

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(92) 599 final

Brussels, 23 December 1992

Proposal for a
COUNCIL REGULATION (EEC)
establishing a cohesion financial instrument

and

Revised draft proposal for a
COUNCIL REGULATION (EEC)
establishing a Cohesion Fund

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. The European Council in Edinburgh requested the Commission to put forward, and the Council to adopt, before 1 April 1993, a proposal for an interim instrument based on Article 235 of the present Treaty permitting financial support for Ireland, Greece, Portugal and Spain in the areas to be covered by the new Cohesion Fund. The present communication and the attached proposal for a Council Regulation for such an instrument respond to the invitation of the European Council.

2. The Commission is at the same time putting forward a revised draft proposal for a regulation establishing the Cohesion Fund pursuant to Article 130d as amended by the Maastricht Treaty, which takes account of the conclusions of the European Council. The joint examination of the two regulations by the Council and the Parliament should facilitate the rapid adoption of the latter upon ratification of the Maastricht Treaty.

3. The two proposals (for an interim instrument and the Cohesion Fund) are identical except for differences which are direct consequences of the difference in legal basis, i.e. Article 235 of the EEC Treaty and Article 130d as set out in the Treaty on European Union respectively. It is the intention of the Commission to ensure
 - that the financing of the relevant projects can begin from 1 April 1993 as agreed in Edinburgh and that full use can be made of the financial provisions in the 1993 budget; and

 - that the Cohesion Fund, once established on the basis of the Treaty on European Union, can take over from the interim instrument the financing of projects without any discontinuity in the implementation of investments or in the flow of finance from the Community.

4. The basic ideas of the proposal have already been laid out in the Communication from the Commission, COM(92) 339 final of 31 July 1992. The present communication and attached legal texts are based on the July proposal taking account of the subsequent Council examination and the conclusions of the Edinburgh European Council.

5. It is the intention of the Commission to table a proposal for a Council Regulation on implementing provisions in January 1993. Pending the adoption of these provisions, the relevant provisions of the Regulation coordinating the structural Funds will be applied mutatis mutandis.

6. In regard to the conclusions of the European Council reached in Edinburgh on 12 December 1992 and given the impossibility of implementing, on the basis of Article 235 of the EEC Treaty, the whole set of conditions which are linked with Article 104c of the, as yet, unratified Treaty on European Union, it is necessary that the financial instrument be of a temporary nature. It should be replaced as soon as possible by the Cohesion Fund as envisaged in Article 130d in the Treaty on European Union. In any case, this financial instrument should be reexamined before 31 December 1993 in the light of the process of ratification of the Maastricht Treaty.

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establishing a cohesion financial instrument

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

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 in particular for it to aim at reducing disparities between the various regions and the backwardness of the least-favoured regions;

Whereas promoting economic and social cohesion calls for Community action to supplement the activities of the structural Funds, the European Investment Bank (EIB) and other financial instruments in the fields of the environment and of transport infrastructure of common interest;

Whereas the European Council, at its meeting in Edinburgh on 11 and 12 December 1992, proposed creating an interim financial instrument pending the establishment of a Cohesion Fund;

Whereas, given the conclusions of the European Council and given the impossibility of implementing, on the basis of Article 235 of the EEC Treaty, the set of conditions which are linked to Article 104c of the draft Treaty on European Union, the financial instrument should be of a temporary nature; whereas it should be replaced as soon as possible by the Cohesion Fund as envisaged in Article 130d of the draft Treaty and should in any event be reexamined before 31 December 1993 in the light of the process of ratifying the draft Treaty;

Whereas the financial resources of the financial instrument should be those provided for the Cohesion Fund in the financial perspectives for the general budget of the European Communities for the years for which the financial instrument applies;

Whereas the promotion of economic and social cohesion calls for a concentration of the funds available to the cohesion financial instrument on projects concerning the environment and transport infrastructure of common interest in Member States with a per capita GNP of less than 90% of the Community average;

Whereas the implementation of convergence programmes designed to avoid excessive government deficits is a necessary condition for progress towards economic and monetary union;

Whereas Title IV of Part Two of the Treaty provides that the Council shall lay down any appropriate provisions to implement a common transport policy; whereas the Community should make a contribution, through the cohesion financial instrument, to trans-European networks in the area of transport infrastructure;

Whereas Article 130r of the Treaty defines the objectives of the Community in the field of the environment; whereas the Community should contribute, through the cohesion financial instrument, to action designed to achieve these objectives in accordance with Article 130s of the Treaty;

