



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 20 December 2005

13002/05

**Interinstitutional File:
2004/0166 (AVC)**

LIMITE

**FC 42
CADREFIN 189**

NOTE

from : Presidency
to : Structural Actions Working Party

No. prev. doc. : 11941/05 FC 41 CADREFIN 164
10686/05 FC 38 CADREFIN 140
9867/05 FC 32 CADREFIN 121
8772/05 FC 26 CADREFIN 101
8329/05 FC 20 CADREFIN 85
7172/05 FC 12 CADREFIN 45
6889/05 FC 11 ECOFIN 72 UEM 75 CADREFIN 37

No. Cion prop. : COM(2004) 494 final (11637/04 FC 5 CADREFIN 23)

Subject : Proposal for a Council Regulation establishing a Cohesion Fund
- Presidency compromise

Delegations will find in Annex to this note the text of the Presidency compromise on the draft Cohesion Fund Regulation based on the discussions held at the Structural Actions Working Party on 20 October 2005 and the conclusions of the European Council, held on 15 and 16 December 2005.

MT entered a parliamentary scrutiny reservation.

Proposal for a

COUNCIL REGULATION

establishing a Cohesion Fund

THE COUNCIL OF THE EUROPEAN,

Having regard to the Treaty establishing the European Community, and in particular Article 161(2) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the assent of the European Parliament²,

Having regard to the opinion of the European Economic and Social Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Whereas:

¹ OJ C (...), (...), p. (...).

² OJ C (...), (...), p. (...).

³ OJ C (...), (...), p. (...).

⁴ OJ C (...), (...), p. (...).

- (1) Regulation (EC) No (...) laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund¹, establishes the framework for the action of the Structural Funds and the Cohesion Fund. It fixes, in particular, the objectives, the principles² and the rules concerning partnership, programming, evaluation and management. It is therefore necessary to specify the mission of the Cohesion Fund in relation to this new framework and to the purpose assigned to it in the Treaty and to repeal, for the sake of clarity, Council Regulation (EC) No 1164/94 of 16 May 1994 establishing the Cohesion Fund³.
- (2) Trans-European network projects financed from the Cohesion Fund must fit the guidelines for these networks adopted by the Council and the European Parliament. In order to concentrate the efforts, priority shall be given to projects of European interest as defined in Decision No 1692/96/EC of the European Parliament and the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network⁴.
- (3) The Community may, through the Cohesion Fund, contribute to action in pursuit of the Community's environmental objectives specified in Articles 6 and 174 of the Treaty.

¹ OJ L (...), (...), p. (...).

² A new recital could be added to clarify that the Cohesion Fund may fund the technical assistance of Member States, although it is stated clearly in Article 44 of the draft General Regulation.

³ OJ L 130 of 25.5.1994, p. 1, Regulation as last modified by the Accession Act of 2003.

⁴ OJ L 228 of 9.9.1996, p. 1 as amended by Decision No 884/2004/EC of the European Parliament and of the Council of 29 April 2004, OJ L 167 of 30.04.2004, p. 1.

- (4) Regulation (EC) No (...) provides that eligibility of expenditure is to be established at national level¹, with certain exceptions, for which it is necessary to lay down specific provisions. The exceptions concerning the Cohesion Fund should therefore be laid down.
- (5) Conditionality provisions in the granting of financial assistance will continue to apply in conjunction with the fulfilment of the conditions of economic convergence as set out in Article 99 of the Treaty and the need for sound government finances. In this respect, Member States having adopted the euro are to implement stability programmes and Member States not having adopted the euro convergence programmes, as defined in Council Regulation (EC) n° 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, leading to the avoidance of excessive government deficits referred to in Article 104 of the Treaty². At the same time, the conditionality provisions shall not apply to commitments that have already been made at the time of suspension³.

HAS ADOPTED THIS REGULATION:

¹ ES reminded its general position concerning the Community rules on eligibility.

² As amended by Council Regulation (EC) No 1055/2005 of 27 June 2005 amending Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies. OJ L 174 of 7.07.2005, p. 1.

³ CZ suggested including a sentence that would precise that it is the Council's political decision to suspend fully or partially.

Article 1

Creation and purpose of the Cohesion Fund

1. A Cohesion Fund (hereinafter: the Fund) is hereby set up for the purpose of strengthening the economic and social cohesion of the Community in the interests of promoting sustainable development.
2. The Fund is governed by the provisions of Regulation (EC) No (...) and by the provisions of this Regulation.

Article 2

Scope of assistance

1. Assistance from the Fund shall be given to actions in the following areas ensuring an appropriate balance and according to the investment and infrastructure needs specific to each Member State receiving assistance:
 - a) trans-European transport networks, in particular priority projects of European interest as identified by Decision No 1692/96/EC¹

¹ p.m.as amended by Decision No 884/2004/EC of the European Parliament and of the Council of 29 April 2004, OJ L 167 of 30.04.2004, p. 1. CZ, HU, CY, LV and RO suggested adding “*and the development of main road networks, secondary roads that link to the TENS*”.

b) environment falling within the priorities assigned to the Community environmental protection policy under the policy and action programme on the environment. In this context, the Fund may also¹ intervene in areas related to sustainable development which clearly² present environmental benefits, namely energy efficiency and renewable energy and, in the transport sector outside the trans-European networks, rail, river, sea³ transport, intermodal transport systems and their interoperability, management of road, sea and air traffic, clean urban transport and public transport⁴.

