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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.7.2009
COM(2009) 384 final

2009/0107 (AVC)

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 1083/2006 concerning general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund as regards simplification of certain requirements and as regards certain provisions relating to financial management

EXPLANATORY MEMORANDUM

1. BACKGROUND TO THE PROPOSAL

- **Reasons and objectives for the proposal**

The current financial and economic crisis has created major challenges for the European Union. Therefore the Council of the European Union of 11 and 12 December 2008 agreed on a European Economic Recovery Plan (EERP), which envisages the initiation of priority action to enable European economies to adjust more rapidly to current challenges.

Whereas a number of important measures to counterbalance the negative effects of the crisis have already been taken both at the Community and national level, including amendments of the Community legislative framework governing Cohesion policy, the actual impact of the financial crisis on the real economy and on the labour market starts only now to make itself widely felt. On 3 June the Commission presented the Communication on 'A Shared Commitment for Employment' in which additional measures were proposed in order to boost job creation and counter the effects of the crisis on jobs.

The pressure on national financial resources increases and necessitates taking further steps to alleviate this pressure through a better use of Community funding, and mobilisation and acceleration of all available Funds to tackle the crisis, in particular using the ESF for rapid recovery packages as outlined in the above-mentioned Communication.

In the context of the current crisis, ensuring a smooth implementation of Cohesion programmes is of particular relevance as they represent the most powerful and relevant lever for assisting the real economy. With total financial resources of 347 billion € for the 2007-2013 period, Cohesion policy provides a powerful support for both budgetary stability and public investment in the Member States and the regions of the European Union.

Experience shows that more effort is needed to facilitate the management of the Community funding in order to speed up the flow of the funding to the beneficiaries that are most affected by the economic downturn. The December European Council supported proposals for 'simplification of procedures and faster implementation of programmes financed by the Cohesion Fund, Structural Funds'. The current proposal therefore includes further elements of simplification, with the overall objective to accelerate co-financed investments in Member States and regions and to increase the impact of the funding on the economy as a whole.

- **General context**

The current crisis is substantially affecting the real economy due to the difficulties encountered by the banks and due to the tightening of credit policy which could reduce household consumption as well as business investment, support to innovation, technological and industrial development with negative effects on GDP and employment.

The crisis is also having a negative impact on the budgets of Member States and the increase in unemployment outlined below is a significant factor in this. On the one hand, an increase in the number of persons entitled to receive benefits can automatically lead to a strain on budgetary resources. At the same time the need to implement active labour market measures in order to maintain people in employment or to get them back to work becomes more acute. Given the general budgetary constraints, severe cash-flow difficulties can arise for the sources of public finance in Member States for the implementation of active labour market measures. As a consequence, such measures may be delayed at a time when they are increasingly necessary, to the detriment of the citizens.

The Commission's most recent economic forecasts predict a marked reduction of growth in the European Union - which would fall to 1,4 % in 2008 (half of that achieved in 2007), 0,2 % in 2009 and 1,1 % in 2010. These poor economic prospects will probably weigh heavily on public finances. Assuming unchanged policies, budget deficits could increase from 1 % of GDP in 2007 to 2,6 % in 2010. Reliable forecasting on public finances - and particularly in the area of debt - is difficult, however, on account of the uncertainty surrounding the budgetary impacts of emergency measures already taken by governments.

It is in this context that the Commission has endeavoured to contribute to the debate currently taking place within the Union and with its international partners on how best to react to the current financial crisis and to its socio-economic consequences. In particular in the framework of its recovery package, the Commission proposed in December 2008 a number of regulatory changes to simplify the implementation rules for Cohesion Policy and to increase the pre-financing (advance payments) to ERDF and ESF programmes. The additional advance payments have provided an immediate cash injection of EUR 6.25 billion in 2009 to pre-finance investment, within the financial envelope agreed for each Member State for the 2007-2013 period. This amendment brings the total of advance payments in 2009 to EUR 11.25 billion. The Commission proposal was adopted by the Council in May 2009 and all advance payments now have been paid to Member States. The Commission has repeatedly encouraged Member States to transfer the additional advance payments to the bodies involved in project management to frontload expenditure to Cohesion Policy Projects.

- **Provisions in force in the policy sphere of the proposal**

The current serious economic repercussions in the European economy lead to the reduction of growth perspectives over the medium term and the marked slow-down in real growth in 2009 and 2010. According to the latest available forecasts, several national economies are in recession. These poor economic prospects have considerable negative impacts on the public finances of the Member States. Moreover the basic conditions for implementing cohesion policy – which requires public match-funding in order to mobilise Structural Funds – risk being seriously disrupted.

In addition, the latest data covering the first months of 2009 show that EU labour markets are now reacting even more strongly than expected to the current economic downturn, with companies announcing substantial job reductions in several sectors and business and consumer confidence continuing to drop. More than 20 million Europeans are unemployed, which is 4 million more than one year ago, and the trend is still upwards.

