



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.9.2004
COM(2004) 627 final

2004/0222 (CNS)

Proposal for a

COUNCIL REGULATION

establishing an Instrument for Pre-Accession Assistance (IPA)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. GENERAL INTRODUCTION

This draft has to be seen in the context of the revision of the External Aid framework for the forthcoming financial perspective from 2007 to 2013, which is currently ongoing. **While the purpose of this exercise is to harmonise (as far as possible) the Community's external aid instruments, it should also be understood that pre-accession aid operates in a very specific framework:**

- assistance provided by this instrument is **driven by the pre-accession process** (European Partnerships, Accession Partnerships, negotiation by chapters, Regular Reports etc.) and its specific requirements, in particular a need for a flexible approach in order to be able to accommodate new priorities quickly
- due to the fact that accession is at least a medium term goal for the beneficiaries, the assistance also **operates in a medium term perspective**, and not in a long-term one like for traditional development aid;
- one of the main characteristics of pre-accession aid is its **bridging function**, i.e. apart from assisting development, more importantly its task is to prepare countries for the time after accession;

The draft Regulation constitutes a **framework regulation**, establishing a unified instrument for pre-accession assistance. As such, it will replace not only the Phare Regulation, but also – among others - the SAPARD, ISPA, Phare CBC and Co-ordination Regulations, as well as the Turkey and CARDS Regulations. It will be **supported by substantial implementing rules**, defining more closely the areas of activity identified in the framework Regulation.

Beneficiary countries will be divided into two categories, depending on their status as either **Candidate Countries** or *potential Candidate Countries*. Potential Candidate Countries are listed in Annex I of the Regulation, Candidate Countries in Annex II.

Potential Candidate Countries will continue to receive assistance along the lines currently laid down in the CARDS-Regulation: Institution Building and Democratisation, Economic and Social Development, Regional and Cross-Border Co-operation and some alignment with the *acquis communautaire*, in particular where this is in the mutual interest of the EU and the beneficiary country.

Candidate Countries will receive the same kind of assistance, and will **additionally** receive assistance in the **preparation for the implementation of Structural and Rural Development Funds after Accession**, as well as concerning the **full implementation of the *acquis communautaire***.

A country can **move from Annex I to Annex II only after the decision of the Council** giving it Candidate status. Such a decision would then authorise the move from Annex I to Annex II through a decision of the Council to be adopted under a “light” procedure, provided for in Article 17 (q.v.).

One of the main characteristics of the Regulation is that, for recognised Candidate Countries, it aims at **progressively adopting the rules and principles of Structural Funds/Rural Development Funds management, by making available assistance for them through three separate components** (Regional Development, Rural Development and Human Resources Development). The aim of these components is to follow the Structural and Rural Development Funds' rules including their institutional framework (e.g. Comitology) as closely as possible, while at the same time laying the groundwork for a national framework promoting economic and social cohesion as well as viable agricultural structures, which is at the same time coherent with a view to European Union membership

The system of Structural and Rural Development Funds for the period after 2007 is still under discussion. For this reason, the Structural Funds-Components and the Rural Development Funds-Component of the Regulation are defined mainly through a **dynamic reference to the Structural and Rural Development Funds Regulations**. The Commission is given the power to adopt implementing rules for these components and to define the framework of assistance under each individual component once the new rules for Structural and Rural Development Funds are clear.

In summary, the regulation is **building on the main lessons learned** in the context of the current pre-accession process, in particular through

- streamlining pre-accession assistance by enhancing co-ordination between the different components, through the creation of a single framework for assistance. This single framework will integrate the Phare/ISPA/SAPARD structure and complete the framework with other Structural Funds and Rural Development Funds Components. It will aim at harmonising implementation rules, where possibly taking into account the specificity of the Structural Funds and Rural Development Regulations, and create a Comitology system which will ensure a maximum of coordination among the components,
- aiming at better preparation for Structural and Rural Development Funds implementation after accession, through further enhancing emphasis on institution building as well as progressive emulation of Structural Funds rules in the run-up to accession.

2. COMMENTS ON SPECIFIC PROVISIONS

2.1. Legal Basis

The legal basis of the proposal is Art. 181 (a) TEC, and not Art. 179 TEC, despite the fact that a number of the beneficiary countries listed in the Annexes are considered developing countries by the International community.

However, the simple fact that some of the beneficiary countries may be considered developing countries does not automatically permit the proposal to be based on Article 179. That article is used to adopt measures to promote Community policy in the area of development policy, which is not the main focus of this proposal, the aim of which is to prepare countries for accession. Art. 181 (a) is the only provision in the Treaty which makes reference to association agreements and agreements concluded with states which are candidates for accession to the Union.

It must therefore be considered as the correct legal base for a regulation which deals exclusively with countries with association agreements in place or under preparation, in particular since these countries have been given a membership perspective, as is the case for the beneficiary countries listed in the annexes to this Regulation.

2.2. Title 1: Objectives and Principles

2.2.1. Article 1: Beneficiaries and overall objective

Art. 1 states the overall objective – approximation to the European Union, with membership as a potential final goal. Annex I lists countries which are in a state of pre-candidatship, whereas Annex II lists those countries which have been officially recognised as candidates according to Art. 49 TEU. The official acceptance of a country as a Candidate Country will entail a change of the Regulation, moving the country from Annex 1 to Annex 2. This system seems appropriate, given the fact that both Council and Parliament have repeatedly confirmed the potential membership perspective for Western Balkan countries. Countries should, however, be kept separate according to their status, so that they can each be judged on their individual merits.

2.2.2. Article 2: Scope

Article 2 sets down, in a non-finite matter, the target areas for assistance. These target areas are set up in a way to ensure coherence with earlier Community assistance, allocated either under the CARDS or the Turkey Regulations by globally targeting the same objectives set down in these two Regulations. The target areas listed in lit. paragraph (1) (a) – (f) are identical for both groups of beneficiary countries, addressing in particular the situation of countries emerging from a period of civil war and internal unrest (support for democracy, rule of law, public administration reform, economic reform, respect for human and minority rights, civil society, reconciliation in the widest sense. Lit. (g) – also identical for both groups of beneficiary countries – addresses the various forms of regional cooperation existing in the wider European framework.

However, a split of objectives takes place in paragraphs (2) and (3): For Candidate Countries, assistance shall target the full implementation of the *acquis communautaire* (see Art. 2 (3) (a)), whereas for countries which are not yet candidates, the mandate is more limited, and oriented towards the general interests of the Community and the beneficiary country, without presupposing full membership (see Art. 2 (2) (a)). Art. 2 (2) (b) targets, for countries which are not Candidate Countries, economic and social development in a generic fashion, whereas for Candidate Countries, Art. 2 (3) (b) is strongly oriented towards the support for implementation of the Community's agricultural and cohesion policy after accession.

2.2.3. Article 3: Components

Art. 3 sets up five Components, under which the different areas of intervention will be dealt with: Transition and Institution Building, Regional and Cross-Border Co-operation, Regional Development, Human Resources Development and Rural Development. The article also gives the Commission the authority to adopt implementing rules for each Component as appropriate. For the adoption of these implementing rules, a Comitology procedure (Management Committee) is foreseen.

Due to the framework character of the present Regulation, Commission Regulations/Decisions will have to set down the detailed rules for the implementation of assistance. Where this is necessary in the interest of efficient and effective management of Community funds, implementing rules may differ from one Component to the other.

2.2.4. Article 4: Framework for Assistance and Allocation of Funds

Assistance will be allocated by the Commission on the basis of a multi-annual indicative framework per component and country. The basic policy document for setting down the priorities for programming the assistance will be the Partnerships (Accession Partnerships with the Candidate Countries, European Partnerships with the potential Candidate countries in Annex 1).

2.3. Title II: Components

Title II of the Regulation is dedicated to the definition of the Components set up in Art. 3. The logic of the Components follows the lessons learned from the current pre-accession process, which has shown a substantial need for support of wide-ranging Institution Building measures, including the investment associated therewith, and a definite need to vigorously support Candidate Countries in their preparation for the implementation of the Community's structural and cohesion policy. Candidate Countries will have access to all five Components, whereas potential Candidate Countries will be limited to the first and second component (Transition Assistance/Institution Building and Regional/Cross-Border Co-operation).

The rationale of three separate Components tackling Regional, Rural and Human Development is that Candidate Countries will be confronted with exactly this situation in the Community's agricultural and cohesion policy after accession.

As the current enlargement process has shown, the early familiarisation with this complex system is of primary importance for the proper implementation and management of Structural and Rural Development Funds after accession, and mastering it requires an intensive and sustained learning process. Candidate Countries will thus be given the opportunity to "practise" the Community's rural and cohesion policies by applying rules as closely as possible to the Structural and Rural Development Funds before accession.

2.3.1. Article 5: Transition Assistance and Institution Building Component

This can be considered the crucial component in charge of all Institution Building matters, as well as the Transition Assistance made available to the countries listed in Annex 1. It is also in charge of all co-operation measures which are not covered by the other Components. In keeping with this logic, it is also the Component which will co-ordinate the assistance through its Committee (see Art. 11 (2)). This subsidiary catch-all function will enable rapid reaction and adaptation to changing needs and newly emerging priorities.

