

Council Regulation (EC) No 1083/2006 of 11 July 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Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (repealed)

TITLE VII

FINANCIAL MANAGEMENT

CHAPTER I

Financial management

Section 1

Budget commitments

Article 75

Budget commitments

1 The Community budget commitments in respect of operational programmes (hereinafter budget commitments) shall be effected annually for each Fund and objective during the period between 1 January 2007 and 31 December 2013. The first budget commitment shall be made before the adoption by the Commission of the decision approving the operational programme. Each subsequent commitment shall be made, as a general rule, by 30 April each year by the Commission on the basis of the decision to grant a contribution from the Funds referred to in Article 32.

2 Where no payment has been made, the Member State may request, by 30 September of the year *n* at the latest, the transfer of any commitments in respect of operational programmes related to the national contingency reserve referred to in Article 51 to other operational programmes. The Member State shall specify in its request the operational programmes benefiting from that transfer.

Section 2

Common rules for payments

Article 76

Common rules for payments

1 Payments by the Commission of the contribution from the Funds shall be made in accordance with the budget appropriations. Each payment shall be posted to the earliest open budget commitments of the Fund concerned.

2 Payments shall take the form of pre-financing, interim payments and payment of the final balance. They shall be made to the body designated by the Member State.

3 At the latest by 30 April each year, Member States shall send the Commission a provisional forecast of their likely applications for payment for the current financial year and the subsequent financial year.

4 All exchanges concerning financial transactions between the Commission and the authorities and bodies designated by the Member States shall be made by electronic means, in accordance with the implementing rules of this Regulation adopted by the Commission in accordance with the procedure referred to in Article 103(3). In cases of *force majeure*, and in particular of malfunction of the common computerised system or a lack of a lasting connection, Member States may forward statements of expenditure and applications for payment in hard copy.

Article 77

Common rules for calculating interim payments and payments of the final balance

Interim payments and payments of the final balance shall be calculated by applying the co-financing rate laid down in the decision on the operational programme concerned for each priority axis to the eligible expenditure mentioned under that priority axis in each statement of expenditure certified by the certifying authority.

However the Community contribution through the interim payments and payments of the final balance shall not be higher than the public contribution and the maximum amount of assistance from the Funds for each priority axis as laid down in the decision of the Commission approving the operational programme.

Article 78

Statement of expenditure

1 All statements of expenditure shall include, for each priority axis, the total amount of eligible expenditure, in accordance with Article 56, paid by beneficiaries in implementing the operations and the corresponding public contribution paid or due to be paid to the beneficiaries according to the conditions governing the public contribution. Expenditure paid by beneficiaries shall be supported by receipted invoices or accounting documents of equivalent probative value.

However, as regards aid schemes within the meaning of Article 87 of the Treaty only, in addition to the conditions set out in the previous subparagraph, the public contribution corresponding to the expenditure included in a statement of expenditure shall have been paid to the beneficiaries by the body granting the aid.

2 By way of derogation from paragraph 1, as regards State aid within the meaning of Article 87 of the Treaty, the statement of expenditure may include advances paid to the beneficiaries by the body granting the aid, under the following cumulative conditions:

- a they shall be subject to a bank guarantee or a financial public facility having an equivalent effect;
- b they shall not exceed 35 % of the total amount of the aid to be granted to a beneficiary for a given project;
- c they shall be covered by expenditure paid by beneficiaries in implementing the project and supported by receipted invoices or accounting documents of equivalent probative value.

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value at the latest three years after the year of the payment of the advance or on 31 December 2015, whichever earlier; if they are not, the next statement of expenditure shall be corrected accordingly.

3 Statements of expenditure shall identify, for each operational programme, the elements referred to in paragraph 1 relating to regions receiving transitional assistance.

4 In the case of major projects as defined in Article 39, only expenditure related to major projects already adopted by the Commission may be included in statements of expenditure.

5 Where the contribution from the Funds is calculated with reference to public expenditure as provided for in Article 53(1), any information on expenditure other than public expenditure shall not affect the amount due as calculated on the basis of the payment request.

