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(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 1164/94
of 16 May 1994
establishing a Cohesion Fund**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Economic Community, and in particular the second subparagraph of Article 130d thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the assent of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Having regard to the opinion of the Committee of the Regions ⁽⁴⁾,

Whereas Article 2 of the Treaty includes the task of promoting economic and social cohesion and solidarity among Member States as objectives essential to the Community's development and success; whereas the strengthening of such cohesion is referred to in point (j) of Article 3 of the Treaty as one of the activities of the Community for the purposes set out in Article 2 of the Treaty;

Whereas Article 130a of the Treaty provides for the Community to develop and pursue its actions leading to the strengthening of its economic and social cohesion, and provides in particular that it shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least-favoured regions; whereas Community action through the Cohesion Fund should support the achievement of the objectives set out in Article 130a;

Whereas the conclusions of the European Councils held in Lisbon on 26 and 27 June 1992 and in Edinburgh on 11 and 12 December 1992 concerning the establishment of the Cohesion Fund set out the principles governing it;

Whereas the promotion of economic and social cohesion requires action by the Cohesion Fund in addition to that taken through the Structural Funds, the European Investment Bank and the other financial instruments in the fields of the environment and transport infrastructure of common interest;

Whereas the Protocol on economic and social cohesion annexed to the Treaty establishing the European Community reaffirms the Community's task of promoting economic and social cohesion and solidarity between Member States and specifies that a Cohesion Fund will provide a financial contribution to projects in the fields of the environment and trans-European networks in the Member States subject to two conditions: firstly that they have a per capita gross national product (GNP) of less than 90 % of the Community average and secondly that they have a programme leading to the fulfilment of the conditions of economic convergence as set out in Article 104c of the Treaty; whereas the relative prosperity of Member States is best assessed on the basis of per capita GNP, measured in purchasing power parities;

Whereas meeting the convergence criteria which are a precondition for moving to the third stage of economic and monetary union calls for a determined effort from the Member States concerned; whereas, in this context, all of the beneficiary Member States are to submit to the Council a convergence programme designed for that purpose and to avoid excessive government deficits;

Whereas the second subparagraph of Article 130d of the Treaty states that the Council is to set up a Cohesion Fund before 31 December 1993 to provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure;

⁽¹⁾ OJ No C 39, 9. 2. 1994, p. 6.

⁽²⁾ Assent given on 5 May 1994 (not yet published in the Official Journal).

⁽³⁾ OJ No C 133, 16. 5. 1994.

⁽⁴⁾ Opinion delivered on 5 April 1994 (not yet published in the Official Journal).

Whereas Article 129c (1) of the Treaty provides that the Community may contribute through the Cohesion Fund to the financing of specific projects in the Member States in the area of transport infrastructure, whilst taking into account the potential economic viability of the projects; whereas projects financed by the Fund should form part of trans-European network guidelines which have been adopted by the Council including those covered by the plans for trans-European networks approved by the Council or proposed by the Commission before the entry into force of the Treaty on European Union; whereas, however, other transport infrastructure projects contributing to the attainment of the objectives of Article 129b of the Treaty may be financed until the Council has adopted the appropriate guidelines;

Whereas Article 130r of the Treaty defines the objectives and principles of the Community in the field of the environment; whereas the Community may contribute, through the Cohesion Fund, to actions designed to achieve those objectives; whereas, in accordance with Article 130s (5) of the Treaty and without prejudice to the principle that the polluter should pay, the Council may decide on financial assistance from the Cohesion Fund where a measure based on paragraph 1 of that Article involves costs deemed disproportionate for the public authorities of a Member State;

Whereas the principles and objectives of sustainable development are established in the Community's programme of policy and action in relation to the environment and sustainable development as set out in the Council Resolution of 1 February 1993⁽¹⁾;

Whereas a suitable balance must be struck between financing for transport infrastructure projects and financing for environmental projects;

Whereas the Commission's Green Paper on the Impact of Transport on the Environment reiterates the need to develop a more environment-friendly transport system which takes into account the sustainable development needs of the Member States;

Whereas any calculation of the cost of transport infrastructure projects must encompass environmental costs;

