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Proposal for a  
**COUNCIL REGULATION (EC)**  
amending Regulation (EC) No 1164/94 establishing a Cohesion Fund

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Proposal for a  
**COUNCIL REGULATION (EC)**  
amending Annex II to Regulation (EC) No 1164/94 establishing a Cohesion Fund

(presented by the Commission)

## EXPLANATORY MEMORANDUM

The Cohesion Fund was established by Article 130d of the Treaty of Maastricht. It was preceded by the provisional cohesion financial instrument, and was set up in May 1994 by a Council Regulation on which the assent of the Parliament had been obtained.

Since then the Fund has provided broadly equal amounts of finance for projects in the fields of trans-European transport networks and the environment. It has raised the level of implementation of environmental Directives in the beneficiary countries and improved the position of trans-European networks and access to them. The four beneficiary countries have made progress in terms of real convergence but so far none has reached the threshold of a GNP of at least 90% of the Community average laid down by the Protocol on Economic and Social Cohesion annexed to the Treaty.

In Agenda 2000, the Commission accordingly argued for the Fund to continue.

This proposal for a Regulation, together with a proposal to amend Annex II to the current Regulation, is made in accordance with Article 16 of the Regulation.

### **I. The general background**

#### **1.1 Continuation of the Cohesion Fund**

The basic objectives of the Fund, which was set up to further the Union's task of promoting economic and social cohesion and solidarity among the Member States, are still relevant today.

The introduction of the single currency will not alter the basic situation. The Commission is thus proposing that the four current beneficiaries should remain eligible for assistance from the Fund.

However, as the current rules provide, there will be a mid-term review in 2003. If any country ceases to be eligible, there will be no Community phasing-out of support, as is planned in the case of the Structural Funds.

#### **1.2 Adjustments to the Cohesion Fund**

Four years after it was set up, with changes in a specific macroeconomic context, that of the forthcoming single currency, the acquisition of considerable management experience, and the obligation to seek greater efficiency and simplification imposed by Agenda 2000, the Cohesion Fund requires adjustment in only a limited number of areas. There is no reason to disturb the legal structure of an instrument which is operating in a very satisfactory fashion. The current Regulation will, therefore, remain in force, as the Commission is proposing only amendments to the text.

### 1.3 The provisions to be amended

After obtaining the assent of the Parliament, the Council adopted the Regulation and its Annexes in May 1994.

Annex II to the Regulation sets out in detail the provisions for implementing the basic principles to be found in the Regulation. Article K states that the Council may amend the Annex by a qualified majority, after consulting Parliament.

The Commission considers it appropriate to make use of these two procedures and to distinguish in its proposals between those that concern the basic principles and those that affect the implementing provisions.

The changes to be made to the basic principles are set out in Part II of this Explanatory Memorandum and those to the implementing provisions are to be found in Part III.

## **II. Amendments to the basic principles**

### 2.1 Macroeconomic conditionality (Article 6)

While the introduction of the euro will not, in the Commission's view, alter the conditions of eligibility for the Cohesion Fund, the Fund will need to embrace the aims of the Stability Pact. That means that macro-economic conditionality will continue to apply both to countries which are not participating in the euro and to those which are. The first group will continue to be subject to the current provisions. In the case of the second group, the Commission has clearly stated that this conditionality will continue to apply and that the provisions laid down by the Stability and Growth Pact, particularly the stability programmes, should be respected. For participating countries, the re-emergence of an excessive public deficit would be a serious occurrence. The Commission considers that it would be wrong to wait until such an event was confirmed before suspending finance. Accordingly, it proposes intervening either under the Council Regulation on multilateral surveillance, where a serious divergence from the medium-term budgetary objective or the adjustment path is continuing or worsening, or under the excessive public deficit procedure, where it considers that such a deficit exists.

### 2.2 Greater use of other sources of complementary private finance (Article 7)

Experience has demonstrated that some projects, especially large-scale ones, generate substantial revenue, which makes them attractive for mixed public-private financing. In conjunction with the EIB, the Cohesion Fund contributes to establishing the financial arrangements for projects by supplementing resources from business and, more generally, through public works concessions. This multiplier effect should be increased, and the Commission's view is that the mobilization of public and private resources should render projects profitable in sectors which have not traditionally benefited from private investment.

