



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
Regional Policy

GUIDANCE NOTE TO THE COCOF

ON TREATMENT OF RETROSPECTIVE EU ASSISTANCE DURING 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

1. Retrospective support represents the award by a managing authority of EU assistance to an operation which has already incurred expenditure from national sources or is already complete before the EU assistance is formally applied for or awarded – hereafter the "retrospective EU assistance".
2. The Commission is not in support of the retrospective EU assistance, as it represents a high area of risks as set out further below. This note aims at listing the rules to which particular attention should be paid by the managing authorities in case they include retrospective operations in the operational programmes.
3. Retrospective EU assistance should be clearly distinguished from programme overbooking i.e. the development of a project pipeline that is bigger in volume than the financial scope of the programme. Where Member States practice overbooking¹ extra projects are selected, developed and implemented from the outset with a view to complying with the requirements applicable to operational programme. The Commission services have in several occasions encouraged managing authorities to consider overbooking to maximise the use of the Structural and Cohesion Funds which, contrary to retrospective financing, does not present the same level of risks and disadvantages.

II. COMMISSION POSITION ON RETROSPECTIVE EU ASSISTANCE

4. Although there is no explicit legal provision prohibiting retrospective EU assistance, the Commission does not recommend this practice. Operations retrospectively selected for co-financing are often initiated or carried out without having been expressly linked to the objectives of a programme and to specific legal requirements linked to EU assistance. As a consequence they entail a high risk of non-compliance with the relevant Union and national rules. Member States should be aware of the considerable risk of declaring ineligible expenditure to the Commission and the relevant consequences they might have to bear.
5. In case managing authorities decide for retrospective financing, it is their responsibility to ensure that operations financed by the Funds comply with the provisions of the Treaty and of acts adopted under it (Article 9(5) of Regulation (EC) No 1083/2006), that operations are selected for funding in accordance with the criteria applicable to the operational programme and that they comply with applicable Union and national rules for the whole of their implementation period (Article 60(a) of Regulation (EC) No 1083/2006). The managing authority is required to determine, whether such operations are in full compliance with all the regulatory provisions before taking a decision to support those operations under an operational programme.

III. RISKS OF RETROSPECTIVE EU ASSISTANCE

6. The managing authority and, within their responsibilities, the certifying and audit authorities are required to check that retrospective operations respect **all applicable rules**.

¹ This is normally practised in relation to the provision of public services or infrastructure where the demand for such services / goods is known and where national needs and investment programmes may exceed the volume of EU supported programmes.

7. Due to the nature of retrospective operations, they should pay particular attention to the respect of the following rules:

(a) Rules on eligibility of expenditure:

- In accordance with Article 56(1) of the Regulation (EC) No 1083/2006 the starting date of eligibility of expenditure during the 2007-2013 period begins on the date of submission of the operational programmes to the Commission or from 1 January 2007, whichever is earlier. Any expenditure paid by the beneficiary before the starting date for eligibility is therefore not eligible.
- Operations which were completed² before the starting date for eligibility are not eligible (Article 56(1) of Regulation (EC) No 1083/2006).
- Where a new category of expenditure as referred to in Table 1 of Part A of Annex II to Commission Regulation (EC) No 1828/2006 is added at the time of the revision of an operational programme referred to in Article 33 of Regulation (EC) No 1083/2006 any expenditure falling under such category is eligible from the date of the submission to the Commission of the request for revision of the operational programme.

(b) Selection criteria fixed by the monitoring committee:

- Expenditure is eligible only where incurred for operations decided on by the managing authority of the operational programme concerned or under its responsibility, in accordance with criteria fixed by the monitoring committee. The managing authority is required to ensure that the operation is selected according to the applicable selection criteria. As a general rule, the applicable selection criteria are those which are in force at the time the operation has been selected for EU assistance.

(c) Union and national rules, including in particular the respect of:

- i. Public procurement rules;
- ii. State aid rules, including the incentive effect of the aid;
- iii. Environmental rules, anti-discrimination rules, including on accessibility and gender equality principles;
- iv. Information and publicity rules;
- v. Requirements concerning availability of documents: obligation of keeping documents for 3 years after closure in accordance with Article 90 of Regulation (EC) No 1083/2006;

² For the definition of completed operation see Article 88(1) of Regulation (EC) No 1083/2006 and COCOF Guidance note on partial closure (COCOF 08/0043/03-EN, page 3):

"According to Article 88(1) of Regulation (EC) No 1083/2006, as amended "(...) 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".

An operation may therefore be considered completed if the following three cumulative criteria are met:

- activities have been actually carried out (no further activity required to complete the operation);
- all expenditure by beneficiaries has been paid (no further payments to be made by beneficiary);
- the public contribution has been paid to the beneficiary (no further payments to be made to beneficiary)."

- vi. Rules on revenue generating projects (Article 55 of Regulation (EC) No 1083/2006);
- vii. Rule on durability of operations (Article 57 of Regulation (EC) No 1083/2006);
- viii. National legal acts or strategic/programme documents (NSRF, specific programme provisions) setting out specific conditions for EU assistance;
- ix. Provisions of Article 13(2) of Regulation (EC) No 1828/2006, which require the capability to demonstrate at any time that double financing has not occurred³.

Specific conditions of EU assistance concerning information and publicity must be respected from the day of the selection of the operation for EU assistance.

(d) Procedures for financial management and control, including the need to comply with:

- i. Audit trail requirements;
- ii. Article 60(b) of the Regulation (EC) No 1083/2006 and Article 13-17 of Regulation (EC) No 1828/2006 concerning checks by managing authority on the expenditure declared, including on the spot checks;
- iii. Article 62 of the Regulation (EC) No 1083/2006 concerning independent audit.

The managing authority needs to assure that all the relevant regulatory provisions and conditions for co-financing of retrospective operations have been respected and that the beneficiaries (and where relevant final recipients) are made aware of EU assistance as soon as the relevant operation has been selected for it. Unless the managing authority has accurately scrutinized the compliance of the above provisions the relevant operation should not be considered for EU assistance. The managing authority should increase management verifications of the operations concerned, closely cooperate with national audit authorities in the follow up of retrospective operations, allow their easy identification and inform the Audit Authority explicitly about presence and volume.

Before certifying the expenditure relating to these operations to the Commission, the certifying authority should, in accordance with Article 61(b)(ii) of Regulation (EC) No 1083/2006, check that the expenditure declared complies with applicable Union and national rules and has been incurred in respect of operations selected for funding in accordance with the criteria applicable to the programme and complying with Union and national rules.

The Commission will treat any operation which does not respect the applicable rules as irregular and proceed with financial corrections accordingly.

³ According to Article 13(2) verifications by the managing authority shall include procedures to avoid double financing of expenditure with other Community or national schemes and with other programming periods. Previous experience showed that an operation initiated under a national scheme/programme has been in certain cases selected for EU assistance, while being maintained under the national scheme/programme. Managing authorities have to therefore ensure that the same expenditure for the same operation is not certified and reimbursed twice, once under a national/regional scheme and second time under the Structural/Cohesion Funds programme.