Whereas, in the light of the undertaking by the Member States concerned not to decrease their investment efforts in the fields of environmental protection and transport infrastructure, the principle of additionality within the meaning of Article 9 of Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the opera-

tions of the European Investment Bank and the other existing financial instruments⁽²⁾ will not apply to the Cohesion Fund;

Whereas, in accordance with Article 198e of the Treaty, the European Investment Bank (EIB) is to facilitate the financing of investments in conjunction with assistance from the other Community financial instruments;

Whereas it is necessary to coordinate action taken in the fields of the environment and of trans-European transport infrastructure networks through the Cohesion Fund, the Structural Funds, the EIB and the other financial instruments in order to enhance the effectiveness of Community assistance;

Whereas with a view, in particular, to helping Member States in the preparation of their projects, the Commission should be in a position to ensure that the necessary technical support is available to them, particularly in order to contribute to the preparation, implementation, monitoring and evaluation of projects;

Whereas, particularly in order to ensure value for money, a thorough appraisal should precede the commitment of Community resources in order to ensure that they yield socio-economic benefits in keeping with the resources deployed;

Whereas assistance from the Cohesion Fund must be consistent with Community policies, including environmental protection, transport, trans-European networks, competition and the award of public contracts; whereas environmental protection includes the assessment of environmental impact;

Whereas there should be provision for an indicative allocation of the global resources available for commitment between the Member States in order to facilitate the preparation of projects;

Whereas provision should be made, in conjunction with Article 104c (6) of the Treaty, for a form of conditionality in the granting of financial assistance;

Whereas it is necessary, given the requirements of economic and social cohesion, to provide a high rate of assistance;

Whereas, in order to facilitate the management of assistance from the Fund, there should be provision for identifying the stages of projects which may be considered technically and financially separate and for grouping the projects together, if necessary;

⁽¹⁾ OJ No C 138, 17. 5. 1993, p. 1.

⁽²⁾ OJ No L 374, 31. 12. 1988, p. 1. Regulation as amended by Regulation (EEC) No 2082/93 (OJ No L 193, 31. 7. 1993, p. 20).

Whereas it should be possible to opt for assistance from the Fund either by annual instalments or for the whole of the project; and whereas, in accordance with the principle laid down by the European Council meeting at Edinburgh on 11 and 12 December 1992, payment instalments following an initial advance should be closely and transparently linked with progress towards the completion of projects;

Whereas the respective powers and responsibilities of the Member States and the Commission concerning financial control over the Fund's operations should be specified;

Whereas, in the interests of the proper management of the Cohesion Fund, provision should be made for effective methods of evaluating, monitoring and checking Community operations, specifying the principles governing the evaluation, defining the nature of and the rules governing the monitoring, and laying down the action to be taken in response to irregularities or failure to comply with one of the conditions laid down when assistance from that Fund was approved;

Whereas adequate information should be provided, *inter alia*, in the form of an annual report;

Whereas provision should be made to give adequate publicity to Community assistance from the Cohesion Fund;

Whereas publication in the *Official Journal of the European Communities* of calls for public tenders concerning projects receiving assistance from the Fund should mention the assistance;

Whereas in order to facilitate the application of this Regulation, the implementing provisions should be defined in Annex II; whereas to ensure the necessary flexibility in their application, the Council, acting by a qualified majority on a proposal from the Commission, should be able, if necessary, in the light of experience gained, to amend those provisions;

Whereas this Regulation should, without interruption, replace Council Regulation (EEC) No 792/93 of 30 March 1993 establishing a cohesion financial instrument⁽¹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Definition and objective

1. A Cohesion Fund, hereinafter referred to as 'the Fund', is hereby established.
2. The Fund shall contribute to the strengthening of the economic and social cohesion of the Community and shall operate according to the provisions set out in this Regulation.
3. The Fund may contribute to the financing of:
 - projects, or
 - stages of a project which are technically and financially independent, or
 - groups of projects linked to a visible strategy which form a coherent whole.

