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# COUNCIL REGULATION (EC) No 1084/2006

## of 11 July 2006

## establishing a Cohesion Fund and repealing Regulation (EC) No 1164/94

(OJ L 210, 31.7.2006, p. 79)

Amended by:

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# COUNCIL REGULATION (EC) No 1084/2006

## of 11 July 2006

## establishing a Cohesion Fund and repealing Regulation (EC) No 1164/94

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 161(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the assent of the European Parliament [1],

Having regard to the opinion of the European Economic and Social Committee [2],

Having regard to the opinion of the Committee of the Regions [3],

Whereas:

(1) Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund [4] establishes a new framework for the action of the Structural Funds and the Cohesion Fund. It sets out, in particular, the objectives, the principles and the rules concerning partnership, programming, evaluation and management. It is therefore necessary to specify the mission of the Cohesion Fund in relati on to the new framework for its action and in relation to the purpose assigned to it in the Treaty and to repeal, in the interests of clarity, Council Regulation (EC) No 1164/94 of 16 May 1994 establishing the Cohesion Fund [5].

(2) Trans-European transport network projects financed by the Cohesion Fund are to comply with the guidelines for trans-European transport networks adopted by the Council and the European Parliament. In order to concentrate efforts, priority should be given to projects of common interest as defined in Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network [6].

(3) The Community may, through the Cohesion Fund, contribute to action in pursuit of the Community's environmental objectives specified in Articles 6 and 174 of the Treaty.

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[1] Assent of 4 July 2006 (not yet published in the Official Journal).
[2] OJ C 255, 14.10.2005, p. 88.
[3] OJ C 231, 20.9.2005, p. 35.
[4] See p. 25 of this Official Journal.
[5] OJ L 130, 25.5.1994, p. 1. Regulation as last amended by the 2003 Accession Act.
[6] OJ L 228, 9.9.1996, p. 1. Decision as last amended by Decision No 884/2004/EC (OJ L 167, 30.4.2004, p. 1).

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(4) Regulation (EC) No 1083/2006 provides that rules on eligibility of expenditure are to be established at national level, with certain exceptions for which it is necessary to lay down specific provisions. Specific provisions should therefore be laid down for the exceptions related to the Cohesion Fund.

(5) Conditionality provisions in the granting of financial assistance should continue to apply in conjunction with the fulfilment of the conditions of economic convergence as set out in Article 99 of the Treaty and the need for sound government finances. In this respect, Member States having adopted the euro are to implement stability programmes and Member States not having adopted the euro convergence programmes, as defined in Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [1], leading to the avoidance of excessive government deficits referred to in Article 104 of the Treaty. Conditionality provisions should not, however, apply to commitments already made at the time of suspension,

HAS ADOPTED THIS REGULATION:

*Article 1*

**Establishment and purpose of the Cohesion Fund**

1. A Cohesion Fund (hereinafter referred to as 'the Fund') is hereby established for the purpose of strengthening the economic and social cohesion of the Community in the interests of promoting sustainable development.

2. The Fund shall be governed by Regulation (EC) No 1083/2006 and by this Regulation.

*Article 2*

**Scope of assistance**

1. Assistance from the Fund shall be given to actions in the following areas, ensuring an appropriate balance, and according to the investment and infrastructure needs specific to each Member State receiving assistance:

(a) trans-European transport networks, in particular priority projects of common interest as identified by Decision No 1692/96/EC;

(b) the environment within the priorities assigned to the Community environmental protection policy under the policy and action programme on the environment. In this context, the Fund may also intervene in areas related to sustainable development which clearly present environmental benefits, namely energy efficiency and renewable energy and, in the transport sector outside the trans-European networks, rail, river and sea transport, intermodal transport systems and their interoperability, management of road, sea and air traffic, clean urban transport and public transport.

[1] OJ L 209, 2.8.1997, p. 1. Regulation as last amended by Regulation (EC) No 1055/2005 (OJ L 174, 7.7.2005, p. 1).

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2. The appropriate balance of assistance shall be agreed in partnership between Member States and the Commission.

*Article 3*

**Eligibility of expenditure**

The following expenditure shall not be eligible for a contribution from the Fund:

(a) interest on debt;

(b) the purchase of land for an amount exceeding 10 % of the total eligible expenditure for the operation concerned;

(c) housing;

(d) decommissioning of nuclear power stations; and

(e) recoverable value added tax.

