



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
Regional Policy

GUIDANCE NOTE TO THE COCOF

MAJOR PROJECTS / AID SCHEMES AND THE AUTOMATIC DECOMMITMENT RULE FOR THE PERIOD 2007-2013

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 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."

I. Introduction

The Community legislation on major projects and aid schemes for the 2007-2013 programming period significantly differs from that in place for the 2000-2006 programming period.

The principal change made for the current period is the inclusion of Cohesion Fund projects in operational programmes. Consequently, the "n+2"/"n+3" (hereafter, "n+2") rule will apply in the same manner as to the ERDF and the eligibility period of expenditure under **major projects** will be that of the operational programme to which they belong. In addition, the information transmitted for each major project by the Member States under Article 40 of Regulation (EC) N° 1083/2006¹ includes an annual financial plan which, pursuant to Article 41(2) of the same Regulation² (see information note to the COCOF n° 08/0006/01-EN), will appear in Annex II of the Commission decision on that major project.

As regards **aid schemes**, which had to appear in the measures of the programme complements in the 2000-2006 programming period, their enumeration is not required in 2007-2013 programmes. However, the managing authority must, before granting assistance to operations which fall within Article 107 of the TFEU, make sure that they have been authorised by the Commission.

For the 2000-2006 programming period, the application of the "n+2" rule to the major projects/aid schemes was the subject, on the one hand, of Communication C(2002) 1942 of 17 May 2002 on the implementation of the "n+2" rule, which was amended by Communication C(2003) 2982 of 8 August 2003, and, on the other hand, of the CDRR-03-0024-02-FR note of 9 July 2003 which clarified details of its implementation.

II. The legal framework for the period 2007-2013

1. For the 2007-2013 period, the provisions concerning automatic de-commitment are laid down in Articles 93 to 97 of Regulation (EC) N° 1083/2006. Article 93³ fixes the general principles of automatic de-commitment, including that related to the closure of the programming period (Article 93(3)). Regulation (EC) N° 1083/2006 also contains more specific rules concerning the treatment of major projects/aid schemes regarding the application of automatic de-commitment.

These provisions have been amended by Regulation (EU) No539/2010:

- i) Article 94 of Regulation (EC) No 1083/2006 as amended provides that:

"1. Where the Member State submits a major project application which meets all the requirements laid down in Article 40, the amounts potentially concerned by automatic decommitment shall be reduced by the annual amounts concerned by such major projects.

Where the Commission takes a decision to authorise an aid scheme, the amounts potentially concerned by automatic decommitment shall be reduced by the annual amounts concerned by such aid schemes.

2. For the annual amounts referred to in paragraph 1, the starting date for the calculation of the automatic decommitment deadlines referred to in Article 93 shall be the date of the subsequent decision necessary in order to authorise such major projects or aid schemes."

Article 94 provides that there shall be a reduction of the amounts potentially concerned by

¹ Article 40 as amended by Regulation (EU) No 539/2010, OJ L 158, 24.6.2010, p.1....

² Article 41 as amended by Regulation (EU) No 539/2010.

³ Article 93 as amended by Regulation (EU) No 539/2010.

the automatic de-commitment in respect of the major projects and aid schemes and clearly lays down the amounts to be taken into account for that reduction, namely "annual amounts concerned by such major projects and aid schemes".

The amendment to Article 94 concerns major projects and applies from 1 January 2007⁴ without distinction between major projects for which the Commission has already adopted a decision under Article 41(2) of Regulation (EC) No 1083/2006 and major projects for which the Commission received an application under Article 40 of Regulation (EC) 1083/2006.

ii) For the major projects:

