decision (as described in section 5.1. of this note), and (ii) the information submitted by the Member State to the Commission pursuant to Article 40 of the General Regulation in the application form (Annexes XXI or XXII to Commission Regulation (EC) No 1828/2006). The follow-up will rely, in particular, on the key output indicators submitted in the framework of the project description (point B.4.2.b) of Annex XXI or point B.4.2.a) of Annex XXII), the project timetable (point D.1) and the elements included in the financing plan (point H). When necessary (if output indicators cannot be used for monitoring), a limited number of monitoring indicators must be agreed between the Member State and the Commission to enable a proper monitoring of the major project.

Annual and final reports on the implementation of each operational programme will include, pursuant to Article 67(2)(a) of the General Regulation, information on "*the progress made in implementing the operational programme and priority axes in relation to their specific, verifiable targets, with a quantification, wherever and whenever they lend themselves to quantification, using the indicators referred to in Article 37(1)(c) (...)*". According to this latter provision, targets shall be quantified using key output and result indicators<sup>16</sup>. Information related to any significant discrepancy should be provided by the Member State.

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

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

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<sup>15</sup> Without prejudice to the obligations laid down in Article 55(2) of the General Regulation for revenue-generating projects.

<sup>16</sup> See Commission working document number 2, Annex 1 : [http://ec.europa.eu/regional\\_policy/sources/docoffic/2007/working/wd2indic\\_082006\\_en.pdf](http://ec.europa.eu/regional_policy/sources/docoffic/2007/working/wd2indic_082006_en.pdf)

## 6. OTHER CONSIDERATIONS

### 6.1. State Aids

In the cases of major projects subject to State aid rules, the amount of public (EU and national) contribution included in the Commission's decisions cannot exceed the State aid ceilings (in accordance with Article 54(4) of Regulation (EC) No 1083/2006. In such cases, the Commission has to define the *amount to which the co-financing rate for the priority axis of the operational programme(s) concerned applies* and the *annual plan of financial contribution from the ERDF or the Cohesion Fund* in a way that ensures the respect the applicable aid ceilings (i.e. ultimately the maximum public contribution allowed for the major project by the State aid intensity).

This must always be satisfied for both major projects within operational programmes where the contribution from the Fund is calculated with reference to public eligible expenditure and equally for major projects within operational programmes where the contribution from the Fund is calculated with reference to total eligible expenditure (Article 53(1) of Regulation (EC) No 1083/2006). In both cases, the *decision amount to which the co-financing rate of the priority axis applies* is the total of eligible costs of the major project.

In addition, the *annual plan of financial contribution from the ERDF or the Cohesion Fund to the major project* must be calculated in order to respect the maximum public contribution allowed by the State aid intensity. Therefore, for the purpose of the Commission decision on the major project concerned, in order to define the EU contribution for a major project subject to the State aid ceiling, the aid intensity rate must be taken into account in parallel to the co-financing rate of the priority axis.

The managing authority has the obligation to respect the applicable state aid ceiling for the major project and to ensure that, in accordance with Article 54(3)(c) of Regulation (EC) No 1083/2006, the *"operation shall not receive an assistance from a Fund higher than the total public expenditure allocated"*.

At the level of the priority axis, the EU contribution shall not be higher than the public contribution and the maximum amount of assistance from the Funds for each priority axis as laid down in the decision of the Commission approving the operational programme. If, at the level of the priority axis, the application of the co-financing rate to the expenditure declared to the Commission results in an amount higher than the amount of public contribution certified in column "Corresponding public contribution", the contribution of the Funds reimbursed by the Commission will be capped to the amount of public contribution certified, in accordance with the second paragraph of Article 77.

If the co-financing rate due to the State aid intensity is lower than the co-financing rate of the priority axis, an excess amount which can arise from the application of the co-financing rate<sup>6</sup> of the priority axis to the decision amount will have to be allocated by the Member States to other operations or projects under the same priority axis and the respective expenditures will have to be declared to the Commission in accordance with Article 78 of Regulation (EC) No 1083/2006.

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<sup>6</sup> Within operational programmes where the contribution from the Fund is calculated with reference to total eligible expenditure, the application of the co-financing rate of the priority axis to the decision amount (i.e. the total of eligible cost of the project, including the private cost) may give rise to an excess of payments from the EU to the priority axis when compared to the effective contribution of Structural Funds to the project

## 6.2. Timing for submission of information

Finally, concerning the submission of information on major projects by the Member States, Article 40 of the General Regulation does not lay down when the application for a major project has to be submitted to the Commission, and when requests for modification of Commission's decision on major projects have to be submitted if modification is needed. However, the wording of Article 40, in particular indents (d) and (h), implies that the submission should be made either prior to the implementation, or at an early stage of implementation, otherwise terms such as "*a timetable for implementing the project*" and "*the financing plan showing the total **planned** financial resources and the **planned** contribution from the Funds*" would become meaningless. It is therefore expected that applications for major projects will be transmitted sufficiently far in advance in order to avoid difficulties if the Commission refuses to approve the said major project.

In the case of revisions of costs or cost increases during the implementation of an operation, when this increase causes this operation to reach the threshold for the identification of a major project, the managing authority has to submit an application for a major project. Even though this can occur at any time during the implementation period of the relevant operational programme, the submission should be made as soon as possible and in any event before the final date of eligibility of expenditure laid down in Article 56(1) of the General Regulation. The time of submission of the major project to the Commission has no direct consequence in the progress of implementation of the project at national level. With regard to the amendment of Article 78(4) of the General Regulation, expenditure incurred from the moment the project becomes a major project until the adoption of a Commission decision on it, can be certified to the Commission (cf. section 1).

## 6.3. Use of the Euro

For Member States which have not adopted the euro as their currency, fluctuations of the exchange rate of the national currency against the euro also can have an impact on the qualification of operations as major projects. The Commission recommends Member States concerned to take exchange rate fluctuations into account in the project's costs estimates. This calculation could be based on the actual exchange rate or on an estimated reference rate, which itself would be based on the average fluctuation of the national currency against the euro during a past period or on the basis of future forecast. This reference rate must be based on reasonable and verifiable data. The Commission also encourages the Member States concerned to submit applications for projects whose total cost is close to the threshold set out in Article 39 of Regulation No1083/2006 in order to avoid future uncertainty on the projects.

However, if it wishes to ensure legal certainty, Member States should consider only the exchange rate in force at the moment of the selection or approval of the project at national level. This will neutralise the risk of cost variations due solely to exchange rate fluctuations.

On the basis of the exchange rate considered at the moment of the selection or approval of the operation, the managing authority will be able to determine whether an operation is to be considered as a major project within the meaning of Article 39 of Regulation (EC) No1083/2006. Where the total costs in euros applying that exchange rate reaches the threshold set out in Article 39 of Regulation (EC) No1083/2006, the project will have to be submitted to the Commission.

For operations which will not be regarded as major projects within the meaning of Article 39 of Regulation (EC) No1083/2006 (i.e. where the total costs in euros by applying the exchange rate in force at the moment of the selection or approval of the operation will not reach the threshold

of Article 39 of Regulation (EC) No 1083/2006), the managing authority will have to clearly indicate in the operation's granting decision the exchange rate used, as this rate will serve as a reference when it is checked that the rules on major projects have been correctly observed.

Any other change in its total costs during its implementation (e.g. cost increases, inflation) can have as consequence that an operation reaches the threshold for being converted into a major project in the meaning of Article 39 of Regulation (EC) No1083/2006.