In practise, the functioning of the first Component as a default will be limited through the fact that activities falling under "the preparation for the implementation and management, and the policy development, of the Community's Common Agricultural and Cohesion Policies" are covered by Components III, IV and V (see Art. 7 (1), 8 (1) and 9 (1)).

In areas normally covered by Components III, IV and V, the first Component will therefore be active only where there are no corresponding activities taking place under Components III to V in a given country.

Given the above, in the case of potential Candidate Countries, Component I would cover the entire range of target areas defined in Art. 2 (1) with the exception of lit. (g) (regional and cross-border co-operation), the latter being addressed by the Component II (defined in Art. 6). Its range is thus similar to the one of Phare, including the Economic and Social Cohesion aspect of Phare, but without Phare CBC.

For Candidate Countries, Component I would normally address the target areas listed in Art. 2 (2) (a) – (f) and 2 (3) (a). It can thus be said to correspond to Phare, with a particular emphasis on the post-conflict scenario, but without Economic and Social Cohesion and CBC.

For both groups of countries, the assistance under Art. 5 will cover institution building measures and the investments associated with them.

Component I would also cover beneficiary countries' participation in Community Programmes, which form an important aspect of the *acquis communautaire*. Moreover, the participation in Community Programmes already before accession can be considered as an institution building measure *sui generis*, because it is conducive to the establishment of administrative structures enabling the population of the beneficiary country in question to start reaping the full benefit of these Programmes from accession at the latest.

2.3.2. *Article 6: Cross-Border and Regional Co-operation*

This Component will be open to both groups of beneficiary countries. It will support cross-border activities among beneficiary countries and between beneficiary countries and Member States. It would also support beneficiary countries' participation in transnational and interregional programmes including both Member States and third countries managed by other instruments (e.g. the ENPI). In the Western Balkans, the component will continue to support Regional Co-operation previously supported under CARDS.

2.3.3. *Article 7: Regional Development Component*

Component III, which is accessible only to Candidate Countries would be expected to emulate, to the maximum extent possible, the ERDF and Cohesion Fund, thereby giving the beneficiary countries the highest possible approximation to Structural and Rural Development Funds practises under External Aid rules.

This will, on the one hand, create efficiency gains because in their move from the pre-accession to post accession phase, Candidate Countries will not have to change procedures and criteria more than absolutely necessary to comply with the Financial Regulation. On the other hand it will give them the best possible preparation for the implementation of the European Regional Development Fund and the Cohesion Fund after accession. By submitting the measures under Component III to the same Comitology rules (including the definition of measures to be submitted to the Committee) that apply for the ERDF and the Cohesion Fund (see Art. 11 (1) (b)), it will be ensured that the shadowing process is as complete as possible.

2.3.4. Article 8: Human Resources Development Component

The purpose of Component IV, which is also accessible only to Candidate Countries, is to prepare them for the programming, implementation and management of the European Social Fund, in the framework of the European Employment Strategy. Hereby the objectives of the Community in the fields of social inclusion, education and training and equality between men and women are to be taken into account. The Component will focus on the setting up of adequate structures and systems for policy and programming design, management and delivery, and in the implementation of ESF-type activities, in line with the agreed policy priorities.

2.3.5. Article 9: Rural Development Component

As is the case for Components III and IV, the administrative objective is to help the countries prepare for post-accession EU-funded rural development programmes by implementing pre-accession assistance through systems which are as similar as possible to those required post-accession.

In order to achieve the operational objective of contributing to the sustainable adaptation of the agricultural sector and rural areas, the range of actions supported (to be specified in the Implementing Regulation) may not include all those eligible under the Rural Development Regulation for Member States. Furthermore, some rural development measures no longer considered relevant within EU Member States may still be important within countries whose agricultural and rural sectors are less well developed and should therefore be eligible under the IPA.

2.4. Title III: Management and Implementation

This title sets up the institutional balance between the Council as primary legislator in the field of Art. 181 (a) TEC, and the Commission, which is acting in the executive function attributed to it by the Council according to Art. 202 (3rd indent) and 211 (4th indent) TEC.

2.4.1. Article 10: Management of Assistance

According to Art. 211 of the TEC, the Commission exercises implementation powers conferred to it by the Council. Art. 10 (1) therefore sets down that, vis-à-vis the Council, the Commission is responsible for the implementation of the assistance, subject to a Comitology procedure set up in Art. 11. This also confirms the Commission's responsibility for the implementation of the budget set down in Art. 48 of the Financial Regulation.

According to Art. 10 (2), implementation shall take place according to the rules of External Aid as set down in the Financial Regulation. This provision gives sufficient flexibility to the implementation process, because it makes a whole continuum of implementation methods available for the execution of the tasks at hand. The Commission may thus resort for example to centralised direct management, centralised indirect management (including agencies, Community bodies and national public-sector bodies/bodies with a public service mission), various stages of decentralised management and joint management with international organisations. According to the purposes they pursue, different Components may apply different implementation methods where this is justified. In order to co-ordinate cross-border cooperation actions with those taking place under the European Neighbourhood Instrument,

the possibility to delegate implementation to Member States has been opened. Such assistance could then also be implemented through shared management.

Art. 10 (3) enables the Commission to manage funds put at its disposal by other donors, e.g. Member States or third countries, which will be earmarked in the budget in accordance with Art. 18 of the Financial Regulation as assigned revenue.

Art. 10 (5) foresees the possibility of split commitments. The possibility of using such split commitments is intended for programmes that have a close link to other EU programmes which also work with split commitments.

The Council's authorisation towards the Commission to implement the measure is counterbalanced through the introduction of a Comitology system as well as the Commission's obligation to annually report to Council and Parliament, which is contained in Art. 10 (6).

2.4.2. *Article 11: Committees*

Art. 11 sets down a Comitology system, making use of five already existing Committees:

- For Components I and II: a Transition Assistance and Institution Building Committee (the successor of the Phare Committee),
- For Components III and V: the Committees set up in Art. 47 of Regulation 1260/1999, and in addition to that, for Component V, also the Committee set up in Art. 11 of Council Regulation 1258/1999, and
- For Component IV: the ESF Committee set up by Art. 147 of the Treaty.

The procedure for the successor of the Phare Committee is set up in detail, as this Committee will lose its legal basis pursuant to the final provisions contained in Art. 19 (2) of the Regulation.

The procedures for the other Committees follow what is already in place for Structural and Regional Development Funds, although some adaptations, e.g. of the Rules of Procedure might have to be set down in the implementing rules for the individual component.

For assistance in the area of agricultural and cohesion policy, Candidate Countries will thus be confronted with the same Committees which will assess such measures after accession. The involvement of these Committees will enable them to reap the full benefits of this learning experience. This approach will also ensure as close as possible an alignment with Structural and Rural Development Funds before accession.

The article also sets down the co-ordination function of the Committee in charge of Component I, and mentions the other standard provisions for Comitology.

2.4.3. *Article 12: Types of Assistance*

Art. 12 lists, in a non-finite way, the types of assistance and the instruments in use therefore.

Art. 12 (1) reiterates Art. 231 of the Implementing Rules of the Financial Regulation, which list certain actions which may be financed.

Article 12 (2) clarifies that certain successful tools which were developed to help Candidate Countries in the adoption and implementation of the *acquis communautaire*, notably Twinning and TAIEX, will continue to be used for the beneficiaries of this regulation.

Art. 13 gives a non-finite list of supporting activities to be financed from the operational budget, listing in particular expenses which could be covered under the no longer existing BA-line. It also aims at covering the range of supporting activities set down in the Structural and Rural Development Funds Regulations, to enable further alignment of actions and eligibility, in particular for Components III to V.

2.4.4. *Article 14: Implementation of Assistance*

The basis for this provision is the framework for External Actions as set down in Title 4 of part II of the Financial Regulation, in particular Art. 163, Art. 166 and 167 (2).

Consequently, Art. 14 sets down a general framework for the relations between the Commission and the beneficiary country. It will form the basis for the implementation of Community assistance. Detailed provisions in this respect should be left to the implementing rules. Standardised framework agreements containing general rules for the implementation should be concluded at the beginning of the relationship, setting down the basic structures and rules. (e.g. implementing bodies, financial flows, anti-fraud measures etc.) Rules should be harmonised as far as possible for all Components, but should also leave open the possibility of concluding agreements including specific rules for individual components, where this is necessary, e.g. to allow for the various degrees of decentralisation foreseen by the different Components.

2.4.5. *Article 15: Protection of the Community's financial interests*

The provisions contained in Art. 15 give the Commission a mandate for concluding the necessary bilateral agreements to protect the Community's financial interests. The detailed provisions to this effect are set down in the Financial Regulation and the Implementing Rules to the Financial Regulation. They do, however, have to be subject of a special agreement with beneficiary countries, because beneficiary countries, unlike Member States, are not duty bound by the principle of Community loyalty set down in Art. 10 TEC, or the *acquis communautaire* derived from it.

In order to comply with the criteria of sound financial management, such framework agreements would notably have to contain provisions defining the notions of fraud and irregularity, measures in the field of financial control by the contracting authority, the Commission and the Court of Auditors, the possibility for OLAF to conduct on-the-spot checks equivalent to the ones foreseen by Regulation (EC) 2185/96, the obligation of the contracting authority to take preventive measures in the field of corruption, the procedure for the communication of cases of suspected fraud and irregularities to the Commission, the procedure for the clearance of accounts in the case of decentralised management, the application of administrative and financial sanctions (including the exclusion of non-reliable candidates and tenderers), and the enforceability of Commission decisions in the area of recovery in case of centralised management.

