



**EUROPEAN COMMISSION**

DIRECTORATE-GENERAL

REGIONAL POLICY

DIRECTORATE-GENERAL

EMPLOYMENT, SOCIAL AFFAIRS and EQUAL OPPORTUNITIES

## **GUIDANCE NOTE ON MAJOR PROJECTS SPANNING OVER TWO PROGRAMMING PERIODS**

***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's 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.*

## **1. INTRODUCTION AND PURPOSE OF THE NOTE**

In the programming period 2007-13, the managing authorities and Commission services have in many instances observed slippages in the implementation timetable of major projects approved by the Commission. Other major projects have a completion target set in 2014 or even 2015 and thus risk not to be completed on time. In some cases major project applications have been submitted to the Commission with unrealistic timetables raising doubts on the capacity of the beneficiaries to complete the investment within the envisaged deadlines.

Member States requested from the Commission clarification on how to apply the rules for major projects which may not be completed on time by the end of the 2007-13 programming period. The note recalls the current framework and basic principles and sets out the steps to follow in order to handle the risks arising from uncompleted projects at the end of the programming period 2007-13.

## **2. LEGAL BASIS**

Articles 39-41 of Regulation (EC) 1083/2006

Annexes XXI and XXII of Commission Regulation (EC) 1828/2006 (replaced by Annex II, of Commission Regulation (EC) 832/2010)

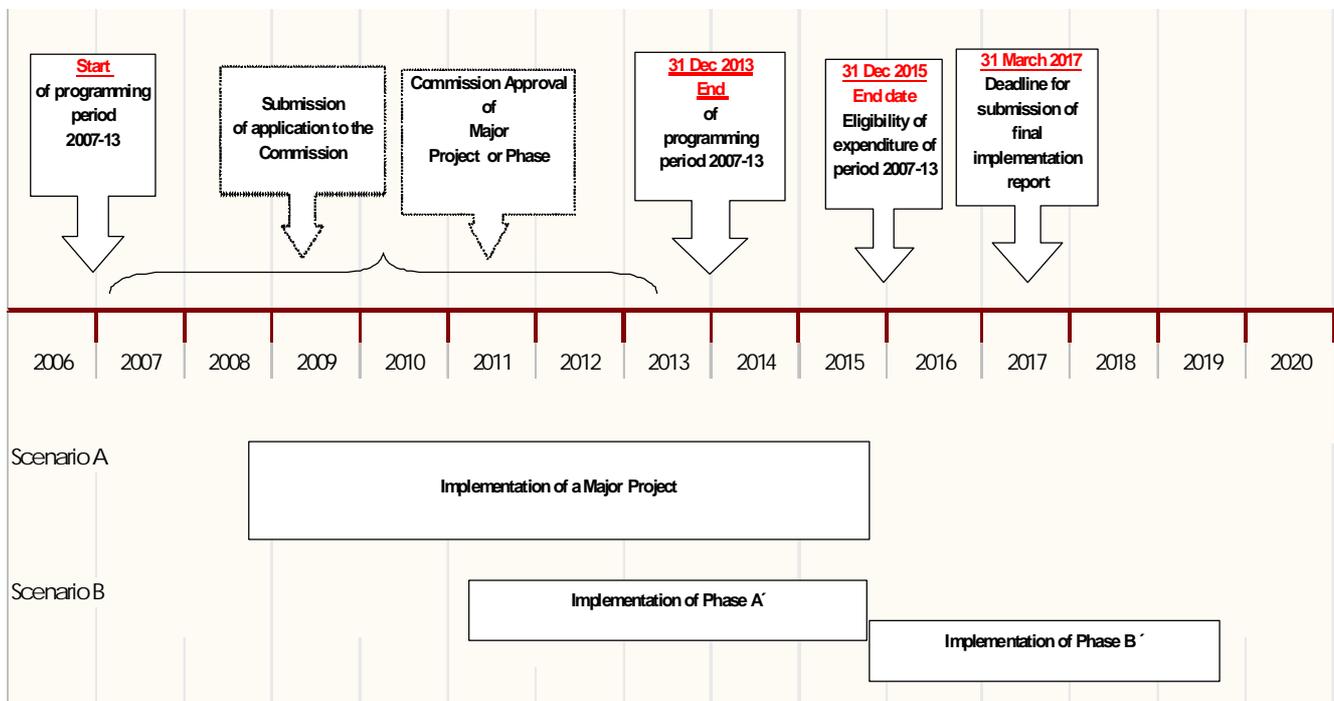
## **3. MAJOR PROJECTS IN THE PROGRAMMING PERIOD 2007-13**

### ***3.1 Commission decision for implementing major projects and possible phasing***

The Regulation provides for two possible scenarios for implementing major projects (Figure 1). Either a major project is implemented in its entirety and put in operation within the framework of the current programming period or a project is split in phases, a first phase being implemented within the current programming period and the next phase - completing the project in its entirety - being implemented over the programming period 2014 – 2020. Some time overlap between two phases can exist the same way as it is the case with the successive programming periods.

