



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
COUNCIL REGULATION (EC)
establishing an Instrument for Structural Policies for Pre-Accession

(presented by the Commission)

EXPLANATORY MEMORANDUM

Introduction

The reinforced pre-accession strategy

In Agenda 2000, the Commission has made a series of proposals for the reinforcement of the pre-accession strategy for all Central and Eastern European applicant Countries (CEECs). The general objective of the strategy is to offer a coherent programme to prepare these countries for accession to the EU and,

- (i) to bring together the different forms of support provided by the Union within a single Framework, the Accession Partnerships¹;
- (ii) to familiarize the applicants with Union policies and procedures through the possibility of their participation in Community programmes.

Pre-accession aid

Together with Phare and aid for agricultural development, Agenda 2000 proposed Structural aid for the applicant countries amounting to some EUR 1 billion per year. This aid would be directed mainly towards aligning the applicant countries on Community infrastructure standards, particularly - and by analogy with the Cohesion Fund - in the transport and environmental spheres. The Luxembourg European Council of December 1997 endorsed the principle of the creation of such a structural instrument.

Following on from the European Council's conclusions, the Commission is now proposing a regulation on an instrument for structural policies for pre-accession (ISPA). This would be based on Article 235 of the Treaty. Given its similar objectives, it was considered appropriate for ISPA to broadly follow the approach of the revised Cohesion Fund.

¹ Accession Partnerships will involve:

- precise commitments on the part of the applicant country relating in particular to democracy, macroeconomic stabilisation and nuclear safety, as well as a national programme for the adoption of the Community *acquis* within a precise timetable, focusing on the priority areas identified in each opinion;
- mobilisation of all resources available to the Community for preparing the applicant countries for accession.

The eligible countries

In accordance with the orientations of Agenda 2000² and with the conclusions of the European Council in Luxembourg³, financial aid provided for by the structural and agricultural pre-accession instruments will be granted to Central and Eastern European applicant countries. This is reflected in Article 1 of the present Regulation, which lists the ten countries concerned.

Cyprus, as set out in the Luxembourg conclusions (§ 22), benefits from a specific pre-accession strategy which corresponds with its present economic situation.

In the light of future progress towards the political solution to the Cyprus problem currently being pursued under the aegis of the United Nations and in order to take account of the economic situation then prevailing on the island, it may become appropriate, as accession negotiations proceed on the basis of the Luxembourg conclusions (§ 28), to also include Cyprus in the list of beneficiary countries.

PART ONE: OBJECTIVES

A. The priorities

Based on the provisions of Agenda 2000 and the amount of financial envelope proposed, there is a need to be especially selective as to the sectors to be covered by the new instrument. Given previous experience with the infrastructure requirements of the new German Länder in this regard, as well as its Opinions on the applicant countries (see also below), the Commission is proposing that the new instrument should limit its funding to environment and transport projects. This will include measures to ensure the effective operation of the projects such as training and maintenance.

Environment – meeting the environmental acquis

As outlined in Agenda 2000, applicant countries are, on the whole, facing more acute environmental problems than the existing EU Member States, particularly in water and air pollution and in waste management.

Quantification of the effort required is complex and difficult, particularly given the need to make a number of assumptions regarding, for example, economic growth, consumption patterns and future behaviour. Best available estimates suggest, however, that total investment needs for environmental acquis compliance in the ten applicant countries could be of the order of EUR 100 000 million (or EUR 1 000 per capita).

As indicated, this figure concerns solely investments related to meeting the requirements of the *acquis* in respect of Directives for drinking water supply, waste water treatment, air pollution and solid waste management. The estimate does not cover environmental improvements which, although they might be a pre-condition for economic development

² See part II (The Challenge of Enlargement), section III (a strategy for enlargement) part 2 (reinforcing the pre-accession strategy) and section IV (Cyprus).

³ See paras. 17-22.

(such as cleaning up contaminated land), are not subject to Community legislation and for which no investment is therefore required in order to meet the *acquis*.

A major effort, including considerable EU technical and financial assistance, will thus be indispensable for enabling acceding countries to progress rapidly towards alignment to the EU environmental *acquis*. Assistance under ISPA will therefore focus primarily on the areas of water, air quality and waste management.

In the environmental field, assistance under ISPA will accordingly provide for:

- **environmental measures, enabling the beneficiary countries to comply with the requirements of environmental legislation and with the objectives contained in the Accession Partnerships.**

Transport - *extending the Trans-European transport network and meeting the objectives of the Accession Partnerships*

Agenda 2000 highlights the urgent need for the development and upgrading of transport infrastructure in candidate countries as well as the need to tackle missing links between the latter and the EU. Without such investment, severe problems of traffic congestion are likely to arise affecting the Union's overall traffic and policies. For the countries concerned, improvements in transport infrastructure are an essential part of their economic development strategies, and thus of their capacity to cope with competitive pressure and market forces in the EU. Development of efficient transport systems is therefore an essential part of the pre-accession strategy.

As indicated in the Commission's Communication⁴ on this issue, in an enlarged Union the future trans-European transport network must be for the benefit of citizens throughout the present and the new Member States - it will eventually serve the transport needs of the Union's regions to ensure the free movement of people, goods and services, giving countries and regions appropriate access to European centres, while ensuring respect for the environment. Such a strategy should pursue a balanced multimodal transport infrastructure development. This future network will comprise the trans-European transport network of the present Union, the appropriate parts of the national networks in the applicant countries and the necessary connections between them. This would encompass access to the latter, including by means of public transport where appropriate.