2.4.6. *Article 16: Rules of Participation and Origin, eligibility for grants*

Natural and legal persons from Member States, the European Economic Area, the beneficiary countries of the IPA and ENPI Regulations as well as International organisations are eligible to participate in tenders and contracts. The issue of the origin of supplies follows the same rules. On the basis of reciprocity, participation can be opened to others. Furthermore, the possibility of derogation in duly substantiated cases is foreseen.

Art 16 (1) to (6) is a precise, if somewhat shortened, replica of the draft regulation on the Untying of Community Aid. Its principles are stated here because as yet, the mentioned regulation is not in force, and might in the end be abandoned in favour of an approach which integrates its provisions into the future External Aid instruments.

Natural persons (or groups of natural persons like NGOs) are specifically mentioned as possible recipients of grants in view of Art. 114 of the Financial Regulation, which would otherwise exclude this at least for centrally managed programmes. Seeing that programmes such as the Small Projects Programme (SPP) have been very successful tools of the pre-accession strategy in the past, it seems desirable to maintain this possibility.

Apart from this single reference, the regulation refrains from specifying potential final beneficiaries. This follows the logic of the Financial Regulation, according to which Community assistance is action-oriented, and not beneficiary-oriented, i.e. anybody can be a beneficiary of Community assistance, as long as s/he contributes to the attainment of the objective pursued by the action.

2.4.7. *Article 17: Suspension of Assistance*

Art. 17 sets down a *clausula rebus sic stantibus* for the granting of Community assistance, giving the Council – on a proposal of the Commission – the competence to make the adaptations it considers necessary in case a beneficiary country violates fundamental principles of democracy, rule of law, human rights, minority right, or where progress with a view to the European Partnerships or the Accession Partnerships is insufficient. For the Western Balkan countries, it also reiterates, in paragraph 2, the special conditionality hitherto contained in Art. 5 (2) of Regulation 2666/2000 (CARDS Regulation).

2.5. Title IV: Transitional and Final Provisions

2.5.1. *Art. 18: Status of Beneficiary Country*

Art. 18 sets down a simplified procedure for amending the Regulation concerning the status of a beneficiary country: In case of Art. 49 TEU, where the Council has decided unanimously to grant applicant status to a beneficiary country, it can then amend the annexes to this Regulation through a simple Decision passed by qualified majority, rather than having to engage in a full-sized legislative procedure which would require formally amending this Regulation through another Regulation.

2.5.2. *Art. 19: Cross-Instrument Provision*

Art. 19 allows, on the basis of reciprocity foreseen in the other geographic external aid instruments, participation in programmes under other legal bases, where a regional, cross-border, transnational or global approach offers an added value.

2.5.3. *Article 20: Transitional Provisions*

Art. 20 repeals the Phare Regulation, the CBC Regulation, the Co-ordination Regulation, the ISPA-Regulation, the SAPARD-Regulation, the Cyprus/Malta Regulation and the Turkey Regulation. It is not necessary to repeal the CARDS Regulation, because it has an expiry date set at December 31, 2006. Provisions are made to ease the transition from one instrument to the other (most relevant in the cases of CARDS and Turkey), and to ensure the repealed regulations can still be used as the legal basis for ongoing assistance.

2.5.4. *Art. 21: Entry into force*

The entry into force of this regulation is foreseen twenty days after its publication in the Official Journal, but it will only apply from January 1, 2007. The reason for this *decalage* is that the repealed regulations are still needed until the end of the current financial perspective, but in the meantime, the new Regulation can already serve as the legal basis for the drafting and decision of the implementing rules, which should take place as soon as possible.

Proposal for a

COUNCIL REGULATION

establishing an Instrument for Pre-Accession Assistance (IPA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 181a thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Whereas:

- (1) In order to improve the efficiency of the Community's External Aid, a new framework for programming and delivery of assistance has been envisaged. Regulation (EC) Nr. *(insert)* of the European Parliament and the Council of *(date)* aspires to put in place the Development Co-operation and Economic Co-operation Instrument. Regulation (EC) Nr. *(insert)* of the European Parliament and the Council of *(date)* introduces a European Neighbourhood and Partnership Instrument. The present instrument constitutes the third general instrument directly supporting European External Aid policies;
- (2) Article 49 of the Treaty on the European Union states that any European State which respects the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law may apply to become a member of the Union,
- (3) The Republic of Turkey's application for membership to the European Union was accepted by the European Council in Helsinki in 1999, and pre-accession assistance has been made available to the Republic of Turkey since 2002,
- (4) At its meeting at Santa Maria da Feira on 20 June, 2000³, the European Council stressed that the countries of the Western Balkans are potential candidates for membership of the European Union,
- (5) At its meeting in Thessaloniki, on 19 and 20 of June 2003⁴, the European Council recalled the conclusions of its meetings in Copenhagen in December 2002 and

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ Santa Maria da Feira European Council of June 19 and 20, 2000; Conclusions of the Presidency, no. 66-67.

Brussels in March 2003, and reiterated its determination to fully and effectively support the European perspective of the Western Balkan countries, indicating that they would become an integral part of the European Union, once they met the established criteria,

- (6) The Thessaloniki European Council 2003 has also indicated that the Stabilisation and Association Process will constitute the overall framework for the European course of the Western Balkan Countries all the way to their future accession,
- (7) In its resolution on the Thessaloniki European Council Conclusions, the European Parliament has recognised that each of the Western Balkan countries is moving towards accession, but at the same time insisted that each country should be judged on its own merits⁵,
- (8) All Western Balkan countries can therefore be considered as potential Candidate Countries, however, a clear distinction should nevertheless be made between Candidate Countries and potential Candidate Countries,
- (9) Furthermore, the Brussels European Council on June 17th-18th, 2004⁶ has recommended that accession negotiations should be opened with Croatia,
- (10) In the interest of coherence and consistency of Community assistance, assistance for Candidate Countries as well as for the potential Candidate Countries should be granted in the context of a coherent framework, taking advantage of the lessons learned from earlier pre-accession instruments as well as Regulation (EC) 2666/2000,
- (11) Assistance for Candidate Countries as well as for potential Candidate Countries should continue to support them in their efforts to strengthen democratic institutions and the rule of law, reform public administration, respect human as well as minority rights, support the development of civil society and advance regional cooperation as well as reconciliation and reconstruction, and contribute to sustainable development and poverty reduction in these countries, and should therefore be targeted to support a wide range of institution building measures,
- (12) Assistance for Candidate Countries should additionally focus on the adoption and implementation of the full *acquis communautaire*, and in particular prepare Candidate Countries for the implementation of the Community's agricultural and cohesion policy,
- (13) Assistance for potential Candidate Countries may include some alignment with the *acquis communautaire* as well as support for investment projects,
- (14) Assistance should be provided on the basis of a comprehensive multi-annual strategy, taking into account the priorities of the Stabilisation and Association process, as well as those deriving from the pre-accession process,

⁴ Thessaloniki European Council of June 19 and 20, 2003; Conclusions of the Presidency, 11638/03, no. 40.

⁵ European Parliament resolution on the Thessaloniki European Council of 19-20 June, Minutes of 3.7.2003 – Provisional Edition; P5_TA (2003) 0320; no. 34.

⁶ Brussels European Council of June 17 and 18, 2004, Conclusions of the Presidency, 10679/04, no. 31.

- (15) The Transition Assistance and Institution Building and Regional and Cross-Border Co-operation Components should be accessible to all beneficiary countries, in order to assist them in the process of transition and approximation to the EU, as well as to encourage regional co-operation between them,
- (16) The Regional Development Component, the Human Resources Component, and the Rural Development Component should be accessible only to recognised Candidate Countries, in order to help them prepare for the time after accession, in particular for the implementation of the Community's cohesion and rural development policies,
- (17) Assistance should be managed in accordance with the rules for External Aid contained in Regulation (EC) 1605/2002, making use of the structures that have proved their worth in the pre-accession process, such as decentralised management, Twinning and TAIEX, but should also allow for innovative approaches such as the implementation through Member States via shared management in case of cross-border programmes on the external borders of the European Union,
- (18) The actions necessary for the implementation of the Transition Assistance and Institution Building Component as well as the Regional and Cross-Border Co-operation Component are management measures relating to the implementation of programmes with substantial budgetary implications, they should therefore be adopted in accordance with Council Decision 1999/468 of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred to the Commission, by submitting multi-annual indicative planning documents to a Management Committee,
- (19) The actions necessary for the implementation of the Regional Development Component, the Human Resources Component, and the Rural Development Component are closely aligned to Structural funds practises, they should therefore be adopted, in accordance with Council Decision 1999/468 of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred to the Commission, partly by Advisory and partly by Management Committees, in order to make use as far as possible of the decision making procedures in place for Structural Funds,
- (20) Where the Commission implements this Regulation through centralised management, it will take the utmost care to protect the financial interest of the European Community, in particular by applying the rules and standards of the *acquis communautaire* in this respect, and where the Commission implements this Regulation through other forms of management, the financial interests of the European Community should be safeguarded through conclusion of implementation agreements containing sufficient guarantees in this respect,
- (21) Rules determining the eligibility of participation in tenders and grant contracts, as well as rules concerning the origin of supplies should be set down in accordance with recent developments within the European Union concerning the Untying of Aid, but should leave the flexibility to react to new developments in this field,
- (22) Where a beneficiary country violates the principles the European Union is founded on, or makes insufficient progress with respect to the Copenhagen Criteria and the priorities set down in the European or Accession Partnership, the Council must, on the basis of a proposal from the Commission, be in a position to take the necessary measures,

