



EUROPEAN COMMISSION

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CDRR/04/0051/00

Subject:: Legally binding commitment and implementation of the automatic decommitment rule at the closure of the programming period 2000-2006

At the 84th and 85th meetings of the CDCR, the Irish delegation raised two questions relating to the final date of the legally binding commitments for projects and the implementation of the automatic decommitment at the closure of the programming period.

1. DEADLINE FOR THE BUDGETARY AND LEGALLY BINDING COMMITMENT

The Irish delegation asked whether the commitments for projects could be made after the last annual commitment from the Community budget to a programme. For example if the last annual commitment into a programme occurs in 2006 with a final date for the eligibility of expenses being 31 December 2008, could commitments be made to projects after 31 December 2006.

For the 1994-1999 programming period, the legal and financial commitments had to be made into projects before the end of 1999. However, Council Regulation (EC) No 1260/1999 does not impose a similar requirement for the current programming period. Article 30(2) of EC Regulation n°1260/1999 states that the **final date for the eligibility of expenditure** is laid down in the decision to grant a contribution from the Funds. The final date for payment by the final beneficiary (i.e. the final date at which expenditure can be considered eligible) is clearly mentioned in Article 5 of the decision granting the assistance: it is fixed at 31 December 2008 as a rule, and 30 April 2009 for expenditure incurred by bodies granting assistance under a State Aid regime (Article 9(1) of EC regulation n° 1260/1999).

The regulation does **not** foresee any given date **for the budgetary and legally binding commitment**. As a result, it can be considered that legally binding commitments should be made prior to the final date for the eligibility of expenditure in order to enable final beneficiaries to carry out payments by 31 December 2008 at the latest or by 30 April 2009 for the bodies granting assistance under Article 9(1) of Regulation (EC) No 1260/1999 .

2. IMPLEMENTATION OF THE AUTOMATIC DECOMMITMENT AT THE CLOSURE OF THE PROGRAMMES

The Irish delegation questioned how the N+2 rule will operate for the last annual commitment (i.e. 2006 commitment in most programmes). They ask for a clarification of the date on which the payment claim covering the last year commitment to the programme will have to be sent to the Commission: 31 December 2008 or 30 June 2009.

The relevant part of Article 31 (2) provides that:

“The Commission shall automatically decommit any part of a commitment which has not been settled by the payment on account or for which it has not received an acceptable payment application, as defined in Article 32(3), by the end of the second year following the year of commitment or, where appropriate and for the amounts concerned, following the date of a subsequent Commission decision necessary in order to authorise a measure or an operation or by the end of the deadline for the transmission of the final report referred to in Article 37(1); the contribution from the Funds to that assistance shall be reduced by that amount.”

Regulation (EC) No1260/1999 therefore sets out three events which, in the alternative, determine the period within which a payment application must be received against a commitment that has been opened for a given year;

- first, by the end of the second full year after the year of the commitment itself, or,
- second, by the end of the second full year after the year of a decision subsequent to that commitment where this decision is needed to authorise a measure or operation (this would be the case with a major project under Article 28, or a state aid scheme contained in an operational programme); or
- finally, by the end of the deadline for the transmission of the final report. That deadline, laid down in Article 37(1) of Regulation (EC) No1260/1999, falls six months after the final date of eligibility of the expenditure. This final eligibility date is itself laid down in the decision approving the financial assistance (Article 30(2)) and will be either 31 December 2008 or 30 April 2009 in the case of expenditure incurred by bodies granting assistance under State Aid regimes

If the cut-off date were 31 December 2008 for applications for reimbursement against the 2006 commitment, this interpretation of Article 31(2) would leave no commitment open on 30 June 2009 or 31 October 2009, the two deadlines for transmission of the final report, and so no question of decommitment of an unclaimed part of a commitment would arise at that point.

Therefore, in order to preserve the meaning of article 31 (2), the Directorates General in charge of the Structural Funds agree that automatic decommitment for the final annual commitment based on decisions to grant a contribution for the Funds must be the end of the deadline for transmission of the final report, a deadline which falls at the latest six months after the final date of eligibility of the expenditure as set out in the decisions themselves. Where the decision provides two dates, the six months are to be counted from the latest one, i.e. 30 April 2009 .

Accordingly, the automatic decommitment will not be made by 31 December 2008 but after the deadline expires for the transmission of the final report, i.e. six months after the final date of eligibility of expenditure.

3. THE DATE OF THE TRANSMISSION OF THE DOCUMENTS PROVIDED BY ARTICLE 32

Another issue is the start date for calculating the deadline for transmission of the documents for the closure, in the case where the decision approving the assistance indicates two end dates for the payments by the final beneficiary. The final date for payment by the final beneficiaries mentioned in Article 5 of the decision granting the assistance is generally fixed at 31 December 2008, this date being extended to 30 April 2009 for expenditure incurred by bodies granting assistance under State Aid regimes.

With regard to the final balance, Article 32(4) of Council Regulation 1260/1999 provides that, at the closure of the assistance, the Member States shall transmit to the Commission an application for payment, defined as the set of the following documents:

- A certified statement of expenditure actually paid within six months of the deadline for payment laid down in the decision ;
- The final report on implementation at the latest six months after the final date of eligibility of the expenditure pursuant to Article 37 (1) ;
- The statement referred to in Article 38 (1) f.

It is clear from this provision, and from the related provisions referring to the certified statement of expenditure actually paid (Article 38(1)(d)), the final report on implementation (Article 37) and the statement of assurance (Article 38(1)(f)), that for each programme, each of those document is to provided once and not in "instalments".

The legislation does not envisage, for example, a partial final report for an operational programme to be completed by a second final report for that part of the expenditure not covered in the first document. As a result, where two possible deadlines are open for transmission of any of the documents required under Article 32(4), the later one would have to be chosen for submission of a single document covering the entirety of the assistance.

Thus, if the concerned programme does not involve any expenditures incurred by bodies granting assistance under State Aid regimes, the application for payment (final payment claim, final report, declaration provided by Article 38 (1) f)) will have to be sent by the Member States six months after the deadline for payment, by 30 June 2009 at the latest.

On the contrary, for a programme, which the final payment claim could include expenditures incurred by bodies granting assistance under State Aid regimes, the application for payment at the closure will have to be sent to the Commission by 31 October 2009 at the latest.

Any decommitment concerning the 2006 commitment will only apply if no application for payment is sent to the Commission either by 30 June 2009 or by 31 October 2009 and obviously if the payment claim does not cover all open commitments (apart from the exceptions foreseen in Article 31).