### 2.3 Better application of the polluter-pays principle (Article 7)

Experience with managing the Fund has shown that it could constitute an obstacle to the introduction of charges in the field of the environment. Where such charges exist, the revenue generated is deducted, subject to certain conditions, from the expenditure base used to determine assistance from the Cohesion Fund, so reducing the grant. This outcome should be corrected, since it represents an obstacle to the introduction of the polluter-pays principle as required by Article 130s of the Treaty. The Commission is therefore proposing that, subject to the maximum limit, rates of assistance should be positively adjusted so as not to discourage the cohesion countries from applying a proper pricing policy in the field of the environment.

However, it should be clear that the polluter-pays principle can be applied only in the context of a Community framework setting out guidelines.

### 2.4 A larger role for the Member States in financial control (Article 12)

The Member States should have greater responsibility for financial control and the sound financial management of Community appropriations and for coordination and cooperation with the Commission on matters relating to financial supervision. The Commission intends to amend the Regulation in this respect.

## **III. Amendments to Annex II**

### 3.1 More effective assistance

#### 3.1.1 Concepts to be clarified

Experience has shown that the lack of shared definitions of "project", "groups of projects" and "stages of projects" has meant that the Fund has, in some cases, been unable adequately to achieve its original aim of financing major projects. The excessive fragmentation of projects into instalments and the lack of a guarantee that the Commission can finance complete and operational systems threaten to reduce the effectiveness of the grants. The Commission therefore considers it essential to clarify these concepts and so is proposing a set of definitions (Article A).

#### 3.1.2 Fuller assessment of alternatives and of environmental impact

The provisions currently in force do not require any substantial modification. However, the information provided by the Member State when it submits a project does not always enable the Commission to check that all the alternatives have been investigated and to measure the environmental impact of the solution selected. The Commission proposes tightening up the Regulation on these points (Article B).

### 3.2 Simpler but more rigorous financial management

The Commission considers that the present provisions can be improved without changing the basic principle of the Cohesion Fund with regard to financial management, that is, a close link between commitments and payments on the one hand and actual project implementation on the other.

First, the Commission is proposing a simpler system for budget commitments, which should normally be made at the beginning of each financial year. This means that the amount of appropriations available for the approval of new projects would be known sufficiently early in the year (Article C).

In the case of payments, it is important not to favour the first year of the project. Financing plans are based on total cost but their annual breakdown, as proposed by the Member States, does not always correspond to implementation in practice. This means that substantial advances are paid before work has begun or in situations where it will not restart in the immediate future (Article D).

The payments system should be adjusted in this respect and so the Commission is proposing a single advance not exceeding 10% of the assistance from the Fund.

It is also vital that subsequent payments reflect actual expenditure. In order to comply with this principle, the Commission proposes reimbursing expenditure certified and actually paid.

**The system of a single advance, followed by reimbursements regularly spaced over the year, is both simple and demanding. Reimbursements will be subject to specific conditions, particularly in terms of the monitoring indicators.**

The genuineness of the commitments from the Community budget should also be clarified. Very often commitments are opened but give rise to no financial movements because, as the work has not begun, nothing happens. This freezing of commitment appropriations prevents them from being rapidly reallocated to other projects. This situation should not be allowed to continue and the Commission is proposing a series of measures which would penalize projects that are not implemented.

### 3.3 Making financial corrections (Article H)

Under the current rules, the Commission may reduce, suspend or cancel assistance from the Cohesion Fund where it detects an irregularity or where changes to an operation mean that it no longer merits the assistance. However, this is difficult to apply in practice. The Commission wishes to introduce a system of financial corrections which could be restricted to irregularities or extended further if the irregularity reveals more general shortcomings in the system of management and supervision in the Member State.