According to figures in the Commission Communication, potential investment costs for establishing the Union's trans-European transport network have been estimated at ECU 50 to 90 billion over 15 years, merely for upgrading roads and railways to Western European standards to meet the expected growth in traffic, without considering any new links.

⁴ "Connecting the Union's transport infrastructure network to its neighbours - towards a cooperative pan-European transport network policy." COM(97) 172 final of 23 April 1997.

The contribution under ISPA to future transport networks will thus be in providing support for:

- **transport infrastructure measures which promote sustainable mobility, and in particular those that constitute projects of common interest based on the criteria of Council Decision 1692/96 and which enable the beneficiary countries to comply with the objectives of the Accession Partnerships. This will include inter-connection and interoperability of national networks as well as with the trans-European networks (TENS) together with access to such networks.**

The results of the Transport Infrastructure Needs Assessment (TINA) process will also be taken into account in identifying suitable projects.

Technical Assistance - directly linked to the projects concerned

A small part of the ISPA budget may also be used to finance preparatory studies as well as technical assistance expenditure. A clear link will need to be established between the measures supported and the projects being financed under ISPA. A key role for technical assistance in this regard will be to ensure the high quality of projects, including in terms of their effective management and implementation. This includes the preparation of measure by feasibility studies and arrangements for the appraisal, monitoring, control and evaluation of measure as well as making best use of existing research results in the fields concerned. Total expenditure in this regard carried out at the Commission's initiative will be no more than 2% of total financing under ISPA. Phare's Large Scale Infrastructure Facility (LSIF), which will primarily focus on the extension of TENs beyond EU borders and on accession-related environmental problems with a transboundary impact, will also be used to help prepare projects which may be subsequently financed from assistance under ISPA.

B. Coordination with Phare and the pre-accession aid for agriculture

It will be necessary to ensure close cooperation between ISPA, Phare and the pre-accession agricultural assistance, in particular to avoid any overlap in the type of operation to be financed. The committee foreseen under the proposal for a Regulation on the Coordination of Assistance to Applicant Countries within the Framework of the Pre-Accession Strategy (COM(1998) 150) will have a key role in this respect.

As with all pre-accession assistance, ISPA will be subject to the conditionality rules laid down in the Accession Partnership Regulation.

PART TWO: THE REGULATION

An approach by project - based on national accession programmes for the environment and transport

By analogy with the Cohesion Fund, the approach for ISPA will be by project or groups of projects (called measures) which should also be of a sufficient scale to have a significant impact in the field of environmental protection or in the improvement of

transport infrastructure networks. Experience with the Cohesion Fund, especially to avoid disproportionate administrative burdens and with regard to the amount accepted in the new guidelines for Phare (EUR 2-3 million), suggests that projects should be of a minimum size of **EUR 5 million**. The minimum size should also take account of the small size of some of the applicant countries.

Project selection and approval will be based on national programmes for transport and environment included within the National Programme for the Adoption of the *Acquis* which is one of the main elements of the Accession Partnership. These programmes shall contain specific strategies for environment and transport and address the transnational dimension necessary for the development of future trans-European networks. The Regulation also specifies a number of criteria to ensure the high quality of projects including their leverage potential and degree of readiness.

Financing arrangements

Indicative allocations by country - three key criteria

The indicative allocation of resources under ISPA to the beneficiary countries will be made by the Commission based on the criteria of population, per capita GDP in purchasing power parities (which most realistically reflects the wealth of the countries concerned) and surface area. Allocations will be on the basis of an upper and lower range in order to provide a degree of financial flexibility - they will also need to be revised as countries accede to the Union leaving the remainder of their allocation to the remaining beneficiary countries. Due account will also be taken of the countries' respective deficiencies in environment and transport infrastructure.

Rates of assistance - to encourage leverage

As outlined earlier, the needs of the applicant countries as regards environmental and transport infrastructure are considerable, especially compared to the public sector resources, including ISPA, likely to be available for cofinancing projects. On the other hand, it is important that, wherever possible, ISPA should have a strategic catalytic impact relating to the overall investment needs rather than subsidizing ad-hoc investments. Agenda 2000 also calls for an increased multiplier effect from structural resources by greater use of forms of assistance other than direct grants. In particular:

- scarce public sector resources should have a leverage effect, especially by mobilizing private sector co-financing;
- assistance from ISPA should not "crowd out" other potential financing, including local sources and project generated revenues.

The Commission will be seeking to maximise the multiplier effect of ISPA by promoting increased recourse to sources of loan and equity financing and in particular from private sources. In this regard project applications at the level of the financial plan will need to contain information on financing the beneficiary is seeking from other sources such as the European Investment Bank (EIB), including its pre-accession facility, The European Bank for Reconstruction and Development (EBRD) and the World Bank.

Individual projects will be examined with the EIB before the financing package is agreed by the Commission.

An emphasis on seeking alternative sources of funding will help dispel any tendency to always expect a high rate of subsidy and might also be considered as important in supporting the efforts being made by the applicant countries to move towards market economies.

The aim is therefore to differentiate the rate of Community assistance under ISPA according to the type of project and financial package involved. This will be up to 85% of public or similar expenditure, the precise level of support also taking account of:

- the overall Community interest in seeing a particular project implemented;
- a project's capacity to generate revenues;
- the application of the "polluter pays" principle.

Such an approach therefore gives the flexibility to use a lower rate of assistance for those projects where loan finance is a possibility, with the upper limit allowing the Commission to modulate the rate on a case-by-case basis.

