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**ADDENDUM 5 to NOTE**

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from :            Presidency  
to:                Permanent Representatives Committee (part 2)/Council

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No. Cion prop.: COM(2012) 496 final, COM(2011) 607 final/2, COM(2011) 611 final/2,  
COM(2011) 614 final, COM(2011) 612 final/2

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Subject:        Cohesion Policy legislative package  
                    - Statements

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**1. Statement by the Commission**

**on the phasing of operations under Cohesion Policy operational programmes of the  
2007-2013 programming period in the 2014-2020 programming period**

"As a general principle, Member States have to ensure that all operations are functioning, meaning completed and in use, by the time of submission of the closure documents in order to declare the related expenditure as eligible. It is recalled that each operation should be selected and implemented in order to contribute to the achievement of the objectives of a particular programme and priority axis.

Member States are responsible for defining each operation, including its scope, objectives and outputs. This provides Member States with the flexibility necessary to select for support operations which will be functioning by the end of a programming period.

Exceptionally and in duly justified circumstances, the Member States may need to adjust a selected operation which cannot be completed by the end of the period by phasing its implementation over two programming periods. The Commission confirms that this flexibility exists subject to the conditions laid down for the purposes of programme closure (guidelines on the closure of operational programmes adopted for assistance from the European Regional Development Fund, the European Social Fund and the Cohesion Fund (2007-2013)). In such a case the two phases constitute separate operations each of which will be implemented under the rules applicable for the respective programming periods, although the overall objective to be achieved after implementation of both phases in order to ensure the functioning of the operation should be set out for each phase.

In addition the Commission may approve the phasing of major projects where the implementation period is expected to be longer than the programming period either in the decision approving a major project or in a subsequent amendment thereto."

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## 2. **Statements by Poland**

### a) **on recital (62) of the CPR (concerning cross-financing as defined in Art. 88 CPR)**

"Poland understands that in compliance with rules determined in Art. 88 CPR it should be possible to use cross-financing between the ERDF and the ESF in mono-fund priority axis (irrespective of mono- or multi- fund character of the programme) making it possible to finance a part of an operation, which is eligible from the other fund, including where all parts of the operation are eligible from the other fund."

**b) on cash in-flows and revenues**

"Poland understands that for the purposes of Article 54 and Article 55(6) of the CPR the following cash in-flows do not meet the conditions established in the provisions of those articles and therefore should not be considered as revenue and should not be deducted from the eligible expenditure of an operation:

- any incidental income which may appear during project implementation, such as sales of materials found on a construction site such as stones, wood, scrap metal,
- compensation collected on a performance bond."

**c) on beneficiary**

"Poland understands that in accordance with current practice for the period 2007-2013 and consistently with the definition of beneficiary used in article 2(10) of the CPR it is up to a Member State to define an operation and to decide on which body is selected as the beneficiary and becomes one of the parties of the co-financing agreement. In particular:

- it is fully admissible that an operation may be implemented in an institutional structure consisting of a beneficiary and several entities (partners) authorized to incur eligible expenditure, among which the division of tasks related to initiation and implementation of the operation occurs. In such a situation, expenditure which has been incurred and paid by the partners may be considered as incurred and paid by a beneficiary within the meaning of Article 55(2).
- a municipal company or another responsible entity initiating and conducting a public procurement procedure may incur eligible expenditure for an operation - as referred to in Article 55(2) - even if the operation was originally initiated by a public authority.

- in the context of state aid schemes, the body transferring the aid to third parties, in particular the provider of advice or training or a business support institution, such as business incubator, industrial park, etc. could be considered the sole beneficiary (even if due to the fact that the services are provided for free or below market value they may constitute State aid). In such cases where the aid is transferred by this body to other bodies not being parties of the co-financing agreement, the Member State may decide not to treat the latter as beneficiaries, despite the fact that they may receive state aid."

**d) on recital 50 and Art. 2 CPR (systemic irregularity)**

"Poland understands that without prejudice to Article 135 CPR, when a systemic irregularity is detected and corrected by Member State or the Commission it should mean that any irregularities of an individual nature connected to the systemic irregularity should not be corrected by the Commission on case by case basis."

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