6 By way of derogation from paragraph 1, as regards financial engineering instruments as defined in Article 44, the statement of expenditure shall include the total expenditure paid in establishing or contributing to such funds or holding funds.

However, at the partial or final closure of the operational programme, eligible expenditure shall be the total of:

- a any payments from urban development funds for investment in public private partnerships or other projects included in an integrated plan for urban development; or
- b any payments for investment in enterprises from each of the abovementioned funds; or
- c any guarantees provided including amounts committed as guarantees by guarantee funds; and
- d eligible management costs.

The co-financing rate shall be applied to the eligible expenditure paid by the beneficiary. The corresponding statement of expenditure shall be corrected accordingly.

7 Interest generated by payments from operational programmes to funds as defined in Article 44, shall be used to finance urban development projects in the case of urban development funds or financial engineering instruments for small and medium-sized enterprises in other cases.

Resources returned to the operation from investments undertaken by funds as defined in Article 44 or left over after all guarantees have been honoured shall be reused by the competent authorities of the Member States concerned for the benefit of urban development projects or of small and medium-sized enterprises.

Article 79

Accumulation of pre-financing and of interim payments

1 The cumulative total of pre-financing and interim payments made shall not exceed 95 % of the contribution from the Funds to the operational programme.

2 When this ceiling is reached, the certifying authority shall continue transmitting to the Commission any certified statement of expenditure on 31 December of year n, as well as the amounts recovered during the year for each Fund, at the latest by the end of February of year n+1.

Article 80

Wholeness of payment to beneficiaries

Member States shall satisfy themselves that the bodies responsible for making the payments ensure that the beneficiaries receive the total amount of the public contribution as quickly as possible and in full. No amount shall be deducted or withheld and no specific charge or other charge with equivalent effect shall be levied that would reduce these amounts for the beneficiaries.

Article 81

Use of the euro

1 Amounts set out in operational programmes submitted by Member States, certified statements of expenditure, applications for payment and expenditure mentioned in the annual and final report of implementation shall be denominated in euro.

2 Commission decisions on operational programmes and Commission commitments and payments, shall be denominated and carried out in euro.

3 Member States which have not adopted the euro as their currency on the date of an application for payment shall convert into euro the amounts of expenditure incurred in national currency. This amount shall be converted into euro using the monthly accounting exchange rate of the Commission in the month during which the expenditure was registered in the accounts of the certifying authority of the operational programme concerned. This rate shall be published electronically by the Commission each month.

4 When the euro becomes the currency of a Member State, the conversion procedure set out in paragraph 3 shall continue to apply to all expenditure recorded in the accounts by the certifying authority before the date of entry into force of the fixed conversion rate between the national currency and the euro.

Section 3

Pre-financing

Article 82

Payment

1 Following the Commission decision approving a contribution from the Funds to an operational programme, a single pre-financing amount for the 2007 to 2013 period shall be paid by the Commission to the body designated by the Member State.

The pre-financing amount shall be paid in different instalments as follows:

- a for Member States of the European Union as constituted before 1 May 2004, in 2007 2 % of the contribution from the Structural Funds to the operational programme, and in 2008 3 % of the contribution from the Structural Funds to the operational programme;

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- b for Member States that acceded to the European Union on or after 1 May 2004, in 2007 2 % of the contribution from the Structural Funds to the operational programme, in 2008 3 % of the contribution from the Structural Funds to the operational programme, and in 2009 2 % of the contribution from the Structural Funds to the operational programme;
- c if the operational programme falls under the European territorial cooperation objective and at least one of the participants is a Member State that acceded to the European Union on or after 1 May 2004, in 2007 2 % of the contribution from the ERDF to the operational programme, in 2008 3 % of the contribution from the ERDF to the operational programme, and in 2009 2 % of the contribution from the ERDF to the operational programme;
- d for Member States of the European Union as constituted before 1 May 2004, in 2007 2 % of the contribution from the Cohesion Fund to the operational programme, in 2008 3 % of the contribution from the Cohesion Fund to the operational programme, and in 2009 2,5 % of the contribution from the Cohesion Fund to the operational programme;
- e for Member States that acceded to the European Union on or after 1 May 2004, in 2007 2,5 % of the contribution from the Cohesion Fund to the operational programme, in 2008 4 % of the contribution from the Cohesion Fund to the operational programme, and in 2009 4 % of the contribution from the Cohesion Fund to the operational programme.