- The first sub-paragraph of Article 94 provides that the exemption from the automatic de-commitment applies from the year of submission of the major project application to the Commission and not, as provided by the initial version of Article 94 from the year in which the decision under Article 41(2) of Regulation (EC) No 1083/2006 is taken.
- The Commission acknowledges receipt of the major project application and indicates whether this application meets the requirements of Article 40 of Regulation (EC) No 1083/2006 as amended.
- The amounts which must be taken into account for the purposes of the first sub-paragraph of Article 94(1) of Regulation (EC) No 1083/2006 are the annual amounts preceding the year of the submission of the major project application in accordance to Article 40, as indicated in the annual plan of the financial contribution from the ERDF and the Cohesion Fund, until the year of the Commission decision. E.g. if the decision is taken in the year following the year of submission of the application, the exemption from the automatic de-commitment will be extended by one, additional, year.
- In accordance with Article 41(2) of Regulation (EC) No 1083/2006 as amended, the Commission decision concerning the major project covers – inter alia – "the annual plan of financial contribution from the ERDF or the Cohesion Fund" (see information note to the COCOF n° 08/0006/01-EN). That annual plan identifies the amounts corresponding to the years prior to the Commission Decision on the major project which will be taken into account by the Commission to implement Article 94 of Regulation (EC) N° 1083/2006. Since, by virtue of Article 93(2a) of Regulation (EC) No 1083/2006 as amended and by way of derogation the deadlines for automatic decommitment do not apply to the annual budget commitment related to 2007 total annual contribution, accordingly the commitments relating to major projects of year 2007 are not decommitted in year 2009, either.
- 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 as amended 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.

iii) For State aids schemes that require a Commission decision:

- The "annual amounts concerned", which must be taken into account to implement the second subparagraph of Article 94(1) of Regulation (EC) No 1083/2006, are the annual amounts preceding the year of the Commission Decision on the aid scheme.

⁴ Article 2 of Regulation (EU) No 539/2010.

- As regards aid schemes that require a Commission decision, it is recommended that the Member State presents to the Commission an annual commitment plan. The plan must not include annual commitments relating to that aid scheme for the years prior to the year when the aid scheme is notified to the Commission.
- Where such an aid scheme does not give rise to a Commission decision during the year of the notification, the annual commitment(s) preceding the year of the Commission decision on the aid scheme will constitute the annual amount(s) to which the provisions of Article 94 of Regulation (EC) N° 1083/2006 apply.
- Where the Member State does not present an annual commitment plan, the annual amounts will be established by the Commission on a pro-rata basis for the years covered by the aid scheme. As a result, this distribution of annual amounts would not concern the years prior to that in which the aid scheme was notified to the Commission.
- Where a given aid scheme is common to several operational programmes, the annual commitments concerned by the aid scheme will need to be divided between the programmes in question. That division must be transmitted to the Commission at the latest in the year of approval of the aid scheme by a Commission decision.

2. As regards the certification of expenditure:

- Article 78(4) of Regulation (EC) N° 1083/2006 as amended lays down that *"When in accordance with Article 41(3) of Regulation (EC) No 1083/2006 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"*.

This provision has a twofold implication:

- (i) Before the adoption of the Commission decision, Member States may include payments relating to major projects in the statement of expenditure.
 - (ii) If the Commission refuses to make a financial contribution to a major project and a Member State has included payments relating to the major project in the statement of expenditure, then the expenditure declaration following the adoption of the Commission decision must be rectified accordingly. In this case, the Member States can replace the expenditure relating to the major project for which the Commission refused to adopt a decision by other eligible expenditure.
- Expenditure related to aid schemes may be included by Member States in statements of expenditure only once they have been the subject of a decision of the Commission.

III. Application to major projects/aid schemes

The Commission proposes to apply the exemption from the rule of automatic decommitment for major projects to the commitment amounts from the submission of the major project application which meets the requirements of Article 40 of Regulation (EC) No 1083/2006 to the Commission and, for State aid, to the commitment amounts prior to the Commission decision in the manner set out in this Guidance Note. As a result, when implementing Article 94 of Regulation (EC) N° 1083/2006 as amended the Commission will take into consideration: (i) for major projects, the "annual amounts" preceding the year of the submission of the application of the major project, and (ii) for aid schemes, the "annual amount" preceding the year of the Commission decision on the aid scheme.

For both the major projects and the aid schemes, the annual commitment of the year of the Commission decision and the successive commitments are concerned by the "n+2" rule in the same way as any other operation and will therefore benefit from no exemption.

The annexes comprise several examples for 2007-2013 programmes which contain a major project (annex I) or an aid scheme (annex II) that is subject to a later Commission decision. These examples demonstrate the necessary developments in respect of the cumulated statements of expenditure "without risk of decommitment" and the year during which the approval decision was taken. These examples are sub-divided to cover the situation of the Member States under both the "n+2" and "n+3" rules (Article 93(2) of Regulation (EC) N° 1083/2006).

