

## COUNCIL REGULATION (EC) No 1264/1999

of 21 June 1999

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the second paragraph of Article 161 thereof,

Having regard to the proposal from the Commission<sup>(1)</sup>,

Having regard to the assent of the European Parliament<sup>(2)</sup>,

Having regard of the opinion of the Economic and Social Committee<sup>(3)</sup>,

Having regard to the opinion of the Committee of the Regions<sup>(4)</sup>,

(1) Whereas, pursuant to Article 16(1) of Regulation (EC) No 1164/94<sup>(5)</sup>, the Council is to reexamine that Regulation before 31 December 1999;

(2) Whereas the basic principles of the Cohesion Fund laid down in 1994 should continue to govern the Fund's activities until 2006 although experience has shown the need for improvements;

(3) Whereas, while the single currency, the euro, will affect the macroeconomic situation of the Community, it will not remove the need for eligibility of the beneficiary countries to be based on gross national product;

(4) Whereas all the Member States participating in the euro are to submit to the Council a stability programme setting out in particular their medium-term objective for achieving a budget that is nearly in balance or is in surplus;

(5) Whereas, by Decision No 1692/96/EC<sup>(6)</sup>, the European Parliament and the Council adopted Community guidelines for the development of the trans-European transport network;

(6) 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<sup>(7)</sup>;

(7) Whereas, in view of the continuing progress achieved towards real convergence and taking account of the new macroeconomic context in which the Cohesion Fund now operates, the overall allocation of assistance of Member States participating in the euro will be adjusted so as to take account of the improvement in national prosperity attained over the previous period;

(8) Whereas the procedures for the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies were set out in Regulation (EC) No 1466/97<sup>(8)</sup>;

(9) Whereas the preliminary and final figures for the public-sector borrowing requirement, gross domestic product and gross national product must be compiled in accordance with the rules of the European system of integrated economic accounts established by Regulation (EC) No 2223/96<sup>(9)</sup>;

(10) Whereas the Resolution on the Stability and Growth Pact<sup>(10)</sup> adopted at the Amsterdam European Council meeting on 17 June 1997 sets out the roles of the Member States, the Commission and the Council;

<sup>(1)</sup> OJ C 159, 26.5.1998, p. 7.

<sup>(2)</sup> Assent delivered on 6 May 1999 (not yet published in the Official Journal).

<sup>(3)</sup> OJ C 407, 28.12.1998, p. 74.

<sup>(4)</sup> OJ C 51, 22.2.1999, p. 10.

<sup>(5)</sup> OJ L 130, 25.5.1994, p. 1.

<sup>(6)</sup> OJ L 228, 9.9.1996, p. 1.

<sup>(7)</sup> OJ L 139, 11.5.1998, p. 1.

<sup>(8)</sup> OJ L 209, 2.8.1997, p. 1.

<sup>(9)</sup> OJ L 310, 30.11.1996, p. 1. Regulation as amended by Regulation (EC) No 448/98 (OJ L 58, 27.2.1998, p. 1).

<sup>(10)</sup> OJ C 236, 2.8.1997, p. 1.

- (11) Whereas, while the principle of a high level of assistance is retained, the search for other sources of finance, in particular the beneficiary Member States effort to maximise the leverage of Fund resources by encouraging greater use of private sources of funding should be supported by the Commission; whereas the rates of assistance should be varied to improve the leverage of Fund resources and to take better account of the rate of return on projects; whereas application of the polluter-pays principle laid down in Article 174 of the Treaty must be complied with in operations financed by the Fund;
- (12) Whereas the responsibility of the Member State for financial control work should be clearly laid down;
- (13) Whereas there should be provision to ensure continuity of finance for operations in progress and their adjustments to the new regulatory requirements;
- (14) Whereas Regulation (EC) No 1164/94 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

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

1. (a) a new recital to be inserted after the sixth recital shall read as follows:

‘Whereas, with regard to the economic convergence criterion, the current macroeconomic conditionality provisions will continue to apply; whereas, accordingly, no new projects or new project stages shall be financed by the Fund in a Member State in the event of the Council, acting by qualified majority on a recommendation from the Commission, finding that the Member State has not respected the Stability Growth Pact.’;

- (b) a new recital to be inserted after the new seventh recital shall read as follows:

‘Whereas the provisions to speed up and clarify the excessive deficit procedure, having

as its objective to deter excessive general government deficits and, if they occur, to further their prompt correction were set out in Council Regulation (EC) No 1467/97 (\*)