Financial Management - *simplification with rigour*

The ISPA articles on financial management reflect the provisions of Title IX of the Financial Regulation applicable to the general budget of the European Communities which contains detailed financial rules relating to external aid. In essence, this means that projects adopted by the Commission will be covered by a financing memorandum to be drawn up between the Commission and the beneficiary country. The details of the payments mechanisms for projects, as well as the management, evaluation and control systems, would also be contained in the financing memoranda. Where permitted by the Financial Regulation, these mechanisms and systems will be similar to those of the Cohesion Fund.

However, with respect to budgetary commitments a simpler and more efficient system will apply under ISPA which will operate under on the basis of multiannual projects. Drawing on the experience of the Structural Funds and Cohesion Fund, the initial commitment will be made when the decision to grant Community assistance is adopted by the Commission. Commitments in respect of subsequent annual instalments will be made at the start of each budgetary exercise and at the latest by 1 April of the year in question.

Whilst improving the management of multiannual measures, the above exception to the Financial Regulation, whereby budget appropriations are authorized for the duration of one financial year, will have to be included in the Interinstitutional Agreement.

In order to avoid too large a difference between the level of commitments and payments, and as an incentive to the efficient use of resources, assistance granted to a project where work has not begun within the contractual period scheduled in the financing memorandum will be automatically decommitted.

Such an approach will make it possible to take a coherent overall view of the operations to be undertaken for each project as well as facilitating a degree of decentralization safeguarding efficient management, control and evaluation. As with the Phare programme, this means that, to the extent permitted by the Financial Regulation and agreed in the respective Financial Memoranda, the implementation of projects will be the responsibility of the applicant countries under the supervision of the Commission. As of 1 January 2000 and in any event not later than 1 January 2002 beneficiary countries should have established the required management and control systems. Recourse as necessary to outside assistance would be possible until 1 January 2002.

Monitoring and Evaluation - according to quantified indicators

Evaluation and monitoring mechanisms for ISPA will be carried out jointly by the applicant country in question and the Commission through procedures established in the individual financing memoranda. In particular, monitoring will be carried out by reference to quantified physical and financial indicators relating to the specific character of the project concerned and its objectives. During the implementation of projects and after their completion, evaluation will similarly assess whether the original objectives can be, or have been, achieved. The evaluation capacity of the implementing and monitoring bodies will also be strengthened as appropriate in these countries through technical assistance.

Committee - assisting implementation

In implementing the ISPA regulation, the Commission will be assisted by an Advisory Committee composed of representatives of the Member States and chaired by the Commission representative. The Committee will deliver opinions on matters referred to it by the Commission, where appropriate by taking a vote. The European Investment Bank will also participate in a non-voting capacity.

Proposal for a
COUNCIL REGULATION (EC)
establishing an Instrument for Structural Policies for Pre-Accession

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission⁵,

Having regard to the opinion of the European Parliament⁶,

Having regard to the opinion of the Economic and Social Committee⁷,

Having regard to the opinion of the Committee of the Regions⁸,

Whereas the conclusions of the Luxembourg European Council of 12 and 13 December 1997 provide for an enhanced pre-accession strategy for the applicant countries of central and eastern Europe, and a specific pre-accession strategy for Cyprus;

Whereas, in the light of future progress towards a political solution to the problem of Cyprus currently being pursued under the aegis of the United Nations and in order to take account of the economic situation which will then prevail on the island, it may become appropriate, as accession negotiations proceed on the basis of the conclusions of the Luxembourg European Council, to include Cyprus in the list of beneficiary countries and to envisage to this effect specific modalities for the application of this Regulation;

Whereas, however, the conclusions of the European Council provide that the assistance provided for in this Regulation is to be granted for the time being to the ten applicant countries of central and eastern Europe;

Whereas Council Regulation (EC) No 622/98 of 16 March 1998 on assistance to the applicant States in the framework of the pre-accession strategy, and in particular on the establishment of Accession Partnerships⁹, provides that those partnerships are to comprise a single framework for the priority areas and all available resources for pre-accession assistance;

⁵ OJ C...

⁶ Opinion delivered on ...

⁷ OJ C ...

⁸ Opinion delivered on ...

⁹ OJ L 85, 20.3.1998, p. 1.

Whereas the pre-accession strategy includes provision for an Instrument for Structural Policies for Pre-Accession, hereinafter called "ISPA", which will be directed towards aligning applicant countries on Community infrastructure standards and provide a financial contribution for environmental measures, and transport infrastructure measures;

Whereas assistance from the Community under ISPA, together with assistance from the Community under Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to the Republic of Hungary and the Polish People's Republic¹⁰, as last amended by Regulation (EC) No 753/96¹¹, and assistance from the Community under Regulation [.../... on Community Support for Pre-accession measures for Agricultural and Rural Development in the applicant countries of Central and Eastern Europe in the Pre-Accession period]¹² is to be coordinated within the framework of the Regulation [.../... on the Coordination of Assistance to the Applicant countries within the Framework of the Pre-Accession Strategy]¹³ and to be subject to the conditionality provisions of Regulation (EC) No 622/98 and of the individual decisions on Accession Partnerships;

Whereas an appropriate balance must be struck between financing for transport infrastructure measures and financing for environmental measures;

Whereas the Community assistance under ISPA should facilitate the implementation by the applicant countries of the *acquis communautaire* in the field of the environment and contribute to sustainable development in these countries;

Whereas 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 network¹⁴ describes the principles for the development of a trans-European Transport Network which after accession should also cover the requirements of the new Member States while the ongoing Transport Infrastructure Needs Assessment (TINA) initiated by the Council and following these principles should facilitate the selection process for measures eligible for assistance during the pre-accession period;

Whereas provision should be made for the Commission to make an indicative allocation of the total resources from the Community under ISPA available for commitment between the applicant countries in order to facilitate the preparation of measures;

Whereas the rates of assistance provided from the Community under ISPA should be adjusted to strengthen the leverage effect of resources, promote use of private sources of finance and to take account of the capacity of measures to generate substantial net revenue;

Whereas, as regards Community assistance, maximum transparency must be ensured in the implementation of financial assistance, and stringent controls must be applied to the use of appropriations;

¹⁰ OJ L 375, 23.12.1989, p. 11.

