THE ENLARGEMENT PROCESS

and the three pre-accession instruments: Phare, ISPA, Sapard

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1 Opening remarks by Commissioner Verheugen

Enlargement can be successful only if both the EU and the candidate countries are duly prepared for it, and if enlargement has broad support among our populations. The business community in current and future Member States has a key role to play in this regard. They are the operators that will make the enlarged internal market work. They, through their business operations, are in day-to-day contact with each other at grassroots level, and can play a major role in helping to explain to broad parts of society the objective of EU enlargement. And they are also actively involved in turning pre-accession assistance into concrete projects.

1. The political context

The Nice European Council (December 2000) has been another important milestone in the enlargement process, for three reasons.

- The remaining institutional obstacles to enlargement on the Union's side were cleared.
- By endorsing the 'Enlargement strategy paper' (put forward by the Commission) the Nice Council set out clear perspectives for the further conduct of the negotiations.
- A clear timeframe for the first accessions has been set, by expressing the hope that the first acceding countries will be able to participate in the elections for the European Parliament in June 2004.

2. The benefits of enlargement

Indeed, the benefits of enlargement are already visible today, both politically and economically. The goal of enlargement has led to political stability based on common European values, and has strongly reinforced economic reform efforts in the candidate countries.

The analysis of progress in individual countries shows that reforms pay off. In several cases the extent of structural change in the economy is already producing rapid growth from new, healthy roots, increasing living standards and boosting the candidate countries' competitive strength.

A wider European Union will further stimulate growth and create new investment and trading opportunities. Two indicators illustrate the great and ever-increasing importance of the candidate countries as trade and investment partners for the EU.

- In 1999, 67.5% of all identified Foreign Direct Investment into the candidate countries of Central and Eastern Europe was of EU origin.
- The European Union has become by far the most important trading partner of the thirteen candidate countries. Over the past six years, the total value of trade has increased almost threefold, to € 210 billion per year.

3. The advantages for existing EU Member States

The Member States run considerable surpluses on their export trade with the candidate countries, and these translate into more jobs, more tax revenue and more money for social security systems. In 1999, the EU's trade surplus with the applicant countries amounted to € 25.8 billion.

Enlargement will also increase the size of the single market where entrepreneurs, traders and investors will be able to use a common set of rules and procedures. Moreover, the strict application of competition policy, rules on intellectual property, company law, etc. will create a level playing field for all.

4. Perspectives for the enlargement process after Nice

A signal was needed to show that the way ahead for enlargement is clear, and to demonstrate the Union's political will to move the accession process forward. Nice provided this signal at the highest level and has given a clear mandate to move forward in the accession negotiations on the basis of the enlargement strategy proposed by the Commission. This signal was reiterated during the European Council of Göteborg, where the irreversibility of the process was affirmed. In concrete terms, this implies that the Union undertakes to present common positions on the various negotiating chapters in accordance with an agreed timetable for the period up to mid 2002. To the extent that this strategy is effectively pursued, and the candidate countries continue their preparations for membership, this means that negotiations could be concluded in 2002 with those candidates that fulfil the accession criteria.

5. The challenges of this tight and ambitious timetable

The candidate countries must step up their preparations for membership. These efforts affect all aspects of society, and include strengthening capacities to implement and enforce the *acquis*, as well as further progress in reforming the economy – including agriculture – and the administration, so as to meet the ‘Copenhagen accession criteria’. It goes without saying that major sacrifices are being asked from these countries’ populations, and that these can only be sustained provided the perspective of enlargement becomes concrete. Nice has set an important benchmark in this regard.

To help the candidate countries duly prepare for membership, the Community has committed itself to an unprecedented pre-accession financial assistance, of more than € 3 billion per year. This money is channelled through the three pre-accession instruments Phare, ISPA and Sapard. The whole process of enlargement, at the level of the negotiations, preparations inside the countries, and use of pre-accession assistance, is now being accelerated, and the perspective of the first accessions has become truly tangible.

6. The importance of communication

The Union itself, in addition to the institutional outcome of Nice, must now also intensify the political and psychological preparation for enlargement, by explaining the costs and benefits to its population. We have to set in motion a wide-ranging dialogue in our societies to make the risks and benefits clear, defuse misconceptions where they exist, and let the people know that their concerns are being taken seriously. With this purpose, the Commission adopted in May 2000 an Enlargement Communication Strategy, which is being implemented on a de-centralised basis in the Member States and the candidate countries, involving national and regional authorities on both sides. In the Nice conclusions, it was also decided to prepare a special programme for border regions.

Economic and business operators are key actors in the accession process: they actively contribute to the economic reform process in the candidate countries, and play an important role in the implementation of pre-accession assistance. But more than that, they also can, and should, make an important contribution to informing and sensitising the population (both in the present EU Member States and in the candidate countries) to the stakes and the opportunities of this truly historic enlargement process.

2 Introduction to Phare, ISPA and Sapard

During the period 2000-2006 financial assistance from the European Communities to the candidate countries of Central and Eastern Europe will be provided through three instruments: the Phare programme (Council Regulation 3906/89), ISPA (Council Regulation 1267/99) and Sapard (Council Regulation 1268/99). The ten countries that have applied to become members of the EU are Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia. The year 2000 has marked the coming into effect of the two new financial pre-accession instruments: ISPA and Sapard. The overall pre-accession assistance is € 3 billion per year (1997 figures) during the 2000-2006 period, half of which is allocated to Phare. The precise appropriations for 2001 are € 540 million for Sapard, € 1,080 million for ISPA, and € 1,620 for Phare, amounting to an overall budget of € 3,240 million.

ISPA supports large-scale infrastructure projects in the fields of transport and environment, in a 50-50 proportion, and Sapard helps to prepare the countries for taking on the *acquis* in the fields of agriculture and rural development.

