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ADDENDUM 6 to NOTE

from: Presidency
to: Permanent Representatives Committee (part 2)/Council

No. prev. doc.: 15243/2/11 REV 2
No. Cion prop.: COM(2011) 615 final/2

Subject: Cohesion Policy legislative package
- Presidency compromise on Major Projects

Delegations will find attached a compromise text on the Major Projects parts of the proposal for the Common Provisions Regulation.

The modifications highlighted in bold are those in comparison to the revised version (corrigendum) presented by the Commission on 14 March 2012.

MAJOR PROJECTS¹

Article 90

Content

As part of an operational programme or operational programmes, **which have been subject to a Commission decision under Article 87(10)**, the ERDF and the **CF** may support an operation comprising a series of works, activities or services intended in itself to accomplish an indivisible task of a precise economic or technical nature which has clearly identified goals and **for which the total eligible cost exceeds EUR 50 000 000 and in the case of operations contributing to the thematic objective under Article 9(7) where the total eligible cost exceeds EUR 75 000 000** (a 'major project'). Financial instruments shall not be considered major projects.

Article 91

Information necessary for the approval of major projects [...]

1. [...] **Before a major project is approved, the managing authority shall ensure that the following information is available:**
 - (a) [...] the body responsible for implementation of the major project, and its capacity;
 - (b) a description of [...] the investment and its location;
 - (c) total cost and total eligible cost, taking account of the requirements set out in Article 54;
 - (d) [...] feasibility studies carried out, including the options analysis, **and** the results, [...];

¹ Where an approval decision on a major project has been made in the 2007-13 programming period, but the implementation of that project spans the programming period governed by the CPR-regulation, the possibility and the modalities of the continuation of support for such projects should be laid down in Article 145 of the CPR-regulation.

- (e) a cost-benefit analysis, including an economic and a financial analysis, and a risk assessment;
- (f) an analysis of the environmental impact, taking into account climate change adaptation and mitigation needs, and disaster resilience;
- (g) the consistency with the relevant priority axes of the operational programme or **operational** programmes concerned, and its expected contribution to achieving the specific objectives of those priority axes;
- (h) the financing plan showing the total planned financial resources and the planned support from the Funds, the EIB, and all other sources of financing, together with physical and financial indicators for monitoring progress, taking account of the identified risks;
- (i) the timetable for implementing the major project and, where the implementation period is expected to be longer than the programming period, the phases for which support from the Funds is requested during the 2014 to 2020 programming period.

The Commission shall provide indicative guidance on the methodology to be used in carrying out the cost-benefit analysis referred to in point (e) [...] in accordance with the advisory procedure referred to in Article 143(2).

At the initiative of a Member State, the information in Article 91(a) to (i) may be assessed by independent experts supported by technical assistance of the Commission or, in agreement with the Commission, by other independent experts. In other cases, the Member State shall submit to the Commission the information set out in Article 91(a) to (i) as soon as it is available.

[...] The Commission shall provide guidance on the methodology to be used in carrying out a quality review of a major project and shall establish the format for the submission of the information set out in Article 91 (a) to (i) by means of implementing acts. Those

implementing acts shall be adopted in accordance with the **examination** procedure referred to in Article 143**(3)**.

2. [...]

Article 92

Decision on a major project

1. **Where the information referred to in Article 91 has been appraised positively by a quality review by independent experts, the Member State may proceed with the selection of the major project in accordance with article 114 paragraph 3. The Managing Authority shall notify the Commission of the selected major project. The notification shall consist of the following elements:**
 - (a) **the document referred to in Article 114(3)(c) setting out:**
 - (i) **the body to be responsible for implementation of the major project;**
 - (ii) **a description of the investment, its location, timetable and expected contribution of the major project to the objectives of the relevant priority axis or axes;**
 - (iii) **total cost and total eligible cost, taking account of the requirements set out in Article 54 and;**
 - (iv) **the financing plan, and the physical and financial indicators for monitoring progress, taking account of identified risks;**
 - (b) **the quality review of the independent experts, providing clear statements on the investment's feasibility and economic viability.**

The major project shall be deemed to be approved by the Commission in the absence of a decision, by means of an implementing act, refusing the major project within two months of the date of notification. The Commission shall refuse a major project only on the grounds that it has established a significant weakness in the independent quality review.¹

The Commission shall establish the format for the notification by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 143(3).

2. **In other cases the Commission shall appraise the major project on the basis of the information referred to in Article 91 in order to determine whether the selection of the major project by the managing authority in accordance with Article 114 (3) is justified.**
The Commission shall adopt a decision **on the approval of a major project**, by means of an implementing act, no later than three months after the date of submission of the information referred to in Article 91. [...]
3. The approval **by the Commission under 92(1) and 92(2)** shall be conditional on the first works contract being concluded, **or in the case of operations implemented under PPP structures the signing of the PPP contract between the public body and the private sector body**, within **three** years of the date of the **approval**. **At the duly motivated request of the Member State, in particular in the case of delays resulting from administrative and legal proceedings related to the implementation of major projects, and made within the three year period, the Commission may adopt a decision, by means of an implementing act, on the extension of the period by not more than two years.**
4. **Where the Commission does not approve the major project it shall give in its decision the reasons for its refusal.**

¹ In order to give equal legal certainty to the different types of proceedings in this Article.

5. **Major projects notified to the Commission under paragraph 1 or submitted for approval under paragraph 2 shall be contained in the list of major projects in an operational programme.**

6. Expenditure relating to **a** major project **may** be included **in a request for** payment **after the notification referred to in paragraph 1 of this Article or after the submission for approval referred to in paragraph 2. When the Commission does not approve the major project, the expenditure declaration following the adoption of the Commission decision must be rectified accordingly.**
