



COMMISSION OF THE EUROPEAN COMMUNITIES

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2004/0166 (AVC)

Proposal for a

COUNCIL REGULATION

establishing a Cohesion Fund

(presented by the Commission)

EXPLANATORY MEMORANDUM

The Cohesion Fund is enshrined in article 161, paragraph 2, of the treaty, with the objective of contributing financially to interventions in the field of the environment and the trans-European networks.

Regulation (EC) No 1164/94 established the Cohesion Fund, and, for the first time, provided a framework for its implementation. This regulation was subsequently complemented by Regulations (EC) No 1264/99 and (EC) No 1265/99.

Following the Union's enlargement on May 1st 2004, the Cohesion Fund applies to the 10 new Member States until the end of 2006, as well as to the three Member States eligible at the end of the 2000-2006 period (Greece, Portugal and Spain).

Regulation (EC) n° [...] lays down the general provisions for the functioning of the structural funds and the Cohesion Fund for the programming period 2007-2013. It envisages that the Cohesion Fund contributes to the convergence of less developed Member States and regions through financial participation in the operational programmes of this convergence objective. Under the reform of the implementation system of cohesion policy, Cohesion Fund interventions are integrated into the multi-annual programming of the structural funds, including major projects. The reform was announced in the third cohesion report, which was adopted by the Commission in February 2004. While maintaining the fundamental principles which underlie the value of the policy (multi-annual programming, partnership, evaluation, shared management), this reform provides a balance between an increased strategic component, and a simplification of the implementation system. Simplification notably occurs through the reduction in the number of funds, simplified programming, a clarification of the roles of the Commission and the Member States in terms of financial management and control, and by adapting the implementation modalities to reflect the intensity of the community contribution.

In the field of trans-European transport networks, actions financed by the Cohesion Fund must follow the guidelines for these networks, which were adopted by the Council in revised decision (EC) 1692/96.

In the environmental field, the Cohesion Fund contributes to achieving the Union's policy objectives envisaged under article 174 of the treaty.

An extension of the domains of intervention is justified by the accession of new Member States on May 1 2004, all of which are eligible to the Cohesion Fund, and which face new and important financing needs. Thus the Cohesion Fund can also finance actions in support of sustainable development, where these have a clear environmental dimension, such as energy efficiency or renewable energy. Beyond the trans-European transport networks, this also allows for financing of rail, navigable maritime and river waterways, multi-modal transport actions and their inter-operability, road and air traffic management, clean urban transport, and communal transport. This extension of the domain of interventions is in accordance with the corresponding provisions in the treaty, and is in line with the priorities decided by the European Council in Lisbon (March 2000) and Gothenburg (June 2001).

The aim of this regulation is to specify the tasks of the Cohesion Fund, and its specific application, in particular regarding the conditionality of assistance and the fields of intervention of the Fund.

Member States benefiting from the Cohesion Fund must conform to the conditions set out in the treaty regarding convergence programmes and those regarding excessive deficits for the Member States participating in economic and monetary union. Assistance under the Cohesion Fund is conditional upon the satisfaction of these conditions. If the Council decides, on the basis of a Commission proposal, that an excessive deficit exists and that the Member State concerned has not taken effective action, the payment will be suspended, effective from January 1 of the following year. The suspension ceases, when the Council decides, on the same basis, that the Member State concerned has taken the measures necessary to allow a return to a situation that is in accordance with the Treaty and with the Council decisions.

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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) Regulation (EC) No [...] laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund⁵, establishes the framework for the action of the Structural Funds and the Cohesion Fund. It fixes, in particular, the objectives, the principles 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 Fund⁶.
- (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 network⁷.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

⁵ OJ L [...], [...], p. [...].

⁶ OJ L 130 of 25.5.1994, p. 1, Regulation as last modified by the Accession Act of 2003.