In order to further accelerate programmes implementation and provide help to overcome the difficulties mentioned earlier, an additional measure is proposed to alleviate the current pressures and allow the highest possible use of Community funding targeting particularly the actions necessary to fight the crisis where the added value for the citizens, especially the unemployed or those at risk to become unemployed, will be highest. This measure will require amendment of Council Regulation n° 1083/2006 on general provisions governing Cohesion policy, including, as proposed in the Communication 'A Shared Commitment for Employment' a temporary change to the ways in which interim payments to programmes co-financed by the European Social Fund are calculated. This involves introducing a temporary option for Member States, where severe cash-flow difficulties exist for the financing of labour market measures necessary to combat the crisis, and which are eligible under the ESF, to request reimbursements made by the Commission at 100% during 2009 and 2010, thus obviating the need to provide national co-financing during this period. The aim is to increase the effectiveness of the important role assigned to the ESF in the above-mentioned communication in implementing active labour market measures, such as training in the context of short-time working arrangements, the anticipation and managing of restructuring, the upgrading of skills as well as the providing of high-quality apprenticeships for the young by the end of 2010. This proposal is presented together with a number of simplification measures that also imply amendments to the Council Regulation.

- **Consistency with other policies and objectives of the Union**

Not applicable.

2. CONSULTATION OF INTEREST PARTIES AND IMPACT ANALYSIS

- **Consultation of interested parties**

The proposed measures, in particular those linked to the simplification, derive from the discussions in the framework of a specific working group involving stakeholders from the Member States launched in 2008. Furthermore, the European Parliament and the European Court of Auditors have repeatedly expressed their wish to simplify the regulations governing the Funds.

- **Procurement and use of expertise**

Use of external expertise has not been necessary.

- **Impact analysis**

The present proposal completes a series of regulatory and non-regulatory adjustments which all seek to stimulate the implementation of cohesion programmes on the ground.

The proposal to provide Member States in the case of operational programmes co-financed by the ESF an option to reimburse interim payment claims at 100% for a limited period (up to the end of 2010), instead of applying the reimbursement rates established in the Operational Programmes will ensure that all certified expenditure of 2009 and 2010 can be paid back without creating a gap in national budgets, but in full respect of national co-funding obligations over the full lifetime of the programmes. Indeed, the 100% reimbursement will be based on the real implementation on the ground in 2009 and 2010. The temporary increase of the reimbursement will not alter the financial framework negotiated at the Council in December 2005.

Further simplification and clarification of rules governing cohesion policy will undeniably have a positive impact on the pace of programme implementation, particularly by providing national, regional and local authorities clearer and less bureaucratic rules that will allow more flexibility to adapt the programmes to the new challenges.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed measures**

The proposed modifications can be divided into two groups:

(1) *Modification linked to the financial management rules with a view to further accelerate the implementation of ESF co-financed programmes on the ground. It concerns the following:*

- The proposed modification of Article 77 concerning the calculation of interim payments for Operational Programmes co-financed by ESF seeks to facilitate and accelerate the implementation of anti crisis measures on the ground and to speed up the support towards the citizens, especially those who need it most, the unemployed or those at risk to become unemployed. It entails that up to the end of 2010, that is, in the period where because of the downturn national resources could be particularly scarce, interim payment claims be reimbursed at 100% of the public contribution to a priority axis, if a Member State expresses the wish to apply this option. The additional amount thus paid out to each programme will be taken into account in the calculation of the 95% threshold and at closure of the programme. In this way, the derogation does not alter the national co-funding obligations which apply to operational programmes over the programming period as a whole, nor does it change the financial framework for the funding period. Given the necessity to find a balance between the Community budgetary constrains and the importance to channel the Funds towards the citizens most affected by the crisis, it is proposed that this provision applies only to operational programmes co-financed by the ESF especially those including measures to fight the crisis. In fact the ESF is the main European tool for investing in citizens and for fighting the effects of the crisis on employment: approximately 9 million people benefit directly from ESF support every year. This support is nearly entirely devoted to the implementation of the Lisbon strategy and the European Employment strategy

(2) *Modifications linked to programme implementation with a view to facilitate, simplify and clarify the rules governing Cohesion policy. They concern the following provisions:*

- The proposed modifications to Articles 39-41 are twofold. Because of the Fund-specific regulations, the ERDF and CF and, within the ERDF, the Convergence and Regional Competitiveness and Employment objectives include different definitions of what constitute "environmental" and "other" projects[1]. By consequence, the double threshold of Article 39 leads to arbitrariness: depending on the Fund and the objective the same project is subject to different thresholds. Therefore it is proposed to include in Article 39 a uniform threshold of 50 million € applicable to all major projects. Nevertheless, given the Community importance of the investments in environment as such, the Commission will ask Member States 1) to ensure an appropriate monitoring of all the investments, including those below the threshold provided in the Regulation and 2) to inform the Commission about the implementation progress in the annual reports on operational programmes.

- The second modification, in Article 39, 40 and Article 41(1) and (2), consists of creating the possibility that a single major project is co-financed by more than one

[1] Articles 4-5 of Regulation n° 1080/2006 for the ERDF, and Article 2 of Regulation n° 1084/2006 for the CF.

programme. This is of particular relevance for projects of nation-wide scope or Community importance, which straddle several regions, and which in the absence of this possibility would have to be artificially separated in multiple projects.