In view of the creation of ISPA and Sapard, investment support under the Phare programme had to be re-oriented, to avoid any overlapping with the other two instruments. Assistance provided under each of these instruments will be co-ordinated in accordance with Council Regulation 1266/99. The assistance will be given in the general legal framework of the Association Agreements with these countries, taking account of the contents of the Accession Partnerships. Phare remains the sole instrument to provide pre-accession support for Institution Building in all *acquis*-related areas.

Co-ordination between the different instruments

Given the magnitude of the needs of the candidate countries, it is vital to ensure that Community assistance can be used in the most cost-effective manner. Co-ordination between the three instruments clearly plays an important role in securing this cost-effectiveness. The main principles of this co-ordination were laid down in the Co-ordinating Regulation. Co-ordination is a shared responsibility between the Commission and the candidate countries, so as to ensure full complementarity between the three instruments.

Given that for Phare and ISPA a similar implementation system is applied, i.e. the Commission approves ex-ante decisions taken by the Contracting Authority concerning the procurement and award of contracts, co-ordination should not prove problematic between these two instruments in practice. However, the countries need to set up appropriate and transparent structures and mechanisms to ensure good co-ordination between Phare and Sapard, as the decentralisation of the management of Phare proceeds and the Sapard (fully decentralised) system is implemented.

3 Phare – Strengthening preparations for enlargement

1. Introduction

The aim of Phare Programme is to assist the candidate countries of Central Europe in their preparations for joining the European Union.

2. Phare priorities

Phare focuses on two main priorities: Institution Building and *acquis*-related Investment.

The first priority, Institution Building, accounting for some 30 percent of the budget, is defined as the process of helping the candidate countries to develop the structures, strategies, human resources and management skills needed to strengthen their economic, social, regulatory and administrative capacity. An innovative tool was introduced to serve that purpose: the long-term twinning of administrations and agencies. Ever since its inception, this new instrument has occupied a central place in pre-accession assistance. With EU support, the vast body of Member States' expertise is made available to the candidate countries, through the long-term secondment of civil servants and accompanying expert missions, in order to support them in their efforts to adopt, implement and enforce key areas of the *acquis*. The process is as follows: the Commission identifies lacunae in the administration in the candidate countries. The candidate country is asked to come up with a concrete project to reform the administration and then the Commission asks the Member States to mobilise a team of experts, lead by a Project Leader and a pre-accession adviser, in order to help the candidate country to reform its administration. It is a very pragmatic, case-by-case method of reforming public administration.

Initially, twinning focused on the fields of agriculture, environment, public finance, justice and home affairs, and regional policy; now the twinning instrument covers the whole body of the *acquis* in all its diversity. During the 1998-2001 period, more than 500 twinning projects were programmed. Their implementation often involved more than one EU Member State. An assessment report of July 2000 confirmed the soundness of the approach of Twinning, but made some valuable suggestions for improvements, the majority of which have been incorporated into the methodology. In addition, a medium term or ‘twinning light’ mechanism has been developed to address well-circumscribed needs of limited scope, which emerge in the final stages of the preparations for accession.

The second priority, *acquis*-related Investment (which accounts for 70%) consists of two major types of activities:

1. Co-financing of investment in the countries’ regulatory framework to strengthen the regulatory infrastructure needed to ensure compliance with the *acquis*. In other words investment in all the equipment needed to operate the internal market, such as putting the food safety structure in place, making frontiers secure, procuring testing and measuring equipment related to the internal market, or for laboratories and control equipment in the field of consumer protection.

2. Co-financing of investment in economic and social cohesion, initiated in Phare 2000 programmes, through measures similar to those supported in Member States through the European Regional Development Fund (ERDF) and the European Social Fund (ESF). This will promote the functioning of the market economy and the capacity to cope with competitive pressure and market forces within the EU. It will represent about one third of each Phare National Programme.

3. Budget

The actual Phare country allocations in MEUR for 2001 are highlighted in the table below.

Country	2001 allocation (MEUR)		
	National Programmes	CBC	Nuclear decommissioning
Bulgaria	82.8	28.0	70.0
Czech Republic	65.4	19.0	
Estonia	26.3	3.0	
Hungary	89.8	19.0	
Latvia	31.4	3.0	
Lithuania	45.5	3.0	55.0
Poland	411.0	56.0	
Romania	273.7	13.0	
Slovakia	43.5	12.0	25.0
Slovenia	21.3	7.0	
Total	**1090.8**	**163.0**	**150.0**

Actual Phare country allocations in 2001

Multi-annual indicative national allocations are set by the Commission, based primarily on population and GDP per head but also taking into account past performance, need, absorption capacity and progress in implementing the Accession Partnerships.

For 2002 up to € 250 million will be made available from the Phare unallocated reserve for additional institution building efforts for all Phare countries. Overall, the indicative allocations for 2002 in MEUR are:

Country	Indicative Phare allocation for 2002 (MEUR)
Bulgaria	162.9
Czech Republic	103.8
Estonia	40.4
Hungary	120.7
Latvia	47.3
Lithuania	80.5
Poland	449.8
Romania	278.5
Slovakia	89.1
Slovenia	41.9
Total	**1415.0**

4. Approach

The Phare Programme is radically accession-driven. In practice, this means that, contrary to the 1989-1997 period, when Phare focused on supporting the process of economic transition in the countries of Central and Eastern Europe and operated on a 'demand-driven'[1] basis, it now must concentrate exclusively on priorities for accession, as defined by the Council in the 'Accession Partnership' for each candidate country.

4.1. Programming documents

The Accession Partnerships are a key feature of 'Agenda 2000' and were approved for the first time by the Luxembourg European Council in December 1997. They lay down the short-term and medium-term priorities for each country in the accession process. They are the single framework for programming all pre-accession assistance. Each Accession Partnership effectively lists each country's weaknesses where efforts are needed to align with European Union requirements; the achievement of these aims is a pre-condition for accession. Priorities for Phare may be adjusted, as Accession Partnerships were reviewed at the end of 2001.

The other important instruments in terms of programming of Phare assistance are the National Programme for the Adoption of the Acquis (NPAA), the National Development Programme, the Regular Reports and the negotiations process.