Article 41(2) provides that the decision of the Commission on major projects *"shall define the physical object, the amount to which the co-financing rate of the priority axis of the operational programme(s) concerned applies and the annual plan of financial contribution from the ERDF or the Cohesion Fund"*. The first element therefore, to be defined in the Commission decision is the physical object of the major project for which the EU co-financing is sought.

**Figure 1: Timeline for implementation of a major project**



\* The implementation of phases may often overlap

As set out in COCOF note n° 08/0006/06, *Contents and Thresholds of Commission decisions*, the description of the physical object, in Annex to the **Commission decision**, should specify *"the main essential characteristics of the operations"* without being too detailed but in a way which is *"sufficiently precise in order to identify the physical object and the nature of the project"*. Further, where a major project has been approved by the Commission, the note makes clear that *"the national authorities are responsible for meeting all the normal conditions of co-financing and for the conformity of the operation in its final form with the approved decision"*. That is, and in application of sound financial management, national authorities have a duty to ensure that within the programming period the co-financed major project is

**implemented, completed and put in operation in conformity with the Commission decision approving it**, thus enabling it to achieve the goals of the priority axis/axes to which it relates and to fulfil its purpose and function.

In the case of **project phasing**, the **Commission decision** can only concern the project phase which has been submitted to the Commission for approval in the programming period 2007-13, defining the physical object corresponding to the particular phase to be implemented and including a reference to the subsequent project phases in view of completing the project in its entirety. As above **the project phase should be completed in conformity with the Commission decision approving it** so as to be able to fulfil the goals (even if reduced) of the priority axis to which it relates. The **project phase should be complete and ready to be used for its purpose and/or function specified in the Commission decision, even if the full design capacity cannot be exploited because of restrictions linked to incomplete subsequent phases**. For example, in a railway project this may mean that a first section of a rail line is completely renovated and given to traffic by connecting it to the existing network while the remaining sections of the line will be upgraded in the next phase. <sup>1</sup>

### ***3.2 The planned phasing of a Major project***

It is customary that a project may need from the start to be divided into phases, for example, due to budgetary, time or technical constraints. In this case, the Member State or the managing authority should submit an application on the basis of Article 40 (d), dividing the project into phases so that certain phase or phases can be completed within the programming period 2007-13, leaving the implementation of a subsequent phase into the next period. The end date for the eligibility of expenditure incurred during a phase which is implemented in the 2007-13 programming period is the 31 December 2015 (Figure 1).

While the phasing of infrastructure projects can be envisaged, no phasing of productive investments (in the meaning of Article 3, Regulation (EC) 1080/2006) should be allowed. This type of investments should correspond to a clear industrial logic and should be able to be

---

<sup>1</sup> . Another example could be the construction of a Metro line. The Phase I (funded by NSRF 2007-2013) in a Metro project may include the completion of civil engineering works and basic electrification for 3 km tunnel and 3 stations, while phase II (funded by Cohesion Policy framework 2014-2020) will include the completion of civil engineering works for the remaining 2 km of tunnel and the remaining 2 stations, as well as all architectural finishes of the stations, and completion of further electromechanical systems.

implemented within one programming period as reflected also in the Regional Aid Guidelines which apply from 1 January 2007 until 31 December 2013.

To enable the project phasing, the major project should be divided into at least two distinct, identifiable financial and physical or development phases corresponding to the forms of assistance concerned. A project phase should be defined in such a way so that when effectively implemented it can fulfil a clear purpose and/or function.. For example, a first university building is completed which can receive students and deliver courses (purpose and function of 1<sup>st</sup> phase are satisfied) although a second building is foreseen to be build in the next phase for collaborative research projects by academia and industry. In another case, during the first phase a bridge is built which subsequently is connected to the local transport network. Therefore during the first phase the function is fulfilled but not the purpose of the project which is fulfilled in the second phase.

