

COUNCIL REGULATION (EC) No 1265/1999

of 21 June 1999

amending Annex II to Regulation (EC) No 1164/94 establishing a Cohesion Fund

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund⁽¹⁾, and in particular Article K of Annex II thereto,Having regard to the proposal from the Commission⁽²⁾,Having regard to the opinion of the European Parliament⁽³⁾,Having regard to the opinion of the Economic and Social Committee⁽⁴⁾,Having regard to the opinion of the Committee of the Regions⁽⁵⁾,

(1) Whereas, in order to make the Fund more effective, the concepts of 'project', 'groups of projects' and 'stages of a project' and the criteria for grouping should be defined;

(2) Whereas the system of financial management should be simplified, while retaining its link with the actual implementation of operations;

(3) Whereas, during the transitional period (1 January 1999 to 31 December 2001), all references to the euro should normally also be read as references to the euro as a monetary unit, as provided for in the second sentence of Article 2 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro⁽⁶⁾;

(4) Whereas the desired simplification should be accompanied by improved checks that expenditure has actually been incurred and by greater responsibility by the Member State for ensuring sound financial management;

(5) Whereas the Commission and the Member State should improve their cooperation on checking projects and this cooperation should be made systematic;

(6) Whereas, where irregularities are detected, there should be a system of financial corrections to protect the financial interests of the Community;

(7) Whereas Annex II to Regulation (EC) No 1164/94 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EC) No 1164/94 is hereby amended as follows:

1. Article A shall be replaced by the following:

*'Article A***Designation of projects, of stages or groups of projects**

1. The Commission may, in agreement with the beneficiary Member State, group projects together and designate technically and financially separate stages of a project for the purpose of granting assistance.

⁽¹⁾ OJ L 130, 25.5.1994, p. 1.⁽²⁾ OJ C 159, 26.5.1998, p. 11.⁽³⁾ Opinion delivered on 6 May 1999 (not yet published in the Official Journal).⁽⁴⁾ OJ C 407, 28.12.1998, p. 74.⁽⁵⁾ OJ C 51, 22.2.1999, p. 10.⁽⁶⁾ OJ L 139, 11.5.1998, p. 1.

2. For the purpose of this Regulation, the following definitions shall apply:

- (a) a "project" shall be an economically indivisible series of works fulfilling a precise technical function and with clearly identified aims from which to judge whether the project complies with the criterion laid down in the first indent of Article 10(5);
- (b) a "technically and financially independent stage" shall be a stage which can be identified as operational in its own right.

3. A stage may also cover preliminary, feasibility and technical studies needed for carrying out a project.

4. To comply with the criterion in the third indent of Article 1(3), projects meeting the following three conditions may be grouped:

- (a) they must be located in the same area or situated along the same transport corridor;
- (b) they must be carried out under an overall plan for the area or corridor with clearly identified goals, as provided for in Article 1(3);
- (c) they must be supervised by a body responsible for coordinating and monitoring the group of projects in cases where the projects are carried out by different competent authorities.'

2. In Article B(2), the second sentence shall be replaced by the following:

'The beneficiary Member States shall provide all necessary information, as set out in Article 10(4), including the results of feasibility studies and *ex ante* appraisals. In order to make this appraisal as effective as possible, Member States shall also provide the results of the environmental impact assessment in conformity with the Community legislation, and their consistency with a general environmental or transport strategy at administrative unit or sector level, and, where appropriate:

- an indication of the possible alternatives that were not chosen, and
- the links between projects of common interest located along the same transport corridor.'

3. Article C is hereby amended as follows:

(a) paragraph 2 shall be amended as follows:

- (i) in the second subparagraph of point (a), the second sentence shall be replaced by the following:

'Commitments in respect of subsequent annual instalments shall be based on the initial or revised financing plan for the project and shall normally be made at the beginning of each budget year and as a general rule by 30 April each year, based on the expenditure forecasts for the project for that current year.'

- (ii) point (b) shall be replaced by the following:

'(b) for projects to be carried out over a period of less than two years or where Community assistance is less than EUR 50 million, an initial commitment of 80 % of assistance may be made when the Commission adopts the decision to grant Community assistance.

The balance shall be committed according to the implementation of the project';

(b) the following paragraph 5 shall be added:

'5. Except in duly justified cases, the assistance granted to a project, group of projects or project stage on which work has not begun within two years from the date of its expected start as indicated in the decision granting assistance or the date of its approval if later, shall be cancelled.

In any case the Commission shall inform in good time the Member States and the designated authority whenever there is a risk of cancellation.'