Article 2

Scope

1. The Fund shall provide financial contributions to projects, which contribute to achieving the objectives laid down in the Treaty on European Union, in the fields of the environment and trans-European transport infrastructure networks in Member States with a per capita gross national product (GNP), measured in purchasing power parities, of less than 90 % of the Community average which have a programme leading to the fulfilment of the conditions of economic convergence referred to in Article 104c of the Treaty.
2. Until the end of 1999, only the four Member States which currently meet the criterion regarding per capita GNP referred to in paragraph 1 shall be eligible for assistance from the Fund. Those Member States are Greece, Spain, Ireland and Portugal.
3. With regard to the GNP criterion referred to in paragraph 1, the Member States referred to in paragraph 2 shall continue to be eligible for assistance from the Fund provided that, after a mid-term review in 1996, their GNP remains below 90 % of the Community average. Any eligible Member State whose GNP exceeds the 90 % threshold at that time shall lose its entitlement to assistance from the Fund for new projects or, in the case of important projects split into several technically and financially separate stages, for new stages of a project.

⁽¹⁾ OJ No L 79, 1. 4. 1993, p. 74.

Article 3

Eligible measures

1. The Fund may provide assistance for the following :

- environmental projects contributing to the achievement of the objectives of Article 130r of the Treaty, including projects resulting from measures adopted pursuant to Article 130s of the Treaty and, in particular, projects in line with the priorities conferred on Community environmental policy by the Fifth Programme of Policy and Action in relation to the Environment and Sustainable Development,
- transport infrastructure projects of common interest, financed by Member States, which are identified within the framework of the guidelines referred to in Article 129c of the Treaty; however, other transport infrastructure projects contributing to the achievement of the objectives of Article 129b of the Treaty may be financed until appropriate guidelines have been adopted by the Council.

2. Assistance may also be granted for :

- preliminary studies related to eligible projects, including those necessary for their implementation,
- technical support measures, particularly :
 - (a) horizontal measures such as comparative studies to assess the impact of Community assistance ;
 - (b) measures and studies which contribute to the appraisal, monitoring or evaluation, of projects, and to strengthening and ensuring the coordination and consistency of projects, particularly their consistency with other Community policies ;
 - (c) measures and studies helping to make the necessary adjustments to the implementation of projects.

Article 4

Financial resources

For the period 1993 to 1999, the total resources available for commitment for the Fund under this Regulation and Regulation (EEC) No 792/93, as set out in the Inter-institutional Agreement of 29 October 1993, shall be ECU 15 150 million at 1992 prices.

The financial perspectives established with regard to the commitment appropriations available for each year of the period under the Regulations referred to in the first paragraph are as follows :

- 1993 : ECU 1 500 million,
- 1994 : ECU 1 750 million,
- 1995 : ECU 2 000 million,
- 1996 : ECU 2 250 million,
- 1997 : ECU 2 500 million,
- 1998 : ECU 2 550 million,
- 1999 : ECU 2 600 million.

Article 5

Indicative allocation

An indicative allocation of the total resources of the Fund shall be made on the basis of precise and objective criteria, principally population, per capita GNP and surface area ; it shall also take account of other socio-economic factors such as deficiencies in transport infrastructure.

The indicative allocation of the total resources resulting from the application of those criteria is set out in Annex I.

Article 6

Conditional assistance

1. In the event of the Council deciding, in accordance with Article 104c (6) of the Treaty, that an excessive government deficit exists in a Member State, and if that decision is not abrogated in accordance with Article 104c (12) of the Treaty within one year or any other period specified for correcting the deficit in a recommendation under Article 104c (7), no new projects or, in the case of large multi-stage projects, no new stages of a project shall be financed from the Fund for that Member State.

2. Exceptionally, in the case of projects directly affecting more than one Member State, the Council, acting by a qualified majority on a recommendation from the Commission, may decide to defer suspension of financing.

3. Suspension of financing shall not take effect less than two years after the entry into force of the Treaty on European Union.

4. The suspension of financing shall cease when the Council, in accordance with Article 104c (12) of the Treaty, abrogates its decision adopted in accordance with Article 104c (6) of the Treaty.