¹¹ OJ L 103, 26.4.1996, p. 5.

¹² OJ L ...

¹³ OJ L ...

¹⁴ OJ L 228, 9.9.1996, p. 1.

Whereas, in the interest of the proper management of Community assistance granted under ISPA, provision should be made for effective methods of appraising, monitoring, evaluating and controlling operations, specifying the principle governing the evaluation, defining the nature of and the rules governing the monitoring, and laying down the action to be taken in response to irregularities or failures to comply with one of the conditions laid down when assistance under ISPA was granted;

Whereas, during the transitional period (from 1 January 1999 until 31 December 2001), each reference made to the euro should as a general rule also be read as a reference to the euro as a monetary unit as in Article 2, second sentence, of Council Regulation (EC) No .../98 [on the introduction of the euro¹⁵];

Whereas for the purpose of the implementation of this Regulation the Commission should be assisted by a committee of an advisory nature;

Whereas the implementation of the measures provided for by this Regulation will help to achieve the Community's aims; whereas the Treaty does not provide, for the adoption of this Regulation, powers other than those of Article 235,

HAS ADOPTED THIS REGULATION:

Article 1

Definition and objective

1. The Instrument for Structural Policies for Pre-Accession, hereinafter referred to as ISPA, is hereby established.

ISPA shall provide assistance to contribute to the preparation for accession to the European Union of the following applicant countries: Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia, hereinafter referred to as the "beneficiary countries", in the area of economic and social cohesion, in particular concerning environment and transport policies in accordance with the provisions of this Regulation.

2. The Community assistance granted under ISPA shall contribute to the objectives laid down in the Accession Partnership for each beneficiary country and to corresponding national programmes for the improvement of the environment and of transport infrastructure networks.

¹⁵ OJ L ...

Article 2

Eligible measures

1. The Community assistance financed under ISPA shall include projects, stages of a project which are technically and financially independent, groups of projects or project schemes in the field of environment or transport, hereinafter referred to collectively as measures. A stage of a project may also cover preliminary, feasibility and technical studies needed for carrying out a project.
2. The Community shall provide assistance under ISPA in the light of the objectives mentioned in Article 1 for the following:
 - (a) environmental measures enabling the beneficiary countries to comply with the requirements of Community environmental law and with the objectives of the Accession Partnerships;
 - (b) transport infrastructure measures which promote sustainable mobility, and in particular those that constitute projects of common interest based on the criteria of Decision No 1692/96/EC and those which enable the beneficiary countries to comply with the objectives of the Accession Partnerships; this includes inter-connection and interoperability of national networks as well as with the trans-European networks together with access to such networks.

Measures shall be of a sufficient scale to have a significant impact in the field of environmental protection or in the improvement of transport infrastructure networks. The total cost of each measure shall in principle not be less than EUR 5 million.

3. An appropriate balance shall be struck between measures in the field of the environment and measures relating to transport infrastructure.
4. Assistance may also be granted for:
 - (a) preliminary studies related to eligible measures, including those necessary for their implementation; and
 - (b) technical support measures, including information and publicity actions, particularly:
 - (i) horizontal measures such as comparative studies to assess the impact of Community assistance;
 - (ii) measures and studies which contribute to the appraisal, monitoring, evaluation or control of projects and to strengthening and ensuring the coordination and consistency of projects with the Accession Partnerships; and

- (iii) measures and studies to ensure effective project management and implementation and to make any necessary adjustments.

Article 3

Financial resources

Community assistance under ISPA shall be granted during the period from 2000 to 2006.

The annual appropriations shall be authorized by the budgetary authority within the limits of the financial perspectives.

Article 4

Indicative allocation

An indicative allocation between beneficiary countries of the total Community assistance under ISPA shall be made by the Commission on the basis of the criteria of population, GDP per capita in purchasing power parities and surface area. This allocation may be adjusted to take account of the performance in previous years of each of the beneficiary countries in implementing ISPA measures. Due account shall also be taken of the countries' respective deficiencies in environment and transport infrastructure.

Article 5

Compatibility with Community policies

1. Measures financed by the Community under ISPA shall comply with the provisions set out in the Europe Agreements, including the implementing rules for the application of the provisions on State aids, and shall contribute to the achievement of Community policies, particularly those concerning environmental protection and improvement, transport and trans-European networks.
2. The Commission shall ensure coordination and consistency between measures undertaken pursuant to this Regulation and measures undertaken with contributions from the Community budget, the operations of the European Investment Bank (EIB), including through its pre-accession facility as well as the other financial instruments of the Community.
3. The Commission shall seek coordination and consistency between measures undertaken in the beneficiary countries pursuant to this Regulation and the operations of the European Bank for Reconstruction and Development (EBRD), the World Bank and other such financial institutions.

Article 6

Forms and rate of assistance

1. Community assistance under ISPA may take one of the following forms: non-repayable direct assistance, repayable assistance, an interest-rate subsidy, a guarantee fee subsidy, the risk-capital participation or another form of finance.

Assistance repaid to the managing authority or to another public authority shall be reapplied for the same purpose.

2. The rate of Community assistance granted under ISPA may be up to 85% of public or equivalent expenditure, including expenditure by bodies whose activities are undertaken within an administrative or legal framework by virtue of which they are regarded as equivalent to public bodies.

