



EUROPEAN PARLIAMENT

2009 - 2014

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*Committee on Regional Development*

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**2009/0107(COD)**

3.2.2010

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## **DRAFT REPORT**

on the proposal for a regulation of the European Parliament and of the Council 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 provisions relating to financial management  
(COM(2009)0384 – C7-0003/2010 – 2009/0107(COD))

Committee on Regional Development

Rapporteur: Evgeni Kirilov

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION .....	5



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council 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 provisions relating to financial management  
(COM(2009)0384 – C7-0003/2010 – 2009/0107(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the proposal for a regulation (COM(2009)0384),
  - having regard to Article 161 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C7-0003/2010),
  - having regard to the Communication from the Commission to the European Parliament and the Council entitled "Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures" (COM(2009)0665),
  - having regard to Article 294(3) and Article 177 of the Treaty on the Functioning of the EU,
  - having regard to the opinion of the Economic and Social Committee,
  - after consulting the Committee of the Regions,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Regional Development and the opinions of the Committee on Budgets and the Committee on Employment and Social Affairs (A7-0000/2010),
1. Adopts the position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  2. Instructs its President to forward its position to the Council, to the Commission and to the national parliaments.

## Amendment 1

### Proposal for a regulation – amending act Recital 9

*Text proposed by the Commission*

(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.

*Amendment*

(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 ***actions within the scope of assistance from the ESF*** that fall under the state aid rules with an obligation to maintain investment. 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.

Or. en

## Amendment 2

### Proposal for a regulation – amending act Recital 11

*Text proposed by the Commission*

***(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***

*Amendment*

***deleted***

*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.*

Or. en

### **Amendment 3**

#### **Proposal for a regulation – amending act Recital 12a (new)**

*Text proposed by the Commission*

*Amendment*

*(12a) Due to exceptional circumstances and given the serious and unprecedented impact of the current economic and financial crisis on the budgets of Member States, an additional pre-financing instalment for 2010 is needed for the Member States worst hit by the crisis, in order to allow for a regular cash flow and to facilitate payments to beneficiaries during programme implementation.*

Or. en

### **Amendment 4**

#### **Proposal for a regulation – amending act Recital 14a (new)**

*Text proposed by the Commission*

*Amendment*

*(14a) It is appropriate to extend the deadline for the calculation of the automatic decommitment of the annual budget commitment related to 2007 total annual contribution to improve the absorption of funds committed for certain*

*operational programmes. Such flexibility is necessary due to slower than expected start up and late approval of the programmes.*

Or. en

## Amendment 5

### Proposal for a regulation - amending act Recital 20a (new)

*Text proposed by the Commission*

*Amendment*

*(20a) Following, inter alia, the change in the decision-making process resulting from the entry into force of the Lisbon Treaty, amendments provided for by this Regulation have not been introduced in time to prevent the application of current Article 93(1) of Regulation 1083/2006. Consequently, decommitments made by the Commission would result, pursuant to Article 11 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (\*) (the Financial Regulation) in cancelling appropriations of financial year 2007 which should be spread over the financial years 2008 to 2013 in implementation of the rules introduced by this Regulation. It is therefore appropriate, as a transitory measure, to provide for the possibility to reconstitute as necessary the corresponding appropriations for the purposes of implementing the amended decommitment rules,*

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\* OJ L 248, 16.9.2002, p. 1.

Or. en



## Amendment 6

### Proposal for a regulation – amending act

#### Article 1 – point 4 – point a

Regulation (EC) No 1083/2006

Article 44 – paragraph 1 – point c

#### *Text proposed by the Commission*

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.

#### *Amendment*

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 *in* existing housing.

Or. en

## Amendment 7

### Proposal for a regulation – amending act

#### Article 1 – point 4 – point b

Regulation (EC) No 1083/2006

Article 44 – paragraph 2 – introductory part

#### *Text proposed by the Commission*

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:

#### *Amendment*

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 *in* existing housing, the Member State or the managing authority shall implement them through one or more of the following forms:

Or. en

## Amendment 8

### Proposal for a regulation – amending act

#### Article 1 – point 7

Regulation (EC) No 1083/2006

Article 56 – paragraph 3 – subparagraph 2

#### *Text proposed by the Commission*

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.

#### *Amendment*

Where a **new** category of expenditure **as referred to in Table 1 of Part A of Annex II to Commission Regulation (EC) No 1828/2006\*** is added at the moment of the revision of an operational programme referred to in Article 33 **of this Regulation**, 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.

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\* *OJ L 371, 27.12.2006, p. 1.*

Or. en

## Amendment 9

### Proposal for a regulation – amending act

#### Article 1 – point 8 – point a

Regulation (EC) No 1083/2006

Article 57 – paragraph 1 – subparagraph 2

#### *Text proposed by the Commission*

**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.

#### *Amendment*

**Actions falling within the scope of assistance** 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 **applicable** rules on state aid within the meaning of **Article 107** 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.