#### **Legal basis**

**The Commission is tabling two sets of proposed amendments. The first concerns the Articles of the Regulation itself and requires the approval of the Council after the assent of Parliament has been obtained in accordance with Article 130d of the Treaty. The second concerns amendments to Annex II to the Regulation, which the Commission proposes the Council adopt, in accordance with Article K of that Annex, by a qualified majority after Parliament has been consulted.**

**Proposal for a  
COUNCIL REGULATION (EC)  
amending Regulation (EC) No 1164/94 establishing a Cohesion Fund**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the assent of the European Parliament<sup>2</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>3</sup>,

Having regard to the opinion of the Committee of the Regions<sup>4</sup>,

- (1) Whereas pursuant to Article 16(1) of Council Regulation (EC) No 1164/94<sup>5</sup>, the Council is to re-examine that Regulation before 31 December 1999;
- (2) Whereas the basic principles of the Cohesion Fund laid down in 1994 should continue to govern the Fund's activities until 2006 although experience has shown the need for improvements;
- (3) Whereas, while the single currency, the euro, will affect the macroeconomic situation of the Community, it will not remove the need for the eligibility of the beneficiary countries to be based on gross national product;
- (4) Whereas all the Member States participating in the euro are to submit to the Council a stability programme setting out in particular their medium-term objective for achieving a budget that is nearly in balance or is in surplus;
- (5) Whereas by Decision No 1692/96/EC<sup>6</sup>, the European Parliament and the Council adopted Community guidelines for the development of the trans-European transport network;
- (6) Whereas, during the transitional period (1 January 1999 to 31 December 2001), all references to the euro should normally also be read as references to the euro as a monetary unit, as provided for in the second sentence of Article 2 of Council Regulation No .../98<sup>7</sup>;

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1 OJ

2 OJ

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5 OJ L 130, 25.5.1994, p. 1.

6 OJ L 228, 9.9.1996, p. 1.

7 OJ L

- (7) Whereas, however, changes concerning macroeconomic conditionality should be made;
- (8) Whereas the procedures for the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies were set out in Council Regulation (EC) No 1466/97<sup>8</sup>;
- (9) Whereas the preliminary and final figures for the public-sector borrowing requirement, gross domestic product and gross national product must be compiled in accordance with the rules of the European System of Integrated Economic Accounts established by Council Regulation (EC) No 2223/96<sup>9</sup>, as amended by Regulation (EC) No 448/98<sup>10</sup>;
- (10) Whereas the Resolution<sup>11</sup> on the Stability and Growth Pact adopted by the Amsterdam European Council on 17 June 1997 sets out the roles of the Member States, the Commission and the Council;
- (11) Whereas macroeconomic conditionality as it applies to all Member States participating in the euro should be assessed by reference to the early-warning system introduced by the Stability and Growth Pact and in the light of individual Member States' responsibilities with regard to the stability of the euro;
- (12) Whereas, while the principle of a high level of assistance is retained, the search for other sources of finance should be promoted; whereas the rates of assistance should be varied to improve the leverage of Fund resources and to take better account of the rate of return on projects; whereas application of the polluter-pays principle laid down in Article 130r of the Treaty must be complied with in operations financed by the Fund;
- (13) Whereas the responsibility of the Member State for financial control work should be clearly laid down;
- (14) Whereas there should be provision to ensure continuity of finance for operations in progress and their adjustment to the new regulatory requirements;
- (15) Whereas Regulation (EC) No 1164/94 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 1164/94 is amended as follows:

- (1) The following paragraph 4 is added to Article 2:

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<sup>8</sup> OJ L 209, 2.8.1997, p. 1.

<sup>9</sup> OJ L 310, 30.11.1996, p. 1.

<sup>10</sup> OJ L 58, 27.2.1998, p. 1.

<sup>11</sup> OJ C 236, 2.8.1997, p. 1.

- “4. To be eligible under the Fund from 1 January 2000, the beneficiary Member States must have introduced a programme as provided for in Articles 3 and 7 of Council Regulation (EC) No 1466/97.\*

The four Member States meeting the GNP criterion referred to in paragraph 1 are Greece, Spain, Ireland and Portugal.

A mid-term review as provided for in paragraph 3 shall be carried out before the end of 2003 based on per capita GNP as shown by Community data for the period 2000 to 2002.