- (23) Provisions should be made to enable the Council to amend this Regulation by way of a simplified procedure with respect to the position of a beneficiary country in Annex I or II,
- (24) Countries which are beneficiaries under the two other regional External Assistance Instruments should, on the basis of reciprocity, be able to participate in actions under this Regulation, where this offers an added value on account of the regional, cross-border, transnational or global nature of the action in question,
- (25) Given that the actions envisaged by this instrument concern the progressive alignment with the standards and policies of the European Union, including where appropriate the *acquis communautaire*, with a view to membership, they cannot sufficiently be addressed at Member State level, and are therefore better implemented on Community level, in accordance with the subsidiarity principle enshrined in Article 5 paragraph 2 of the EC Treaty,
- (26) Given that the actions envisaged by this instrument are limited to what is necessary to help the beneficiary countries to progressively align with EU standards and policies, in particular with a view to accession, they are in accordance with the proportionality principle enshrined in Article 5 paragraph 2 of the EC Treaty,
- (27) The institution of the new system of Community pre-accession assistance makes it necessary to repeal Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to the Republic of Hungary and the Polish People's Republic⁷, Commission Regulation (EC) No 2760/98 of 18 December 1998 concerning the implementation of a programme for cross-border cooperation in the framework of the PHARE programme⁸, Council Regulation (EC) No 1266/1999 of 21 June 1999 on coordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation (EEC) No 3906/89⁹, Council Regulation (EC) No 1267/1999 of 21 June 1999 establishing an Instrument for Structural Policies for Pre-accession¹⁰, Council Regulation (EC) No 1268/1999 of 21 June 1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries of central and eastern Europe in the pre-accession period¹¹, Council Regulation (EC) No 555/2000 of 13 March 2000 on the implementation of operations in the framework of the pre-accession strategy for the Republic of Cyprus and the Republic of Malta¹², Council Regulation (EC) No 2666/2000 of 5 December 2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, repealing Regulation (EC) No 1628/96 and amending Regulations (EEC) No 3906/89 and (EEC) No 1360/90 and Decisions 97/256/EC and 1999/311/EC¹³ and Council Regulation

⁷ OJ L 375, 23.12.1989, p. 11. Regulation as last amended by Regulation (EC) No 769/2004 (OJ L 123, 27.4.2004, p. 1).

⁸ OJ L 345, 19.12.1998, p. 49. Regulation as last amended by Regulation (EC) No 1822/2003 (OJ L 267, 17.10.2003, p. 9).

⁹ OJ L 161, 26.6.1999, p. 68.

¹⁰ OJ L 161, 26.6.1999, p. 73. Regulation as last amended by Regulation (EC) No 769/2004.

¹¹ OJ L 161, 26.6.1999, p. 87. Regulation as last amended by Regulation (EC) No 769/2004.

¹² OJ L 68, 16.3.2000, p. 3. Regulation as last amended by Regulation (EC) No 769/2004.

¹³ OJ L 306, 7.12.2000, p. 1. Regulation as amended by Regulation (EC) No 2415/2001 (OJ L 327, 12.12.2001, p. 3).

Council Regulation (EC) No 2500/2001 of 17 December 2001 concerning pre-accession financial assistance for Turkey and amending Regulations (EEC) No 3906/89, (EC) No 1267/1999, (EC) No 1268/1999 and (EC) No 555/2000¹⁴,

HAS ADOPTED THIS REGULATION:

TITLE I: GENERAL PROVISIONS

Article 1

Beneficiaries and overall objective

The Community shall assist the countries listed in the Annexes in progressive alignment with the standards and policies of the European Union, including where appropriate the *acquis communautaire*, with a view to membership.

Article 2

Scope

- (1) Assistance shall, where appropriate, be used to support in particular the following areas:
 - (a) strengthening democratic institutions and the rule of law,
 - (b) public administration reform, including the establishment of a system enabling de-centralisation of assistance management to the beneficiary country in accordance with the rules set down in Regulation (EC) 1605/2002¹⁵,
 - (c) economic reform,
 - (d) The promotion and the protection of human rights and fundamental freedoms and enhanced respect for minority rights,
 - (e) the development of civil society,
 - (f) reconciliation, confidence building measures and reconstruction,
 - (g) regional and cross-border cooperation,
- (2) In case of countries listed in Annex 1, assistance shall also be used to support the following areas:
 - (a) progressive alignment with the *acquis communautaire*,
 - (b) social and economic development.

¹⁴ OJ L 342, 27.12.2001, p. 1. Regulation as amended by Regulation (EC) No 769/2004.

¹⁵ OJ L 248 of 16.9.2002, p. 1.

- (3) In case of countries listed in Annex II, assistance shall also be used to support in particular the following areas:
 - (a) the adoption and implementation of the *acquis communautaire*,
 - (b) support for the policy development as well as preparation for the implementation and management of the Community's common agricultural and cohesion policies.

Article 3 ***Components***

- (1) Assistance shall be programmed and implemented according to the following components:
 - (a) Transition Assistance and Institution Building
 - (b) Regional and Cross-Border Co-operation
 - (c) Regional Development
 - (d) Human Resources Development
 - (e) Rural Development
- (2) The Commission shall ensure coordination and coherence between assistance granted under the different components.
- (3) Acting in accordance with the procedure set down in Article 11 (1) (a) of this Regulation, the Commission shall adopt rules for the implementation of this Regulation. Where these rules concern the implementation of Article 7 to 9 of this Regulation, the Committees responsible for the Component in question shall be consulted first, following the procedure set down in Article 3 of Decision 1999/468/EC, in compliance with Article 7 (3) thereof.

Article 4 ***Framework for Assistance and Allocation of Funds***

- (1) The Commission shall, on the basis of a strategic approach, taking into consideration the financial perspective, as well as the European Partnerships and Accession Partnerships, establish an indicative multi-annual framework with an allocation of funds by component and country, and where appropriate per theme. This shall be reviewed annually, taking into account a set of objective criteria including absorption capacity, needs assessment, respect of conditionalities, and capacity of management. It shall also be reviewed, where appropriate, in view exceptional assistance measures or interim response programmes adopted under the Regulation establishing the Stability Instrument. The funds allocated to cross-border co-operation programmes with Member States shall be at least equivalent to the corresponding financing from the European Regional Development Fund.

- (2) The indicative multi-annual framework shall be communicated annually by the Commission to the Council and the European Parliament.
- (3) For countries listed in Annex I, assistance shall be based on the European Partnerships. Assistance shall be programmed on the basis of a single framework per country and per component, covering the priorities as defined in the analysis of the situation in each State on which preparation for further integration into the European Union must concentrate, in view of the criteria defined by the European Council, and the progress made in implementing the stabilisation and association agreements, including the regional cooperation.
- (4) For countries listed in Annex II, assistance shall be based on the Accession Partnerships. Assistance shall be programmed on the basis of a single framework per country and per component, covering the priorities as defined in the analysis of the situation in each State on which preparations for accession must concentrate, in view of the political and economic criteria and the progress made in the adoption and implementation of the *acquis communautaire*.

TITLE II: RULES CONCERNING SPECIFIC COMPONENTS

Article 5

Transition and Institution Building Component

- (1) The Transition Assistance and Institution Building Component shall assist the countries listed in Annexes I and II in the attainment of the objectives set out in Article 2.
- (2) It may *inter alia* be used to finance capacity and institution building as well as investment in as far as the latter is not covered by Articles 6 to 9 of this Regulation.
- (3) Assistance under this component may also support the participation of countries listed in Annexes I and II in Community programmes and agencies.

Article 6

Regional and Cross-Border Co-operation Component

- (1) The Regional and Cross-Border Co-operation Component may support the countries listed in Annexes I and II in regional, cross-border, and, where appropriate, transnational and interregional cooperation among themselves and between them and EU Member States.
- (2) Such co-operation shall have the objective of fostering stability, security and prosperity in the mutual interest of all countries concerned, and of encouraging their harmonious, balanced and sustainable development.
- (3) Co-operation will be co-ordinated with other Community instruments for cross-border, transnational and interregional co-operation where appropriate. In case of cross-border co-operation with Member States, this component shall cover the regions on both sides of the respective border or borders.

- (4) Within the objectives of this article, this component may *inter alia* be used to finance capacity and institution building as well as investment.

Article 7

Regional Development Component

- (1) The Regional Development Component shall support countries listed in Annex II in policy development as well as preparation for the implementation and management of the Community's cohesion policy, in particular in their preparation for the European Regional Development Fund and the Cohesion Fund.
- (2) It may in particular contribute towards the financing of the type of actions provided for under Regulation [(EC)1783/1999¹⁶] and Regulation [(EC) 1164/1994¹⁷].