Each candidate country has drawn up its National Programme for the Adoption of the Acquis (NPAA). The NPAA sets out in detail how the candidate country in question intends to fulfil the priorities of the Accession Partnership and to prepare for its integration in the EU. The NPAA complements the Accession Partnership in that it contains a timetable for achieving the priorities and objectives and, where possible and relevant, indicates the human and financial resources to be allocated.

The Regular Reports are the European Commission's assessment of progress achieved by each of the candidate countries towards accession. These reports serve as a basis for the Council to take decisions on the conduct of negotiations or their extension to other countries.

The National Development Programme is the candidate country's action programme for regional development and as such maps out the strategy, priorities and programme for promoting economic and social cohesion in the candidate countries.

The accession negotiations determine the conditions under which each candidate country will join the EU. The negotiations focus on the terms under which candidates adopt, implement and enforce the *acquis communautaire.*

4.2. Reforms and developments

In 1997, important reforms were introduced to make Phare operate in a more efficient and more focused manner. These changes included:

- important steps towards more decentralised management of Phare in the countries;
- important transfer of Commission responsibilities and personnel from the Headquarters in Brussels to the Delegations (so-called "deconcentration");
- channelling of all Phare funds through one single body (the National Fund) in the countries; the head of the National Fund (National Authorising Officer, NAO) bears full responsibility and liability towards the Commission for the use of the funds;

1 The various partner country governments proposed projects to the European Commission, which meant that they themselves were effectively the driving force in shaping the programmes. Given that projects could be in any field or sector – provided they met the Phare objectives – this led to numerous small projects, which were time-consuming and very complicated for project managers.

- emphasis on support for public administration; for instance by the introduction of the 'twinning' instrument which is an innovative long-term tool for public administration reform. From 2000 onwards a new instrument, "Twinning Light", is tackling any self-contained institutional issues arising from the *acquis communautaire* provided the subject addressed is of limited scope;
- improvement of monitoring and evaluation of the Programme (especially through the creation of Joint Monitoring Committees).

The 1997 reforms were fundamental and their full impact is only being felt today. They established the structures and procedures in the countries, which will constitute the basis for further developing what is needed for sound and efficient management of pre-accession assistance and the Structural Funds after accession.

5. Latest developments and perspectives for Phare

Phare has now also started to support investment in economic and social cohesion, based on a preliminary National Development Plan, which the Commission has asked the candidate countries to prepare. These new activities aim at preparing the candidate countries for their future involvement in the Structural Funds, on the basis of 'Objective 1' approaches (i.e. Productive sector activity, human resources and business-related infrastructure). The type of projects that Phare supports in this domain, is quite similar to those co-financed by the ERDF and the ESF in Member States. There are three major categories: human resources development (which corresponds particularly to the European Social Fund), SME development, and business-related infrastructure. A detailed description of this new domain has been given in a Communication, which Commissioner Verheugen presented to the Commission on 27 October 2000[2]. Key features of this Communication are to further consolidate the 1997 reforms, and to help the countries prepare to take on Structural Funds upon accession.

For the first time, Phare is now engaging in a 'light' and indicative version of multi-annual programming, which will be based on the countries' National Development Plans. As National Development Plans are a key prerequisite for the countries' future involvement in the Structural Funds, a great deal of emphasis is put on continuously improving these plans.

Furthermore, instead of supporting stand-alone projects, we are moving towards a more programmatic approach. This new programmatic approach will also lead to a better alignment of the cross-border co-operation programmes (Phare CBC) with the Structural Funds version of these Programmes (Interreg).

One of the major objectives of the Commission is to help the candidate countries prepare for taking on full responsibility and liability for the management of all Community assistance. For this purpose, an Extended Decentralised Implementation System is currently being prepared (EDIS).

These new approaches should help the countries to prepare for a smooth transition from pre-accession assistance to Structural Funds.

For further information please consult the Phare web site:
http://europa.eu.int/comm/enlargement/pas/phare/index.htm

Tender announcements are published on the EuropeAid web page:
http://europa.eu.int/comm/europeaid/cgi/frame12.pl

2 Phare 2000 Review, Strengthening Preparations for Membership, European Commission Directorate General Enlargement C (2000) 3103/2.

4 ISPA (Instrument for Structural Policies for Pre-Accession)

1. Introduction

The “Instrument for Structural Policies for Pre-Accession” (ISPA) provides financial support for investment in the areas of environment and transport in order to speed up the compliance in accession countries with the European legislation in force for these two sectors for a period of seven years (2000-2006). The budget is foreseen approximately about € 7 billion for 2000 to 2006.

ISPA is of a hybrid nature, as it is situated between the financial support to third countries (cf. Phare) and the financial support to Member States (cf. Cohesion Fund). ISPA is accession-oriented, follows an approach similar to that of the Cohesion Fund, and applies to the Environment and Transport sectors.

2. Sectors benefiting from ISPA

The objectives of ISPA projects have their origin mostly in the Accession Partnership, the National Programme for the Adoption of the *acquis*, the National Development Programme, the Regular Reports and the National ISPA Strategies for Environment and Transport sectors.

In transport, investments are related to the *acquis communautaire* and most of the investments are related to the corridors and the TINA (Transport Infrastructure Needs Assessment) Network. This will include projects aimed at extending the Trans-European Transport Networks to provide good connections between the Union and the applicant countries and interconnections between national networks and links from these to the Trans-European Transport Networks. In this context, the TINA network will be an important reference for identifying projects. ISPA will therefore be contributing to funding the development of railways, roads, waterways/ports and airport infrastructure. Up to now, rail is the main sub sector (50% of the budget), then roads (slightly more than 40%) and there is one airport infrastructure project in Bulgaria.

The assistance in the field of environment infrastructure will concentrate on the “investment heavy” directives, which concern: drinking water, treatment of wastewater, solid-waste management and air pollution. Up to now wastewater treatment was the main sub sector, followed by drinking water, then sewage treatment and finally solid waste management. There is no project in the air pollution field in the first year.