Save in the case of repayable assistance or when there is a substantial Community interest, the rate of assistance shall be reduced to take into account:

- (a) the availability of co-financing;
 - (b) the measure's capacity to generate revenues; and
 - (c) an appropriate application of the polluter-pays principle.
3. Measures which generate revenues in accordance with paragraph 2(b) shall be:
 - (a) infrastructures the use of which involves fees borne by users;
 - (b) productive investments in the environment sector.
4. Preliminary studies and technical support measure, may be financed exceptionally at 100% of the total cost.

Total expenditure carried out at the Commission's initiative or on behalf of the Commission pursuant to this paragraph may not exceed 2% of the total allocation to ISPA.

Article 7

Appraisal and approval of measures

1. The Commission shall adopt decisions on the measures to be financed under ISPA.
2. The beneficiary countries shall submit applications for assistance to the Commission. However, the Commission may grant assistance pursuant to Article 2(4) on its own initiative.
3. Applications shall contain:
 - (a) the information set out in Annex I;
 - (b) all relevant information proving that the measures comply with this Regulation and with the criteria set out in Annex II, and in particular that there are medium-term economic and social benefits commensurate with the resources deployed.

4. On receipt of an application for assistance and before approving a measure, the Commission shall carry out a thorough appraisal in order to assess the measure's compliance with the criteria set out in Annex II.
5. Commission decisions approving measures shall determine the amount of financial assistance and lay down a financing plan together with all the provisions and conditions necessary for the implementation of the measures.

Article 8

Commitments and payments

1. The Commission shall implement expenditure under ISPA in accordance with the Financial Regulation applicable to the general budget of the European Communities on the basis of the financing memorandum to be drawn up between the Commission and the beneficiary country.

However, annual budgetary commitments in respect of assistance granted to measures shall be carried out in one of the following two ways:

- (a) commitments in respect of the measures referred to in Article 2(2) to be carried out over a period of two or more years shall, as a general rule and subject to point (b), be effected in annual instalments.

The commitments in respect of the first annual instalment shall be made when the financing memorandum is drawn up. Commitments in respect of subsequent annual instalments shall be based on the initial or revised financing plan for the measure and in principle be granted at the start of each financial year and at the latest by 1 April of the year in question according to forecast expenditure for this year.

- (b) For measures with a duration of less than two years or for which the Community assistance does not exceed EUR 20 million a first commitment of up to 80% of the assistance granted may take place when the financing memorandum is drawn up. The remainder will be committed subject to the state of the implementation of the measure.

2. Except in duly justified cases, assistance granted to a measure where substantial work has not begun within the specified contractual period shall be cancelled.
3. Payments of financial assistance for measures may take the form either of advances or of intermediate payments or payments of balances in respect of expenditure certified and actually paid.

The Commission shall adopt detailed rules on payments in accordance with the procedure laid down in Article 14.

4. The details of the payments mechanism for measures shall be laid down in the financing memorandum with each beneficiary country.

Article 9

Management and control

1. The Commission shall require the beneficiary countries:
 - (a) to establish as from 1 January 2000 and in any event not later than 1 January 2002, management and control systems which ensure:
 - (i) the proper implementation of the assistance granted under this Regulation in accordance with the principles of sound financial management,
 - (ii) the separation of the functions of management and control,
 - (iii) that expenditure declarations presented to the Commission are accurate and emanate from accounting systems based on supporting documents which are open to verification;
 - (b) to verify on a regular basis that the measures financed by the Community have been properly carried out;
 - (c) to prevent irregularities and take action against them;
 - (d) to recover any amounts lost as a result of irregularity or negligence.
2. Without prejudice to checks carried out by beneficiary countries, the Commission and the Court of Auditors may, through their own staff or duly authorized representatives, carry out on-the-spot technical or financial audits, including sample checks and final audits.
3. The detailed implementing provisions of the principles established in paragraphs 1 and 2 shall be contained in the financing memorandum, together with arrangements for cooperation and for coordination of programming and methodology of control between the Commission and the beneficiary country.
4. The financing memorandum shall also contain provisions concerning the reduction, suspension and cancellation of assistance where the implementation of a measure does not justify either a part or the whole of the assistance allocated.

Article 10

Use of the euro

1. The amounts in the applications for assistance, together with the relevant financing plan, shall be expressed in euros.
2. The amounts of assistance and the financing plans approved by the Commission shall be expressed in euros.

3. Declarations of expenditure in support of the corresponding payment applications shall be expressed in euros.
4. Payments of financial assistance by the Commission shall be made in euros to the authority designated by the beneficiary country to receive such payments.

Article 11

Monitoring and *ex-post* evaluation

The beneficiary countries and the Commission shall ensure that the implementation of measures under this Regulation is monitored and evaluated in accordance with the provisions in Annex III.

Article 12

Annual report

The Commission shall present an annual report on Community assistance granted under ISPA to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions. The annual report shall contain the information set out in Annex IV.

The European Parliament shall deliver an opinion on the report as soon as possible. The Commission shall report on the manner in which that opinion has been taken into account.

The Commission shall ensure that the Member States and the beneficiary countries are informed of the activities of ISPA.

Article 13

Information and publicity

1. The beneficiary countries responsible for implementing measures for which the Community has granted financial assistance under ISPA shall ensure that adequate publicity is given to the measure with a view to:
 - (a) making the general public aware of the role played by the Community in relation to the measures;
 - (b) making potential beneficiaries and professional organizations aware of the possibilities afforded by the measures.