Article 8

Human Resources Development Component

- (1) The Human Resources Development Component shall support Candidate Countries listed in Annex II in policy development as well as preparation for the implementation and management of the Community's cohesion policy, in particular in their preparation for the European Social Fund.
- (2) It may in particular contribute towards the financing of the type of actions provided for under Regulation [(EC) 1784/1999¹⁸].

Article 9

Rural Development Component

- (1) The Rural Development Component shall support Candidate Countries listed in Annex II in policy development as well as preparation for the implementation and management of the Community's common agricultural policy. It shall in particular contribute to the sustainable adaptation of the agricultural sector and rural areas and to the Candidate Countries' preparation for the implementation of the *acquis communautaire* concerning the Common Agricultural Policy and related policies.
- (2) It may in particular contribute towards the financing of the type of actions provided for under the Regulation (EC) 1257/1999¹⁹.

¹⁶ OJ L 213 of 13.8.1999, p. 1.

¹⁷ OJ L 130 of 25.5.1994, p. 1.

¹⁸ OJ L 213 of 13.8.1999, p. 5.

¹⁹ OJ L 160 of 26.6.1999, p. 80.

TITLE III: MANAGEMENT AND IMPLEMENTATION

Article 10

Management of Assistance, Reporting

- (1) The Commission shall be responsible for the implementation of this Regulation, acting in accordance with the procedure referred to in Article 11.
- (2) Actions under this Regulation shall be implemented in accordance with Regulation (EC) 1605/2002²⁰. Community financing can take in particular the form of financing agreements between the Commission and the beneficiary country, procurement contracts or grant agreements with national or international public sector bodies or natural or legal persons responsible for carrying out the action, or employment contracts. For cross-border programmes with Member States according to Article 6 of this Regulation, implementation tasks shall in principle be delegated to Member States, in which case they shall be implemented through shared management in accordance with the relevant provisions of Regulation (EC) 1605/2002. In case of shared management, the managing authority shall operate in accordance with the principles and rules laid down in Council Regulation (EC) 1260/1999
- (3) The Commission may also receive and manage funds from other donors in order to implement actions, as assigned revenue in accordance with Article 18 of Regulation 1605/2002, with these donors.
- (4) The Commission may, in accordance with Article 54 of Regulation (EC) 1605/2002, decide to entrust tasks of public authority, and in particular budget implementation tasks to the bodies listed in Article 54 (2) of said Regulation. The bodies defined in Article 54 (2) (c) of said Regulation may be entrusted with tasks of public authority if they are of recognised international standing, comply with internationally recognised systems of management and control, and are supervised by public authority.
- (5) Budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments.
- (6) Each year the Commission shall send to the European Parliament and the Council a report on the implementation of Community assistance under this instrument. The report shall contain information on the actions financed during the year and on the findings of monitoring work, and shall give an assessment of the results achieved in the implementation of the assistance.

²⁰ OJ L 248 of 16.9.2002, p. 1.

Article 11
Committees

- (1) The Commission shall be assisted by the following Committees, which shall be composed of representatives of Member States and chaired by a representative of the Commission:
 - (a) A Transition Assistance and Institution Building Committee shall be established, and give its opinion on multi-annual indicative planning documents based on the strategic approach and priorities established in the European Partnerships and Accession Partnerships which are prepared in the context of Article 5 and 6. Where reference is being made to this paragraph, the management procedure laid down in Article 4 of Decision 1999/468/EC shall apply, in compliance with Article 7 (3) thereof. The period laid down in Article 4(3) of Decision 1999/468 shall be set at six weeks. The Committee shall adopt its rules of procedures.
 - (b) The Committee established according to Article 47 (1) (a) of Regulation (EC) 1260/1999²¹ shall give its opinion on assistance provided in the context of Article 7, according to the rules set down in the said Regulation, in particular Article 47 (2) and (3) thereof.
 - (c) The Committee established according to Article 147 of the Treaty establishing the European Community shall give its opinion on assistance provided in the context of Article 8 according to the rules set down in Regulation (EC) 1260/1999²², in particular Article 49 thereof.
 - (d) The Committees established according to Article 47 (1) (c) of Regulation (EC) 1260/1999²³ and Article 11 of Regulation (EC) 1258/1999²⁴ shall give their opinion on assistance provided in the context of Article 9 according to the rules set down in those two Regulations, in particular Article 47 (2) and (3) of Regulation (EC) 1260/1999 and Article 12 to 15 of Regulation (EC) 1258/1999.
- (2) The Institution Building Committee shall be in charge of co-ordinating the assistance as required by Article 3 (2) of this Regulation.
- (3) An observer from the European Investment Bank shall take part in the Committees' proceedings with regard to questions concerning the Bank.

²¹ OJ L 161 of 26.6.1999, p. 1.

²² OJ L 161 of 26.6.1999, p. 1.

²³ OJ L 161 of 26.6.1999, p. 1.

²⁴ OJ L 160 of 26.6.1999, p. 103.

Article 12
Types of Assistance

- (1) Assistance under this Regulation may, *inter alia*, finance investments, procurement contracts, grants, including interest rate subsidies, special loans, loan guarantees and financial assistance, budgetary support, and other specific forms of budgetary aid, and the contribution to the capital of international financial institutions or the regional development banks. Budgetary support is contingent on the administration of public finances of the Partner Country being sufficiently transparent, reliable and efficient, and on well-defined sectorial or macroeconomic policies approved by international financing institutions having been put in place.
- (2) Assistance may also be implemented through administrative co-operation measures involving public-sector experts dispatched from Member States. Such projects shall be implemented according to implementing rules laid down by the Commission.

Article 13
Implementation of Assistance

Assistance may also be used to cover the costs of actions linked to preparation, follow-up, control, audit and evaluation directly necessary for the administration of the programme and the attainment of its objectives, in particular studies, meetings, information and publicity, expenses linked to informatics networks aiming at information exchange, as well as any other expenses for administrative and technical assistance of which the Commission can avail itself for the administration of the programme. It also covers the cost of the administrative support for the purposes of devolved programme management in the Commission delegations in non member countries.

Article 14
Implementation of Assistance

- (1) The Commission and the beneficiary countries shall conclude framework agreements on the implementation of the assistance.
- (2) Subsidiary agreements concerning implementation of assistance shall be concluded between the Commission and the beneficiary country or its implementing authorities as required.

Article 15
Protection of the Community's financial interests

- (1) Any agreements resulting from this Regulation shall contain provisions ensuring the protection of the Community's financial interest, in particular with respect to fraud, corruption and any other irregularities in accordance with Council Regulations (EC, Euratom) No 2988/1995, (EC, Euratom) 2185/1996 and (EC, Euratom) 1073/1999.

- (2) Agreements shall expressly provide for the Commission and the Court of Auditors to have the power of audit, on the basis of documents and on the spot, over all contractors and subcontractors who have received Community funds. They shall also expressly authorise the Commission to carry out on-the-spot checks and inspections as those set down in Regulation (EC, Euratom) 2185/1996.
- (3) All contracts resulting from the implementation of assistance shall ensure the right of the Commission and the Court of Auditors as provided for in paragraph 2 of this Article during and after the implementation of contracts.

Article 16

Rules of participation and origin, eligibility for grants

- (1) Participation in the award of procurement or grant contracts financed under this Regulation shall be open to all natural or legal persons from Member States of the European Community coming within the scope of the Treaties,
- (2) Participation in the award of procurement or grant contracts financed under this Regulation shall also be open to all natural and legal persons from
 - any country that is a beneficiary of the present Regulation,
 - any country that is a beneficiary of the European Neighbourhood and Partnership Instrument,
 - any Member State of the European Economic Area,
 - any other country in cases where the Commission has decided that reciprocal access to external assistance is guaranteed.
- (3) Participation in the award of procurement or grant contracts financed under this Regulation shall also be open to all international organisations.
- (4) Experts proposed in the context of procedures for the award of contracts are not required to comply with the nationality conditions listed above.
- (5) All supplies and materials purchased under a contract financed under this Regulation must originate from the Community or a country eligible according to paragraph (2) above.
- (6) The Commission may, in duly substantiated cases, authorise the participation of natural and legal persons from other countries, or the use of supplies and materials of different origin.
- (7) In conformity with Article 114 of Regulation (EC) 1605/2002 natural persons may receive grants.

Article 17
Suspension of assistance

- (1) Respect for the principles of democracy, the rule of law and for human rights and minority rights and fundamental freedoms is an essential element for the application of this Regulation and the granting of assistance under it. Community assistance for Albania, Bosnia-Herzegovina, Croatia, former Yugoslav Republic of Macedonia and Serbia and Montenegro shall also be subject of the conditions defined by the Council in its Conclusions of 29 April 1997, in particular as regards the recipients' undertaking to carry out democratic, economic and institutional reforms.
- (2) Where a beneficiary country fails to respect these principles or the commitments contained in the relevant Partnership with the European Union or progress toward fulfilment of the accession criteria is insufficient, the Council, acting by qualified majority on a proposal from the Commission, may take appropriate steps with regard to any assistance granted under this Regulation.