Article 7

Rate of assistance

1. The rate of Community assistance granted by the Fund shall be 80 % to 85 % of public or equivalent expenditure, including expenditure by bodies whose acti-

vities are undertaken within an administrative or legal framework by virtue of which they may be deemed to be equivalent to public bodies.

The actual rate of assistance shall be fixed according to the type of operation to be carried out.

2. Where assistance is granted for a project which generates revenue, the amount of the expenditure on which the calculation of the assistance from the Fund is based shall be established by the Commission, taking account of revenue where it constitutes substantial net revenue for the promoters and in close collaboration with the beneficiary Member State.

'Project which generates revenue' means :

- infrastructures the use of which involves fees borne directly by users,
- productive investments in the environment sector.

3. The beneficiary Member States may submit proposals for preparatory studies and technical support measures.

4. Preliminary studies and technical support measures, including those undertaken at the Commission's initiative, may be financed exceptionally at 100 % of the total cost.

Total expenditure carried out pursuant to this paragraph may not exceed 0,5 % of the total allocation to the Fund.

Article 8

Coordination and compatibility with Community policies

1. Projects financed by the Fund shall be in keeping with the provisions of the Treaties, with the instruments adopted pursuant thereto and with Community policies, including those concerning environmental protection, transport, trans-European networks, competition and the award of public contracts.

2. The Commission shall ensure coordination and consistency between projects undertaken pursuant to this Regulation and measures undertaken with contributions from the Community budget, the European Investment Bank (EIB) and the other financial instruments of the Community.

Article 9

Cumulation and overlapping

1. No item of expenditure may benefit both from the Fund and from the European Agricultural Guidance and Guarantee Fund, the European Social Fund, the European Regional Development Fund or the financial instrument of fisheries guidance.

2. The combined assistance of the Fund and other Community aid for a project shall not exceed 90 % of the total expenditure relating to that project.

Article 10

Approval of projects

1. The projects to be financed by the Fund shall be adopted by the Commission in agreement with the beneficiary Member State.

2. A suitable balance shall be struck between projects in the field of the environment and projects relating to transport infrastructure. This balance shall take account of Article 130s (5) of the Treaty.

3. Applications for assistance for projects under Article 3 (1) shall be submitted by the beneficiary Member State. Projects, including groups of related projects, shall be of a sufficient scale to have a significant impact in the field of environmental protection or in the improvement of trans-European transport infrastructure networks. In any event, the total cost of projects or groups of projects may in principle not be less than ECU 10 million. Projects or groups of projects costing less than this may be approved in duly justified cases.

4. Applications shall contain the following information : the body responsible for implementation, the nature of the investment and a description thereof, its costs and location, including, where applicable, an indication of projects of common interest situated on the same transport axis, the timetable for implementation of the work, a cost-benefit analysis, including the direct and indirect effects on employment, information enabling possible impact on the environment to be assessed, information on public contracts, the financing plan including, where possible, information on the economic viability of the project, and the total financing the Member State is seeking from the Fund and any other Community source.

They shall also contain all relevant information providing the required proof that the projects comply with the Regulation and with the criteria set out in paragraph 5, and particularly that there are medium-term economic and social benefits commensurate with the resources deployed.

5. The following criteria shall be applied to ensure the high quality of projects :

- their medium-term economic and social benefits, which shall be commensurate with the resources deployed ; an assessment shall be made in the light of a cost-benefit analysis,
- the priorities established by the beneficiary Member States,
- the contribution which projects can make to the implementation of Community policies on the environment and trans-European networks,
- the compatibility of projects with Community policies and their consistency with other Community structural measures,
- the establishment of an appropriate balance between the fields of the environment and transport infrastructure.

6. Subject to Article 6 and to the availability of commitment appropriations, the Commission shall decide on the grant of assistance from the Fund provided that the requirements of this Article are fulfilled, as a general rule within three months of receipt of the application. Commission decisions approving projects, stages of projects or groups of related projects shall determine the amount of financial support and lay down a financing plan together with all the provisions and conditions necessary for the implementation of the projects.

7. The key details of the Commission's decisions shall be published in the *Official Journal of the European Communities*.