2 The total amount paid as pre-financing shall be reimbursed to the Commission by the body designated by the Member State if no application for payment under the operational programme is sent within 24 months from the date on which the Commission pays the first instalment of the pre-financing amount.

The total contribution from the Funds to the operational programme shall not be affected by such reimbursement.

Article 83

Interest

Any interest generated by the pre-financing shall be posted to the operational programme concerned, being regarded as a resource for the Member State in the form of a national public contribution, and shall be declared to the Commission at the time of the final closure of the operational programme.

Article 84

Clearance

The amount paid as pre-financing shall be totally cleared from the Commission accounts when the operational programme is closed in accordance with Article 89.

Section 4

Interim payments

Article 85

Interim payments

Interim payments shall be made for each operational programme. The first interim payment shall be made in accordance with Article 71(2).

Article 86

Acceptability of applications for payment

1 Each interim payment made by the Commission shall be subject to the following conditions being met:

- a the Commission must have been sent a application for payment and a statement of expenditure in accordance with Article 78;
- b no more than the maximum amount of assistance from the Funds as laid down in the decision of the Commission approving the operational programme has been paid by the Commission during the whole period for each priority axis;
- c the managing authority must have sent the Commission the most recent annual implementation report in accordance with Article 67(1) and (3);
- d there is no reasoned opinion by the Commission in respect of an infringement under Article 226 of the Treaty as regards the operation(s) for which the expenditure is declared in the application for payment in question.

2 If one or more of the conditions referred to in paragraph 1 are not met, the Member State and the certifying authority shall be informed by the Commission within a period of one month so that the necessary steps can be taken to remedy the situation.

Article 87

Date of presentation of applications for payment and payment delays

1 The certifying authority shall satisfy itself that requests for interim payments for each operational programme are grouped together and sent to the Commission, as far as possible, on three separate occasions a year. For a payment to be made by the Commission in the current year, the latest date on which a application for payment shall be submitted is 31 October.

2 Subject to available funding, and the absence of a suspension of payments in accordance with Article 92, the Commission shall make the interim payment no later than two months after the date on which a application for payment meeting the conditions referred to in Article 86 is registered with the Commission.

Section 5

Programme closure and payment of final balance

Article 88

Partial closure

1 Partial closure of operational programmes may be made at periods to be determined by the Member State.

Partial closure shall relate to operations completed during the period up to 31 December of the previous year. For the purposes of this Regulation, an operation shall be deemed completed where the activities under it have been actually carried out and for which all expenditure by the beneficiaries and the corresponding public contribution have been paid.

2 Partial closure shall be made on the condition that the Member State sends the following to the Commission by 31 December of a given year:

- a a statement of expenditure relating to the operations referred to in paragraph 1;
- b a declaration for partial closure in accordance with Article 62(1)(d)(iii).

3 Any financial corrections made in accordance with Articles 98 and 99 concerning operations subject to partial closure shall be net financial corrections.

Article 89

Conditions for the payment of the final balance

1 The Commission shall pay the final balance provided that:

- a the Member State has sent an application for payment comprising the following documents by 31 March 2017:
 - (i) an application for payment of the final balance and a statement of expenditure in accordance with Article 78;
 - (ii) the final implementation report for the operational programme, including the information set out in Article 67;
 - (iii) a closure declaration referred to in Article 62(1)(e); and
- b there is no reasoned opinion by the Commission in respect of an infringement under Article 226 of the Treaty as regards the operation(s) for which the expenditure is declared in the application for payment in question.

2 Failure to send any of the documents referred to in paragraph 1 to the Commission shall automatically result in the decommitment of the final balance, in accordance with Article 93.