(\*) OJ L 209, 2.8.1997, p. 6.’;

- (c) a new recital to be inserted after the former 20th recital shall read as follows:

‘Whereas total annual receipt in any Member State from the Cohesion Fund under this Regulation, in combination with assistance provided under the Structural Funds, should be limited under a general capping dependent on the national absorption capacity’;

- (d) the former 21st recital shall become the renumbered 24th recital and read as follows:

‘Whereas provision should be made, in conjunction with the fulfilment of the conditions of economic convergence as set out in Article 104 of the Treaty and with the need for sound management of the government deficit, for a form of conditionality in the granting of financial assistance; whereas, in that context, compliance with the obligations arising from the Treaty must also be assessed having due regard to the guidelines adopted in the Resolution of the European Council of 17 June 1997 on the Stability and Growth Pact (\*) and whereas the concept of excessive deficit is to be interpreted in the light of that Resolution; whereas, for each participating Member State, macroeconomic conditionality should be assessed taking account of the responsibilities of that Member State in respect of the stability of the euro;

(\*) OJ C 236, 2.8.1997, p. 1.’

2. Paragraph 4 to be added to Article 2 shall read as follows:

‘4. To be eligible under the Fund from 1 January 2000, the beneficiary Member States must have introduced a programme as provided for in Articles 3 and 7 of Council Regulation (EC) No 1466/97 (\*).

The four Member States meeting the GNP criterion referred to in paragraph 1 are Spain, Greece, Portugal and Ireland.

A mid-term review as provided for in paragraph 3 shall be carried out before the end of 2003 based on per capita GNP as shown by Community data for the period 2000 to 2002.

(\*) OJ L 209, 2.8.1997, p. 2.'

3. Article 3 is hereby amended as follows:

(a) in paragraph 1

(i) in the first indent, the word 'fifth' shall be deleted;

(ii) the second indent shall be replaced by:

'— transport infrastructure projects of common interest, supported by Member States, which are identified within the framework of the guidelines adopted by Decision No 1692/96/EC of the European Parliament and the Council of 23 July 1996 on the development of the trans-European transport network (\*).

(\*) OJ L 228, 9.9.1996, p. 1.;

(b) in paragraph 2, the second indent shall be amended as follows:

(i) the introductory phrase shall be replaced by the following:

'technical support measures, including publicity and information campaigns, particularly:';

(ii) in point (b), the word 'supervision' shall be inserted after 'monitoring'.

4. In Article 4, the third, fourth and fifth paragraphs to be added shall read as follows:

'From 1 January 2000, total resources available for commitments in the period 2000 to 2006 should be EUR 18 billion at 1999 prices.

Commitment appropriations for each year of that period should be:

— 2000: EUR 2,615 billion,

— 2001: EUR 2,615 billion,

— 2002: EUR 2,615 billion,

— 2003: EUR 2,615 billion,

— 2004: EUR 2,515 billion,

— 2005: EUR 2,515 billion,

— 2006: EUR 2,510 billion.

In the event of a Member State becoming ineligible, resources for the Cohesion Fund will be reduced accordingly.'

5. Article 5 shall be replaced by the following:

'Article 5

**Indicative allocation**

An indicative allocation of the total resources of the Fund shall be made on the basis of precise and objective criteria, principally population, per capita GNP taking account of the improvement in national prosperity attained over the previous period, and surface area; it shall also take account of other socioeconomic factors such as deficiencies in transport infrastructure.

The indicative allocation of the total resources resulting from the application of those criteria is set out in Annex I.

Total annual receipts from the Cohesion Fund under this Regulation, in combination with assistance provided under the Structural Funds, should not exceed 4 % of national GDP.'

6. Article 6 shall be replaced by the following:

'Article 6

**Conditional assistance**

1. No new projects or, in the event of important projects, no new project stages shall be financed by the Fund in a Member State in the event of the Council, acting by a qualified majority on a recommendation from the Commission, finding that the Member State in the application of this Regulation has not implemented the programme referred to in Article 2(4) in such a way as to avoid an excessive government deficit.

The suspension of financing shall cease when the Council, acting under the same conditions, finds that the Member State concerned has taken measures to implement that programme in such a way as to avoid an excessive government deficit.

2. Exceptionally, in the case of projects directly effecting more than one Member State, the Council acting by a qualified majority on a recommendation from the Commission may decide to defer suspension of financing.'