Whereas, in the light of an undertaking by the Member States concerned not to decrease their investment efforts in the fields of environmental protection and transport infrastructure, additionality in the sense 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 operations of the European Investment Bank and other existing financial instruments⁽¹⁾ will not apply to the cohesion financial instrument;

Whereas it is necessary to coordinate action taken in the fields of the environment and of trans-European transport networks through the cohesion financial instrument, the structural Funds, the European Investment Bank and the other financial instruments in order to enhance the effectiveness of Community operations;

Whereas, with a view to helping Member States in the preparation of projects, the Commission should be in a position to supply the necessary technical support;

Whereas the operations of the cohesion financial instrument must be consistent with Community policies, inter alia, those regarding environmental protection, transport, competition and the award of public contracts;

Whereas an indicative allocation of commitment appropriations between the Member States should be provided for in order to facilitate the programming of projects;

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

Whereas, in the interests of the proper management of the cohesion financial instrument, the provisions contained in Titles VI and VII of Regulation (EEC) No 4253/88 should be applied where appropriate and by analogy;

(1) OJ No L 374, 31.12.1988, p. 1.

Whereas provision should be made to give adequate publicity to Community assistance provided by the cohesion financial instrument;

Whereas, for the adoption of this Regulation, the Treaty provides for no other powers than those contained in Article 235,

HAS ADOPTED THIS REGULATION:

Article 1

Definition and Scope

A cohesion financial instrument (hereinafter referred to as "the financial instrument") is hereby established, whereby the Community shall provide financial contributions to projects in the fields of the environment and trans-European transport infrastructure networks in Greece, Spain, Ireland and Portugal, each of which shall have a convergence programme examined by the Council, designed to avoid an excessive government deficit.

Article 2

Eligible projects

The financial instrument may provide support for:

- 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;
- transport infrastructure projects of common interest financed by Member States which promote the interconnection and interoperability of national networks and access to such networks, taking account in particular of the need to link insular, landlocked or peripheral regions with the central regions of the Community, in particular the projects which are provided for in trans-European network schemes which have been adopted by the Council or proposed by the Commission in accordance with Title IV of Part Two of the Treaty;

- preparatory studies and technical support measures related to eligible projects.

Article 3

Financial resources

The commitment appropriations for the financial instrument shall be ECU 1 500 million in 1993 and ECU 1 750 million in 1994, expressed in 1992 prices.

Article 4

Indicative allocation

In order to facilitate the planning of assistance in the Member States concerned the Commission shall on the basis of an indicative allocation of the total resources of the financial instrument, establish the commitment appropriations for each Member State. The indicative allocation shall principally be based on population, GNP per capita and surface area; it shall also take account of other socio-economic factors, such as deficiencies in transport infrastructure.

Article 5

Rate of assistance

1. The rate of assistance granted by the financial instrument shall be 80% to 85% of public or similar expenditure as defined for the purposes of the structural Funds.
2. Preliminary studies and technical support measures necessary for the implementation of eligible projects may be financed at 100%.

Article 6

**Coordination and compatibility with
Community policies**

1. Projects financed by the financial instrument 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, competition and the award of public contracts.
2. The Commission shall ensure coordination and coherence between projects undertaken in pursuance of this Regulation and measures undertaken with contributions from the Community budget, the EIB and the other financial instruments of the Community.

Article 7

Combination and overlapping

1. No item of expenditure may benefit both from the financial instrument and from the European Agricultural Guidance and Guarantee Fund, the European Social Fund or the European Regional Development Fund.
2. Where a project benefits from other Community assistance, the combined assistance granted by the Community shall not exceed 90% of total expenditure.

Article 8

Approval of projects

1. The projects to be financed under the financial instrument shall be decided upon by the Commission in agreement with the Member State concerned.

2. The Member States concerned and the Commission shall ensure an appropriate balance between projects in the fields of the environment and transport infrastructure.
3. Applications for assistance in accordance with Article 2 shall be submitted by the Member State concerned. 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.
4. Applications shall contain the following information: the body responsible for implementation, the nature of the investment, its location and costs, the timetable for implementation, the financing plan and the total financing the Member State is seeking under the financial instrument and any other Community source. They shall also contain any information necessary to show that the projects are in accordance with this Regulation.
5. The following criteria shall be employed to ensure the quality of the projects:
 - their medium-term economic and social benefits, an assessment which shall be commensurate with the resources deployed; this shall be made in the light of an analysis of costs and benefits;
 - 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.
6. Subject to the availability of commitment appropriations, the Commission shall decide on assistance from the financial instrument generally within three months of receipt of an application. Commission decisions approving projects or groups of related projects

shall determine the amount of financial support, a financing plan and all the provisions and conditions necessary for the realization of the projects.