Beneficiary countries shall ensure, in particular, that directly visible display panels are erected showing that the measures are being co-financed by the Community, together with the Community logo, and that representatives of the Community institutions are duly involved in the most important public activities connected with Community assistance granted under ISPA.

They shall inform the Commission annually of the initiatives taken under this paragraph.

2. The Commission shall adopt detailed rules on information and publicity acting in accordance with the procedure laid down in Article 14.

It shall inform the European Parliament thereof and shall publish them in the *Official Journal of the European Communities*.

Article 14 **Committee**

In implementing this Regulation, the Commission shall be assisted by a committee of an advisory nature composed of representatives of the Member States and chaired by the representative of the Commission. The European Investment Bank shall appoint a non-voting representative.

The representative of the Commission shall submit to the committee a draft of the decision to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its opinion recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 15 **Final and transitional provisions**

1. The Council, acting on a proposal from the Commission, shall re-examine this Regulation by 31 December 2006. It shall act on the proposal in accordance with the procedure laid down in Article 235 of the Treaty.
2. On accession to the European Union, a country shall lose its entitlement to assistance under ISPA.
3. The remainder of its allocation shall be reallocated among the remaining beneficiary countries in accordance with Article 4.

Article 16
Entry into force

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

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

Done at Brussels,

For the Council
The President

Content of applications (Article 7(3)(a))

Applications shall contain the following information:

1. the name of the body responsible for implementation, the nature of the measure and a description thereof;
2. the cost and location of the measure, including, where applicable, an indication of the inter-connection and interoperability of measures situated on the same transport axis;
3. the timetable for implementation of the work;
4. a cost-benefit analysis, including the direct and indirect effects on employment;
5. assessment of the environmental impact similar to the assessment provided for in Council Directive 85/337/EEC¹⁶;
6. information on the place and priority of the measure within the national environmental strategy as laid down in the national programme for the adoption of the *acquis communautaire*;
7. information on the national transport development strategy and the place and priority of the measures within that strategy;
8. information on compliance with competition law and public contract rules;
9. the financing plan including, where possible, information on the economic viability of the measure, and the total financing the beneficiary country is seeking from ISPA, the European Investment Bank (EIB) including its pre-accession facility and any other Community or Member State source, the European Bank for Reconstruction and Development (EBRD), and the World Bank;
10. the compatibility of measures with Community policies;
11. information on the arrangements for ensuring the efficient use and maintenance of facilities.

¹⁶ OJ L 175, 5.7.1985, p. 40.

Appraisal of measures (Article 7(3)(b) and (4))

- A. In appraising the measures, the following criteria shall be applied to ensure their high quality:
1. their economic and social benefits, including their potential for leverage of private financing, which shall be commensurate with the resources deployed; an assessment shall be made in the light of a cost-benefit analysis;
 2. the arrangements for ensuring effective management of the measures;
 3. the priorities established by the Accession Partnerships for the areas of intervention;
 4. the contribution which measures make to the implementation of Community policy on the environment;
 5. the contribution of measures to trans-European networks and common transport policies;
 6. the establishment of an appropriate balance between the fields of the environment and transport infrastructure.
- B. The Commission may invite the EIB, EBRD or World Bank to contribute to the appraisal of measures as necessary. The Commission shall examine applications for assistance to verify in particular that the administrative and financial mechanisms are adequate for the effective implementation of the measure.
- C. The Commission shall appraise measures to determine their anticipated impact in terms of the objectives of this Regulation, using appropriate quantified indicators. The beneficiary countries shall provide all necessary information, as set out in Annex I, including the results of their feasibility studies and appraisals, an indication of alternatives not pursued and the coordination of measures of common interest situated on the same transport route, to make this appraisal as effective as possible.

Monitoring and ex-post evaluation (Article 11)

- A. Monitoring shall be carried out by means of jointly agreed reporting procedures, sample checks and the establishment of ad hoc committees. It shall be carried out by reference to physical and financial indicators. The indicators shall relate to the specific character of the project and its objectives. They shall be arranged in such a way as to show the stage reached in the measure in relation to the plan and objectives originally laid down and the progress achieved on the management side and any related problems.

- B. These committees shall be set up by arrangement between the beneficiary country concerned and the Commission. The authorities or bodies designated by the beneficiary country, the Commission and where appropriate, the EIB shall be represented on the committees. Where regional and local authorities and private enterprises are competent for the execution of a project and where they are directly concerned by a project they shall also be represented on such committees.

- C. For each measure, the authority or body responsible for the measure shall submit progress reports to the Commission within three months of the end of each full year of implementation.

- D. The authority or body responsible for the measure shall submit a final report to the Commission within six months of completion of the measure or stage of project. The final report shall contain the following:
 - 1. a description of the work undertaken, accompanied by physical indicators, quantification of expenditure by category of work and the measures taken with regard to the specific clauses contained in the decision to grant assistance;
 - 2. information relating to publicity actions;
 - 3. certification of the conformity of the work with the decision granting assistance;
 - 4. a first assessment of the extent to which the expected results have been achieved, including notably:
 - (a) the effective date of implementation of the measure;
 - (b) an indication of the way in which the measure will be managed once completed;
 - (c) confirmation, if appropriate, of financial forecasts, especially as regards operating costs and expected revenues;

- (d) confirmation of the socio-economic forecast, especially the expected costs and benefits;
 - (e) an indication of the actions taken to ensure protection of the environment and their cost.
- E. On the basis of the results of monitoring and taking account of the comments of the monitoring committee, the Commission shall adjust the amounts and conditions for granting assistance as initially approved, as well as the financing plan envisaged, if necessary on a proposal by the beneficiary countries.