7. Article 7 is hereby amended as follows:

(a) paragraph 1 shall be amended as follows:

(i) the second subparagraph shall be replaced by the following:

'However, from 1 January 2000 this rate may be reduced to take account, in cooperation with the Member State concerned, of the estimated revenue generated by projects and of any application of the polluter-pays principle.'

(ii) the following subparagraph shall be added:

'To achieve this, the Commission shall support beneficiary Member States' efforts to maximise the leverage of Fund resources by encouraging greater use of private sources of funding.'

(b) in paragraph 2, the words 'the expenditure on which the calculation of' and 'is based' shall be deleted.

8. Article 10 is hereby amended as follows:

(a) in paragraph 3 'ECU' is replaced by 'EUR';

(b) in paragraph 4, in the eighth line, the word 'possible' before 'impact' shall be deleted;

(c) in the third indent of paragraph 5, the words 'including the polluter-pays principle' shall be inserted after the words 'on the environment'.

9. Article 11 is hereby amended as follows:

in paragraph 5, 'ecus' shall be replaced by 'euro'.

10. Article 12 is hereby amended as follows:

(a) paragraphs 1 and 2 shall be replaced by the following:

'1. Without prejudice to the Commission's responsibility for implementing the Community budget, Member States shall take responsibility in the first instance for the financial control of projects. To that end, the measures they take shall include:

(a) verifying that management and control arrangements have been set up and are being implemented in such a way as to ensure that Community funds are being used efficiently and correctly;

(b) providing the Commission with a description of these arrangements;

(c) ensuring that projects are managed in accordance with all the applicable Community rules and that the funds placed at their disposal are used in accordance with the principles of sound financial management;

(d) certifying that the declarations of expenditure presented to the Commission are accurate and guaranteeing that they result from accounting systems based on verifiable supporting documents;

(e) preventing and detecting irregularities, notifying these to the Commission, in accordance with the rules, and keeping the Commission informed of the progress of administrative and legal proceedings. In that context, the Member States and the Commission shall take the necessary steps to ensure that the information exchanged remains confidential;

(f) presenting to the Commission, when each project, step of project or group of projects is wound up, a declaration drawn up by a person or department having a function independent of the designated authority. This declaration shall summarise the conclusions of the checks carried out during previous years and shall assess the validity of the application for payment of the final balance and the legality and regularity of the expenditure covered by the final

certificate. The Member States may attach their own opinion to this declaration if they consider it necessary;

- (g) cooperating with the Commission to ensure that Community funds are used in accordance with the principles of sound financial management;
- (h) recovering any amounts lost as a result of an irregularity detected and, where appropriate, charging interest on late payments.

2. The Commission in its responsibility for the implementation of the Community budget shall ensure that Member States have smoothly functioning management and control systems so that Community funds are efficiently and correctly used.

To that end, without prejudice to checks carried out by the Member States in accordance with national laws, regulations and administrative provisions, Commission officials or servants may, in accordance with arrangements agreed with the Member State in the framework of cooperation described in Article G(1) of Annex II, carry out on-the-spot checks, including sample checks, on the projects financed by the Fund and on management and control systems with a minimum of one working day's notice. The Commission shall give notice to the Member State concerned with a view to obtaining all the assistance necessary. Officials or servants of the Member State concerned may take part in such checks.

The Commission may require the Member State concerned to carry out an on-the-spot check to verify the correctness of one or more

transactions. Commission officials or servants may take part in such checks.;

- (b) paragraph 4 shall be deleted and paragraph 5 shall become paragraph 4.

11. In Article 16(1), the words 'before the end of 1999' shall be replaced 'by 31 December 2006 at the latest'.

12. Annex I shall be replaced by the following:

*'ANNEX I*

Indicative allocation of the total resources of the Cohesion Fund among the beneficiary Member States

- Spain: 61 % to 63,5 % of the total
- Greece: 16 % to 18 % of the total
- Ireland: 2 % to 6 % of the total
- Portugal: 16 % to 18 % of the total.'

*Article 2*

Applications submitted before the entry into force of this Regulation shall remain valid provided that, where necessary, they are supplemented to comply with the requirements of Regulation (EC) No 1164/94, as amended within two months of the entry into force of this Regulation.

*Article 3*

This Regulation shall enter into force on 1 January 2000.

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

Done at Luxembourg, 21 June 1999.

*For the Council*  
*The President*  
 G. VERHEUGEN