3 The Commission shall inform the Member State of its opinion on the content of the closure declaration referred to in paragraph 1(a)(iii) within five months of the date of its receipt. The closure declaration shall be deemed to be accepted in the absence of observations by the Commission within that five-month period.

4 Subject to available funding, the Commission shall pay the final balance within no more than 45 days from the later of the following dates:

- a the date on which it accepts the final report in accordance with Article 67(4); and
- b the date on which it accepts the closure declaration referred to in paragraph 1(a)(iii) of this Article.

5 Without prejudice to paragraph 6, the balance of the budgetary commitment shall be decommitted 12 months following the payment. The closure of the operational programme shall be on the date of the earliest of the following three events:

- a the payment of the final balance determined by the Commission on the basis of the documents referred to in paragraph 1;
- b the sending of a debit note for sums unduly paid by the Commission to the Member State in respect of the operational programme;
- c the decommitment of the final balance of the budgetary commitment.

The Commission shall inform the Member State about the date of the closure of the operational programme within a deadline of two months.

6 Notwithstanding the results of any audits performed by the Commission or the European Court of Auditors, the final balance paid by the Commission for the operational programme may be amended within nine months of the date on which it is paid or, where there is a negative balance to be reimbursed by the Member State, within nine months of the date on which the debit note is issued. Such amendment of the balance shall not affect the date of the closure of the operational programme as set out in paragraph 5.

Article 90

Availability of documents

1 Without prejudice to the rules governing State aid under Article 87 of the Treaty, the managing authority shall ensure that all the supporting documents regarding expenditure and audits on the operational programme concerned are kept available for the Commission and the Court of Auditors for:

- a a period of three years following the closure of an operational programme as defined in Article 89(3);
- b a period of three years following the year in which partial closure took place, in the case of documents regarding expenditure and audits on operations referred to in paragraph 2.

These periods shall be interrupted either in the case of legal proceedings or at the duly motivated request of the Commission.

2 The managing authority shall make available to the Commission on request a list of completed operations which have been subject to partial closure under Article 88.

3 The documents shall be kept either in the form of the originals or in versions certified to be in conformity with the originals on commonly accepted data carriers.

Section 6

Interruption of the payment deadline and suspension of payments

Article 91

Interruption of the payment deadline

1 The payment deadline may be interrupted by the authorising officer by delegation within the meaning of Regulation (EC, Euratom) No 1605/2002 for a maximum period of six months if:

- a in a report of a national or Community audit body there is evidence to suggest a significant deficiency in the functioning of the management and control systems;
- b the authorising officer by delegation has to carry out additional verifications following information coming to his attention alerting him that expenditure in a certified statement of expenditure is linked to a serious irregularity which has not been corrected.

2 The Member State and the certifying authority shall be informed immediately of the reasons for the interruption. The interruption shall be ended as soon as the necessary measures have been taken by the Member State.

Article 92

Suspension of payments

1 All or part of the interim payments at the level of priority axes or programmes may be suspended by the Commission where:

- a there is a serious deficiency in the management and control system of the programme which affects the reliability of the procedure for certification of payments and for which corrective measures have not been taken; or
- b expenditure in a certified statement of expenditure is linked to a serious irregularity which has not been corrected; or
- c there is a serious breach by a Member State of its obligations under Article 70(1) and (2).

2 The Commission may decide to suspend all or part of interim payments after having given the Member State the opportunity to present its observations within a period of two months.

3 The Commission shall end suspension of all or part of interim payments where the Member State has taken the necessary measures to enable the suspension to be lifted. Where the required measures are not taken by the Member State, the Commission may adopt the decision to cancel all or part of the Community contribution to the operational programme in accordance with Article 99.

Section 7

Automatic decommitment

Article 93

Principles

1 The Commission shall automatically decommit any part of a budget commitment in an operational programme that has not been used for payment of the pre-financing or interim payments or for which an application for payment has not been sent in conformity with Article 86 by 31 December of the second year following the year of budget commitment under the programme, with the exception mentioned in paragraph 2.