- The proposed modification of Article 44 reflects the emphasis of the European Economic Recovery Plan on stimulating spending on energy efficiency and the use of renewable energy in the European Union. It creates the possibility to set-up dedicated financial engineering instruments in support of such actions, in addition to the already existing financial engineering instruments for other domains.

- The proposed amendment to Article 48 clarifies what type of document is required and what is the minimum information to be presented in the context of a revision of an operational programme, in order to avoid the necessity of an evaluation in case of circumstances of a nature which obviates the need of an evaluation.

- The proposed modifications to Article 55 on revenue-generating projects intend to simplify the monitoring of revenues and to align this with the overall life-cycle of programmes. Therefore, the duration of the provisions on monitoring revenue is now limited to the date of submission of the closure documents of a programme. On the one hand, this avoids situations in which such revenues would have to be monitored for years after the closure of a programme, thereby significantly reducing the administrative burden on authorities in the Member States and the Commission. On the other hand, it ensures that monies reimbursed to a programme because of higher than anticipated revenues, are not definitively lost but can be re-used within the programme. Furthermore in line with the principle of sound financial management and the applicable national rules, it is also recalled that in all the cases revenues generated by operations are to be taken into account when calculating the public contribution.

- The proposed amendment to Article 56, paragraph 3 aims at clarifying that it is only where a new category of expenditure is added at the moment of the revision of an operational programme that a new eligibility date applies to this new category of expenditure, whereas new expenditure within an already eligible category can be added at any moment without an immediate programme modification.

- The proposed modification of Article 57 intends to clarify the scope of the application of this article on the durability of operations. The current version of article 57(1) only states at the end (clause (b)) that it applies to infrastructures and productive activities. This latter scope specification is now proposed for inclusion in the very first part of the paragraph. Secondly, for the ESF it is proposed to limit the provisions to operations that fall under the state aid rules with an obligation to maintain investment or jobs created for the time period foreseen in the applicable state aid rule. Furthermore, it is suggested to exclude the application of this provision to cases of non-fraudulent bankruptcy. Thereby, operations for which the managing authority or beneficiary cannot reasonably be expected to be able to guarantee the durability of operations, are excluded from the scope of the article.

- Article 67 is to be modified to clarify and simplify the information required for yearly reporting on financial implementation of an operational programme. The proposal suggests aligning the financial information required in the annual report on implementation of an operational programme with information to be provided in payment requests, and to make the financial information comparable to the information on the physical progress of the programme. This reduces the reporting burden on managing authorities, intermediary bodies and final beneficiaries, and provides the Commission with overall better comparable data on programme implementation.

- The proposed modification of article 78(2)(a) intends to clarify that in the context of advance payments on State aids admissible guarantees include guarantees by banks or other financial institutions, but also a facility provided for this purpose by public institutions and the Member States themselves. This takes better into account the various guarantee instruments that are used and the different institutional set-ups in the Member States.

- The proposed modification of Article 78, paragraphs (6) and (7), follows directly from the above modification of Article 44 on the inclusion of financial engineering instruments related to energy efficiency and renewable energy. In addition, in paragraph 6(d) the modification will allow treating management fees as eligible expenditure. This reflects better a reality on the ground as in the financial engineering instruments management fees are normally part of the eligible expenditure of the contract.

- Article 88 concerns the partial closure of programmes, which is in itself an instrument with the potential of significantly reducing the administrative burden on Managing authorities, intermediate bodies and final beneficiaries by limiting the period for document retention. However Member States currently have little incentive to use partial closure: for the time being any financial corrections concerning operations subject to partial closure shall be net corrections, meaning that the amount is lost for the programme. This is perfectly logical in the case a correction is triggered by an audit from Commission, OLAF or Court of auditors, given that operations included in a partial closure have to be fully legal and regular. However in the case of irregularities detected by Member States it would be more consistent (as well as providing an incentive to use the system) to allow Member States to re-use the amounts they corrected on an operation included in a partial closure. The proposed amendment would allow Member States to re-use the amounts for irregularities they detected and corrected themselves on operations that were included in partial closure. In the case of an irregularity detected by an EU institution, the current situation would remain unchanged.

- The proposed modification of Article 94 intends to provide more flexibility for the calculation of the decommitment rule in case of major projects. Instead of calculating the period relevant for the decommitment from the date of the Commission decision on such a major project, the proposal suggests to apply the automatic decommitment rule for major projects from the date of the submission to the Commission of the major project application that fulfils all the requirements of the Regulation.

- **Legal base**

Council Regulation (CE) 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 defines the common rules applicable to the three Funds. Based on the principle of shared management between the Commission and the Member States, this regulation includes provisions for a new programming process as well as new arrangements for programme (including financial) management, monitoring, financial control and evaluation of projects.

- **Subsidiarity principle**

The proposal complies within the subsidiarity principle to the extent that it seeks to provide support to the Member States to diminish the negative effects of the current crisis through changes strengthening their role within the framework of shared management of the Funds.

- **Proportionality principle**

The proposal conforms to the proportionality principle for the following reasons:

The proposed amendment to the financial management rules is targeted in nature as it aims to stimulate the contribution of the ESF to measures to combat the crisis and thus underpin the European economic recovery without changing the principles governing the financial management of cohesion policy. The reimbursement of interim payments at 100% should be limited in time under the presumption that the peak of the crisis will cease by the end of 2010.