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\* OJ L 209, 2.8.1997, p. 1.”

- (2) Article 3 is amended as follows:

- (a) Paragraph 1 is amended as follows:

- (i) In the first indent, the word “Fifth” is deleted.
- (ii) The second indent is replaced by:

“- transport infrastructure projects of common interest, financed by Member States, which are identified within the framework of the guidelines adopted by Decision No 1692/96/EC of the European Parliament and the Council of 23 July 1996 on the development of the trans-European transport network.\*

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\* OJ L 228, 9.9.1996, p. 1.”

- (b) In paragraph 2, the second indent is amended as follows:

- (i) The introductory phrase is replaced by the following:

“technical support measures, including publicity and information campaigns, particularly:”

- (ii) In point (b), the word “supervision” is inserted after “monitoring”.

- (3) In Article 4, the following third and fourth subparagraphs are added:

“From 1 January 2000, total resources available for commitment in the period 2000 to 2006 shall be EUR 21 billion at 1999 prices.

Commitment appropriations for each year of that period shall be EUR 3 billion at 1999 prices.”



(4) Article 6 is amended as follows:

(a) Former paragraph 4 becomes paragraph 2.

(b) Paragraph 3 is replaced by the following:

“3. Paragraphs 2 and 3 shall apply from 1 January 2000 to the Member States participating in the euro.

No new project or, in the case of major projects, no new project stage shall be financed by the Fund where:

(a) either the Commission adopts a recommendation with regard to the Member State concerned which it addresses to the Council under Article 6(3) of Regulation (EC) No 1466/97 with a view to preventing an excessive public deficit,

(b) or the Commission adopts a recommendation pursuant to Article 3(2) of Regulation (EC) No 1467/97 in respect of the Member State concerned which it addresses to the Council.

The suspension of financing shall cease once the Commission finds that the Member State has taken effective steps to correct the situation referred to in the recommendation made under (a) or (b) of the second subparagraph, or:

(i) in the case referred to in (a), if the Council does not adopt the recommendation referred to in Article 6(3) of Regulation (EC) No 1466/97 within three months from the date on which the Commission addressed that recommendation to it;

(ii) in the case referred to in (b), if the Council does not decide by the deadline laid down in Article 3(3) of Regulation (EC) No 1467/97 that an excessive public deficit exists.

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\* OJ L 209, 2.8.1997, p. 6.”

(c) The following paragraph 4 is added:

“4. Where checks on the target deficit figures contained in the recommendation referred to in paragraph 1 or paragraph 5 reveal an appreciable and unjustified difference for a reference year between the data first sent by the Member State and the statistics validated by the Commission, the latter may, after considering the explanations of the Member State concerned, take steps to suppress all or part of the assistance granted since the previous check.”

(d) Former paragraph 2 becomes paragraph 5.

(5) Article 7 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) The second subparagraph is replaced by the following:

“However, from 1 January 2000 this rate may be reduced to take account of the project’s capacity to generate revenue and, where appropriate, of any application of the polluter-pays principle.”

(ii) The following third subparagraph is added:

“To achieve this, the Commission shall maximize the leverage of Fund resources by encouraging greater use of private sources of funding.”

(b) In paragraph 2, the words “the expenditure on which the calculation of” and “is based” are deleted.

(6) Article 10 is amended as follows:

(a) In paragraph 3, “ECU” is replaced by “EUR”.

(b) In paragraph 4, in the eighth line, the word “possible” before “impact” is deleted.

(c) In the third indent of paragraph 5, the words “including the polluter-pays principle,” are inserted after the words “on the environment”.

(7) Article 12 is amended as follows:

(a) Paragraphs 1 and 2 are replaced by the following:

“1. The Member States shall have primary responsibility for the financial control of projects.

In order to guarantee successful completion of the projects financed by the Fund, Member States shall:

- verify on a regular basis that operations financed by the Community have been properly carried out;
  - prevent irregularities and take administrative and legal action against them;
  - 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 remain liable for reimbursement of any sums unduly paid.
2. Member States shall cooperate with the Commission to ensure that assistance from the Fund is used in accordance with the principles of sound financial management.