These examples also illustrate that, in order to avoid the risk of decommitment, the national authorities should make provision in time to anticipate the expenditure levels to be certified to the Commission. This advice applies to the transfers related to both the major projects and aid schemes. It is of particular importance to those Member States referred to in Article 93(2) of Regulation (EC) N° 1083/2006 which will shift from the "n+3" regime to the "n+2" regime in 2010. This shift could possibly increase the risk of decommitment in the event that those Member States do not carry out expenditure in time.

**Annex I: Major projects and automatic decommitment:
numerical examples**

1) First example n+2: The submission of the application and the major project decision in the same year.

Year	2007	2008	2009	2010	2011	2012 N+2 for MP adopted in 2010	2013	2014	2017
Annual OP Commitment	100	100	100	100	100	100	100		
Cumulative declaration of expenditure without n+2 risk			0	116,67	233,33	350	466,67	583,33	700
Annual MP commitment			20	20	30	40	40		
Cumulative declaration without n+2 risk				116,67	213,33 (233,33-20)	350	466,67	583,33	700

2) First example of n+3: The submission of the application and the major project decision in the same year

Year	2007	2008	2009	2010	2011	2012	2013	2014	2017
				Submission of MP application & MP decision			N+3 for MP adopted in 2010		
Annual OP Commitment	100	100	100	100	100	100	100		
Cumulative declaration of expenditure without n+3 risk				0	116,67	233,33	466,67	583,33	700
Annual MP commitment			20	20	30	40	40		
Cumulative declaration without n+3 risk					116,67	213,333 (233,33-20)	4466,67	583,33	700

3) Second example of n+2: The submission of the application and the major project decision in two, subsequent, years.

Year	2007	2008	2009	2010	2011	2012	2013	2014	2017
			Submission of MP application	MP Decision		N+2 for MP adopted in 2010			
Annual OP Commitment	100	100	100	100	100	100	100		
Cumulative declaration of expenditure without n+2 risk			0	116,67	233,33	350	466,67	583,33	700
Annual MP commitment	20	20	30	40	40				
Cumulative declaration without n+2 risk				76,67 [116,67-(20+20)]	163,33 [233,33-(20+20+30)]	350	466,67	583,33	700

4) Second example of n+3: The submission of the application and the major project decision in two, subsequent, years

Year	2007	2008	2009 Submission of MP application	2010 MP Decision	2011	2012	2013 N+3 for MP adopted in 2010	2014	2017
Annual OP Commitment	100	100	100	100	100	100	100		
Cumulative declaration of expenditure without n+3 risk				0	116,67	233,33	466,67	583,33	700
Annual MP commitment	20	20	30	40	40				
Cumulative declaration without n+3 risk					76,67 [116,67- (20+20)]	163,33 [233,33- (20+20+30)]	466,67	583,33	700

**Annex II: Aid schemes and automatic decommitment:
numerical examples**

1) Example of n+2

Year	2007	2008	2009	2010	2011	2012	2013	2014	2017
		Notification of the aid scheme to the Commission	Commission decision		N+2 for an aid scheme adopted in 2009				
Annual OP Commitment	100	100	100	100	100	100	100		
Cumulative declaration of expenditure without n+2 risk			0	116,67	233,33	350	466,67	583,33	700
Annual commitment		20	20	20	20	20			
Cumulative declaration without n+2 risk				96,67 (116,67 - 20)	233,33	350	466,67	583,33	700

2) Example of n+3

Year	2007	2008	2009	2010	2011	2012	2013	2014	2017
		Notification of the notification of the aid scheme to the Commission	Commission decision			N+3 for an aid scheme adopted in 2009			
Annual OP Commitment	100	100	100	100	100	100	100		
Cumulative declaration of expenditure without n+3 risk			0	0	116,67	233,33	466,67	583,33	700
Annual Commitment		20	20	20	20	20			
Cumulative declaration without n+3 risk			0	0	96,67 (116,67-20)	233,33	466,67	583,33	700