A small part of ISPA budget may also be used to fund preparatory studies and technical assistance for project preparation and project management.

ISPA is important for “Learning by doing”, since it is the precursor of the Cohesion Fund. It should be managed as closely as possible to the way the Cohesion Fund is managed.

3. Budget

The total resources for ISPA amount to € 1080 million (at 2001 prices) per year. These figures are adjusted for inflation on a yearly basis. The Commission, using the same criteria as the ones used for the Cohesion Fund, has decided the allocation of ISPA resources among the recipient countries on the basis of population, per capita GDP (in purchasing power parity terms) and land surface area. Last year Poland received the largest allocation, of € 335 million, and Slovenia the smallest (€ 16 million). The ISPA Regulation specifies the need to strike a balance between measures in the fields of environment and transport, and as a consequence the Commission has succeeded in having a 50/50 split in the budget between transport and environment even though it is not a legal requirement.

ISPA can finance only up to 75% of project cost, though in some exceptional cases it can be increased up to 85%. Co-financing is consequently needed (with the EIB, EBRD, the Nordic Investment Bank, the Nordic Environment Fund and national sources). The Commission wants to develop co-financing with IFIs and also with the private sector (public/private partnerships).

In order to encourage the accession countries to propose high quality projects and to have some flexibility in the management of ISPA funding, the allocations are given as ranges:

Country	Budget Prevision for 2000* (EUR)	Country % of Total
Bulgaria	106,795,200	9,63%
Czech Republic	66,907,017	6,03%
Estonia	29,921,977	2,70%
Hungary	90,776,000	8,18%
Latvia	48,057,849	4,33%
Lithuania	50,464,517	4,55%
Poland	406,566,846	36,65%
Romania	245,628,509	22,14%
Slovakia	48,057,848	4,33%
Slovenia	16,019,300	1,44%

** Second tranche of 2000 projects included*
Source: DG Regio ISPA

4. Approach

The objectives of ISPA projects have their origins in the Accession Partnerships and the National ISPA Strategies for the environment and the transport sectors. The National Strategies are set up by the candidate countries and define the priority objectives and the ways and means of realising these. The National ISPA strategies tackle the programming exercise from three angles: conformity with priority objectives in terms of sectors and sub sectors, geographical priorities and financial engineering (combination of public and private money, of loan money and grant money).

Project preparation has required significant technical assistant funds to be used in the framework of the Phare Programme to prepare the first round of projects. Project ideas can come from everywhere (municipalities, companies, …), must be proposed through the formal ISPA application form[3] and must be proposed to the National ISPA Co-ordinator[4] in the candidate country. The National ISPA coordinator submits the proposal directly to the Commission, which carries out a thorough appraisal of project following the procedure established for the Cohesion Fund. The appraisal criteria are the conformity with priority objectives, economic feasibility, financial engineering (rate of assistance) and institutional capacity. The proposal is then submitted to the ISPA Management Committee, which is a Committee composed of Member States officials, for its opinion. The Commission will decide on the basis of the Committee's opinion and the Financing Memorandum is prepared for signature by the Commission and by the beneficiary countries. After which the implementation of the project starts.

The minimum size of investment is € 5 million, although the actual project size can be smaller in case that they are grouped together. Generally, the project size is significant: € 6 to € 100 million for environmental projects and € 6 to € 300 million for transport project. ISPA can finance technical assistance during the whole project cycle: project preparation, project management and supervision.

3 Application forms exist in electronic form and should be filled and transmitted in this way to facilitate processing and ease possible modifications.

4 The National ISPA Coordinator is a senior official acting as the main "manager" of ISPA projects in the candidate country and is the main interlocutor of the Commission for programming, implementation and evaluation issues.

5. Practicalities

There are three types of contracts under the ISPA Programme (service, works and supply contracts). There are no grants.

Service contracts have essential supervision and management functions during the implementation of the projects. The Financing Memoranda feature a conditional clause that requires that the Commission must receive evidence that project management capacities are in place and that project managers were appointed under terms of reference acceptable to the Commission.

Supply contracts exist in the transport sector, e.g. for signalling equipment.

Works contracts are likely to be the majority of contracts under the ISPA Programme. The procedures of the Practical Guide should be applied for the tendering procedures, however the contracts provided by the International Federation of Consulting Engineers (FIDIC) should be used for works. The 1999 version of the FIDIC books applies.

The FIDIC rules are an accepted contractual framework that has worked for years. In the candidate countries experience has been built up over the last years. With accession the candidate countries would be free to apply the FIDIC rules. FIDIC rules are also used by the co-financing International Financial Institutions. Therefore it makes sense to retain FIDIC rules for ISPA projects.

For construction in the transport sector the New “Red Book”[5] is likely to be used in most of the cases. For environment projects the Implementing Agency may rather select the Design-Build type from the New “Yellow Book”[6], which leaves the final design to the contractor under advice from the engineer. The Turnkey procedure in the New “Silver Book”[7] may not be that frequently used for the time being. It is possible that whole packages turnkey arrangement may be used for public-private-partnership projects. However, the ultimate choice of contract will depend on project-specific criteria, including the risk associated, and is the responsibility of the Contracting Authority.

The “Red” and the “Yellow Books” require an engineer. In fact, the Commission has to be sure that the engineering functions are properly taken care of. Therefore, ISPA projects require independent and experienced engineers. Apart from that, appropriate health and safety measures must be guaranteed.

Contracting Authorities need not just be the CFCUs or the transport and environment ministries, but can also be established down to the communal level. The EBRD has for many years been working closely with municipalities. And some municipalities have proved to be capable of implementing projects.

For further information please consult the ISPA web site:
http://www.inforegio.cec.eu.int/wbpro/ISPA/ISPA_en.htm

Tender announcements are published on the EuropeAid web page:
http://europa.eu.int/comm/europeaid/cgi/frame12.pl

To find more information on the FIDIC rules:
http://www.fidic.org/bookshop/

5 Works of Civil Engineering Construction (Red Book), Conditions of Contract for Works of Civil Engineering Construction (4th Edit. 1987 reprinted 1992).