2. The appropriate balance of assistance shall be agreed in partnership between Member States and the Commission.

¹ DE suggested deleting “also”.
² EL suggested deleting "clearly".
³ ES and PT suggested adding “air”.
⁴ DE and IT suggested deleting this subparagraph.

Article 3

Eligibility of expenditure

1. The following expenditure shall be ineligible for a contribution from the Cohesion Fund:
 - 1) interest on debt;
 - 2) the purchase of land for an amount exceeding 10% of the total eligible expenditure for the operation concerned;¹
 - 3) housing²;
 - 4) decommissioning of nuclear power stations; and
 - 5) reimbursable VAT,

2. Expenditure on non-reimbursable VAT shall be eligible only in the following circumstances:
 - i) in the Member States whose GDP from 2001 to 2003 was below 85% of the EU25 average in the same period, non-reimbursable VAT shall be eligible;

 - ii) in the remaining Member States non-reimbursable VAT shall only be eligible when it is genuinely and definitively borne by a beneficiary other than a non-taxable person foreseen in Article 4(5) 1st subparagraph of the 6th VAT Council Directive (states, regional and local government authorities and other bodies governed by public law).

¹ HU suggested aligning this provision to the corresponding one from the ERDF Regulation, i.e. allowing in exceptional cases higher threshold (40% for example for nature protection).

² LT suggested adding "*excluding energy-efficient constructions*". CZ, HU, PL and SK suggested adding "*excluding energy efficiency and other environment improving investments for an amount not exceeding 25% of the total eligible expenditure for the operation concerned*".

Article 4

Conditions applying to access to Fund assistance¹

1. Assistance from the Cohesion Fund shall be conditional on the following rules.
2. If the Council:
 - a) has decided in accordance with Article 104(6) EC that excessive government deficit exists in a beneficiary Member State, and
 - b) has established in accordance with Article 104(8) EC that the Member State concerned has not taken effective action in response to a Council Recommendation issued under Article 104(7) EC,

it may decide to suspend either the totality or part of the commitments from the Fund for the Member State concerned with effect from 1st January of the year following the decision to suspend.²

¹ The new drafting of the Article reflects the EFC opinion (Doc. 6869/05). CZ and HU expressed reservations regarding the close link between the Excessive deficit procedure (EDP), the Treaty Article 104 and the Cohesion Fund, since this would imply the possible suspension of Cohesion Funds as an effective sanction in the EDP that would apply only to the Cohesion countries.

² CZ, HU, LV, LT, MT, PL, PT and SK suggested reverting back to the previous text, i.e. “*The suspension shall concern commitments, except for the amounts necessary to complete the operations already approved*”. EL and PT suggested moving parts of recital 5 to paragraph 2.

3. If the Council establishes that the Member State concerned has taken the necessary corrective action, it shall decide, without delay, to lift the suspension of the commitments concerned. At the same time, the budgetary authority shall decide, on a proposal from the Commission¹, to re-budget the suspended commitment in accordance with the procedure set out in the Interinstitutional Agreement on budgetary discipline and improvement of the budgetary procedure².
4. The Council shall take the decisions referred to in paragraphs 2 and 3 on a qualified majority on a proposal from the Commission.

¹ CZ, LT and LV suggested including a deadline of 3 months to re-budget the suspended commitments. In the same vein, CZ sought more precision in this provision (how to re-budget, deadline, impact on n+2 rule).

² P.M. Paragraph 18 of the draft Interinstitutional Agreement (doc. 11745/04) : *"The Council can decide, at the same time this suspension is lifted, on a transfer of suspended commitments to the following years. Suspended commitments of year n cannot be re-budgeted beyond year n+1. The Council decides on a proposal from the Commission."* .

Article 5

Transitional provisions¹

1. This Regulation shall not affect either the continuation or the modification, including the total or partial cancellation, of operations approved by the Commission on the basis of Regulation EC No 1164/94 which shall consequently apply thereafter to that assistance or projects until their closure.

2. Applications for major projects, within the meaning of Articles 38 to 40 of Regulation (EC) (...) [General Regulation], made to the Commission under Regulation (EC) No 1164/94 shall remain valid² provided such applications are supplemented, where necessary, so as to comply with the requirements of this Regulation and the above mentioned Articles of Regulation (EC) (...) [General Regulation], within not more than two³ months as of 1 January 2007.

¹ PL and PT suggested adding a new paragraph:

2. *If for an operation approved under Regulation 1164/94 the amounts committed until 31 December 2006 are below the maximum amount of assistance as set in a granting decision for the operation, the Member State concerned shall include continuation of such operation in an operational programme for the Cohesion Fund. The amounts for continuation of such operations shall be excluded from the amounts subject to automatic decommitment under Art. 92 of Regulation No (...).*

² HU, PL, PT and SK suggested adding "and shall be subject to the rules concerning the starting point of eligibility of expenditure laid down in that Regulation".

³ PL suggested replacing "two" by "three".

Article 6

Repeal

Without prejudice to the provisions laid down in Article 106(1) of Regulation (EC) No (...) [General Regulation] and Article 5 of this Regulation, Regulation (EC) No 1164/94 is hereby repealed with effect from 1 January 2007¹.

References to Regulation (EC) No 1164/94 shall be construed as reference to this Regulation.

Article 7

Review

The Council shall review this Regulation by 31 December 2013 at the latest in accordance with Article 161 of the Treaty.

¹ PT suggested adding "*except the effects produced on projects approved before 31 December 2006.*"

Article 8
Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels,

For the Council
The President