⁷ OJ L 228 of 9.9.1996, p. 1

- (3) The Community may, through the Cohesion Fund, contribute to action in pursuit of the Community's environmental policy objectives specified in Article 174 of the Treaty. Under Article 175(5) of the Treaty and without prejudice to the principle that the polluter should pay, the Council can decide, in the case of measures on the basis of paragraph 1 of that Article which are deemed to involve disproportionate costs for the public authorities of a Member State, that the measure is to be aided from the Cohesion Fund.
- (4) Granting of assistance from the Cohesion Fund must take due account of the priorities of the enlarged Union, in particular those set by the Göteborg European Council on the environment in the interests of sustainable development.
- (5) Regulation (EC) No [...] provides that eligibility of expenditure is to be established at national level, with certain exceptions, for which it is necessary to lay down specific provisions. The exceptions concerning the Cohesion Fund should therefore be laid down.
- (6) 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 104 of the Treaty and the need for sound government finances. In this respect, Member States participating in the Economic and Monetary Union are to implement stability programmes and non participating Member States 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 fulfilment of the conditions of economic convergence referred to in article 104 of the Treaty.

HAS ADOPTED THIS REGULATION:

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, social and territorial cohesion of the Community in the interests of promoting sustainable development.
2. The Fund shall contribute to the financing of programmes, which support the objectives set out in the Treaty.
3. The Fund is governed by the provisions of Regulation (EC) No [...] and by the provisions of this Regulation.

Article 2

Scope of assistance

Assistance from the Fund shall be given in the following areas ensuring an appropriate balance and according to the investment and infrastructure needs specific to each Member State receiving assistance:

- 1) trans-European transport networks, in particular priority projects of European interest as identified by Decision No 1692/96/EC;
- 2) achievement of the objectives of Article 174 of the Treaty falling within the priorities assigned to the Community environmental protection policy under the policy and action programme on the environment;
- 3) areas that can be developed on a sustainable basis and clearly present environmental benefits, namely energy efficiency and renewable energy and, in the transport sector outside the trans-European networks, rail, river and sea transport, intermodal transport systems and their interoperability, management of road and air traffic, clean urban transport and public transport.

Article 3

Rules on eligibility of expenditure

The following expenditure shall be ineligible:

- 1) VAT;
- 2) interest on debt;
- 3) the purchase of land for an amount exceeding 10% of the total eligible expenditure for the operation concerned;
- 4) housing;
- 5) decommissioning of nuclear power stations.

Article 4

Conditions applying to access to Fund assistance

1. Assistance from the Cohesion Fund shall be conditional on the following rules.
2. If the Council:
 - a) has established in accordance with Article 104(6) EC that excessive government deficit exists in a beneficiary Member State, and

- b) has decided in accordance with Article 104(8) EC that the Member State concerned, in response to a Council Recommendation issued under Article 104(7) EC has not taken effective action or that the action taken has proven to be inadequate,

it decides to suspend either the totality or part of the financial assistance from the Fund for the Member State concerned with effect from 1st January of the year following the decision. The suspension concerns the commitments.

3. The Council decides to lift the suspension of the financial assistance from the Fund if it establishes that the Member State concerned has taken the necessary corrective action. The Commission proceeds to the re-budgetisation of the commitments suspended.
4. The Council takes the decisions referred to in paragraphs 2 and 3 on a qualified majority on a proposal from the Commission.

Article 5

Transitional provisions

This Regulation shall not affect neither the continuation nor the modification, including the total or partial cancellation, of operations approved by the Commission on the basis of Regulation (EC) No 1164/94, applicable before entry into force of this Regulation.

Applications made under Regulation (EEC) No 1164/94 shall remain valid.

Article 6

Repeal

Regulation (EC) No 1164/94 is hereby repealed with effect from 1 January 2007.

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.

Article 8

Entry into force

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

It shall apply from 1 January 2007.

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

Done at Brussels, [...].

For the Council
The President
[...]