In order to allow Member States benefit from the simplified measures during the whole programming period it is necessary to apply certain provisions retroactively. Given that the modified Regulation No 1080/2006[2] provides for the eligibility of expenditure on energy efficiency and the use of renewable energy in existing housing in all Member States, it is necessary to apply the amendments relating to Article 44 and 78(6) from the date of the entry into force of that Regulation. Other measures should apply from the day following the day of publication in the Official Journal given their crucial role in helping Member States counterbalance the negative effects of the crisis.

- **Choice of instruments**

Proposed instrument: regulation.

Other instruments would not be appropriate for the following reasons:

The Commission has explored the scope for manoeuvre provided by the legal framework to accelerate projects for the benefit of the Member State economies and the citizens together with the possibilities to decrease an administrative burden to the beneficiaries. Alongside the recent amendments to the General Regulation and Fund-

[2] REGULATION (EC) No 397/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 6 May 2009 amending Regulation (EC) No 1080/2006 on the European Regional Development Fund as regards the eligibility of energy efficiency and renewable energy investments in housing, OJ L 126/3 of 21.5.2009.

specific Regulations and together with the non-regulatory modifications presented in the Communications of 26 November 2008 and 3 June 2009, the Commission considers necessary, in the light of the experience up to now, to propose further modifications to the General Regulation. The objective of these revisions is to further facilitate the mobilisation of Community resources for the start-up of projects thereby accelerating both their implementation and the impact of such investments on the real economy.

4. BUDGETARY IMPACT

There is no impact on commitment appropriations since no modification is proposed to the maximum amounts of ESF financing provided for in the Operational Programmes for the programming period 2007-2013.

Where Member States decide to make use of the option to request 100% reimbursements during 2009 and 2010 there will be an impact on payment appropriations.

The analysis of the Member States' payment forecasts and the payment appropriations available in the budget for 2009 and the Draft Budget for 2010 show that the maximum additional payment appropriations to be paid under the 100% reimbursement option in 2009 and 2010 for the ESF programmes would represent approximately EUR 6.6 billion. This will be compensated by a reduced need for payment appropriations later in the programming period.

The Commission will set up a monitoring tool to supervise closely the consumption of the additional credits for the European Social Fund. For the payment claims submitted as of 1 January 2011, the regular co-financing rate agreed in the programme decision will apply.

The Commission believes that the proposed measures to simplify the implementation may significantly increase the pace of expenditure on the ground and consequently accelerate the submission of interim payments to the Commission.

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amending Regulation (EC) No 1083/2006 concerning general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund as regards simplification of certain requirements and as regards certain provisions relating to financial management

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the assent of the European Parliament,

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

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

Whereas:

(1) The current financial and economic crisis has created major challenges for the Community. Whilst important actions to counterbalance the negative effects of the crisis have already been taken, including amendments of the legislative framework, the actual impact of the financial crisis on the real economy, on the labour market and the citizens is only now widely felt. The pressure on national financial resources increases and necessitates taking further steps to alleviate this pressure through the maximum and optimal use of the Community funding.

(2) In order to facilitate the management of Community funding, to help accelerate the investments in the Member States and regions and to increase the impact of the funding on the economy it is necessary to further simplify the rules governing cohesion policy.

(3) Given the differences between the Funds and the objectives with regard to the definition of environment, it is appropriate, for the reasons of coherence and consistency, to apply only one threshold for the purpose of definition of major project. Given the importance of the investments in the environment, including those under the threshold provided in this Regulation, the Member States should ensure appropriate monitoring of all the these investments and inform the Commission in the annual implementation reports on operational programmes.

(4) It is also necessary to allow a possibility for a major project to cover more than one operational programme in order to enable implementation of such a major project covering different regions and objectives. This is of particular relevance in case of investments with a nation-wide or Community importance.

(5) It is necessary to make available financial engineering instruments in the measures for energy efficiency and renewable energy taking into account the importance of those measures in the Community and national priorities.

(6) In order to facilitate the adaptation of operational programmes to respond to the current financial and economic crisis, the Member States should provide an analysis justifying the revision of an operational programme instead of an evaluation.

(7) In line with the principle of sound financial management and the applicable national rules, revenues generated by operations are to be taken into account when calculating the public contribution. It is necessary to simplify the monitoring of revenues in order to align it with the overall programming cycle.

(8) For the reason of legal certainty it is necessary to clarify that expenditure becomes eligible from the date of the submission to the Commission of a request for revision of an operational programme only where it falls under a new category of expenditure added at the moment of the revision of that operational programme.

(9) The scope of the provision on the durability of operation should be clarified. It is appropriate, in particular, to limit the provisions to those operations co-financed by the ESF that fall under the state aid rules with an obligation to maintain investment or jobs created. Furthermore, it is necessary to exclude the application of that provision to those operations where, after their completion, they undergo a substantial modification through a cessation of productive activity due to a non fraudulent bankruptcy.

(10) It is necessary to clarify and simplify the information required for yearly reporting on financial implementation of an operational programme. Therefore it is appropriate to align the financial information required in the annual report on implementation of an operational programme with information provided in the statement of expenditure and to clarify the definition of financial indicators.

