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THE EUROPEAN UNION**

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ADDENDUM TO "I/A" ITEM NOTE

from: General Secretariat of the Council

to: COREPER/COUNCIL

No Cion prop.: 13403/11 FSTR 30 FC 30 REGIO 62 SOC 679 CADREFIN 67 FIN 566
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Subject: Proposal for a Regulation of the European Parliament and of the Council amending
Council Regulation (EC) No 1083/2006 as regards repayable assistance and
financial engineering (**first reading**)

- Adoption of the legislative act (LA + S)

= Statements

COMMON GUIDELINES

Consultation deadline: 9.12.2011

Statement by the Council

The Council confirms that considering the aim of greater legal security and clarity concerning the application of an existing practice, the amendments regarding repayable assistance shall be without prejudice for the application of such forms of assistance in the next programming period 2014-2020.

Statement by the Commission
(on the scope of definition of a credit line)

The Commission proposal on the amendment of Council Regulation (EC) No 1083/2006 introduces a new Section 3a on repayable assistance, including provisions on forms of repayable assistance (Article 43a) and its reuse (Article 43b).

As to the scope of the repayable assistance, the proposal provides for two distinct forms of repayable assistance: a) reimbursable grant and b) credit line, defined under Article 2 as new points 8 and 9. It is also made clear in the proposal that declarations of expenditure concerning repayable assistance are submitted in line with Article 78(1) to (5).

The Commission would like to underline that given its specific placement under a separate section, the term credit line, as defined in Article 2(9), can only be used in relation to repayable assistance.

Statement by the Commission
(on results of the mapping exercise relating to cases of repayable assistance)

The amendment reflects the results of a mapping exercise and takes account of information provided by Member States. In this mapping exercise, the Commission identified schemes or operations which are based on repayable assistance defined as reimbursable grants or credit lines, but which do not have the characteristics of financial engineering instruments as defined in Article 44 of Council Regulation (EC) No 1083/2006. This amendment aims at providing legal security to Member States which are implementing such types or schemes of operations. For these types of schemes or operations, the statement of expenditure is submitted in accordance with the rules applicable for grants as set out in Article 78(1) to (5) of the same regulation.

To the Commission's best knowledge, the new provisions cover all operations identified in the mapping exercise which have not given rise to any doubts that they fall within the definitions now laid down in the amendment.

Statement by the Commission
(on timely spending from financial engineering instruments)

New forms of finance for assistance have been developed in the 2007-2013 programming period, moving away from traditional grant-based financing to revolving forms of finance. The European Commission recognises the importance of the financial engineering instruments as vehicles for the more effective use of Structural Funds and as catalysts of public and private resources to achieve the investment levels needed to implement the Europe 2020 Strategy.

At the same time, the Commission takes note of the view of the Court of Auditors on the need to ensure a timely utilisation of the resources made available through the funds created through the financial engineering instruments.

The Commission proposal aimed to introduce a legal obligation in order to ensure that the financial contribution paid by managing authorities for establishing or contributing to financial engineering instruments is spent for eligible expenditure within a timeframe of two years from the date of the certified statement of expenditure which includes the payment into the fund.

The Commission recognises the position of the Member States not to have the above provision in the current legislation and is looking forward to the debate on timely spending in the framework of the negotiations on the cohesion policy legislative package for the 2014-2020 period.

**Statement by Slovenia, the Czech Republic, Lithuania, Hungary,
Slovakia, United Kingdom and Latvia**
(on application of financial engineering to the Cohesion Fund)

Slovenia, the Czech Republic, Lithuania, Hungary, Slovakia, the United Kingdom and Latvia fully share the view that financial engineering instruments are important vehicles for the more effective use of Structural Funds and as catalysts of public and private resources to achieve the investment levels needed to implement the Europe 2020 Strategy. With the use of financial engineering we can clearly achieve more results with the same amount of public cohesion policy funding.

Given that the scope of Cohesion Fund in 2007-2013 period has been expanded also to non-major projects, including those in the area of sustainable development, we have proposed to extend the application of financial engineering also to the Cohesion Fund. Although the proposal received wide support from the Member States it has not been included in the text of the Proposal for Regulation amending Council Regulation (EC) No 1083/2006 as regards repayable assistance, financial engineering and certain provisions related to statement of expenditure.

We see this as a missed opportunity as regards how to leverage the already disposable cohesion policy funds in the present financial framework, which will as a consequence, due to the restrictive provision of the general regulation under discussion, need to be provided as simple grants only.

We welcome the Commission's intention to make Cohesion Fund eligible for financial engineering in the 2014-2020 period. It is therefore unfortunate that we were not able to use the current period at least to introduce pilot schemes, if necessary in a limited number of fields (e.g. energy efficiency and renewable energy), thereby speeding up the start of implementation post 2014.

Statement by Portugal, Hungary and Latvia

(on reimbursements under repayable assistance operations)

Portugal, Hungary and Latvia consider that in order to ensure greater legal security and clarity concerning the application of an existing practice, the amounts reimbursed under repayable assistance operations, in accordance with art. 43a-b shall not be considered as deductions or withdrawals within the meaning of article 80 of the General Regulation.

Statement by the Netherlands

(on the use of financial instruments)

The Netherlands stresses the importance of quality of legislation and legal certainty. Whereas discussions are ongoing about the desired form and criteria for the use of financial instruments, most notably in the framework of the Financial Regulation, this particular proposal should not give precedence to any future decisions on the use of financial instruments. Only when the preconditions for the use of such financial instruments have been properly laid down in legislation following the appropriate legal procedures, should financial instruments be allowed to be set up. This urges for clearer provisions regarding the conditions under which financial instruments may be set-up and used, or not. The Netherlands reluctantly approves of this proposal on financial engineering and will negatively assess any future attempts to legalise financial instruments retroactively.

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