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 and previously verified by them 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.”

(b) Paragraph 4 is replaced by the following:

- “4. The Commission shall ensure that Member States have smoothly functioning management and control systems which guarantee that Community funds are effectively and correctly used.

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.”

- (8) In Article 16(1), the words “before the end of 1999” are replaced by “by 31 December 2006 at the latest”.

*Article 2*

Applications submitted before the entry into force of this Regulation shall remain valid provided that, where necessary, they are supplemented to comply with the requirements of this Regulation within two months of its entry into force.

*Article 3*

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

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

Done at Brussels,

For the Council  
The President

**Proposal for a  
COUNCIL REGULATION (EC)  
amending Annex II to Regulation (EC) No 1164/94 establishing a Cohesion Fund**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund<sup>12</sup>, and in particular Article K of Annex II thereto,

Having regard to the proposal from the Commission<sup>13</sup>,

Having regard to the opinion of the European Parliament,

Whereas, in order to make the Fund more effective, the concepts of "project", "groups of projects" and "stages of a project" and the criteria for grouping projects should be defined;

Whereas the system of financial management should be simplified while retaining its link with the actual implementation of operations;

Whereas, during the transitional period (1 January 1999 to 31 December 2001), all references to the euro should normally also be read as references to the euro as a monetary unit, as provided for in the second sentence of Article 2 of Council Regulation No ..../98<sup>14</sup>;

Whereas that simplification should be accompanied by improved checks that expenditure has actually been incurred and greater responsibility by the Member State for ensuring sound financial management;

Whereas the Commission and the Member State should improve their cooperation on checking projects and this cooperation should be made systematic;

Whereas, where irregularities are detected, there should be a system of financial corrections to protect the financial interests of the Community;

Whereas Annex II to Regulation (EC) No 1164/94 should be amended accordingly,

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<sup>12</sup> OJ L 130, 25.5.1994, p. 1.

<sup>13</sup> OJ

<sup>14</sup> OJ L

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EC) No 1164/94 is amended as follows:

(1) Article A is replaced by the following:

“Article A

Designation of projects, 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. For the purposes of this Regulation, the following definitions shall apply:
  - (a) a “project” is an economically indivisible series of works fulfilling a precise technical function and with clearly identified aims from which to judge whether the project complies with the criterion laid down in the first indent of Article 10(5);
  - (b) a “technically and financially independent stage” is one which can be identified as operational in its own right.
3. A stage may also cover preliminary, feasibility and technical studies needed for carrying out a project.
4. To comply with the criterion in the third indent of Article 1(3), projects meeting the following three conditions may be grouped:
  - (a) they must be located in the same area or situated along the same transport corridor;
  - (b) they must be carried out under an overall plan for the area or corridor with clearly identified goals, as provided for in Article 1(3);
  - (c) they must be supervised by a body responsible for coordinating and monitoring the group of projects in cases where the projects are carried out by different competent authorities.

(2) In Article B(2), the second sentence is replaced by the following:

“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, the results of the environmental impact assessment and their consistency with a general environmental strategy at administrative unit or sector level, an indication of the alternatives that were not chosen and in appropriate cases the links between projects of common interest located along the same transport corridor, to make this appraisal as effective as possible.”

(3) Article C is amended as follows:

(a) Paragraph 2 is amended as follows:

- (i) In the second subparagraph of point (a), the second sentence is replaced by the following:

“Commitments in respect of subsequent annual instalments shall be based on the initial or revised financing plan for the project and shall normally be made at the beginning of each budget year and no later than 1 March of the current year, based on the expenditure forecasts for the project for that year.”

- (ii) Point (b) is replaced by the following:

“(b) for projects to be carried out over a period of less than two years or where Community assistance is less than EUR 50 million, an initial commitment of 80% of assistance may be made when the Commission adopts the decision to grant Community assistance.

The balance shall be committed according to the implementation of the project.”

(b) The following paragraph 5 is added:

“5. Except in duly justified cases, the assistance granted to a project, group of projects or project stage on which work has not begun within two years of the date of its expected start, as indicated in the decision granting assistance, shall be cancelled.”