2 For Member States whose GDP from 2001 to 2003 was below 85 % of the EU-25 average in the same period, as listed in Annex II, the deadline referred to in paragraph 1 shall be 31 December of the third year following the year of the annual budget commitment from 2007 to 2010 under their operational programmes.

This deadline shall also apply to the annual budget commitment from 2007 to 2010 in an operational programme falling under the European territorial cooperation objective if at least one of the participants is a Member State referred to in the first subparagraph.

3 That part of commitments still open on 31 December 2015 shall be automatically decommitted if the Commission has not received an acceptable application for payment for it by 31 March 2017.

4 If this Regulation enters into force after 1 January 2007, the period after which the first automatic decommitment as referred to in paragraph 1 may be made shall be extended, for the first commitment, by the number of months between 1 January 2007 and the date of the first budget commitment.

Article 94

Period for interruption for major projects and aid schemes

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

For these annual amounts, 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 95

Period of interruption for legal proceedings and administrative appeals

The amount potentially concerned by automatic decommitment shall be reduced by the amounts that the certifying authority has not been able to declare to the Commission because of operations suspended by a legal proceeding or an administrative appeal having suspensory effect, on condition that the Member State sends the Commission

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information stating the reasons by 31 December of the second or third year following the year of the budget commitment pursuant to Article 93.

For that part of commitments still open on 31 December 2015, the time limit referred to in Article 93(2) shall be interrupted under these same conditions in respect of the amount relating to the operations concerned.

The abovementioned reduction may be requested once if the suspension lasted up to one year or several times corresponding to the number of years between the date of the legal or administrative decision suspending the implementation of the operation and the date of the final legal or administrative decision.

Article 96

Exceptions to the automatic decommitment

The following shall be disregarded in calculating the automatic decommitment:

- (a) that part of the budget commitment for which a application for payment has been made but whose reimbursement has been interrupted or suspended by the Commission on 31 December of the second or third year following the year of the budget commitment pursuant to Article 93 and in accordance with Articles 91 and 92. When the problem resulting in the interruption or suspension has been resolved, the automatic decommitment rule shall be applied to that part of the budget commitment which is concerned;
- (b) that part of the budget commitment for which a application for payment has been made but whose reimbursement has been capped in particular due to a lack of budget resources;
- (c) that part of the budget commitment for which it has not been possible to make an acceptable application for payment for reasons of *force majeure* seriously affecting implementation of the operational programme. The national authorities claiming *force majeure* shall demonstrate its direct consequences on the implementation of all or part of the operational programme.

Article 97

Procedure

1 The Commission shall inform the Member State and the authorities concerned in good time whenever there is a risk of application of automatic decommitment under Article 93. The Commission shall inform the Member State and the authorities concerned of the amount of the automatic decommitment resulting from the information in its possession.

2 The Member State shall have two months from the date of receipt of that information to agree to the amount or submit its observations. The Commission shall carry out the automatic decommitment not later than nine months after the deadline referred to in Article 93.

3 The Fund's contribution to the operational programme shall be reduced, for the year concerned, by the amount automatically decommitted. The Member State shall produce within two months of the date of decommitment a revised financing plan reflecting the reduced amount of assistance over one or several priority axes of the operational programme. Failing this, the Commission shall reduce the amounts allocated to each priority axis proportionately.

CHAPTER II

Financial corrections

Section 1

Financial correction by Member States

Article 98

Financial corrections by Member States

1 The Member States shall in the first instance bear the responsibility for investigating irregularities, acting upon evidence of any major change affecting the nature or the conditions for the implementation or control of operations or operational programmes and making the financial corrections required.

2 The Member State shall make the financial corrections required in connection with the individual or systemic irregularities detected in operations or operational programmes. The corrections made by a Member State shall consist of cancelling all or part of the public contribution to the operational programme. The Member State shall take into account the nature and gravity of the irregularities and the financial loss to the Funds.

The resources from the Funds released in this way may be reused by the Member State until 31 December 2015 for the operational programme concerned in accordance with the provisions referred to in paragraph 3.

3 The contribution cancelled in accordance with paragraph 2 may not be reused for the operation or operations that were the subject of the correction, nor, where a financial correction is made for a systemic irregularity, for existing operations within the whole or part of the priority axis where the systemic irregularity occurred.