Article 11

Financial provisions

1. The commitment appropriations entered in the budget shall be granted on the basis of the decisions approving the measures concerned, in accordance with Article 10.

2. Assistance relating to the projects referred to in Article 3 (1) shall as a general rule be committed by annual instalments. However, in appropriate cases, the

Commission may commit the total amount of the assistance granted when it adopts the decision granting the assistance.

3. Expenditure within the meaning of Article 7 (1) shall not be deemed eligible for assistance from the Fund if incurred by the beneficiary Member State before the date on which the Commission receives the relevant application.

4. Payments made after an initial advance must be closely and transparently linked to progress made in the implementation of the projects.

5. Payments shall be made in ecus and shall be subject to the specific provisions set out in Annex II.

Article 12

Financial checks

1. In order to guarantee successful completion of the projects financed by the Fund, Member States shall take the necessary measures :

- to verify on a regular basis that operations financed by the Community have been properly carried out,
- to prevent irregularities and take action against them,
- to recover any amounts lost as a result of irregularity or negligence. Except where the Member State and/or the implementing authority provide proof that they were not responsible for the irregularity or negligence, the Member State shall be liable in the alternative for reimbursement of any sums unduly paid.

2. Member States shall inform the Commission of the measures taken for those purposes and, in particular, shall notify the Commission of the description of the management and control systems established to ensure the efficient implementation of operations. They shall regularly inform the Commission of the progress of administrative and judicial proceedings. In that context, the Member States and the Commission shall take the necessary steps to ensure that the information exchanged remains confidential.

3. Member States shall make available to the Commission any appropriate national control reports on the projects concerned.

4. Without prejudice to checks carried out by Member States in accordance with national laws, regulations and administrative provisions and without prejudice to Article 188a of the Treaty or to any inspection arranged on the basis of Article 209 (c) of the Treaty, the Commission may, through its officials or agents, carry out on-the-spot

checks, including sample checks, in respect of projects financed by the Fund, and may examine the control arrangements and measures established by the national authorities, which shall inform the Commission of measures taken to that end.

5. As soon as this Regulation enters into force, the Commission shall adopt detailed rules for the application of this Article and shall inform the European Parliament thereof.

Article 13

Appraisal, monitoring and evaluation

1. The Member States and the Commission shall ensure that the implementation of projects under this Regulation is effectively monitored and evaluated. Projects must be adjusted on the basis of the results of monitoring and evaluation.

2. In order to ensure the effectiveness of Community assistance, the Commission and the beneficiary Member States shall, in cooperation with the EIB where appropriate, carry out a systematic appraisal and evaluation of projects.

3. On receipt of a request for assistance and before approving a project, the Commission shall carry out a thorough appraisal in order to assess the project's consistency with the criteria laid down in Article 10 (5). The Commission shall invite the EIB to contribute to the assessment of projects as necessary.

4. During the implementation of projects and after their completion, the Commission and the beneficiary Member States shall evaluate the manner in which they have been carried out and the potential and actual impact of their implementation in order to assess whether the original objectives can be, or have been, achieved. This evaluation shall, *inter alia*, address the environmental impact of the projects, in compliance with the existing Community rules.

5. In vetting individual applications for assistance, the Commission shall take into account the findings of appraisals and evaluations made in accordance with this Article.

6. The detailed rules for monitoring and evaluation, as provided for in paragraph 4, shall be laid down in the decisions approving projects.

Article 14

Information and publicity

1. The Commission shall present an annual report on the activities of the Fund, for the purposes of examination

and their opinion, to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions.

The European Parliament shall deliver an opinion on the report as soon as possible. The Commission shall report on how it has applied the observations contained in the European Parliament's opinion.

The Commission shall ensure that Member States are informed of the activities of the Fund.

2. The Member States responsible for implementing a measure receiving a financial contribution from the Fund shall ensure that adequate publicity is given to the measure with a view to:

- making the general public aware of the role played by the Community in relation to the measure,
- making potential beneficiaries and professional organizations aware of the possibilities afforded by the measure.

Member States shall ensure, in particular, that directly visible display panels are erected showing the percentage of the total cost of a given project which is being financed by the Community, together with the Community logo, and that representatives of the Community institutions are duly involved in the most important public activities connected with the Fund.