TITLE IV: TRANSITIONAL AND FINAL PROVISIONS

Article 18
Status of Beneficiary Country

If a beneficiary country listed in Annex I of this Regulation is, pursuant to a decision of the Council acting under Art. 49, paragraph 1, first sentence of the Treaty on European Union, granted Candidate status, the Council, acting by qualified majority on the basis of a proposal from the Commission will transfer that country from Annex I to Annex II.

Article 19
Cross-Instrument Provision

In order to ensure consistency and efficiency of Community assistance, the Commission can decide that other countries, territories and regions can benefit from actions under this Regulation, if the project or programme in question has a regional, cross border, transnational or global character.

Article 20
Transitional Provisions

- (1) As of January 1, 2007, the following Regulations are repealed:
 - Regulation (EEC) No 3906/1989
 - Regulation (EC) No 2760/1998
 - Regulation (EC) No 1266/1999
 - Regulation (EC) No 1267/1999

- Regulation (EC) No 1268/1999
 - Regulation (EC) No 555/2000
 - Regulation (EC) No 2500/2001.
- (2) The repealed Regulations, as well as Regulation 2666/2000, shall continue to apply for legal acts and commitments implementing the budget years preceding 2007.
- (3) Should specific measures be necessary to facilitate the transition from the system established by Regulations (EC) 3906/1989, (EC) 2760/1998, (EC) 1266/1999, (EC) 1267/1999, (EC) 1268/1999, (EC) 555/2000, (EC) 2666/2000 or (EC) 2500/2001 to the one established by this Regulation, such measures shall be adopted by the Commission in accordance with the procedures laid down in Article 11 of this Regulation.

Article 21
Entry into force

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

It shall apply from 1 January, 2007.

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

Done at Brussels,

For the Council
The President

ANNEX 1

e.g.:

- Albania
- Bosnia and Herzegovina
- Serbia and Montenegro
- the former Yugoslav Republic of Macedonia

ANNEX 2

e.g.:

- Croatia
- Turkey

LEGISLATIVE FINANCIAL STATEMENT

Policy area: Enlargement

Activity: Pre-accession assistance

TITLE OF ACTION: INSTRUMENT FOR PRE-ACCESSION (IPA)

1. BUDGET LINES + HEADINGS (AS IN PDB 2005)

**05 01 ADMINISTRATIVE EXPENDITURE OF POLICY AREA
'AGRICULTURE'**

05 01 04 03 The SAPARD pre-accession Instrument – Expenditure on administrative management

**05 05 SPECIAL ACCESSION PROGRAMME FOR
AGRICULTURE AND RURAL DEVELOPMENT (SAPARD)**

05 05 01 01 The SAPARD pre-accession Instrument

05 05 01 02 The SAPARD pre-accession Instrument – Completion of the SAPARD pre-accession assistance relating to eight applicant countries

**05 49 EXPENDITURE ON ADMINISTRATIVE MANAGEMENT
OF PROGRAMMES COMMITTED IN ACCORDANCE
WITH THE FORMER FINANCIAL REGULATION**

05 49 04 03 The SAPARD Pre-accession Instrument – Expenditure on administrative management

**06 01 ADMINISTRATIVE EXPENDITURE OF POLICY AREA
'ENERGY AND TRANSPORT'**

06 01 04 09 Intelligent energy – Europe programme (2003 to 2006): external strand – Coopener - Expenditure on administrative management

06 04 CONVENTIONAL AND RENEWABLE ENERGIES

06 04 02 Intelligent energy – Europe programme (2003 to 2006): external strand – Coopener (in part)

**07 01 ADMINISTRATIVE EXPENDITURE OF POLICY AREA
'ENVIRONMENT'**

07 01 04 05 LIFE (European Financial Instrument for the Environment – 2000 to 2006 – Operations outside Community territory – Expenditure on administrative management (in part)

07 02	GLOBAL ENVIRONMENTAL AFFAIRS
07 02 02	LIFE (European Financial Instrument for the Environment – 2000 to 2006 – Operations outside Community territory (in part))
13 01	ADMINISTRATIVE EXPENDITURE OF POLICY AREA ‘REGIONAL POLICY’
13 01 04 02	Instrument for structural policies for pre-accession (ISPA) – Expenditure on administrative management
13 05	PRE-ACCESSION INTERVENTIONS RELATED TO THE STRUCTURAL POLICIES
13 05 01 01	Instrument for structural policies for pre-accession
13 05 01 02	Instrument for structural policies for pre-accession – Closure of pre-accession assistance relating to eight applicant countries
13 49	EXPENDITURE ON ADMINISTRATIVE MANAGEMENT OF PROGRAMMES COMMITTED IN ACCORDANCE WITH THE FORMER FINANCIAL REGULATION
13 49 04 02	Instrument for structural policies for pre-accession – Expenditure on administrative management
14 03	INTERNATIONAL ASPECTS OF TAXATION AND CUSTOMS
14 03 02	Customs co-operation and international assistance (Customs 2007) (in part)
19 01	ADMINISTRATIVE EXPENDITURE OF POLICY AREA ‘EXTERNAL RELATIONS’
19 01 04 08	Assistance for the countries of the western Balkans – Expenditure on administrative management
19 01 04 11	Development and consolidation of democracy and the rule of law – Respect for human rights and fundamental freedoms – Expenditure on administrative management (partially)
19 04	EUROPEAN INITIATIVE FOR DEMOCRACY AND HUMAN RIGHTS (EIDHR)
19 04 02	Support for the victims of human rights’ abuses (partially)
19 04 03	Development and consolidation of democracy and the rule of law – Respect for human rights and fundamental freedoms (partially)

19 04 04 Support for the activities of international criminal tribunals and the International Criminal Court (partially)

19 07 RELATIONS WITH THE WESTERN BALKANS

19 07 01 Assistance for the countries of the western Balkans

19 07 02 Assistance to Serbia and Montenegro

19 07 03 Aid for the reconstruction of Kosovo

19 07 04 Interim civilian administrations

19 49 EXPENDITURE ON ADMINISTRATIVE MANAGEMENT OF PROGRAMMES COMMITTED IN ACCORDANCE WITH THE FORMER FINANCIAL REGULATION

19 49 04 07 Assistance for the countries of the western Balkans – Expenditure on administrative management

19 49 04 10 Development and consolidation of democracy and the rule of law – Respect for human rights and fundamental freedoms – Expenditure on administrative management (partially)

22 01 ADMINISTRATIVE EXPENDITURE ON POLICY AREA ‘ENLARGEMENT’

22 01 04 01 Pre-accession assistance for countries of central and eastern Europe – Expenditure on administrative management

22 01 04 02 Pre-accession strategy for Turkey – Expenditure on administrative management

22 01 04 03 Phasing-out of pre-accession assistance for new Member States – Expenditure on administrative management

22 01 04 05 Technical Assistance Information Exchange Office (TAIEX) actions in the framework of the pre-accession instruments – Expenditure on administrative management

22 02 PRE-ACCESSION ASSISTANCE INSTRUMENTS

22 02 01 Pre-accession assistance for countries of central and eastern Europe

22 02 02 Cross-border co-operation for central and eastern Europe

22 02 03 Completion of the Phare pre-accession assistance

22 02 04 01 Pre-accession assistance for Turkey

22 02 04 02 Completion of the former co-operation with Turkey

22 02 05	Pre-accession assistance for Malta and Cyprus
22 02 06	Technical Assistance Information Exchange Office (TAIEX) actions in the framework of the pre-accession instruments
22 02 07	Impact of enlargement in EU border regions – Preparatory actions
22 02 08	Subsidy for organising traineeships for young diplomats from the applicant countries
22 02 09	Pilot project on demining activities in Cyprus
22 02 10	Pre-accession multi-country horizontal programmes
22 04	INFORMATION AND COMMUNICATION STRATEGY
22 04 01	Prince - Information and communication strategy
22 49	EXPENDITURE ON ADMINISTRATIVE MANAGEMENT OF PROGRAMMES COMMITTED IN ACCORDANCE WITH THE FORMER FINANCIAL REGULATION
22 49 04 01	Pre-accession assistance for countries of central and eastern Europe – Expenditure on administrative management
22 49 04 02	Pre-accession assistance for Turkey – Expenditure on administrative management
22 49 04 03	Pre-accession strategy for Malta and Cyprus – Expenditure on administrative management

In addition, under title 4 (Employment and social affairs), a new chapter will have to be created to host the Human Resources Development Component of the IPA, with a corresponding “support administrative expenditure” item in the article 04 01 04 XX.