(4) Article D is amended as follows:

(a) In paragraph 1, the second sentence is replaced by the following:

“Payments may take the form either of advances or in intermediate payments or payments of balances in respect of expenditure certified and actually paid.”

(b) Paragraphs 2 and 3 are replaced by the following:

“2. Payments shall be made as follows:

- (a) a single advance of up to 10% of the Fund assistance as initially decided shall be paid when the decision granting Community assistance is adopted and, except where duly justified, after signature of the contracts relating to public procurement.

All or part of the advance shall be reimbursed by the designated authority or body referred to in paragraph 1 if no payment application is submitted to the Commission within 12 months from the date on which the advance is paid.

(b) intermediate payments may be paid provided that the project is progressing satisfactorily towards completion and shall be made to refund the expenditure certified and actually paid, subject to the following conditions:

- the Member State has submitted an application describing the progress of the project in terms of its physical and financial indicators and its conformity with the decision to grant assistance, including where appropriate any specific conditions attached to the assistance;
- the observations and recommendations of the national and/or Community inspection authorities have been acted upon, in particular as regards the correction of any observed or presumed irregularities;
- the main technical, financial and legal problems that have arisen and the measures taken to correct them have been indicated;
- any departures from the original financing plan have been analysed;
- the steps taken to publicize the project have been described.

(c) the total amount of the payments made under (a) and (b) may not exceed 80% of the total assistance granted. This percentage may be increased to 90% for important projects committed in annual instalments and in justified cases.

(d) the balance of Community assistance calculated on the basis of expenditure certified and actually paid 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 deadline for completion of the work and for expenditure laid down in the decision granting assistance to 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;
- the Member State has sent the Commission the declaration referred to in Article G;
- all the information and publicity measures drawn up by the Commission under Article 14(3) have been implemented.

3. If the final report referred to in paragraph 2 is not sent to the Commission within 12 months of the final date for completion of the works and payments, as given in the decision granting assistance, that part of the assistance representing the remaining balance for the project shall be cancelled."

(c) In paragraph 4, the words "and in paragraph 3 point d)" are deleted.

(d) The following paragraph 4a is inserted:

"4a. The Member States shall ensure that applications for payment are submitted to the Commission as a general rule twice a year, by 1 March and 1 October at the latest."

(e) In paragraph 5, after the words "for payment", the following is added:

"provided budget funds are available."

(f) The following paragraph 7 is added:

"7. The Commission shall lay down common rules on the eligibility of expenditure."

(5) Article E is amended as follows:

(a) In the title and in paragraphs 1 to 4, "ecu(s)" is replaced by "euro(s)" where required.

(b) In paragraphs 1 and 3, the words "or in national currency" are deleted.

(c) The following paragraph 5 is added:

“5. For Member States not participating in the euro, the conversion rate shall be the Commission’s financial accounting rate.”

(6) Article F is amended as follows:

(a) The following second subparagraph is added to paragraph 4:

“This report shall include:

- (a) a description of the work carried out, accompanied by the physical indicators, the expenditure by category of work and any measures taken under specific clauses in the decision granting assistance;
- (b) information on all publicity measures;
- (c) certification that the work conforms to the decision granting assistance;
- (d) an initial assessment as to whether the anticipated results as indicated in Article 13(4) are likely to be achieved, including in particular:
  - the actual starting date of the project;
  - the way in which it will be managed once finished;
  - confirmation, if appropriate, of the financial forecasts, especially as regards the operating costs and expected revenue;
  - confirmation of the socio-economic forecasts, in particular the expected costs and benefits;
  - an indication of the environmental protection measures taken, and their cost, including compliance with the polluter-pays principle.”

(b) The following second subparagraph is added to paragraph 5:

“The decision granting assistance shall include appropriate arrangements for making the modifications differentiating between them on the basis of their nature and importance.”