4. Article D is hereby amended as follows:

(a) in paragraph 1, the second sentence shall be replaced by the following:

'Payments may take the form of payments on account, interim payments or payments of the final balance. Interim payments and

payments of the balance shall relate to expenditure actually paid out, which must be supported by receipted invoices or accounting documents of equivalent probative value.;

(b) paragraphs 2 and 3 shall be replaced by the following:

‘2. Payments shall be made as follows:

(a) a single payment on account of 20% of the Fund assistance as initially decided shall be paid when the decision granting Community assistance is adopted and, except where duly justified, after signature of the contracts relating to public procurement.

All or part of a payment on account shall be repaid by the designated authority or body referred to in paragraph 1 if no payment application is sent to the Commission within 12 months from the date on which the payment on account is paid;

(b) interim payments may be paid provided that the project is progressing satisfactorily towards completion and shall be made to refund the expenditure certified and actually paid, subject to the following conditions:

— the Member State has submitted an application describing the progress of the project in terms of its physical and financial indicators and its conformity with the decision to grant assistance, including where appropriate any specific conditions attached to the assistance,

— the observations and recommendations of the national and/or Community inspection authorities have been acted on, in particular as regards the correction of any observed or presumed irregularities,

— the main technical, financial and legal problems that have arisen and the measures taken to correct them have been indicated,

— any departures from the original financing plan have been analysed,

— the steps taken to publicise the project have been described.

The Member States shall be informed without delay by the Commission if one of the abovementioned conditions is not fulfilled;

(c) the total amount of the payments made under (a) and (b) may not exceed 80% of the total assistance granted. This percentage may be increased to 90% for important projects committed in annual instalments and in justified cases;

(d) the final balance of Community assistance calculated on the basis of expenditure certified and actually paid shall be paid provided that:

— the project, stage of project, or group of projects has been carried out according to its objectives,

— the designated authority or body referred to in paragraph 1 submits an application for payment to the Commission within six months of the deadline for completion of the work and for expenditure laid down in the decision granting assistance to the project, stage of project or group of projects,

— the final report referred to in Article F(4) is submitted to the Commission,

— the Member State certifies to the Commission that the information given in the application for payment and in the report is correct,

— the Member State has sent the Commission the declaration referred to in Article 12(1),

— all the information and publicity measures drawn up by the Commission under Article 14(3) have been implemented.

3. If the final report referred to in paragraph 2 is not sent to the Commission within 18 months of the final date for completion of the works and payments as given in the decision granting assistance, that

part of the assistance representing the remaining balance for the project shall be cancelled.’;

(c) in paragraph 4, the final words shall read ‘in paragraph 2(d).’;

(d) the following paragraph shall be inserted:

‘4a. Member States shall ensure that applications for payment are submitted to the Commission as a general rule three times a year, by 1 March, 1 July and 1 November at the latest.’;

(e) in paragraph 5, after the words ‘for payment’, the following shall be added: ‘provided budget funds are available.’;

(f) the following paragraph shall be added:

‘7. The Commission shall lay down common rules on the eligibility of expenditure.’

5. Article E is hereby amended as follows:

(a) in the title and in paragraphs 1 to 4, ‘ecu(s)’ shall be replaced by ‘euro’ where required;

(b) in paragraphs 1 and 3, the words ‘or in national currency’ shall be deleted;

(c) the following paragraph shall be added:

‘5. For Member States not participating in the euro, the conversion rate shall be the Commission’s financial accounting rate.’

6. Article F is hereby amended as follows:

(a) the following subparagraph shall be added to paragraph 4:

‘This report shall include:

(a) a description of the work carried out, accompanied by the physical indicators, the expenditure by category of work and any measures taken under specific clauses in the decision granting assistance;

(b) information on all publicity measures;

(c) certification that the work conforms to the decision granting assistance;

(d) an initial assessment as to whether the anticipated results as indicated in Article 13(4) are likely to be achieved, including in particular:

— the actual starting date of the project,

— the way in which it will be managed once finished,

— confirmation, if appropriate, of the financial forecasts, especially as regards the operating costs and expected revenue,

— confirmation of the socioeconomic forecasts, in particular the expected costs and benefits,

— an indication of the environmental protection measures taken, and their cost, including compliance with the polluter-pays principle.’;

(b) the following subparagraph shall be added to paragraph 5:

‘The decision granting assistance shall include appropriate arrangements for making the modifications, differentiating between them on the basis of their nature and importance.’