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

3. As soon as this Regulation enters into force, the Commission shall adopt detailed rules on information and publicity, shall inform the European Parliament thereof and shall publish them in the *Official Journal of the European Communities*.

Article 15

Implementation

The provisions for the implementation of this Regulation are set out in Annex II hereto.

Article 16

Final and transitional provisions

1. The Council, acting on a proposal from the Commission in accordance with the procedure laid down in Article 130d of the Treaty, shall re-examine this Regulation before the end of 1999.

2. As soon as it enters into force, this Regulation shall replace Regulation (EEC) No 792/93.

3. This Regulation shall not affect the continuation of measures approved by the Commission on the basis of the provisions of Regulation (EEC) No 792/93 applicable before the entry into force of this Regulation, which shall consequently apply thereafter to those measures.

4. Applications presented within the framework of Regulation (EEC) No 792/93 before the entry into force of this Regulation shall remain valid provided such appli-

cations are supplemented, where necessary, so as to comply with the requirements of this Regulation within not more than two months of the entry into force of this Regulation.

Article 17

Entry into force

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

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

Done at Brussels, 16 May 1994.

For the Council

The President

Th. PANGALOS

ANNEX I

INDICATIVE ALLOCATION OF THE TOTAL RESOURCES OF THE COHESION FUND AMONG THE BENEFICIARY MEMBER STATES

— Spain :	52 % to 58 % of the total,
— Greece :	16 % to 20 % of the total,
— Portugal :	16 % to 20 % of the total,
— Ireland :	7 % to 10 % of the total.

ANNEX II**IMPLEMENTING PROVISIONS***Article A***Designation of stages or groups of projects**

1. The Commission may, in agreement with the beneficiary Member State, group projects together and designate technically and financially separate stages of a project for the purpose of granting assistance.
2. A stage may also cover preliminary, feasibility and technical studies needed for carrying out a project.

*Article B***Ex-ante evaluation**

1. The Commission shall examine applications for assistance to verify in particular that the administrative and financial mechanisms are adequate for the effective implementation of the project.
2. Pursuant to Article 13 (3), the Commission shall appraise projects to determine their anticipated impact in terms of the objectives of the Fund, quantified using appropriate indicators. The beneficiary Member States shall provide all necessary information, as set out in Article 10 (4), including the results of feasibility studies and *ex-ante* appraisals, to make this appraisal as effective as possible.

*Article C***Commitments**

1. Budgetary commitments shall be made on the basis of the Commission decisions approving the measures concerned (project, stage of project, group of projects, study or technical support measure). Commitments shall be valid for a period determined by the nature of the measure and the specific conditions for its implementation.
2. Budgetary commitments in respect of assistance granted to projects, stages of projects or groups of projects shall be carried out in one of two ways :
 - (a) commitments in respect of the projects referred to in Article 3 (1) to be carried out over a period of two or more years shall, as a general rule and subject to the provisions of subparagraph (b), be effected in annual instalments.

The commitments in respect of the first annual instalment shall be made when the decision granting Community assistance is adopted by the Commission. Commitments in respect of subsequent annual instalments shall be based on the initial or revised financing plan for the project and on the progress made in its implementation ;
 - (b) for projects to be carried out over a period of less than two years or where Community assistance is less than ECU 40 million, the total amount of assistance may be committed when the Commission adopts the decision to grant Community assistance.
3. In the case of the studies and technical support measures referred to in Article 3 (2), the assistance shall be committed when the Commission approves the measure concerned.
4. The arrangements for commitments shall be specified in the Commission decisions approving the measures concerned.

*Article D***Payments**

1. Payments of financial assistance shall be made in accordance with the corresponding budget commitments, to the authority or body designated for the purpose in the application submitted by the beneficiary Member State concerned. Payments may take the form either of advances or in intermediate payments or payments of balances in respect of expenditure actually incurred.
2. Where Community assistance is committed in accordance with Article C (2) (a), payments shall be made as follows :

- (a) an advance of up to 50 % of the amount of the first annual instalment committed shall be paid when the decision granting Community assistance is adopted ;
 - (b) intermediate payments may be paid provided that the project is progressing satisfactorily towards completion and that at least two-thirds of the expenditure relating to the previous payment have been made.