6 Electrical and Mechanical Works (Yellow Book), Conditions of Contract for Electrical and Mechanical Works (3rd Edition, 1987; Reprinted 1988).

7 FIDIC Contracts Guide to the Construction, Plant and Design-Build and EPC/Turnkey Contracts (1st Edition, 2001).

5 Sapard (Special Accession Programme for Agriculture and Rural Development)

1. Introduction

Sapard aims to support the efforts made by the candidate countries to prepare for their participation in the Common Agricultural Policy and the Single Market. It involves two major, explicit, operational objectives:

- to help solve the priority and specific problems in agriculture and rural development;
- to contribute to the implementation of the *acquis communautaire* (the whole body of Community legislation) concerning the CAP and other agricultural priorities.

Legal basis: Sapard is founded on the Council Regulation 1268/1999, which was adopted in June 1999[8]. The Regulation lays down parameters for Community support for pre-accession measures for agriculture and rural development in the 10 applicant countries of Central and Eastern Europe in the pre-accession period. It stipulates that aid under Sapard has to be granted in the form of a financial contribution, subject to financial rules reflecting those established for the financing of the Common Agricultural Policy set out in regulation 1258/1999.

The legal basis for decentralisation is the Co-ordination regulation (1266/1999), which allows conferral of management tasks, otherwise executed by the Commission, to implementing agencies operating under the responsibility of the third country concerned.

2. Priorities

The Council, in the above regulation, determined that pre-accession aid for agriculture should be applied to priority areas to be defined for each country. It specified that support under Sapard should relate to one or more of the 15 measures, namely:

- investments in agricultural holdings,
- improving the processing and marketing of agricultural and fishery products,
- improving the structures for quality, veterinary and plant-health controls, for the quality of foodstuff and for consumer protection,
- agricultural production methods designed to protect the environment and maintain the countryside,
- development and diversification of economic activities, providing for multiple activities and alternative income,
- setting up farm relief and farm management services,
- setting up producer groups,
- renovation and development of villages and the protection and conservation of the rural heritage,
- land improvement and re-parcelling,
- establishment and updating of land registers,
- improvement of vocational training,
- development and improvement of rural infrastructure,
- agricultural water resources management,
- forestry, including afforestation of agricultural areas, investments in forest holdings owned by private forest owners and processing and marketing of forestry products,
- technical assistance for the measures covered by regulation, 1268/1999 including studies to assist with the preparation and monitoring of the programme, information and publicity campaigns.

8 OJ L161P 87, of 26.6.1999.

The list of measures includes many that are also provided for in Member States' Rural Development Programmes. The ones not available to Member States are those for improving controls of quality, veterinary and plant health, for producer groups, and land registers.

Of the available measures, for the 10 countries, investment in processing and marketing is the most popular with 26% of the total public aid, followed by investment in agricultural holdings and investment in the rural infrastructure, each just over 20%. Next comes a very heterogeneous measure, diversification of activities, with approximately 11%. Of the 9 other measures none averages more than 4% of the total public aid. Although the balance differs from programme to programme, in virtually all of the candidate countries the share of public aid accounted for by the three measures, processing and marketing, investment in agricultural holding and in the rural infrastructure, is over 60% of the total. In other words, in each of the candidate countries these are the big targets for interested suppliers of services and equipment.

3. Budget

Sapard funds amount to € 540 million (at 2001 prices) per year. The allocation to each country is based on certain criteria. These include agricultural area, farming population and GDP per capita. The allocations differ significantly from one country to the next. Poland receives the largest allocation of € 175 million per year, Slovenia the smallest: € 6.6 million per year. It is important to note that some of these criteria are different from those for Phare and ISPA, and subsequently the resulting allocation per country will also differ.

The Community annual allocations to each country are as follows (as set out in a Commission Decision of 20 July 1999):

Country	**Annual allocation (MEUR) at 2001 prices**
Bulgaria	54,128
Czech Republic	22,911
Estonia	12,603
Hungary	39,517
Latvia	22,688
Lithuania	30,976
Poland	175,170
Romania	156,429
Slovakia	18,992
Slovenia	6,580
Total	**540,0**

Published in the Official Journal L 226, 27 August 1999, p. 23; Note: 1999 prices indexed to 2001

The Community contribution may amount to up to 75% of the total eligible public expenditure and for certain measures up to 100% of these costs. An aid intensity limit is set for all revenue-generating investments, which in practice means all investment except infrastructure not generating substantial net revenue. For these investments public aid may amount to up to 50% of the total eligible cost provided the Community contribution does not exceed the ceilings set under State aid policy.

The Community's financial contribution is to be granted in the form of advances to applicant countries, to be used for the part financing of proven expenditure incurred by the selected beneficiaries. No advances of Community money are to be made to beneficiaries in anticipation of expenditure by them. In no case is the Community contribution to precede the national component.

4. Approach

Sapard introduces a new dimension in Community aid for third countries. The innovation is to confer management on agencies in the applicant countries. This is a radical move because it is the first time a fully decentralised external assistance programme has been undertaken by the Commission. It transfers new and important responsibilities to the candidate countries of Central and Eastern Europe. The different Sapard agencies – who are usually either located in the National Ministry of Agriculture or established as separate entities under the aegis of the Minister of Agriculture – will be responsible for project selection, management, arranging finance and carrying out controls. The idea is that they will operate in a similar fashion to paying agencies in the Member States (set up according to the European Guidance and Guarantee Fund-EAGGF rules) and upon accession could become the paying agency for the Common Agricultural Policy.

5. Reasons for decentralisation

A fully decentralised system will give the candidate countries valuable experience in the practical application of Community rules. These countries have to apply similar mechanisms to those required under Community legislation for existing Member States in implementing the EAGGF. The process of decentralisation involves a steep and important learning curve both for the candidate countries and the Commission.