The Commission shall define the appropriate arrangements for these adjustments differentiating them according to their nature and importance.
- F. *Ex-post* evaluation shall cover the utilization of resources and the effectiveness and efficiency of assistance and its impact. It shall cover the factors contributing to the success or failure of implementation of measures and the achievements and results. After the completion of measures, the Commission and the beneficiary countries shall therefore evaluate the manner, including the efficient and effective use of resources, in which they have been carried out. The evaluation shall also cover the actual impact of their implementation in order to assess whether the original objectives have been achieved. This evaluation shall, *inter alia*, address the contribution made by measures to the implementation of Community policies on the environment or to the contribution of trans-European networks and common transport policies, and they shall also assess the environmental impact of the measures.
- G. For the greater effectiveness of Community assistance granted under ISPA, the Commission shall ensure that in administering ISPA particular attention is paid to transparency of management.
- H. The detailed rules for monitoring and evaluation shall be laid down in the Commission decisions approving the measures.

Annual report from the Commission (Article 12)

The annual report shall provide information on the following:

1. financial assistance committed and paid by the Community under ISPA with an annual breakdown by beneficiary country by type of project (environment or transport);
2. the contribution which the Community assistance under ISPA made to the efforts of the beneficiary countries to implement Community environment policy and to strengthen trans-European transport infrastructure networks; the balance between measures in the field of the environment and measures relating to transport infrastructure;
3. assessment of the compatibility of operations of Community assistance under ISPA with Community policies, including those concerning environmental protection, transport, competition and the award of public contracts;
4. the measures taken to ensure coordination and consistency between measures financed through ISPA and measures financed with contribution from the Community budget, the European Investment Bank (EIB) and the other financial instruments of the Community;
5. the investment efforts of the beneficiary countries in the fields of environmental protection and transport infrastructure;
6. the preparatory studies and technical support measures financed;
7. the results of appraisal, monitoring and evaluation of measures, including information on any adjustment of measures to accord with the results of appraisal, monitoring and evaluation;
8. the contribution of the EIB to the evaluation of measures;
9. summary of information on the results of checks carried out, irregularities found and administrative and judicial proceedings in progress;
10. information on publicity actions.

FINANCIAL STATEMENT

1. TITLE OF OPERATION

Proposal for a Regulation establishing an Instrument for Structural Policies for Pre-Accession (ISPA)

2. BUDGET HEADING INVOLVED

B2

3. LEGAL BASIS

Article 235 of the Treaty

4. DESCRIPTION OF THE OPERATION

4.1 General Objective

Financial assistance within the re-inforced pre-accession strategy to contribute to bringing the applicant countries' infrastructures up to Community standards in the areas of transport and environment.

4.2 Period covered and arrangement for renewal or extension

2000-2006; the proposal should be re-examined by the Council before 31.12.2006

5. CLASSIFICATION OF EXPENDITURE OR REVENUE

5.1 Non-compulsory expenditure

5.2 Differentiated appropriations

5.3 -

6. TYPE OF EXPENDITURE OF REVENUE

Subsidy for joint financing with other sources in the public and/or private sector. The subsidies can take the form of non-repayable direct assistance, repayable assistance (repayable to the managing authority who must re-apply the assistance for the same purpose), an interest rate subsidy, a guarantee fee subsidy, risk capital participation or another form of finance.

7. FINANCIAL IMPACT

7.1 Method of calculating total cost of operation

The proposal for financial resources for pre-accession structural assistance for the period 2000-2006 will be included in the Commission proposal on the financial perspectives for 2000-2006. In Agenda 2000 the Commission indicated that an amount of ECU 1 billion per year would be allocated for such assistance for the period 2000-2006.

7.2 Itemized breakdown of costs

The annual financial resources for pre-accession structural assistance for the period 2000-2006 will be authorized by the budgetary authority within the limits of the financial perspectives to be agreed for 2000-2006.

7.3 Administrative expenditure relating to studies, to experts and alike included in part B of the budget

A small part of the resources for ISPA will be set aside for preliminary studies related to eligible measures and technical assistance expenditure. A clear link will need to be established between the measures supported and the projects being financed under ISPA. A key role for technical assistance in this regard will be to ensure the high quality of projects, including in terms of their effective management and implementation. This includes the preparation of measure by feasibility studies and arrangements for the appraisal, monitoring, control and evaluation of measures.

Depending on the outcome of current experiences of the Phare programme with the 'STAP' ("*Technical Support for the Administration of Programmes*") facility a proportion of the expenditure could be used to finance contracts concluded by the Commission for the duration of programmes, in order to supply technical support and cover relevant administrative expenditure for the mutual benefit of the Commission and the recipient countries.

Total expenditure for studies and technical assistance carried out at the Commission's initiative will be no more than 2% of total financing under ISPA.

8. FRAUD PREVENTION MEASURES: RESULTS OF MEASURES TAKEN

The Commission shall implement expenditure under ISPA in accordance with the Financial Regulation applicable to the general budget of the European Communities on the basis of a financing memorandum to be drawn up between the Commission and the beneficiary country. The financing memorandum shall contain provisions concerning the management and control of expenditure through ISPA as well as reduction, suspension and cancellation of assistance where the implementation of a measure does not justify either a part or the whole of the assistance allocated.

9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

9.1 Specific and quantifiable objectives; target population

Article 1 of the proposal for a Regulation sets out the objectives of ISPA:

The Community assistance granted under ISPA shall contribute to the objectives laid down in the Accession Partnership for each applicant country and to a corresponding national programmes for the improvement of the environment and of transport infrastructure networks.