*Article 4*

**Conditions applying to access to Fund assistance**

1. Assistance from the Fund shall be conditional on the following rules:

(a) if the Council has decided in accordance with Article 104(6) of the Treaty that excessive government deficit exists in a beneficiary Member State, and

(b) has established in accordance with Article 104(8) of the Treaty that the Member State concerned has not taken effective action in response to a Council recommendation made under Article 104(7) of the Treaty,

it may decide to suspend either the totality or part of the commitments from the Fund for the Member State concerned with effect from 1 January of the year following the decision to suspend.

2. If the Council establishes that the Member State concerned has taken the necessary corrective action, it shall decide, without delay, to lift the suspension of the commitments concerned. At the same time, the Council shall decide, on a proposal from the Commission, to re-budget the suspended commitment in accordance with the procedure set out in the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management ([1]).

3. The Council shall take the decisions referred to in paragraphs 1 and 2 by qualified majority on a proposal from the Commission.

([1]) OJ C 139, 14.6.2006, p. 1.

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*Article 5*

**Transitional provisions**

1. This Regulation shall not affect either the continuation or the modification, including the total or partial cancellation, of project or other forms of assistance approved by the Commission on the basis of Regulation (EC) No 1164/94, which shall consequently apply thereafter to that assistance or the projects concerned until their closure.

2. Applications for major projects within the meaning of Articles 39, 40 and 41 of Regulation (EC) No 1083/2006 made to the Commission under Regulation (EC) No 1164/94 shall remain valid provided that such applications are supplemented, where necessary, so as to comply with the requirements of this Regulation and the abovementioned Articles of Regulation (EC) No 1083/2006 within not more than two months as of 1 January 2007.

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*Article 5a*

**Specific provisions following the accession of Croatia**

1. Measures which, on the date of accession of Croatia, have been the subject of Commission decisions on assistance under Council Regulation (EC) No 1267/1999 of 21 June 1999 establishing an Instrument for Structural Policies for Pre-accession ([1]) and the implementation of which has not been completed by that date shall be considered to have been approved by the Commission under this Regulation.

Without prejudice to paragraphs 2 to 5, the provisions governing the implementation of actions approved pursuant to this Regulation and to Regulation (EC) No 1083/2006 shall apply to the measures referred to in the first subparagraph of this paragraph.

2. Any procurement procedure relating to measures referred to in paragraph 1 which, on the date of accession, has already been the subject of an invitation to tender published in the *Official Journal of the European Union* shall be implemented in accordance with the rules laid down in that invitation to tender. Article 165 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 ([2]) shall not apply.

Any procurement procedure relating to a measure referred to in paragraph 1 which, on the date of accession, has not yet been the subject of an invitation to tender published in the *Official Journal of the European Union* shall be implemented in compliance with the Treaties or the acts adopted under the Treaties as well as with Article 9 of Regulation (EC) No 1083/2006.

3. Payments made by the Commission under a measure referred to in paragraph 1 shall be considered as a contribution from the Fund under this Regulation.

([1]) OJ L 161, 26.6.1999, p. 73.
([2]) OJ L 248, 16.9.2002, p. 1.

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Payments made by the Commission under a measure referred to in paragraph 1 shall be posted to the earliest open commitment made in the first instance pursuant to Regulation (EC) No 1267/1999, and then pursuant to this Regulation and to Regulation (EC) No 1083/2006.

The conditions for interim payments or for the final balance are those set out in paragraph 2 (b) to (d) and paragraphs 3 to 5 of Article D in Annex II to Regulation (EC) No 1164/94.

4. For the measures referred to in paragraph 1, the rules governing the eligibility of expenditure pursuant to Regulation (EC) No 1267/1999 or specifically established in the relevant financing agreements shall remain applicable, except in duly justified cases to be decided on by the Commission at the request of Croatia.

5. If any measures are necessary to facilitate the transition of Croatia from the pre-accession regime to that resulting from the application of this Article, the Commission shall adopt the required measures.

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*Article 6*

**Repeal**

1. Without prejudice to the provisions of Article 105(1) of Regulation (EC) No 1083/2006 and Article 5 of this Regulation, Regulation (EC) No 1164/94 is hereby repealed with effect from 1 January 2007.

2. References to the repealed Regulation shall be construed as references to this Regulation.

*Article 7*

**Review**

The Council shall review this Regulation by 31 December 2013 at the latest in accordance with Article 161 of the Treaty.

*Article 8*

**Entry into force**

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.