## Amendment 10

### Proposal for a regulation – amending act

#### Article 1 – point 8 – point a

Regulation (EC) No 1083/2006

Article 57 – paragraph 1 – subparagraph 3

#### *Text proposed by the Commission*

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.

#### *Amendment*

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

Or. en

## Amendment 11

### Proposal for a regulation – amending act

#### Article 1 - point 9

Regulation (EC) No 1083/2006

Article 67 - paragraph 2 - point b - point ii

#### *Text proposed by the Commission*

(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;

#### *Amendment*

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

Or. en

## Amendment 12

### Proposal for a regulation – amending act

#### Article 1 – point 10

Regulation (EC) No 1083/2006

Article 77

***(10) Article 77 is replaced by the following:***

***deleted***

***"Article 77***

***Common rules for calculating interim payments and payments of 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.*

Or. en

### Amendment 13

#### Proposal for a regulation – amending act

##### Article 1 – point 11 a (new)

Regulation (EC) No 1083/2006

Article 82 – paragraph 1 – subparagraph 2 – point (f) (new)

*Text proposed by the Commission*

*Amendment*

*(11a) Article 82(1) is amended as follows:*

*(a) in the second subparagraph, the following point is added:*

*"(f) for Member States that were granted loans in 2009 in accordance with Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term assistance for Member States' balances of payments \*, or, Member States with a GDP decrease in 2009 of more than 10 % in real terms in comparison to 2008: in 2010, 2 % of the contribution from the Cohesion Fund and 4 % of the contribution from the European Social Fund to the operational programme.*

*\* OJ L 53, 23.2.2002, p. 1."*

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Or. en

## Amendment 14

### Proposal for a regulation – amending act

#### Article 1 – point 11a – point (b) (new)

Regulation (EC) No 1083/2006

Article 82 – paragraph 1 – subparagraph 3 (new)

*Text proposed by the Commission*

*Amendment*

***(b) the following subparagraph is added***

***"For the purpose of applying the criteria referred to in point (f) of the second subparagraph, GDP figures shall be based on Community statistics published in November 2009 \*\*.***

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***\*\* European Economic Forecast Autumn 2009 (EUROPEAN ECONOMY, No. 10, 2009, Office for Official Publications of the EC, Luxembourg)"***

Or. en

## Amendment 15

### Proposal for a regulation – amending act

#### Article 1 – point 12

Regulation (EC) No 1083/2006

Article 88 – paragraph 3 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

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.

However, in cases where the irregularities in operations which have been subject to a declaration of partial closure are detected 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.

Or. en

## Amendment 16

### Proposal for a regulation – amending act

#### Article 1 – point 12 a (new)

Regulation (EC) No 1083/2006

Article 93 – paragraph 1

*Text proposed by the Commission*

*Amendment*

*(12a) Article 93 is amended as follows*

*(a) paragraph 1 is replaced by the following:*

**"1. The Commission shall automatically decommit any part of *the amount calculated in accordance with the second subparagraph* in an operational programme that has not been used for payment of the pre-financing or interim payments or for which an application for payment has not been sent in conformity with Article 86 by 31 December of the second year following the year of budget commitment under the programme, with the exception mentioned in paragraph 2.**

***For the purpose of the automatic decommitment, the Commission shall calculate the amount by adding one sixth of the annual budget commitment related to 2007 total annual contribution to each of 2008 to 2013 budget commitments."***

Or. en

## Amendment 17

### Proposal for a regulation – amending act

#### Article 1 – point 12 a – point b (new)

Regulation (EC) No 1083/2006

Article 93 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***(b) the following paragraph is inserted after paragraph 2:***

***"2a. By way of derogation from paragraph 1, first subparagraph, and paragraph 2, the deadlines for automatic decommitment shall not apply to the annual budget commitment related to 2007 total annual contribution."***

Or. en

## **Amendment 18**

### **Proposal for a regulation – amending act Article 1 a (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 1a Transitional measures***

***In order to meet the exceptional circumstances of the transition to the decommitment rules introduced by this Regulation, appropriations which have been cancelled because of decommitments made by the Commission for the financial year 2007 in the implementation of the first subparagraph of Article 93(1) and Article 97 of Regulation 1083/2006, pursuant to Article 11 of the Financial Regulation, shall be reconstituted to the extent necessary for the implementation of the second subparagraph of Article 93(1) of Regulation 1083/2006.***

Or. en

## **Amendment 19**

### **Proposal for a regulation – amending act Article 2**

*Text proposed by the Commission*

*Amendment*

This Regulation shall enter into force on

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.

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), **(10)(a)**, **(10)(b)(i)**, (13) and **(14)** of Article 1 shall apply from 1 January 2007 and points (4), **(10)(b)(ii)** and **(10)(c)** of Article 1 shall apply with effect from 10 June 2009.

Or. en