(11) As outlined in the Communication of the Commission of June 3 June 2009 on "A Shared Commitment for Employment", in order to counteract cash flow problems occurring in Member States as a result of financial constraints during the peak of the crisis and in order to speed up the implementation of active labour market measures aiming at supporting citizens and more specifically the unemployed or those at risk of unemployment, it is necessary to modify for a limited period of time the provisions concerning the calculation of interim payments. For this reason it is appropriate, without altering the national co-funding obligations which apply to operational programmes over the whole programming period, for the Commission to reimburse, where Member States so request, interim payment claims at 100% of the public contribution to each priority axis in operational programmes co-financed by the ESF.

(12) In order to simplify the payment of advances to beneficiaries of State aid and to limit the financial risks associated with such a payment, the scope of the admissible guarantees should be redefined.

(13) The requirements for statements of expenditure concerning financial engineering instruments should be simplified. In particular, management fees, besides management costs, should be considered as eligible expenditure.

(14) For reasons of consistency, it is appropriate that Member States re-use the amounts corrected on an operation included in a partial closure in case of irregularities detected by the Member States themselves.

(15) On the basis of experience it is appropriate to apply the reduction of amounts subject to the automatic decommitment rule by the amounts concerned for a major project from the date of the submission to the Commission of the application for that major project that fulfils all the requirements of the Regulation.

(16) In order to allow Member States to benefit from the simplification measures during the whole programming period and to ensure equal treatment, it is necessary to apply the amendments relating to Article 48(3), 56(2) and (3), 57, 78(2) and 78(6)(d) retroactively.

(17) Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999[3] was amended by Regulation (EC) No 397/2009[4] which introduced the eligibility rules for expenditure on energy efficiency and the use of renewable energy in existing housing in all Member States. Therefore it is appropriate to apply the amendments related to energy efficiency and the use of renewable energy from the date of the entry into force of Regulation (EC) No 397/2009.

(18) Once an application for a major project that fulfils all the requirements of the Regulation has been submitted, the amounts covered by the application should be protected from automatic decommitment. This protection should apply to all major project applications submitted from the beginning of the programming period and should apply retroactively, especially in view of the current financial crisis.

(19) As the unprecedented crisis affecting international financial markets necessitates a rapid response in order to counter effects on the economy as whole, other amendments should enter into force on the day following its publication in the *Official Journal of the European Union.*

(20) 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[5] should therefore be amended accordingly.

[3] OJ L 210, 31.7.2006, p. 1.
[4] OJ L 126, 21.5.2009, p. 3.
[5] OJ L 210, 31.7.2006, p.25.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1083/2006 is amended as follows:

(1) Article 39 is replaced by the following:

"*Article 39*

Content

As part of an operational programme or operational programmes, the ERDF and the Cohesion Fund may finance expenditure 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 whose total cost exceeds EUR 50 million (hereinafter "major projects")."

(2) Article 40 is amended as follows:

(a) the introductory phrase is replaced by the following:

"The Member State or the managing authorities shall provide the Commission with the following information on major projects:"

(b) point (d) is replaced by the following:

"(d) a timetable for implementing the major project and, where the implementation period is expected to be longer than the programming period, the phases for which Community co-financing is requested during the 2007 to 2013 programming period;"

(3) Article 41(1) and (2) is replaced by the following:

"1. The Commission shall appraise the major project, if necessary consulting outside experts, including the EIB, in the light of the factors referred to in Article 40, its consistency with the priorities of the operational programme or programmes concerned, its contribution to achieving the goals of those priorities and its consistency with other Community policies.

2. The Commission shall adopt a decision as soon as possible but no later than three months after the submission by the Member State or the managing authority of a major project, provided that the submission is in accordance with Article 40. That decision shall define the physical object, the amount to which the co-financing rate for the priority axis of the operational programme or programmes concerned applies, and the annual plan or plans of financial contribution from the ERDF or the Cohesion Fund."

(4) Article 44 is amended as follows:

(a) the first paragraph is replaced by the following:

"As part of an operational programme, the Structural Funds may finance expenditure in respect of an operation comprising contributions to support:

a) financial engineering instruments for enterprises, primarily small and medium sized ones, such as venture capital funds, guarantee funds and loan funds;

b) urban development funds, that is, funds investing in public private partnerships and other projects included in an integrated plan for sustainable urban development; and

c) funds or other incentive schemes providing loans, guarantees for repayable investments, or equivalent instruments for energy efficiency and use of renewable energy in buildings, including existing housing. "

(b) in the second paragraph, the introductory sentence is replaced by the following:

"When such operations are organised through holding funds, that is, funds set up to invest in several venture capital funds, guarantee funds, loan funds, urban development funds, funds or other incentive schemes providing loans, guarantees for repayable investments, or equivalent instruments for energy efficiency and use of renewable energy in buildings, including existing housing, the Member State or the managing authority shall implement them through one or more of the following forms:"

(5) Article 48(3) is replaced by the following:

"3. During the programming period, Member States shall carry out evaluations linked to the monitoring of operational programmes in particular where that monitoring reveals a significant departure from the goals initially set. Where proposals are made for the revision of operational programmes, as referred to in Article 33, analysis shall be provided on the reasons for the revision, including any implementation difficulties, and the expected impact of the revision, including that on the strategy of the operational programme. The results of evaluations or analyses shall be sent to the monitoring committee for the operational programme and to the Commission. "

(6) Article 55(3) and (4) is replaced by the following:

"3. Where it is objectively not possible to estimate the revenue in advance, the net revenue generated within five years of the completion of an operation shall be deducted from the expenditure declared to the Commission.