4 In the case of a systemic irregularity, the Member State shall extend its enquiries to cover all operations liable to be affected.

Section 2

Financial corrections by the Commission

Article 99

Criteria for the corrections

1 The Commission may make financial corrections by cancelling all or part of the Community contribution to an operational programme where, after carrying out the necessary examination, it concludes that:

- a there is a serious deficiency in the management and control system of the programme which has put at risk the Community contribution already paid to the programme;
- b expenditure contained in a certified statement of expenditure is irregular and has not been corrected by the Member State prior to the opening of the correction procedure under this paragraph;

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c a Member State has not complied with its obligations under Article 98 prior to the opening of the correction procedure under this paragraph.

2 The Commission shall base its financial corrections on individual cases of irregularity identified, taking account of the systemic nature of the irregularity to determine whether a flat-rate or extrapolated correction should be applied.

3 The Commission shall, when deciding the amount of a correction, take account of the nature and gravity of the irregularity and the extent and financial implications of the deficiencies found in the operational programme concerned.

4 Where the Commission bases its position on facts established by auditors other than those of its own services, it shall draw its own conclusions regarding the financial consequences after examining the measures taken by the Member State concerned under Article 98(2), the reports supplied under Article 70(1)(b), and any replies from the Member State.

5 When a Member State does not comply with its obligations as referred to in Article 15(4), the Commission may, in relation to the degree of non-compliance with these obligations, make a financial correction by cancelling all or part of the Structural Funds contribution to the Member State concerned.

The rate applicable to the financial correction referred to in this paragraph shall be laid down in the implementing rules of this Regulation adopted by the Commission in accordance with the procedure referred to in Article 103(3).

Article 100

Procedure

1 Before taking a decision on a financial correction, the Commission shall open the procedure by informing the Member State of its provisional conclusions and requesting the Member State to submit its comments within two months.

Where the Commission proposes a financial correction on the basis of extrapolation or at a flat rate, the Member State shall be given the opportunity to demonstrate, through an examination of the documentation concerned, that the actual extent of irregularity was less than the Commission's assessment. In agreement with the Commission, the Member State may limit the scope of this examination to an appropriate proportion or sample of the documentation concerned. Except in duly justified cases, the time allowed for this examination shall not exceed a further period of two months after the two-month period referred to in the first subparagraph.

2 The Commission shall take account of any evidence supplied by the Member State within the time limits mentioned in paragraph 1.

3 Where the Member State does not accept the provisional conclusions of the Commission, the Member State shall be invited to a hearing by the Commission, in which both sides in cooperation based on the partnership shall make efforts to reach an agreement concerning the observations and the conclusions to be drawn from them.

4 In case of an agreement, the Member State may reuse the Community funds concerned in conformity with the second subparagraph of Article 98(2).

5 In the absence of agreement, the Commission shall take a decision on the financial correction within six months of the date of the hearing taking account of all information and observations submitted during the course of the procedure. If no hearing takes place, the six-

month period shall begin to run two months after the date of the letter of invitation sent by the Commission.

Article 101

Obligations of Member States

A financial correction by the Commission shall not prejudice the Member State's obligation to pursue recoveries under Article 98(2) of this Regulation and to recover State aid under Article 87 of the Treaty and under Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty⁽¹⁾.

Article 102

Repayment

1 Any repayment due to be made to the general budget of the European Union shall be effected before the due date indicated in the order for recovery drawn up in accordance with Article 72 of Regulation (EC, Euratom) No 1605/2002. The due date shall be the last day of the second month following the issuing of the order.

2 Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate of such interest shall be one-and-a-half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls.

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- (1) [OJ L 83, 27.3.1999, p. 1](#). Regulation as amended by the 2003 Act of Accession. Editorial note: the title of Regulation (EC) No 659/1999 has been adjusted to take account of the renumbering of the Articles of the Treaty establishing the European Community, in accordance of Article 12 of the Treaty of Amsterdam; the original reference was to Article 93 of the Treaty.