2. OVERALL FIGURES

2.1. Total allocation for action (Part B): € million for commitment

€ 14 653 million euros

2.2. Period of application:

2007-2013

(start and expiry years)

2.3. Overall multi-annual estimate of expenditure: (current prices)

- (a) Schedule of commitment appropriations/payment appropriations (financial intervention) *(see point 6.1.1)*

€ million

	2007	2008	2009	2010	2011	2012	2013 *and following	Total
Commitments	1.426	1.631	1.734	1.977	2.294	2.441	2.564	14.067
Payments	285	754	1.264	1.690	1.898	2.116	6.060	14.067

- (b1) Technical and administrative assistance: of which staff *(see point 6.1.2)*

Commitments	28	31	34	39	47	52	55	286
Payments	28	31	34	39	47	52	55	286

- (b2) Technical and administrative assistance: of which support expenditure *(see point 6.1.2)*

Commitments	32	37	38	43	48	50	52	300
Payments	32	37	38	43	48	50	52	300

Subtotal a+b								
Commitments	1.486	1.699	1.806	2.059	2.389	2.543	2.671	14.653
Payments	345	822	1.336	1.772	1.993	2.218	6.167	14.653

- (c) Overall financial impact of human resources and other administrative expenditure *(see points 7.2 and 7.3)*

Commitments/ payments	65	76	82	95	113	122	130	683
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TOTAL a+b2+c								
Commitments	1.523	1.744	1.854	2.115	2.455	2.613	2.746	15.050
Payments	382	867	1.384	1.828	2.059	2.288	6.242	15.050

* following years only applies to payment appropriations

2.4. Compatibility with financial programming and financial perspective

Proposal is compatible with the 2007-2013 financial programming of heading 4, as set out in the Communication from the Commission “Building our common Future: Policy challenges and Budgetary means of the Enlarged Union 2007-2013” – COM (2004) 101 of 10 February 2004.

2.5. Financial impact on revenue:

Proposal has no financial implications (involves technical aspects regarding implementation of a measure)

3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
Non comp	Diff	YES	NO	NO	4

4. LEGAL BASIS

Article 181a of the Treaty

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention

5.1.1. Objectives pursued

The Instrument is intended to facilitate the entry into the Union of those countries deemed to be candidates or potential candidates for membership. This covers Turkey and the countries of the Western Balkans.

The intention is that future candidate countries should be treated broadly the same as past candidate countries. As the countries of the Western Balkans become candidate countries, it is proposed that they will receive per capita per year about the level of assistance established in the financial perspective 2000-2006, under heading 7, for the 10 candidate countries in central and eastern Europe. For Turkey, taking into account the size and absorption capacity of the country, it is proposed that there will be a gradual increase in assistance over the period 2007-2013, towards this level. After the accession of 8 of the central and eastern European candidate countries in 2004, assistance to the remaining countries, Bulgaria and Romania, was increased by 20%, 30% and 40% over the years 2004-2006, in the run up to their planned accession in 2007. Such an enhanced level of funding is not proposed under IPA.

The Instrument will focus on two main priorities:

- helping countries to fulfil the political, economic and acquis-related criteria for membership (the Accession Criteria) and to build up administrative and judicial capacity

- helping countries prepare for EU Structural, Cohesion and Rural Development Funds (EU Funds) after accession (both by preparing the necessary structures and systems and by financing projects)

To do this, the Instrument will have five Components:

- Transition Assistance and Institution Building (both “soft”, in terms of know-how, and “hard”, in terms of physical investment) to help countries meet the Accession Criteria and improve their administrative and judicial capacity
- Regional and Cross-Border Co-operation
- Regional Development (to help prepare for Structural Funds ERDF programmes - and Cohesion Funds)
- Human Resources Development (to help prepare for Structural Funds ESF programmes)
- Rural Development (to help prepare for Agriculture and Rural Development).

There will be a clear differentiation within the Instrument between assistance to potential candidates (or “pre-candidates”), listed in Annex I of the Regulation, and to recognised candidate countries, listed in Annex II of the Regulation.

For pre-candidate countries, the assistance will consist of institution building, in particular to strengthen the Copenhagen political criteria, enhance administrative and judicial capacity and selectively promote some alignment with the *acquis* in areas of mutual advantage. This will be complemented by regional and cross-border co-operation, investment to promote economic and social development and other transition measures to foster stabilisation and reconciliation throughout the Western Balkans. The pre-candidate countries will, therefore, benefit only from the Transition and Institution Building Component and the Regional and Cross-border Co-operation Components of the Instrument. They will, therefore, receive a level of funding less than that proposed for candidate countries.

For the candidate countries, the full pre-accession package will apply. The institution building effort will, therefore, focus on full rather than selective alignment with the *acquis*, and these countries will also benefit from the other three components of the Instrument designed to help prepare candidate countries for EU Funds after accession.

The assistance to pre-candidate countries will also be designed to bring them step by step, within a coherent framework, closer to candidate country status, and ultimately membership.

Decisions on when pre-candidate countries will become candidate countries and when candidate countries will join the Union are for the European Council and this Regulation will respond to the implications of those decisions.

The objectives of this Instrument will also embrace the objectives for sustainable development outlined in COM (2004) 101final.

Specific objectives to target specific sectoral objectives for preparation for accession will be fixed for each Component.

The development and consolidation of democracy and the rule of law, and respect for human rights and fundamental freedoms constitute key objectives of the European Union's external policies. Within the framework of the present Regulation and its geographical scope, the European Community will contribute to the implementation of operations advancing respect for human rights and fundamental freedoms, promoting and strengthening democratic processes, [including where appropriate through election observation and assistance,] and developing and consolidating the rule of law and good governance.

5.1.2 and 5.1.3 Ex post and ex ante evaluation

The Commission carried out in the second half of 2003 an extensive high-level review of the whole range of European Community external instruments, in the context of the preparation of its proposals for the new financial perspectives. The Commission established the "Peace Group" which was tasked with leading the identification of the future priorities for external relations and the instruments needed to serve those priorities. This Group functioned at both the level of the external relations Commissioners and the services. It met regularly between April and December 2003 and developed the principles, which were set out in the Communication "Building our Common Future, Policy Challenges and Budgetary Means of the Enlarged Union 2007-2013"²⁵. The need to align objectives and instruments more closely to European Union values and interests was identified as being fundamentally important.

In particular, the "Peace Group" underlined that the European Union's values, reflected by its democratic tradition, social model and integration experience, include human dignity, the rule of law, human rights, solidarity, equality between the sexes, adherence to the multilateral system of the United Nations and support, within the multilateral economic system, for regionalism as a force for development and stability. It emphasised that its interests drive the European Union to promote stable international growth founded on sustainable development. In this way it guarantees itself increasing outlets and quality jobs on competitive, open and regulated markets. Finally, the "Peace Group" recommended that the European Union promotes its values and interests by operating simultaneously as a continental power, and as a global economic and political player.

As far as external community instruments are concerned, the "Peace Group" recognised that the European Union's co-operation and assistance policy is the result of 50 years of successive sedimentation, which results in a multiplication of assistance instruments and a fragmentation of aid management both in terms of programming and implementation functions (even if recent policy and structural reforms have helped to improve coherence and consistency of the European Union's co-operation and assistance policy).

The "Peace Group" put forward that the European Union's framework for external assistance should be rationalised and simplified by a reduction in the number of legal bases, the number of budget lines, and the number of programmes. More precisely, it recommended that:

- the complex structure of existing aid programs (EDF, ALA, MEDA, TACIS, CARDS, etc...) covering a wide range of interventions (peacekeeping and post-crisis operations; rehabilitation; economic reforms; projects; human rights programs; budgetary support) should be significantly streamlined;

²⁵ COM(2004) 101 du 10 février 2004.

- European Community and Member States policies and implementation should be harmonised.

Furthermore, the “Peace Group” underlined the following points:

- Large geographic programmes based on the principles of ownership and partnership with partner countries and regions and thematic programmes allowing for policy initiatives by the Community should be maintained;
- Strategy papers, subject to regular reviews, are the right tool to ensure overall policy coherence and to respect external policy objectives in the different areas as well as in the external aspects of internal policies;
- Resources should be allocated to partner countries according to expected and measured performances and strategy papers process, backed up by stronger analytical capabilities, should confront goals and achievements;
- Performance-based allocations do not mean increased conditionality in the traditional sense and the issue of political conditionality should be approached cautiously, on the basis of lessons drawn from experience;
- Though this is not necessarily a solution in each and every case, such concerns for results, namely the political and economic reforms in the partner countries, leads the Commission to suggest, where possible, moving further financial and technical assistance from projects towards sector programmes, budget support and macro-economic financial assistance which facilitate both the absorption by the partner country since its own budgetary procedures are used, and donors’ co-ordination as well as quick disbursement subject to compliance though.

The current proposal also takes account of the vast literature of work on development, the practice of other international and bi-lateral donors, as well as of the principles and objectives of the reform of the management of external assistance launched by the Commission in May 2000.

In addition, the inter service group which prepared this legislative proposal looked in detail at the lessons that could be learned from past pre-accession assistance, and this work is also reflected in the proposal.

5.2. Action envisaged and budget intervention arrangements

There will be two principal types of actions – one focusing on assistance to pre-candidate countries, to continue the work started under CARDS and to help prepare them for candidate country status and one focusing on candidate countries, to help prepare them for membership of the Union.

The detailed planning of these actions will fall within a Reinforced Pre-accession Strategic Approach. This will start with the system of European Partnerships and Annual Reports, introduced for pre-candidate countries, and of Accession Partnerships and Regular Reports, in place for candidate countries. From these a multi-annual framework, to be reviewed annually, with an allocation of funds by Component and by country will be prepared. These allocations will be made on the basis of certain criteria, whilst providing for flexibility to adapt to the specific pre-accession needs of the individual countries.

As set out in the thematic strategy, measures receiving Community support in pursuit of the present Regulation's objectives in the field of promoting democratisation and the rule of law, and respect for human rights and fundamental freedoms shall include

- pertinent global, regional and country projects and programmes of local and EU non-governmental and civil society based organisations,
- co-operation with international organisations in the field of democratisation and human rights.