- (7) Article G is replaced by the following:

**“Article G  
Checks**

1. As part of their responsibilities, the Member States shall:
  - (a) ensure that projects are managed in accordance with all the applicable Community rules;
  - (b) guarantee that the declarations of expenditure are accurate and result from accounting systems based on verifiable supporting documents;
  - (c) present to the Commission, at the winding-up of each project, a declaration drawn up by a person or department having a function independent of the designated managing authority. This declaration shall summarize the conclusions of the checks carried out and shall assess the validity of the application for payment of the final balance and the legality and correctness of the expenditure covered by the certificated declaration. The Member States shall attach their opinion to this declaration if they consider it necessary.
  
2. 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. The Commission may carry out on-the-spot checks without notice. 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.

The Commission and the Member States shall cooperate to coordinate programmes and methods relating to checks so as to maximize the usefulness of those carried out. The Member State concerned and the Commission shall immediately exchange any relevant information concerning the results of the checks carried out.
  
3. The Commission and the Member States shall cooperate to examine and evaluate at least once a year:
  - (a) the results of the checks carried out by the Member State and the Commission;
  - (b) any comments made by the other national or Community supervisory bodies or institutions;

- (c) the financial impact of the irregularities identified, the steps already taken or still required to correct them and, where necessary, adjustments to the management and control systems.

Following this examination and without prejudice to the measures to be taken immediately by the Member State under Article H, the Commission shall draw up conclusions, particularly regarding the financial impact of any irregularities identified. These conclusions shall be addressed to the Member State and the managing authorities of the assistance concerned. They shall be accompanied, where necessary, by recommendations or requests for corrective measures to remedy the management shortcomings found and correct those irregularities detected which have not already been corrected.

The Member State and managing authorities concerned shall immediately take the necessary measures to comply with the Commission's recommendations or requests.

- 4. 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.

That period shall be suspended in the event of legal proceedings or at the reasoned request of the Commission.”

(8) Article H is amended as follows:

- (a) The title is replaced by:

“Financial corrections”.

- (b) Paragraph 2 is amended as follows:

- (i) The words “an improper combination of funds” are inserted after “irregularity”.

- (ii) The second subparagraph is replaced by:

“Any reduction or cancellation of the assistance shall give rise to recovery of the sums paid.”

- (c) The following paragraph 2a is inserted:

“2a Where the Commission considers that an irregularity has not been corrected or that all or part of an operation does not justify either all or part of the assistance granted to it, the Commission shall conduct a suitable examination of the case and request the Member State to submit its comments within a specified period.

After the examination, if no corrective measures have been undertaken by the Member State, the Commission may:

- (a) reduce or cancel the advance referred to in Article D(2); or
- (b) cancel all or part of the assistance granted to the measure.

The Commission shall determine the size of a correction taking into account the nature of the irregularity and the extent of any failures in the management and control systems.”

- (d) In paragraph 3, the second sentence is replaced by the following:

“To such sum shall be added interest on account of late repayment in accordance with arrangements to be adopted by the Commission.”

- (c) The following paragraph 4 is added:

“4. The Commission shall lay down the detailed rules for implementing paragraphs 1 to 3 and shall inform the European Parliament thereof.”

- (9) Annex II is amended as follows:

- (a) Point 2 is replaced by

“2. the economic and social impact of the Fund in the Member States and on economic and social cohesion in the Union, including the impact on employment;”

- (b) In point 4, “(1) and (2)” are deleted.

#### *Article 2*

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

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

Done at Brussels,

For the Council  
The President

## FINANCIAL STATEMENT

### 1. TITLE OF OPERATION

Cohesion Fund

### 2. BUDGET HEADING INVOLVED

B2-3000

### 3. LEGAL BASIS

Article 16 of Regulation (EC) No 1164/94 of 26 May 1994 establishing a Cohesion Fund

### 4. DESCRIPTION OF OPERATION

#### 4.1 General objective

To continue efforts to further cohesion in countries whose per capita GNP is below 90% of the Community average

#### 4.2 Period covered

2000-2006

### 5. CLASSIFICATION OF EXPENDITURE

#### 5.1 Non-compulsory expenditure

#### 5.2 Compulsory expenditure

### 6. TYPE OF EXPENDITURE

Subsidy for joint financing with other sources in the public and/or private sector

### 7. FINANCIAL IMPACT

#### 7.1 Method of calculating total cost of operation

The Cohesion Fund's financial resources for the period 2000-2006 are set out in the Commission's Communication 'Agenda 2000', i.e. ECU 20.3 billion at 1997 prices.