Moreover, the programme involves a large number of projects (in most candidate countries thousands, even tens of thousands, are expected to be processed each year), so it would have been administratively impossible for the Commission to issue ex-ante approval (which is the basis used for Phare and ISPA). When Sapard is fully operational, there will be more people working in the Sapard national agencies than the whole staff of DG Agriculture (well over 1000).

6. Programming – 3 major elements/conditions

Three key conditions need to be met before the Community funds start to flow, that is to say, before the Commission confers management of the programme on the candidate countries.

6.1. Approval of National Rural Development Programmes by the Commission

Programming measures under Sapard required a plan to be drawn up. Each candidate country designated a competent authority to draw up this national plan, after relevant bodies and organisations at the appropriate level had been consulted. The plans covered a period of up to seven years from 2000. They included a description of the strategy proposed, its quantified objectives, the priorities selected and the geographical scope.

In their plans, candidate countries gave priority to measures to improve market efficiency, quality and health standards, and measures to create new employment in rural areas and to protect the environment. Some 2% of Community contribution may be used by the Commission on its initiative for actions that involve preliminary studies, exchange visits, evaluations and controls.

On the basis of each applicant country's plan, the Commission approved, from October to December 2000, 10 separate Programmes for Agriculture Development having consulted Member States through the Agricultural Structures management committee (STAR). This involved a process of consultation and negotiation between the Member States, the candidate countries and the European Commission, and within the Commission itself. The programmes adopted can be found on the DG Agriculture website[9].

These programmes indicate the priority areas, which Sapard will address in the individual countries, as well as setting out a strategy for rural development and an annual estimate of the financial resources needed for the realisation of the programme. Each country will opt to concentrate on a number of measures out of a possible 15 (see list above) laid out in the Council Regulation 1268/99.

9 http://www.europa.eu.int/comm/agriculture/external/enlarge/countries/index_en.htm

6.2. Signature and conclusion of the international financing agreement

The international financing agreement has to be negotiated, signed and concluded with each country and the Commission on behalf of the Community. Prior to accession no Community legislation is applicable in the candidate countries. In this agreement, the Commission is under an obligation to test the Sapard machinery and systems in each country to check that everything is in order before Community funds begin to flow.

A multi-annual financing agreement has been concluded between the Commission and the candidate countries. It lays down the Community management and control rules for the implementation of Sapard for the whole period of the programme (2000-2006). It enshrines the three principles outlined in the Commission's communication of January 2000 namely:

- full decentralisation of programme management to an agency established under the responsibility of each country,
- financing arrangements based on differentiated appropriations,
- the application of the EAGGF Guarantee Section Clearance of Accounts procedure.

An annual agreement has to be concluded with each candidate country. The annual agreements set out the Community financial allocation for each year and may amend the provisions laid down in the multi-annual agreements.

The multi-annual and annual agreements have now been signed for each country. Details of which can be found on the DG Agriculture website[10].

6.3. Approval of the accreditation of the Sapard agencies

Sapard agencies have the responsibility for selecting and managing projects, arranging finance and carrying out controls. Payments by the Sapard agency must be based on expenditure incurred by the beneficiaries. The Community contribution is paid on the basis of the total national contribution. Each Sapard agency comprises two elements: a paying and an implementing agency. The paying agency is responsible for all financial procedures, including checking payment claims and authorising payments. The implementing agency is responsible for such tasks as checking applications, carrying out on-the-spot checks, issuing approval for work to commence and monitoring the progress of projects. These agencies are subject to independent audit by the Commission.

The competent authority is responsible for accrediting the national Sapard agency. For the system to operate the Commission must first examine and approve this accreditation. Once the National Fund is satisfied that the Sapard agency meets the EU requirements and has consequently accredited the agency, it will communicate the details to the Commission. The Commission will then commence its formal examination of the structures and procedures of the National Fund and the Sapard agency (to ensure that it meets the accreditation criteria and that the national structures involved in the management of the programme are satisfactory). Only when the Commission has approved this accreditation will management of Community funds be conferred to the agency and Community funds start to flow.

7. Carrying forward funds for 2000

Although the programmes were approved and the negotiations of the agreements completed in 2000 the work to build the Sapard agencies was not completed by the end of that year. In order to safeguard funds earmarked under Sapard for the year 2000 they were committed by the Commission to each country in annual agreements. In so doing, the funds from the 2000 budget are available, including for countries that have not yet completed the accreditation process. No funds have consequently been lost. Moreover, the period of validity for payments of commitments from the 2000 budget was extended from the end of 2002 until 31 December 2003.

10 http://www.europa.eu.int/comm/agriculture/external/enlarge/countries/index_en.htm

6 Decentralised Tender and Contract Procedures

1. Introduction

Decentralisation involves the transfer of responsibility of the Contracting Authority from the Commission to the recipient country. There are two types of decentralisation involved in the programming of the pre-accession instruments: ex-ante and ex-post decentralisation. The Contracting Authority is responsible for the tendering and contracting, as well as the financial and administrative management of the projects.

- For Phare and ISPA, the Commission exercises systematic ex-ante controls; that is to say, the decisions concerning the procurement and award of contracts are taken by the Contracting Authority and referred for the prior approval of the Commission Delegation.
- Sapard operates under an ex-post system in which the Contracting Authority without the prior approval of the Commission takes these decisions.

1.1. The ex-ante decentralisation procedure

In practice, the ex-ante control decentralisation procedure carried out by the Commission Delegations involves four essential checks:

- Approving the content of the tender dossier when the tender is launched.
- Approving the composition of the evaluation committee (which is responsible for recommending a bidder to the Contracting Authority).
- Checking and approving the evaluation report.
- The signature of the Head of the Delegation on the contract itself, not as a party to the contract but to confirm that the project will receive EU financing.

2. The main actors

The main actors are the National Aid Co-ordinator, National Authorising Officer, National Fund, EC Delegations and the final beneficiaries.