7. Article G shall be amended as follows:

Article G

Checks

Current paragraph 1 shall be transferred to Article 12(2), second subparagraph. New paragraph 1 shall read as follows:

‘1. The Commission and the Member State shall on the basis of bilateral administrative arrangements cooperate to coordinate plans, methods and implementation of checks so as to maximise the usefulness of those carried out.

They shall immediately exchange the results of the checks carried out. At least once a year the following shall be examined and evaluated:

- (a) the results of the checks carried out by the Member State and the Commission;
- (b) any comments made by other national or Community control bodies or institutions;
- (c) the financial impact of the irregularities noted, the steps already taken or still required to correct them and, where necessary, adjustments to the management and control systems.

Following this examination and evaluation and without prejudice to the measures to be taken immediately by the Member State under Article H, the Commission may make observations, particularly regarding the financial impact of any irregularities detected. These observations shall be addressed to the Member State and the designated authority of the project concerned. The observations shall be accompanied, where necessary, by requests for corrective measures to remedy the management shortcomings found and correct those irregularities detected which have not already been corrected. The Member State shall have the opportunity to comment on these observations.

Where following or in the absence of comments of the Member State the Commission adopts conclusions, the Member State shall take the necessary steps within the deadline set to comply with the Commission's request and inform the Commission of its actions.

2. Without prejudice to this Article, the Commission may suspend all or part of an interim payment if it finds that the expenditure concerned is linked to a serious irregularity. The Commission shall inform the Member State concerned of the action taken and the reasons for it.

3. For a period of three years, unless otherwise decided in the bilateral administrative arrangements, following the payment by the Commission of the final balance in respect of a project, the responsible body and authorities shall keep available for the Commission all the

supporting documents (either the originals or versions certified to be in conformity with the originals on commonly accepted data carriers) regarding expenditure and checks on the project concerned.

This period shall be interrupted either in the case of legal proceedings or at the duly substantiated request of the Commission.'

8. Article H is hereby amended as follows:

- (a) the heading shall be replaced by:

'Financial corrections';

- (b) paragraph 1 shall be replaced by:

'1. If, after completing the necessary verifications, the Commission concludes that:

- (a) the implementation of a project does not justify either part or the whole of the assistance granted to it, including a failure to comply with one of the conditions in the decision to grant assistance and in particular any significant change affecting the nature or conditions of implementation of the project for which the Commission's approval has not been sought, or
- (b) there is an irregularity with regard to assistance from the Fund and that the Member State concerned has not taken the necessary corrective measures,

the Commission shall suspend the assistance in respect of the project concerned and stating its reason, request that the Member State submits its comments within a specified period of time.

If the Member State objects to the observations made by the Commission, the Member State shall be invited to a hearing by the Commission, in which both sides make efforts to reach an agreement about the observations and the conclusions to be drawn from them.;

- (c) paragraph 2 shall be replaced by:

'2. At the end of the period set by the Commission, the Commission shall, subject

to the respect of due procedure, if no agreement has been reached within three months, taking into account any comments made by the Member State, decide to:

- (a) reduce the payment on account referred to in Article D(2), or
- (b) make the financial corrections required. This shall mean cancelling all or part of the assistance granted to the project.

These decisions shall respect the principle of proportionality. The Commission shall, when deciding the amount of a correction, take account of the type of irregularity or change and the extent of the potential financial impact of any shortcomings in the management or control systems. Any reduction or cancellation shall give rise to recovery of the sums paid.;

- (d) in paragraph 3, the second sentence shall be replaced by the following:

‘Any sum received unduly and to be recovered shall be paid to the Commission. Interest on account of late repayment shall be charged in accordance with the rules to be adopted by the Commission.’;

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

Done at Luxembourg, 21 June 1999.

- (e) the following paragraph shall be added:

‘4. The Commission shall lay down the detailed rules for implementing paragraphs 1 to 3 and shall inform the Member States and the European Parliament thereof.’

- 9. In the second subparagraph of Article J, the following sentences shall be added:

‘4. At this meeting the Commission shall inform the Member States in particular of the relevant subjects for the annual report and its actions and decisions taken. The Commission shall send the Member States the appropriate documents in good time before the meeting is held.’

- 10. The Annex to Annex II is hereby amended as follows:

- (a) Point 2 shall be replaced by:

‘2. the economic and social impact of the Fund in the Member States and on economic and social cohesion in the Union, including the impact on employment;’

- (b) Point 4 shall end with the words ‘...in Article 6’.

Article 2

This Regulation shall enter into force on 1 January 2000.

For the Council
The President
 G. VERHEUGEN