Until beneficiary countries are able to participate in the Community Programme 'Erasmus', under Article 5.3 of the Regulation, this Instrument will continue to provide access for those countries to the TEMPUS Plus programme.

5.3. Methods of implementation

Implementation (From Centralised to Decentralised Management)

- Experience has shown that it is vital, for the broad approach needed for pre-accession aid, to have available the whole range of implementation methods (from centralised to full decentralisation of financial management to the beneficiary countries, as well as joint management with international organisations) offered by the Financial Regulation. This approach will, therefore, be maintained in this Instrument. The Regulation also leaves open the possibility for programme implementation under indirect centralised management arrangements by national public sector bodies or bodies governed by private law with a public service mission, or by an executive agency.
- It is likely that different modalities will apply for different Components of this Instrument, with full decentralisation as the ultimate objective. Moreover the speed at which beneficiary countries are able to move down the road of decentralisation is also likely to vary from Component to Component. An appropriate mix of centralised and decentralised management structures will need to be put in place, taking into account the quality of the management and control systems of beneficiary countries, in line with the requirements of the Financial Regulation.
- It is, nonetheless, important that the highest level of decentralisation possible for the individual beneficiary country concerned should be pursued as soon as feasible, without delaying the flow of assistance. A start on the process of moving to partially decentralised management will, therefore, be made at the earliest possible point, starting with pre-candidate countries. For Components where the only realistic approach is to proceed to full decentralisation from the start of programme implementation, preparation for the implementation of a limited number of key measures could facilitate an early start of programme implementation.
- In addition, there is, at present, a large European Agency for Reconstruction in the Western Balkans. The Commission will reflect on how best to handle these ongoing tasks within the IPA, bearing in mind the political and technical complexities of the EU's operations in the Western Balkans.

6. FINANCIAL IMPACT

6.1. Total financial impact on Part B - (over the entire programming period) (*current prices*)

6.1.1. Financial intervention

Commitments (in € million)

Breakdown	2007	2008	2009	2010	2011	2012	2013 and subs. Years	Total
TOTAL	1.426	1.631	1.734	1.977	2.294	2.441	2.564	14.067

6.1.2. Technical and administrative assistance, support expenditure and IT expenditure (commitment appropriations)

	2007	2008	2009	2010	2011	2012	2013 and subs. years	Total
TOTAL	60	68	72	82	95	102	107	586

As the progressive move to partial and then to full decentralisation is achieved, some transfer of funds from 6.1.2 to 6.1.1 will be possible. The allocation of funds by component shall take into account the cost of administrative support for devolved programme management in the Commission delegations referred to in Article 12(3) of this Regulation.

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

7.1. Impact on human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources		Total	Description of tasks deriving from the action
		Number of permanent posts	Number of temporary posts		
Officials or temporary staff	A	HQ: 275		359	
	B	Del.: 84			
	C				
Other human resources			HQ: END: AUX: INT: Ex BA-lines : ATA: Delegations : Ex BA-lines	15 18 7 69 418	
Total				886	

7.2. Overall financial impact of human resources (2004 prices)

Type of human resources	Amount (€)	Method of calculation *
Officials	29,700,000	275 x € 108,000
Temporary staff	16,309,272	84 x € 194,158
HQ:		
END	668,160	15 x € 44,544
AUX	1,021,680	18 x € 56,760
INT	441,630	7x € 63,096
<u>Ex BA-lines:</u>		
ATA	3,977,574	69 x € 57,646
Delegations:		
<u>ExBA-lines:</u>		
ALAT / AL	31,972,820	418 x € 76,490
Total	84,091,136	

The amounts are total expenditure for twelve months.

7.3. Other administrative expenditure deriving from the action (2004 prices)

	Amount €	Method of calculation
Overall allocation (Title A7)		
A0701 – Missions	600,000	
A07030 – Meetings	100,000	
A07031 – Compulsory committees (ex-PHARE), UPI Committees	500,000	4 Committees meeting 5 times a year at € 25,000 per meeting
A07032 – Non-compulsory committees	50,000	
A07040 – Conferences	50,000	
A0705 – Studies and consultations		
Other expenditure (specify)		
Information systems (A-5001/A-4300)	200,000	
Other expenditure – Part A (specify)		
Total	1,500,000	

The amounts are total expenditure for twelve months.

(2004 prices)

I.	Annual total (7.2 + 7.3)	€ 85,591,136
II.	Duration of action	7 years
III.	Total cost of action (I x II)	€ 599,137,958

Human and administrative resource needs will be covered from within the allocation made to the DG managing the activities under the annual allocation procedure.

The allocation of posts will depend on the one hand on the internal organisation of the next Commission, and on the other hand on a possible reallocation of posts between the services, following the new financial perspectives.

8. FOLLOW-UP AND EVALUATION

8.1. Follow-up arrangements

Art. 27 (4) of the Financial Regulation obliges the Commission to undertake both ex ante and ex post evaluations, to be applied to all programmes and activities which entail significant spending. Evaluation results are to be disseminated to spending, legislative and budgetary authorities. Due to the fact that the obligation is already in place, the Regulation itself does not mention either monitoring or evaluation.

Provisions will be made within Framework Agreements to ensure the beneficiary countries make the necessary arrangements to enable independent monitoring and evaluation. In outline, the system is envisaged as follows:

- Project implementation will be monitored through the Joint Monitoring Committee (JMC). This includes the NAO, the NAC and the Commission services. The JMC will meet at least once a year to review all IPA-funded programmes in order to assess their progress towards meeting the objectives set out in the Financing Agreements and the Accession/European Partnership. The JMC may recommend a change of priorities and/or reallocation of IPA funds.
- The JMC will be assisted by Sectoral Monitoring Sub-Committees (SMSC) for each component and sector, which will include all relevant institutions and partners involved, including the Commission Services, in accordance with the specific monitoring arrangements that will be established for each component. The SMSC, inter alia, will, review in detail the progress made towards achieving the objectives set out in its relevant programme and will report to the JMC on all IPA financed actions in its component or sector.
- The Commission services shall ensure that an ex-post evaluation is carried out after completion of the programme.

8.2. Arrangements and schedule for the planned evaluation

In application of current rules and in view of the vast scope of the activities foreseen, an evaluation system covering the different levels of intervention and types of instruments has been set up.

Notably, the financial regulation, as well as the internal control standards, calls for regular evaluation of all (sizable) activities. This is translated into the evaluation of single operations (e.g. development projects), of programmes (e.g. national programmes) and policy sectors or themes (e.g. transport or gender issues). Evaluations of are also necessary and ongoing of wider legal obligations such as the 3 Cs (Coherence, Complementarity, Coordination).

As set out above, project implementation will be monitored through the Joint Monitoring Committee (JMC) in each beneficiary country, assisted by Sectoral Monitoring Sub-Committees (SMSC) for each component and sector. Each Component will have its own

specific evaluation scheme. For Institution Building, there is an ongoing scheme of Interim Evaluation, and these interim evaluations, prepared by independent evaluators, are reviewed by the JMC. This Interim Evaluation scheme generates over 130 individual country, sectoral and thematic reports a year. Thematic reports covering such issues as nuclear issues, civil society, public administration, justice and home affairs, national aid coordination, twinning, SMEs, and statistics have been prepared.

These works will be complemented by relevant works on databases, meta-analyses, methodology and training.

9. ANTI-FRAUD MEASURES

The protection of the Community's financial interests and the fight against fraud and irregularities form an integral part of this Regulation.

Administrative monitoring of contracts and payments will be the responsibility of the EC Delegations in beneficiary countries.

Each of the operations financed under this regulation will be supervised at all stages in the project cycle through the delegations. Supervision will take account of contractual obligations as well as of the principles of cost/benefit analysis and sound financial management.

For Cross Border co-operation programmes operating under shared management the Member State where the joint managing authority is located is responsible for ensuring sound financial management and the legality and regularity of the transactions.

Moreover, any agreement or contract concluded pursuant to this Regulation shall expressly provide for monitoring of spending authorised under the projects/programmes and the proper implementation of activities as well as financial control by the Commission, including the European Anti-Fraud Office (OLAF), and audits by the Court of Auditors, if necessary on the spot. They shall authorise the Commission (OLAF) to carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and irregularities.

Particular attention will be paid to the nature of expenditure (eligibility of expenditure), to respect for budgets (actual expenditure) and to verify supporting information and relevant documentation (evidence of expenditure).

In practise, this would mean that framework agreements would contain provisions making reference notably to the following:

- Definitions of the notions of irregularity, fraud, active and passive corruption and conflict of interest;
- Measures in the field of financial control by the contracting authority, the Commission and the Court of Auditors;
- The possibility for OLAF to conduct on-the-spot checks equivalent to the ones foreseen by Regulation (EC) 2185/96

- The obligation of the contracting authority of the third country to take preventive measures in the field of corruption
- The procedure for the communication of cases of suspected fraud and irregularities to the Commission;
- The procedures for the clearance of accounts in the case of decentralised management
- The application of administrative and financial sanctions (including the exclusion of non-reliable candidates and tenderers)
- Enforceability of Commission decisions in the area of recovery in case of centralised management.