Subject to (c), each such payment may not exceed 50 % of the amount of each annual instalment committed ;
 - (c) the total amount of the payments made under (a) and (b) for all the instalments may not exceed 80 % of the total assistance granted. This percentage may be increased to 90 % for important projects and in justified cases ;
 - (d) the balance of Community assistance shall be paid provided that :
 - the project, stage of the project, or group of projects, has been carried out according to its objectives ;
 - the designated authority or body referred to in paragraph 1 submits an application for payment to the Commission within six months of the physical completion of the project, stage of project or group of projects ;
 - the final report referred to in Article F (4) is submitted to the Commission ;
 - the Member State certifies to the Commission that the information given in the application for payment and in the report is correct.
3. Where the commitment is made in accordance with Article C (2) (b), payment shall be made as follows :
- (a) the advance paid following the decision may be up to 50 % of the assistance relating to planned expenditure in the first year as shown in the financing plan approved by the Commission ;
 - (b) further intermediate payments may be made provided that the project is progressing satisfactorily towards completion and that at least two-thirds of the expenditure relating to the previous payment, and all expenditure relating to earlier payments, have been made.

Subject to subparagraph (c), each of those payments may amount to up to 50 % of the assistance relating to expenditure planned for the year in question, as shown in the initial or revised financing plan approved by the Commission ;
 - (c) the total amount of the payments referred to under subparagraphs (a) and (b) may not exceed 80 % of the total assistance granted ;
 - (d) the balance of Community assistance shall be paid provided that :
 - the project, stage of the project, or group of projects, has been carried out according to its objectives ;
 - the designated authority or body referred to in paragraph 1 submits an application for payment to the Commission within six months of completion of the project, stage of project or group of projects ;
 - the final report referred to in Article F (4) is submitted to the Commission ;
 - the Member State certifies to the Commission that the information given in the application for payment and in the report is correct.
4. Member States shall designate the authorities empowered to issue the certificates referred to in paragraphs 2 (d) and 3 (d).
5. Payment shall be made to the authority or body designated by the Member State, as a general rule not later than two months after receipt of an admissible application for payment.
6. In the case of the studies and other measures referred to in Article 3 (2), the Commission shall determine the appropriate payment procedures.

Article E

Use of the ecu

- 1. Applications for assistance, together with the relevant financing plan, shall be submitted to the Commission in ecus or in national currency.
- 2. The amounts of assistance and the financing plans approved by the Commission shall be expressed in ecus.
- 3. Declarations of expenditure in support of the corresponding payment applications shall be expressed in ecus or in national currency.
- 4. Payments of financial assistance by the Commission shall be made in ecus to the authority designated by the Member State to receive such payments.

*Article F***Monitoring**

1. The Commission and the Member State shall ensure effective monitoring of implementation of Community projects part-financed by the Fund. Monitoring shall be carried out by way of jointly agreed reporting procedures, sample checks and the establishment of *ad hoc* committees.

2. Monitoring shall be carried out by reference to physical and financial indicators. The indicators shall relate to the specific character of the project and its objectives. They shall be arranged in such a way as to show :

- the stage reached in the receipt in relation to the plan and objectives originally laid down ;
- the progress achieved on the management side and any related problems.

3. Monitoring committees shall be set up by arrangement between the Member State concerned and the Commission.

The authorities or bodies designated by the Member State, the Commission and, where appropriate, the EIB shall be represented on the committees.

Where regional and local authorities are competent for the execution of a project and, where appropriate, where they are directly concerned by a project they shall also be represented on such committees.

4. For each project, the authority or body designated for the purpose by the Member State shall submit progress reports to the Commission within three months of the end of each full year of implementation. A final report shall be submitted to the Commission within six months of completion of the project or stage of project.

5. On the basis of the results of monitoring, and taking account of the comments of the monitoring committee, the Commission shall adjust the amounts and conditions for granting assistance as initially approved, as well as the financing plan envisaged, if necessary on a proposal by the Member States.