7. The Commission decisions shall be published in the Official Journal of the European Communities.

Article 9

Financial provisions, monitoring and assessment

In implementing this Regulation, the Commission shall where appropriate and by analogy apply the relevant provisions of Titles VI and VII of Regulation (EEC) No 4253/88.

Article 10

Information and publicity

1. The Commission shall present an annual report on the activities of the financial instrument to the Council, the European Parliament and the Economic and Social Committee.
2. Member States shall ensure that adequate publicity is given to the operations of the financial instrument with a view to making the general public aware of the role played by the Community in relation to projects. They shall consult the Commission on, and inform it about, the initiatives taken for this purpose.

Article 11

Review

This Regulation shall be reexamined before 31 December 1993.

Article 12

Entry into force

This Regulation shall enter into force on 1 April 1993.

It shall remain in force for two years.

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

Done at Brussels,

For the Council,
The President

Revised draft proposal for a
COUNCIL REGULATION (EEC)
establishing a cohesion fund

Revised draft proposal for a
COUNCIL REGULATION (EEC)
establishing a Cohesion Fund

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having obtained the assent of the European Parliament,

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

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

Whereas Article 2 of the Treaty includes the task of promoting economic and social cohesion and solidarity between Member States; whereas the strengthening of economic and social cohesion is mentioned under point j of Article 3 as one of the activities of the Community for the purposes set out in Article 2;

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, including rural areas; whereas Community action through the Cohesion Fund should support the achievement of the objectives set out in Article 130a;

Whereas the Protocol on economic and social cohesion annexed to the Treaty reaffirms the Community's task of promoting economic and social cohesion and solidarity between Member States and specifies that a Cohesion Fund to be set up before 31 December 1993 will provide a financial contribution to projects in the fields of the environment and trans-European networks in the Member States with a per capita GNP of less than 90% of the Community average which 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 the special situation of the Member States concerned calls for a determined effort to help them meet the convergence criteria which are a precondition for moving to the third stage of Economic and Monetary Union;

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

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 by virtue of Article 130s of the Treaty the Cohesion Fund may provide financial support for action taken by Member States in pursuit of the objectives of Community policy on the environment; whereas the Cohesion Fund shall contribute to the financing of new measures if the Council decides that they involve costs deemed disproportionate for the public authorities of a Member State;

Whereas, in the light of an undertaking by the Member States concerned not to decrease their investment efforts in the fields of environmental protection and transport infrastructure, additionality in the sense 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 operations of the European Investment Bank and the other existing financial instruments⁽¹⁾ will not apply to the Cohesion Fund;

Whereas in accordance with Article 198e of the Treaty the European Investment Bank (EIB) will facilitate the financing of investments in conjunction with assistance from the structural Funds and 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 the Community operations;

Whereas, with a view to helping Member States in the preparation of projects, the Commission should be in a position to supply the necessary technical support;

Whereas the operations of the Cohesion Fund must be consistent with Community policies, inter alia, those regarding environmental protection, transport, competition and the award of public contracts;

Whereas an indicative allocation of commitment appropriations between the Member States should be provided for in order to facilitate the programming of projects;

(1) OJ No L 374, 31.12.1988, p. 1.

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

Whereas it is necessary to ensure effective methods of monitoring, assessing and carrying out checks in respect of Community operations;

Whereas provision should be made to give adequate publicity to Community assistance provided by the Cohesion Fund,

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.

Article 2

Scope

1. The Fund shall provide financial contributions to projects in the fields of the environment and trans-European networks in the area of transport infrastructure in Member States with a per capita GNP of less than 90% of the Community average which have a programme leading to the fulfilment of the conditions of economic convergence as set out in Article 104c of the Treaty.

2. With regard to the GNP criterion referred to in paragraph 1, Member States shall continue to be eligible for assistance from the Fund provided that, after a mid-term review in 1996, they remain below 90% of the Community average.

Article 3

Eligible projects

The Fund may provide support for:

- 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;
- transport infrastructure projects of common interest financed by Member States which are identified in the framework of the guidelines referred to in Article 129c of the Treaty; where the appropriate guidelines referred to in Article 129c have not yet been adopted by the Council, other transport infrastructure projects contributing to the achievement of the objectives of Article 129b of the Treaty may be financed.
- preparatory studies and technical support measures related to eligible projects.

Article 4

Financial resources

1. For the period 1993-1999 the total commitment appropriations for the Fund shall be ECU 15 150 million at 1992 prices.

2. In accordance with paragraph 1, the commitment appropriations for each year of the period shall be 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

In order to facilitate the planning of assistance in the Member States concerned the Commission shall, on the basis of an indicative allocation of the total resources of the Fund, establish the commitment appropriations for each Member State. The indicative allocation shall principally be based on population, GNP per capita and surface area; it shall also take account of other socio-economic factors, such as deficiencies in transport infrastructure.