The **National Aid Co-ordinator** is responsible for ensuring co-ordination both at the level of programming (with the aim of ensuring a close link between the general accession process and the use of Community financial assistance) and at the level of monitoring and assessing of the Phare/pre-accession programmes. This person is usually a high-ranking official appointed by the government.

The **National Authorising Officer** is the NAC's financial counterweight (also appointed by the government) and is responsible for the National Fund, which is now the only channel (since 1998) through which Community pre-accession funds flow. It is the sole financial entity that deals with:

- the financial management of all programmes;
- the request to and the receipt of funds from the Commission;
- the redistribution of funds to the relevant beneficiaries;
- financial reporting to the Commission.

In short, the Fund bears the overall responsibility for financial management, including the observance of the Financing Memorandum and the Practical Guide (see below). It is located in a national ministry with central budgetary competence, such as the Ministry of Finance.

The **Implementing Agencies** (IAs) are located within a ministry or administration in the candidate country (their vocation is to remain after accession). They are responsible for the implementation of Phare projects and are under the authority of the National Authorising Officer (NAO): the number of these agencies has been limited. A Programme Authorising Officer (PAO) is in charge of each agency and is nominated by the NAO in consultation with the National Aid Co-ordinator (NAC). The PAO is responsible for the sound financial management of the programme(s) to be implemented by the IA, including the observance of tendering and contracting procedures, and the monitoring of project implementation.

A **Central Financing and Contracting Unit** (CFCU) and a few **Implementing Agencies** (IA) in the main Line Ministries (i.e. regional development, transport, environment) carry out the tendering and contracting elements of the programme. For example, Institution Building programmes, which are multi-sectoral by nature, are managed by CFCUs. Project selection and monitoring remain the responsibility of the ministries/administrations directly benefiting from the assistance. The CFCU is also the specialised agency for the administrative and financial management of twinning operations.

Deconcentration involves the transfer of competence from the Commission Headquarters in Brussels to the **Commission Delegation** to the relevant country. It is a process that has been greatly enhanced in recent years. In 1999, the ceiling under which the Heads of Delegations are competent to approve tenders and contracts on behalf of the Commission was raised from € 500,000 to € 5 million; this covers the bulk of Phare tenders and contracts in most of the candidate countries. This threshold was totally removed in October 2000, making the Delegation competent for standard tenders and contracts no matter their amount. For Phare, the **Directorate General for Enlargement** is responsible for general policy and programming, as well as for financial flows to the National Fund, whereas for ISPA and Sapard the responsible DGs are Regional Policy and Agriculture respectively. No pre-accession money is passed through the Delegations, except a few budget lines such as technical assistance or grants to NGOs.

Whilst having no responsibility in the management of the pre-accession funds, the **EuropeAid Co-operation Office** remains competent for ensuring overall co-ordination with external aid programmes, in particular as to the development and monitoring of the procurement rules (Manual of Instructions and Practical Guide to Phare, ISPA, Sapard).

The **final beneficiaries** (institutions, municipalities, ministries) will also be part to the contract, in particular if they financially contribute to it. As a general rule, all investments must be co-financed.

3. Practical guide to Phare, ISPA and Sapard

The Practical Guide to Phare, ISPA and Sapard[11] came into force on the 1st January 2001. It replaces section F (procurement) of the DIS (Decentralised Implementation System) manual and applies to the procedures for tendering and covers all forms of procurement, namely service, supply and works contracts. The provisions therein stem from the Manual of Instructions for External Aid (according to which all other External assistance programmes proceed) and Financial Regulation IX (public procurement rules for external aid programmes).

The main features of the Practical Guide fall into **three categories** (simplification and harmonisation, increased transparency and more rights to companies participating in tenders, and eligibility criteria and other essentials).

11 For Sapard, the Practical Guide is only applicable with respect to the public procurement procedures (in sections 2, 3, 4 and 5).

3.1. Simplification and harmonisation

- Worldwide standards: The EuropeAid Co-operation Office (formerly the SCR) has worked towards common tendering and contracting procedures for all external aid programmes.
- Body of rules common to all types of procurement (service, supply and works contracts). A much greater degree of internal simplification has been introduced in this respect in order to make the process less complicated.
- Unified control procedures.
- English as common language to be used in all tendering and contract procedures, and all templates and documentation (found in the annexes of the Practical Guide).

3.2. Increased transparency and more rights to companies participating in tenders

- Publication of annual contract forecast[12], which must be published 30 days before corresponding procurement notice.
- Publication of procurement notice.[13]
- Extended submission period (50-90 days). The start of this range is 50 days for services and a maximum of 90 days for open works tender. This means that bidders are given more time to prepare better quality proposals.
- Publication of evaluation criteria and draft contract in the tender dossier. The evaluation criteria are more precise, binding and transparent, which limits the margin of manoeuvre of the Contracting Authority.
- Publication of the award of contract notices; these will henceforth be published in the same way and according to the same procedure as the tender itself (on the EuropeAid Co-operation Office website in case of international tenders).
- More precise information to unsuccessful tenderers. Explanations will be provided for why and on which point(s) they failed to win the tender.
- Appeal procedures (new): Tenderers believing that they have been harmed by an error or irregularity during the award process may petition the Contracting Authority directly. The Contracting Authority must reply within 90 days of receipt of the complaint. If the Commission is informed of such a complaint, the European Commission must communicate its opinion to the Contracting Authority and do all it can to facilitate an amicable solution between the complainant (tenderer) and the Contracting Authority.

3.3. Eligibility criteria and other essentials

- **Nationality**: Phare tenders are open to all natural and legal entities and persons of the EU Member States and the Phare countries. To verify compliance with this rule, in the tender the tenderers must state the country of which they are nationals.
- **Rule of origin**: all supplies and equipment purchased under a supply contract must originate in the EU or in a Phare country, as defined in the nationality rule above. Similarly, the tenderer must state the origin of the supplies in its tender.
- **Exceptions**[14]: For the two above rules the Commission awards derogations in exceptional cases and on a case-by-case basis.
- **Grounds for exclusion**: Candidates and successful tenderers must not fall into any of the categories identified in section 2.3.3[15] of the Practical Guide. Candidates must provide a sworn statement that they do not fall into these categories; successful tenderers must supply proof (usually under the law of the country in which they are established) to that effect.
- **Ethics clauses**: Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the Evaluation Committee or Contracting Authority during the tender procedure will lead to the rejection of that candidacy or tender and may result in administrative penalties.

