

Analysis of the projects where had been made essential changes within five years from the last payment realization

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Basic objective of the research is to ensure absorption of all the funding available for the programming period 2007-2013 in conformity with the laws and regulations and to ensure compliance with Article 57 of the 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.

The research results in the following outputs:

- 1) analysis of the projects financed by the EU Structural Funds and Cohesion Fund during the programming period 2004-2006 that have undergone substantial modifications after the completion of operation and receipt of the final payment, presented in this Report;
- 2) elaboration of a methodological guidebook for institutions involved in administration of the EU funds on how to evaluate cases of modifications and make appropriate decisions based on conclusions and recommendations drawn up in this Report.

Substantial modifications within the meaning of Article 57 of the Council Regulation (EC) No 1083/2006 have been analysed from two aspects, i.e.,

- 1) legal analysis of Community law, legal acts of the Republic of Latvia and legal acts and experience of the Republic of Estonia and the Republic of Ireland;
- 2) case studies of the projects identified in Latvia that have already undergone recorded modifications within five years after receipt of the final payment.

Legal analysis of the concept of substantive modification allows to **draw the following conclusions**:

- Community law and documents adopted in the legislative process do not provide a clear guidance on what is considered as substantial modifications for the purpose of Article 57 of the Council Regulation No 1083/2006.
- The contents of the concept of substantial modifications are elaborated in the case law of Court of Justice of the European Communities. Even though the Court has not interpreted the concept directly in the context of the Council Regulation No 1083/2006, nor within the meaning of the Council Regulation No 1260/1999, its elements (effects: impact on nature of the activity; impact on implementation conditions of the activity; creation of an undue advantage resulting from either a change in the nature of ownership of an item of infrastructure or the cessation of a productive activity) have been clarified by the Court in a number of decisions on state aid and the Council Regulation No 4253/88.

- As to events that cause substantial modifications, comparison of different language versions of the Article 57 of the Council Regulation No 1083/2006 indicates that Article 57 concerns any kind of changes in ownership, for example, selling, lending, mortgage, lease and rent of items. At the same time, cessation of productive activity applies to every situation when an SME terminates the activity that has been provided in the funding agreement. Transfer of productive activity is considered to be a specific case of cessation of activity.
- Activity is to be considered as a substantial modification if it simultaneously corresponds to one of the cases mentioned in the following paragraphs one and three or two and three respectively:
 - 1) changes have occurred either with the property the purchase of which was supported by the means of Funds or with the property that has been benefiting from such support, and these changes are not in line with objectives of the respective support;
 - 2) beneficiary has ceased its respective productive activity;
 - 3) activities of Paragraphs 1 and 2:
 - a. affect the nature of supported activity, i.e., impede achievement of the objectives of the activity;
 - b. affect conditions of implementation of the supported activity, i.e., breach of the terms of the support agreement or legal acts or changes in the legal status of the beneficiary that would not allow the beneficiary to qualify for support;
 - c. provide an undue advantage, i.e., cause a favourable situation that would not occur in normal market conditions and has originated from the breach of legal rules.

Conclusions of this analysis provide only a general interpretation of the contents of criterion. List of actual situations that could correspond to these conditions can be unlimited. Therefore these criteria can be applied only in the context with specific actual circumstances by evaluating nature, objectives, achievable results and specific conditions of the supported activity.

Analysis of the case studies with project modifications that have encountered in Latvia **lead us to the following conclusions:**

- Up till March 2008 a total of seven different project modification cases that have occurred within five years after receipt of the final payment and that can be considered as substantial modifications have been recorded in Latvia. Only one of the change cases, i.e., changes in the name of beneficiary cannot be considered as substantial modification.
- Four out of ten institutions administrating EU Structural Funds and Cohesion Fund have commenced ex-post monitoring of projects financed by the EU Structural Funds in Latvia. Final payment has been made only to a limited number of projects of the programming period 2004-2006. Therefore the current list of project cases with modifications cannot be considered as exhaustive and it is expected that during the upcoming years Latvia will face new modification cases of the projects of the programming period 2004-2006.

- The fact that many institutions have not commenced systematic ex-post monitoring of the projects financed by the EU Structural Funds in Latvia in the programming period 2004-2006 restricts performing a comprehensive analysis on the factors that potentially may have had impact on the modification cases. However, having analysed the available data, it was possible to conclude that correlation exists between strong and detailed support agreement conditions and a high number of identified modification cases.

To minimise the number of project modification cases in the future, it **is recommended** that support agreements with beneficiaries for the programming period 2007-2013 clearly and in detail state those contractual terms that Latvia is under obligation to ensure in accordance with Article 57 of the Council Regulation No 1083/2006.

The analysis and conclusions on substantial modifications in the projects within five years from the receipt of the final payment that are outlined in this report from both - the perspective of interpretation of legal acts as well as study of project modification cases that have encountered in Latvia, will provide a basis for elaboration of a methodological guidebook for institutions involved in administration of the EU Structural Funds on evaluation of substantial modifications and making of a respective decision. It is expected that this guide will be primarily used for ex-post monitoring of the finalised projects of the programming period 2004-2006.