Article 6

Conditional assistance

1. If the Council decides in accordance with Article 104c(6) that a Member State has an excessive government deficit, and if that decision is not abrogated in accordance with Article 104c(12) within one year or any other period specified for correcting the deficit in a recommendation in accordance with Article 104c(7), no new projects or, in the case of large multistage 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 may decide to defer suspension.
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 shall cease when the Council, in accordance with Article 104c(12), abrogates its decision adopted in accordance with Article 104c(6).

Article 7

Rate of assistance

1. The rate of assistance granted by the Fund shall be 80% to 85% of public or similar expenditure as defined for the purposes of the structural Funds.
2. Preliminary studies and technical support measures necessary for the implementation of eligible projects may be financed at 100%.

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, competition and the award of public contracts.

2. The Commission shall ensure coordination and coherence between projects undertaken in pursuance of this Regulation and measures undertaken with contributions from the Community budget, the EIB and the other financial instruments of the Community.

Article 9

Combination 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 or the European Regional Development Fund.
2. Where a project benefits from other Community assistance, the combined assistance granted by the Community shall not exceed 90% of total expenditure.

Article 10

Approval of projects

1. The projects to be financed by the Fund shall be decided upon by the Commission in agreement with the Member State concerned.
2. The Member States concerned and the Commission shall ensure an appropriate balance between projects in the field of environment and projects relating to transport infrastructure. This balance shall take account of Article 130s(5) of the Treaty.
3. Applications for assistance in accordance with Article 3 shall be submitted by the Member State concerned. 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.

4. Applications shall contain the following information: the body responsible for implementation, the nature of the investment, its location and costs, the timetable for implementation, the financing plan and the total financing the Member State is seeking from the Fund and any other Community source. They shall also contain any information necessary to show that the projects are in accordance with this Regulation.
5. The following criteria shall be employed to ensure the quality of the 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 an analysis of costs and benefits;
 - 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.
6. Subject to Article 6 and to the availability of commitment appropriations, the Commission shall decide on assistance from the Fund generally within three months of receipt of the applications. Commission decisions approving projects or groups of related projects shall determine the amount of financial support, a financing plan as well as all the provisions and conditions necessary for the realization of the projects.
7. The decisions of the Commission shall be published in the Official Journal of the European Communities.

Article 11

Financial provisions

1. Budgetary commitments shall be made in ECUs on the basis of the Commission decisions approving assistance referred to in Article 10. Commitments shall be made in annual instalments for each project.
2. Payments shall be made in ECUs and shall be subject to the specific arrangements laid down in the implementing provisions pursuant to Article 15.

Article 12

Financial control

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 and to take action against irregularities;
 - to recover any amounts lost as a result of an 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, of the progress of administrative and judicial proceedings. In this context the Member States and the Commission shall take the necessary measures to ensure that the information exchanged will remain confidential.

3. When submitting requests for payment, 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 the provisions of Article 188a of the Treaty or to any inspection arranged on the basis of Article 209(c) of the Treaty, Commission officials may carry out on-the-spot checks, including sample checks, in respect of projects financed by the Fund and examine the systems and measures of control established by the national authorities who shall inform the Commission of measures taken to this effect.
5. Further arrangements for the implementation of financial control shall be established in accordance with Article 15.

Article 13

Monitoring and assessment

1. The Member States and the Commission shall ensure that the implementation of Community projects under this Regulation is effectively monitored and assessed.
2. The arrangements for monitoring and assessing of Community projects shall be established by the provisions referred to in Article 15.

Article 14

Information and publicity

1. The Commission shall present an annual report on the activities of the Fund to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions.

2. Member States shall ensure that adequate publicity is given to the operations of the Fund with a view to making the general public aware of the role played by the Community in relation to projects. They shall consult the Commission on, and inform it about, the initiatives taken for this purpose.

Article 15

Implementation

The Council, acting by a qualified majority on a proposal from the Commission, shall establish operational provisions necessary for the implementation of this Regulation.

Article 16

Final 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 reexamine this Regulation in 1999.
2. Council Regulation (EEC) No ... [the cohesion financial instrument] (2) is hereby repealed.

Article 17

Entry into force

This Regulation shall enter into force on the seventh 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,

For the Council

The President

(2) OJ No L ...

COM(92) 599 final

DOCUMENTS

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Catalogue number : CB-CO-93-003-EN-C

ISBN 92-77-51567-8