12 http://europa.eu.int/comm/europeaid/cgi/frame12.pl
13 http://europa.eu.int/comm/europeaid/cgi/frame12.pl
14 ISPA–specific derogations: With regards to rules of nationality and origin, the Commission seeks derogations to the Title IX limitations on the basis that ISPA projects are co-financed by International Financial Institutions that have a broader procurement policy.
15 Bankruptcy, grave professional misconduct, not fulfilling tax and social security obligations, misrepresentation of information, breach of contract.

- **Fair competition (equal access of any eligible company to tenders and contracts)**: To avoid any conflict of interest, any firm or expert participating in the preparation of a project must be excluded from participating in tenders based on this preparatory work.
- **Use of standard documents (templates and forms in the annexes of the Practical Guide)**: Stressed fair competition will aim to be secured by conforming to these standard documents and procedures.
- **Transparency and impartiality**: The contract award procedure must be completely transparent and impartial.
- **Best value for money**: The most economically advantageous tender must be selected.
- **No retroactive awards**: Contracts or contract addenda cannot be awarded retroactively under any circumstances. This means that no disbursements can be effected and no goods and services provided prior to the signature of the contract/and or addendum.
- **Record keeping**: Written records – originals of all tenders submitted, corresponding tender dossiers, relevant correspondence – of the entire tendering and contracting procedure must be kept confidential and retained by the Contracting Authority for 5 years after the completion of the project.

4. Types of contracts

There are four types of contract:

- Service (such as technical assistance, studies provision of know-how, training).
- Supplies: equipment and materials.
- Works: infrastructure and other engineering works.
- Grants: a direct payment of a non-commercial nature by the Contracting Authority to a specific beneficiary to implement an action in order to promote an EC policy aim – this type of contract is not covered by this presentation.

5. Types of procedures

There are essentially six types of procedure which fall into two categories:

i) Procedures involving **publication**: international open tender (supplies/works), and restricted tender (services) are published on the EuropeAid Co-operation Office website[16], the EU Official Journal and the appropriate media in the candidate country. Local open tender (supplies/works) are published only in the recipient country although the nationality rules are still the same (all EU and Phare states companies are eligible).

ii) Procedures **not involving publication**: simplified procedure (direct consultations of companies with receipt and evaluation of at least three valid offers), Framework Contracts for services (rapid consultation of three potential already pre-selected contractors) and negotiated procedure (no competition – possible only under strict conditions).

Open procedure involves an open invitation to take part in competitive tendering.

Restricted tender: not all applicants qualify to submit a tender dossier. The first procedure is to invite interested companies to express their interest. They are given 30 days to do so. The Contracting Authority draws up a shortlist of between 4 and 8 applicants. Only short-listed applicants are given the opportunity to submit a tender dossier.

16 http://europa.eu.int/comm/europeaid/cgi/frame12.pl

Framework contracts: to provide short-term technical assistance (specific for services) for assignments of less than 12 months and for amounts less than € 200,000. Tendering and contracting may only sometimes take 2 weeks. The Commission has launched an international restricted tender procedure, selected the candidates, examined the framework proposals made, and drawn up a list of potential contractors on whom it can call to provide experts for specific assignments.

SERVICES	≥ € 200,000 International restricted tender procedure	< € 200,000 but > € 5,000 1. Framework contract 2. Simplified procedure		≤ € 5,000 Single tender
SUPPLIES	≥ € 150,000 International open tender procedure	< € 150,000 but ≥ € 30,000 Local open tender procedure	< € 30,000 but > € 5,000 Simplified procedure	≤ € 5,000 Single tender
WORKS	≥ € 5,000,000 1. International open tender procedure 2. International restricted tender procedure (in exceptional cases)	< € 5,000,000 but ≥ € 300,000 Local open tender	< € 300,000 but > € 5,000 Simplified procedure	≤ € 5,000 Single tender

5.1. General Principles

- **Contract size**: In the design of projects, care must be taken to allow for the right contract size and to avoid the unnecessary fragmentation of programmes into a series of small contracts.
- **Co-financing**: Additional funding often comes from the following entities: the beneficiary country's own resources, an individual Member State's bilateral assistance programme, international organisations such as UN agencies, the World Bank, the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD).
- Ensuring the neutrality of **key documents**: Terms of Reference (for service contracts) and Technical Specifications (for supply and work contracts) provide instructions and guidance to contractors at the tendering stage about the nature of the activity (services, works, supplies) tendered for which they are invited to bid and serve as the contractor's mandate during project implementation. These documents are key to the success of a project because, if prepared thoroughly, they will ensure that the project has been properly conceived, that competition allows selecting the best contractor to implement the tasks, that the work will be carried out on schedule and that resources will not be wasted.

5.2. Contract award procedures

The basic principal governing the award of contracts is competitive tendering. This is aimed at ensuring transparency and the desired quality of services, supplies and works at the best possible price:

- **Services**: best technical offer within the available budget – scores (weighing quality 80% against price 20%).
- **Supplies and works**: cheapest technically compliant bid.

5.3. Cancellation of tenders

The cancellation may occur in the following cases:

- unsuccessful tendering procedure;
- economic or technical data fundamentally altered;
- force majeure;
- all bids exceed the budget available;
- irregularities occur during the procedure.

In the case of a cancellation of contract award, all tenderers must be notified in writing and as soon as possible of the reason for the cancellation. After cancellation, the Contracting Authority may decide to:

- launch a new tender procedure;
- negotiate with the bidder(s) with the prior authorisation of the Commission;
- not to award the contract.

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