6. For the greater effectiveness of the Fund, the Commission shall ensure that when the Fund is administered particular attention is paid to transparency of management.

7. The monitoring arrangements shall be laid down in the Commission decisions approving the projects.

*Article G***Checks**

1. Before carrying out an on-the-spot check, the Commission shall give notice to the Member State concerned with a view to obtaining all the assistance necessary. On-the-spot checks by the Commission without notice shall be subject to agreements reached in accordance with the Financial Regulation. Officials or agents of the Member State concerned may take part in checks.

The Commission may require the Member State concerned to carry out an on-the-spot check to verify the correctness of payment applications. Officials or agents of the Commission may take part in such checks, and must do so if the Member State concerned so requests.

The Commission shall ensure that any checks that it carries out are performed in a coordinated manner so as to avoid repeating checks in respect of the same subject matter during the same period. The Member State concerned and the Commission shall immediately exchange any relevant information concerning the results of the checks carried out.

2. The responsible body and authorities shall keep available for the Commission all the supporting documents regarding expenditure on any project for a period of three years following the last payment in respect of a project.

*Article H***Reduction, suspension and cancellation of assistance**

1. If the implementation of a measure appears not to justify either a part, or the whole, of the assistance allocated, the Commission shall conduct an appropriate examination of the case, in particular requesting the Member State or authorities or bodies designated by it to implement the measure to submit their comments within a specified period of time.

2. Following the examination referred to in paragraph 1, the Commission may reduce, suspend or cancel assistance in respect of the measures concerned if the examination reveals an irregularity or a failure to comply with one of the conditions in the decision to grant assistance, and in particular any significant change affecting the nature or conditions of implementation of the measure for which the Commission's approval has not been sought.

Any undue cumulation shall give rise to the recovery of sums unduly paid.

3. Any sum to be recovered for want of due entitlement shall be repaid to the Commission. Interest on account of late repayment shall be charged in accordance with the rules to be adopted by the Commission.

Article I

Public contracts

In the context of the application of Community rules on the award of public contracts, notices sent for publication in the *Official Journal of the European Communities* shall specify those projects for which Community assistance has been applied for or granted.

Article J

Information

The information to be given in the annual report provided for in Article 14 shall be as set out in the Annex to this Annex.

The Commission shall be responsible for organizing an information meeting with the Member States every six months.

Article K

Review

If necessary, in the light of experience gained, the Council may, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, amend the provisions of this Annex.

Annex to ANNEX II

The annual report shall provide information on the following :

1. financial assistance committed and paid by the Fund, with an annual breakdown by Member State and by type of project (environment or transport);
 2. the economic and social impact of the Fund in the Member States and on economic and social cohesion in the Union ;
 3. summary of information on the programmes implemented in the beneficiary Member States to fulfil the conditions of economic convergence referred to in Article 104c of the Treaty and on the application of Article 6 of the Regulation ;
 4. information on the conclusions drawn by the Commission, with regard to the suspension of financing, from decisions taken by the Commission, such as those mentioned in Article 6 (1) and (2);
 5. the contribution which the Fund has made to the efforts of the beneficiary Member States to implement Community environment policy and to strengthen trans-European transport infrastructure networks ; the balance between projects in the field of the environment and projects relating to transport infrastructure ;
 6. assessment of the compatibility of operations of the Fund with Community policies, including those concerning environmental protection, transport, competition and the award of public contracts ;
 7. the measures taken to ensure coordination and consistency between projects financed by the Fund and measures financed with contributions from the Community budget, the European Investment Bank and the other financial instruments of the Community ;
 8. the investment efforts of the beneficiary Member States in the fields of environmental protection and transport infrastructure ;
 9. the preparatory studies and technical support measures financed, including a specification of the types of such studies and measures ;
 10. the results of appraisal, monitoring and evaluation of projects, including information on any adjustment of projects to accord with the results of appraisal, monitoring and evaluation ;
 11. the contribution of the EIB to the evaluation of projects ;
 12. summary of information on the results of checks carried out, irregularities found and administrative and judicial proceedings in progress.
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