Article 2 lays down the eligible measures:

- (a) environmental measures enabling the beneficiary countries to comply with the requirements of the body of Community environmental law and with the objectives of the Accession Partnerships;
- (b) transport infrastructure measures which promote sustainable mobility, and in particular those that constitute projects of common interest based on the criteria of Council Decision 1692/96 and those which enable the beneficiary countries to comply with the objectives of the Accession Partnerships; this will include inter-connection and interoperability of national networks as well as with the trans-European networks together with access to such networks.

The target population will be the authorities and bodies in the applicant countries responsible for transport and environment infrastructure investment. The intermediaries involved will vary between the applicant countries. However in line with the decentralized implementation policy the Commission is pursuing with Phare assistance for applicant countries it is probable that ISPA will be administered through a National Fund in each country, preferably located within the Ministry of Finance. To the extent permitted by the Financial Regulation, the implementation of ISPA will be the responsibility of the applicant countries under supervision of the Commission.

9.2 Grounds for the operation - Need for Community aid: Choice of ways and means

The best available estimates of the cost of the applicant countries' adoption of the whole of the Community *acquis* show that it will be very considerable everywhere. In Agenda 2000, the Commission made a series of proposals for the reinforcement of the pre-accession strategy for all applicant countries. The general objective of the strategy is:

to offer a coherent programme to prepare the applicant countries for accession to the EU and,

- (i) to bring together the different forms of support provided by the Union within a single Framework, the Accession Partnerships;

- (ii) to familiarize the applicants with Union policies and procedures through the possibility of their participation in Community programmes.

Together with Phare and aid for agricultural development, Agenda 2000 announced Structural aid for the CEECs amounting to some ECU 1 billion per year. This aid would be directed mainly towards aligning the applicant countries on Community infrastructure standards.

Based this financial envelope proposed, there is a need to be especially selective as to the sectors to be covered by the new instrument. Given previous experience with the infrastructure requirements of the new German Länder in this regard, as well as its Opinions on the applicant countries the Commission is proposing that the new instrument should limit its funding to environment and transport projects.

Applicant countries are, on the whole, facing more acute environmental problems than the existing EU Member States, particularly in water and air pollution and in waste management. The investment needed to comply with the requirements of the *acquis* could be more than ECU 100 billion.

Agenda 2000 also highlights the urgent need for the development and upgrading of transport infrastructure in candidate countries as well as the need to tackle missing links between the latter and the EU. Without such investment, severe problems of traffic congestion are likely to arise affecting the Union's overall traffic and policies.

Support for investment in these two areas would have major benefits in the applicant countries to improve the quality of life and support economic development and also in the EU countries in view of the transboundary effects of transport and environment problems.

As the needs of the applicant countries as regards environmental and transport infrastructure are considerable compared to the public sector resources, including ISPA, likely to be available for cofinancing measure, it is important that, wherever possible, ISPA should have a strategic catalytic impact relating to the overall investment needs rather than subsidizing ad-hoc investments. Agenda 2000 also calls for an increased multiplier effect from structural resources by greater use of forms of assistance other than direct grants. In particular:

- scarce public sector resources should have a leverage effect, especially by mobilizing private sector co-financing;
- assistance from ISPA should not "crowd out" other potential financing, including local sources and project generated revenues.

The Commission will be seeking to maximise the multiplier effect of ISPA by promoting increased recourse to sources of loan and equity financing and in particular from private sources. In this regard project applications at the level of the financial plan will need to contain information on financing the beneficiary is seeking from other sources such as the European Investment Bank (EIB),

including its pre-accession facility, The European Bank for Reconstruction and Development (EBRD) and the World Bank. Individual projects will be examined with the EIB before the financing package is agreed by the Commission.

Main factors of uncertainty

The capacity of the organizations in the applicant countries responsible for the implementation of the measures, the general economic situation in the countries and more specifically the functioning of the financial system as well as the willingness of the financial markets to allocate funds to the projects involved which could affect their possibilities to co-finance operations.

9.3 Monitoring and evaluation of the operation

Performance indicators selected: These will be selected by the Commission together with the applicant country, when applications for assistance are appraised. The proposal for a Regulation states that on receipt of a request for assistance and before its approval, the Commission should carry out a thorough appraisal of the measure. The following criteria will be applied:

- economic and social benefits, including the potential for leverage of private financing, which shall be commensurate with the resources deployed; an assessment shall be made in the light of a cost-benefit analysis;
- the arrangements for ensuring effective management of the measures;
- the arrangements for ensuring effective financial management of the measures;
- the priorities established by the Accession Partnerships for the areas of intervention;
- the contribution which projects can make to the implementation of Community policy on the environment;
- the contribution of projects to trans-European networks and common transport policies;
- the establishment of an appropriate balance between the fields of the environment and transport infrastructure.

Details and frequency of planned evaluations

In addition to the *ex-ante* appraisal outlined above, the Commission and the applicant countries will undertake *ex-post* evaluations of the measures supported through ISPA. In addition annual progress reports on each measure will have to be submitted to the Commission.

9.4 Coherence with financial programming

The action proposed for assistance corresponds to the broad Community objective of economic and social cohesion defined in Articles 130a and 130d of the Treaty.

10. **ADMINISTRATIVE EXPENDITURE**

10.1 Increase in Commission staff

Any increase in staff if necessary, cannot be quantified at this stage. In some of the applicant countries increases in staff in the Commission delegations may be necessary to assist with the decentralised implementation of the assistance through ISPA.

However, actual mobilisation of the necessary administrative resources will depend on the Commission's annual decision on the allocation of resources, taking into account the number of staff and additional amounts authorized by the budgetary authority.

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