4. Where it is established that an operation has generated net revenue that has not been taken into account under paragraphs 2 and 3, such net revenue shall be deducted by the certifying authority at the latest at the time of submission of the documents under point (a) of Article 89(1) for the operational programme. The application for payment of the final balance shall be corrected accordingly."

(7) In Article 56 (3), the second subparagraph is replaced by the following:

"Where a category of expenditure is added at the moment of the revision of an operational programme referred to in Article 33, any expenditure falling under such category shall be eligible from the date of the submission to the Commission of the request for revision of the operational programme."

(8) Article 57 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. The Member State or managing authority shall ensure that an operation comprising investment in infrastructure or productive investment retains the contribution from the Funds only if it does not, within five years from its completion, undergo a substantial modification which is caused by a change in the nature of ownership of an item of infrastructure or the cessation of a productive activity and which affects the nature or the implementation conditions of the operation or gives to a firm or a public body an undue advantage.

Operations receiving contribution from the ESF shall be considered as not having retained the contribution only where they are subject to an obligation for maintenance of investment under the rules on state aid within the meaning of Article 87 of the Treaty and where they undergo a substantial modification caused by the cessation of productive activity within the period laid down in those rules.

Member States may reduce the time limits set out in the first subparagraph to three years in case of the maintenance of an investment or jobs created by SMEs."

(b) the following paragraph 5 is added:

"5. Paragraph 1 to 4 shall not apply to any operation which undergoes a substantial modification as a result of the cessation of the productive activity due to a non fraudulent bankruptcy."

(9) In Article 67(2), point (b) is replaced by the following:

"(b) quantification of the financial indicators referred to in Article 66(2) expressing the cumulative financial implementation of the operational programme, detailing for each priority axis the following:

(i) the total amount of certified eligible expenditure paid by beneficiaries and the corresponding public contribution;

(ii) the rate of the total amount of certified eligible expenditure paid by the beneficiaries and the total funding of the programme including Community funding and national counterpart;

Where appropriate, financial implementation in areas receiving transitional support shall be presented separately within each operational programme;"

(10) Article 77 is replaced by the following:

"*Article 77*

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

1. 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.

2. By way of derogation from the first subparagraph of paragraph 1, in the case of operational programmes co-financed by the ESF, interim payments by the Commission for statements of expenditure sent by the Member States by 31 December 2010 may, if a Member State so requests in order to facilitate implementation of anti-crisis measures, be made by paying 100% of the public contribution for each priority axis as mentioned under that priority axis in the statement of expenditure certified by the certifying authority. Where the Member State chooses this option, the Commission shall apply this system to all interim payments requests sent by 31 December 2010 for the given operational programme.

The difference between the total amount paid under the first sub-paragraph and the amount calculated under the first subparagraph of paragraph 1 shall not be taken into account to calculate interim payments for statements of expenditure sent after 31 December 2010. However, this difference shall be taken into account for the purpose of the provision under Article 79(1) and for the calculation of the payment of the final balance."

(11) Article 78 is amended as follows:

(a) paragraph 2, is amended as follows:

(i) point (a) is replaced by the following:

"(a) they shall be subject to a guarantee provided by a bank or other financial institution established in one of the Member States;"

(ii) the following subparagraph is added:

"Facility provided as a guarantee by a public entity or by the Member State itself shall be considered equivalent to a guarantee referred to in the first subparagraph of point (a)."

(b) paragraph 6 is amended as follows:

(i) point (d) is replaced by the following:

"(d) eligible management costs or fees; and"

(ii) the following point (e) is added:

"(e) any loans or guarantees for repayable investments from funds or other incentive schemes providing loans, guarantees for repayable investments, or equivalent instruments for energy efficiency and use of renewable energy in buildings, including existing housing."

(c) paragraph 7 is replaced by the following:

"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, financial engineering instruments for small and medium-sized enterprises or for energy efficiency and use of renewable energy in buildings, including existing housing, in the case of funds or other incentive schemes providing loans, guarantees for repayable investments, or equivalent instruments.

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, of small and medium-sized enterprises or for energy efficiency and use of renewable energy in buildings, including existing housing."

(12) In Article 88 (3), the following subparagraph is added:

"However, in cases where the irregularities in operations which have been subject to a declaration of partial closure are detected by controls carried out by the Member State, Article 98(2) and (3) shall apply. The statement of expenditure referred to in point (a) of paragraph 2 of this Article shall be adjusted accordingly."

(13) Article 94 (1) is amended as follows:

"When the Member State submits a major project application which meets all the requirements laid down in Article 40, the amounts potentially concerned by automatic decommitment shall be reduced by the annual amounts concerned by such major projects.