### 8. FRAUD PREVENTION MEASURES INCLUDED IN PROPOSAL

## 9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

### 9.1 Objectives

The Cohesion Fund contributes financially towards projects in the fields of the environment and the trans-European transport networks in Member States whose per capita GNP is less than 90% of the Community average, calculated on the basis of purchasing power parities, namely Spain, Greece, Ireland and Portugal.

### 9.2 Grounds for the operation

In its Communication Agenda 2000, the Commission opted for the continuation of the Cohesion Fund, including for the countries which will be participating in the forthcoming single currency. The latter remain eligible for contributions from the Fund where they meet the cohesion criterion, i.e. where, despite the significant progress made, their GNP still falls below 90% of the Community average. Under the circumstances, the Commission has taken the view that major financial resources should continue to be spent on them.

### 9.3 Monitoring and evaluation of the operation

9.3.1 In conjunction with the beneficiary countries concerned, the Commission systematically assesses the projects.

When making such assessments, the Commission cooperates, where appropriate, with the EIB. Once the aid application is received, the Commission assesses the projects presented by the Member States with regard to the following criteria:

- their medium-term economic and social benefits, to be weighed against the resources mobilized; the assessment must be based on a cost-benefit analysis carried out by the Member States;
- the contribution the projects can make to the implementation of the Community policies in the fields of the environment and the trans-European networks;
- the striking of a suitable balance between environmental and transport projects.

The Commission assesses the anticipated impact of the project by conducting a quantitative cost-benefit analysis.

The beneficiary Member States concerned must provide all the information necessary, including the results of feasibility studies and *ex ante* evaluation, so the assessment can be made as efficiently as possible.

The Commission also vets aid applications to check in particular whether the administrative and financial mechanisms enable them to be implemented efficiently.

- 9.3.2 The practical details and the timetable for the assessment fall into various categories. In addition to the *ex ante* evaluation of the projects referred to in point 1, the Commission undertakes an *ex post* evaluation of the projects in conjunction with the Member State.

Furthermore, in order to assess the projects' macroeconomic impact, econometric studies have been undertaken and the findings are being drafted to evaluate the results achieved.

#### **9.4 Coherence with financial programming**

The proposed amendment is in line with DG XVI's broad objective of promoting a regional and cohesion policy as defined in Article 130a and 130d of the Treaty.



## IMPACT ASSESSMENT FORM

### THE IMPACT OF THE PROPOSAL ON BUSINESS, WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES

Title: Proposal for a Council Regulation amending Regulation (EC) No 1164/94 establishing a Cohesion Fund and of Annex II thereto

#### Reference number

#### The proposal

1. Under Article 16(1) of the Regulation establishing a Cohesion Fund, the Council is to review the Regulation before the end of 1999 on the basis of a proposal from the Commission in accordance with the procedure laid down in Article 130d of the Treaty.

The proposal forms part of the follow-up to the Commission's Communication Agenda 2000. Its objectives are to amend the provisions in force to adapt them to the environment of the forthcoming single currency, make them more effective and simplify certain aspects of commitments and payments.

#### Impact on enterprises

2. Cohesion Fund assistance is intended to provide support for infrastructure projects relating to trans-European transport networks and measures in the environmental field.
3. Under Community law on public procurement, projects must ensure fair competition for sectors not excluded. During the appraisal of projects and their follow-up, the Commission is to ensure compliance.
4. The proposal is aimed at maintaining the Cohesion Fund. Thanks to the scale of the assistance provided in the beneficiary countries and in those two sectors, the Fund is having a major impact on completing the trans-European transport network and bringing the Member States concerned up to standard in compliance with the Directives on the environment, as well as on employment and the competitive position of enterprises. The matter are more closely integrated into the internal market thanks to better infrastructure.

5. No.

#### Consultation

6. Commission departments and European Investment Bank.

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