The major project application should provide the description of the phase which will be implemented in the 2007-13 programming period and make reference to the subsequent project phases and their implementation timetable in view of the completion of the entire project. Where the division into phases is necessary, the managing authority should specify the criteria which have been used to determine the division of the project into phases (see application form of Annex XXI to Commission Regulation 1828/2006, section B.4.1 points (b) to (c) as amended by Commission Regulation (EC) 832/2010). Where the CBA and EIA procedure relate to the whole project then separate CBA and EIA may not be required for each phase, though this is to be assessed case by case.

In order to determine whether a project or project phase falls within the scope of Articles 39 and 40, *the total cost of the investment has to be considered and not just only one particular phase of it*. The total cost must correspond to the total cost taken into account in Section H.1 of the application form (Annexes XXI of the Commission implementing regulation 1828/2006). This total cost should correspond to a project, seen as a *self-sufficient unit of analysis*, for which the CBA and EIA assessment are carried out. The breakdown of costs to be considered in applying the major projects threshold is given in section H.1 of the application form. If the total cost is above the €50 million threshold set out in Article 39, even if the project should be split between two programming periods, a major project application should be submitted to the Commission by the Member State or the responsible managing authority. In the particular case,

where the project phase considered for financing in the 2007-2013 programming period encompasses only preparation (i.e. studies, planning and design, procurement preparation), only the estimated total cost of the preparatory phase is to be taken into account when determining whether it exceeds the €50 million threshold.

### ***3.3 Structural Funds financing of phased projects in the programming period 2014-20***

It should be noted that the approval of a project phase by the Commission only allows managing authorities to implement the relevant major project within the programming period 2007-13.

The EU financing of subsequent phases will have to be considered in conformity with the Regulations of the programming period 2014-20. To the extent that the initial planning and budget were respected for the first phase, the task of the Member State or managing authority concerning the subsequent phase(s) may be greatly facilitated by using the same CBA and EIA as for the previous phase.

In some cases, however, the phasing of a project may require the update of certain documents or procedures such as the original CBA or EIA if certain parameters of the project or the conditions of implementation have changed significantly, for example, modification of the project, a revised timetable for completion of the overall project, expiry of construction permits, increases in projects costs, changes in expected revenues etc.

As a good practice, the Commission recommends that a list of phased major projects to be continued over the next programming period is established and agreed between the Commission and the Member States concerned.

When the Member State is unable to complete a project, render it functional and put it in operation a financial correction to recover unduly paid sums may become necessary in application of Article 57(3) of Regulation 1083/2006.

In all cases, for the programming period 2014-20 the new Regulations will apply.

#### **4. DEALING WITH PROJECTS WHICH CANNOT BE COMPLETED BY THE END OF THE PROGRAMMING PERIOD 2007-13**

Managing authorities and beneficiaries have responsibility to ensure that a co-financed project is implemented, completed and put to operation within the programming period. To this end, the two year overlap between programming periods provides an adequate time for ensuring a smooth transition from one programming period to the next.

Member States and managing authorities are requested to screen in 2012 the implementation of all major projects submitted to the Commission, including those already approved, in order to clarify which of them are likely to be completed by the 31 December 2015 deadline and which not. A first screening of all major projects is necessary in order to ensure the effective allocation and use of available funds. The Commission will assess the Member States' proposals for phasing with a view to agree on new timetables and to the amendments of the Commission decisions of the already approved projects in 2013. If the need for phasing of a major project appears after that, the possibility of its phasing will have to be individually assessed taking into account the complexity of the design factors and other variables affecting the particular project.

In addition, Member States and managing authorities will need to make sure that for any major project to be submitted in the course of 2012 and (if needed) within 2013, the major project application addresses effectively the issue of whether or not the project can be completed within the 2007-13 programming period or needs to be divided into phases. Halfway through the programming period it is neither correct nor acceptable to submit project applications including unrealistic timetables.

Despite these measures, in certain cases the forced splitting of a project between two programming periods may become necessary, for example, when a project is delayed despite the substantial progress in its implementation, leaving only a small part of the project unfinished at the end of the programming period. The conditions for the continued EU financing, if any, between two programming period in this case, i.e. the *bridging* of a project,

will be detailed in the closure guidelines for the 2007-13 programming period to be presented by the Commission in 2012.