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

Article 2

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

However, points (5) and (7) of Article 1 shall apply from 1 August 2006, points (8), (11)(a), (11)(b)(i) and (13) of Article 1 shall apply from 1 January 2007 and points (4), (11)(b)(ii) and (11)(c) of Article 1 shall apply with effect from 10 June 2009.

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

Done at Brussels, […]

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. NAME OF THE PROPOSAL :

Proposal COUNCIL REGULATION (EC) No …/2009 amending Regulation (EC) No 1083/2006 concerning general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund as regards simplification of certain requirements and as regards certain provisions relating to financial management

2. ABM / ABB FRAMEWORK

Policy Area(s) concerned and associated Activity/Activities:

Regional Policy; ABB activity 13.03

Employment and social Affairs; ABB activity 04.02

3. BUDGET LINES

3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B.A lines)):

The proposed new action will be implemented on the following budget lines in 2009, and 2010:

- 04.0217 Convergence (ESF)
- 04.0219 Regional competitiveness & employment (ESF)

3.2. Duration of the action and of the financial impact:

In order to stimulate the implementation of cohesion programmes, it is proposed to undertake further simplifications of procedures allowing the highest possible use of Community funding while respecting the principle of sound financial management.

Out of the series of proposed measures, reimbursement of interim payments claims at 100% for a limited period (up to the end of 2010) for the ESF programmes, instead of applying the (lower) reimbursement rates established in the Operational Programmes, will have direct implication on the budgetary resources.

This measure would have financial consequences for 2009 and 2010 budgets as it requires an injection of additional payment appropriations. The increase of cash flow by raising the reimbursement rates would help to frontload expenditure on projects aiming to fight the crisis and to support the citizens most affected by the crisis across the entire European Union.

The analysis of the payment appropriations available in the budget for 2009 and the Draft Budget for 2010 show that the additional payment credits to be paid under the 100% reimbursement option in 2009 and 2010 for the ESF programmes would represent approximately EUR 6.6 billion overall.

3.3. Budgetary characteristics:

Budget line	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
04.0217	Non-comp	Diff	NO	NO	NO	**No** 1b
04.0219	Non-comp	Diff	NO	NO	NO	**No** 1b

4. SUMMARY OF RESOURCES

4.1. Financial Resources

4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

The following tables show the estimated impact of the proposed measures in 2009 and 2010.

EUR million (to 3 decimal places)

Expenditure type	Section no.		Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and later	Total
Operational expenditure[6]									
Commitment Appropriations (CA)	8.1	a	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Payment Appropriations (PA)		b	2,500	4,100	n.a	n.a.	n.a.	-6,600	0,000
Administrative expenditure within reference amount[7]									
Technical & administrative assistance (NDA)	8.2.4	c	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
TOTAL REFERENCE AMOUNT									
Commitment Appropriations		**a+c**	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Payment Appropriations		**b+c**	**2,500**	**4,100**	**n.a**	**n.a.**	**n.a.**	**-6,600**	**0,000**
Administrative expenditure <u>not</u> included in reference amount[8]									
Human resources and associated expenditure (NDA)	8.2.5	d	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6	e	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

Total indicative financial cost of intervention

TOTAL CA including cost of Human Resources		a+c +d +e	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
TOTAL PA including cost of Human Resources		b+c +d +e	n.a	n.a.	n.a	n.a.	n.a.	n.a.	n.a

6 Expenditure that does not fall under Chapter xx 01 of the Title xx concerned

7 Expenditure within article xx 01 04 of Title xx.

8 Expenditure within chapter xx 01 other than articles xx 01 04 or xx 01 05.

Co-financing details

EUR million (to 3 decimal places)

Co-financing body		Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and later	Total
……………………	f	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
TOTAL CA including co-financing	a+c +d+ e+f	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

4.1.2. *Compatibility with Financial Programming*

☒ Proposal is compatible with existing financial programming.

☐ Proposal will entail reprogramming of the relevant heading in the financial perspective.

☐ Proposal may require application of the provisions of the Interinstitutional Agreement[9] (i.e. flexibility instrument or revision of the financial perspective).

4.1.3. *Financial impact on Revenue*

☒ Proposal has no financial implications on revenue

☐ Proposal has financial impact – the effect on revenue is as follows:

NB: All details and observations relating to the method of calculating the effect on revenue should be shown in a separate annex.

[9] See points 19 and 24 of the Interinstitutional agreement.

EUR million (to one decimal place)

Budget line	Revenue	Prior to action [Year n-1]	Situation following action [Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5][10]
	a) Revenue in absolute terms		n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
	b) Change in revenue	*Δ*	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

(Please specify each revenue budget line involved, adding the appropriate number of rows to the table if there is an effect on more than one budget line.)

4.2. Human Resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.

Annual requirements	Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and later
Total number of human resources	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

5. CHARACTERISTICS AND OBJECTIVES

5.1. Need to be met in the short or long term

Given that it is linked to real expenditure incurred by beneficiaries, the temporary 100% reimbursement rate for ESF Operational Programmes would increase the cash flow to national, regional and local authorities and to beneficiaries, while stimulating measures to fight the crisis and to support the citizens most affected by the crisis. The difference between the total amount paid under the 100% co-financing rule and the amount calculated by applying the co-financing rate laid down in the decision on the operational programme will not be taken into account when the Commission will revert to the calculation based on the co-financing rate established for the programme in 2011. However, this difference shall be taken into account for the calculation of the payment of final balance and for the provisions under Article 79 (1) of the Regulation (EC) No 1083/2006.

10 Additional columns should be added if necessary i.e. if the duration of the action exceeds 6 years

5.2. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

By introducing more flexibility and increasing cash availabilities, the implementation of the operational programmes will be better placed to resist the negative impacts of the current economic downturn and to build a rhythm of implementation allowing achieving the objective of boosting growth and employment.

The proposal to increase reimbursement rates in 2009 and 2010 will contribute to the objectives of the European Economic Recovery Package to stimulate the economic growth in the EU regions by supporting creation of jobs and skills for the future.

5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

Further simplification of rules governing cohesion policy will have positive effects on the implementation of programmes on the ground. More flexibility provides an adequate reply to the current needs of the Member States for a larger margin of manoeuvre.

5.4. Method of Implementation (indicative)

Show below the method(s) chosen for the implementation of the action.

~~***Centralised Management***~~

~~***Directly by the Commission***~~

~~***Indirectly by delegation to:***~~

~~***Executive Agencies***~~

~~***Bodies set up by the Communities as referred to in art. 185 of the Financial Regulation***~~

~~***National public-sector bodies/bodies with public-service mission***~~

Shared ~~***or decentralised***~~ ***management***

With Member states

~~***With Third countries***~~

~~***Joint management with international organisations (please specify)***~~

6. MONITORING AND EVALUATION

6.1. Monitoring system

The Commission will set up a monitoring tool to supervise closely the consumption of the additional credits for the European Social fund. For the payment claims submitted as of 1 January 2011, the regular co-financing rate agreed in the programme decision will apply.

6.2. Evaluation

6.2.1. Ex-ante evaluation

Given the emergency situation requiring a very quick reaction, no ex-ante evaluation has been undertaken.

6.2.2. Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)

N/A

6.2.3. Terms and frequency of future evaluation

N/A

7. ANTI-FRAUD MEASURES

N.A.

8. DETAILS OF RESOURCES

8.1. Objectives of the proposal in terms of their financial cost

Commitment appropriations in EUR million (to 3 decimal places)

(Headings of Objectives, actions and outputs should be provided)	**Type of output**	**Av. cost**	**Year n**		**Year n+1**		**Year n+2**		**Year n+3**		**Year n+4**		**Year n+5 and later**		**TOTAL**	
			No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost
OPERATIONAL OBJECTIVE No.1 Sustain the implementation of the operational programmes																
Action 1 – 100% co-financing rate				0,000		0,000										0,000
TOTAL COST				**0,000**		**0,000**										**0,000**

8.2. Administrative Expenditure

8.2.1. Number and type of human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources (**number of posts/FTEs**)					
		Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5
Officials or temporary staff (XX 01 01)	A*/AD	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
	B*, C*/AST	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Staff financed by art. XX 01 02		n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Other staff financed by art. XX 01 04/05		n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
TOTAL		n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

8.2.2. Description of tasks deriving from the action

N/A

8.2.3. Sources of human resources (statutory)

(When more than one source is stated, please indicate the number of posts originating from each of the sources)

☐ Posts currently allocated to the management of the programme to be replaced or extended

☐ Posts pre-allocated within the APS/PDB exercise for year n

☐ Posts to be requested in the next APS/PDB procedure

☐ Posts to be redeployed using existing resources within the managing service (internal redeployment)

☐ Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

8.2.4. Other Administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)

EUR million (to 3 decimal places)

Budget line (number and heading)	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
1 Technical and administrative assistance (including related staff costs)							
Executive agencies	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Other technical and administrative assistance	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
- intra muros	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
- extra muros	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Total Technical and administrative assistance	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

8.2.5. Financial cost of human resources and associated costs not included in the reference amount

EUR million (to 3 decimal places)

Type of human resources	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later
Officials and temporary staff (XX 01 01)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Staff financed by Art XX 01 02 (auxiliary, END, contract staff, etc.) (specify budget line)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Total cost of Human Resources and associated costs (NOT in reference amount)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

Calculation– ***Officials and Temporary agents***   *Reference should be made to Point 8.2.1, if applicable*   n.a.   Calculation– ***Staff financed under art. XX 01 02***   *Reference should be made to Point 8.2.1, if applicable*   n.a.

8.2.6. Other administrative expenditure not included in reference amount

EUR million (to 3 decimal places)

	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
XX 01 02 11 01 – Missions	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
XX 01 02 11 02 – Meetings & Conferences	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
XX 01 02 11 03 – Committees	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
XX 01 02 11 04 – Studies & consultations	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
XX 01 02 11 05 - Information systems	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
2 Total Other Management Expenditure (XX 01 02 11)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
3 Other expenditure of an administrative nature (specify including reference to budget line)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Total Administrative expenditure, other than human resources and associated costs (NOT included in reference amount)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

Calculation - ***Other administrative expenditure <u>not</u> included in reference amount***   n.a.