

COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION

and

Draft

COUNCIL REGULATION (EC)

establishing a Cohesion Fund

(presented by the Commission)

COMMUNICATION FROM THE COMMISSION

Introduction

The broad outline of the Commission's initial thinking on the Cohesion Fund has been set out in two previous communications, viz. "From the Single Act to Maastricht and beyond - the means to match our ambitions" (COM(92) 2000) and "Community structural policies - review and outlook" (COM(92) 84).

To facilitate discussion and further progress, but recognizing that the Treaty has not yet been ratified, it is desirable that the Commission should provide an indication of its thinking on the nature of the Fund and how it will operate.

The European Council at Lisbon decided that the Cohesion Fund should be put in place early in 1993. The Commission therefore needs to put forward proposals for the establishment and implementation of the Fund in time to set up the Fund as decided by the European Council. This Communication and the draft proposal for a regulation attached thereto are intended to facilitate the rapid adoption of a regulation establishing the Cohesion Fund. It will thus be possible to adopt the Regulation formally once the Maastricht Treaty has been ratified. It should be recalled that the formal procedure for adoption will require the assent of the European Parliament, the opinion of the Economic and Social Committee and the Committee of the Regions to be set up after ratification.

1. Objectives

Article 130d of the Treaty establishing the European Community states that the Council shall, before 31 December 1993, set up a Cohesion Fund providing a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure.

The protocol on economic and social cohesion annexed to the Treaty establishes the criteria of eligibility for this Fund, and reaffirms the role of the existing Structural Funds and the EIB in the field of cohesion.

2. Characteristics

Although different in concept from the existing Structural Funds, the Cohesion Fund is also structural in nature. This is evidenced both by the fact that the provision for its establishment is inserted in Article 130d of the Treaty, which governs the tasks, objectives and organization of the Structural Funds, and by the fields it covers.

Like the existing Structural Funds, the Cohesion Fund is intended to reduce economic and social disparities in the Community. But whereas the former have a wide range of regional and social objectives, the Cohesion Fund has the more specific purpose of contributing to cohesion via financing of projects in the field of transport infrastructure and environmental programmes in Member States faced with structural weaknesses and a limited funding capacity.

By contributing to national governments' expenditure in the field of transport infrastructure and environment, the Cohesion Fund will reinforce the structure and improve the prospects of balanced growth of the economies concerned.

The use of the Cohesion Fund will allow a recipient Member State to enhance its transport and environmental facilities more quickly without a corresponding increase in domestic public expenditure, since no additionality will be required for the Fund.

The protocol makes an explicit link to the convergence programmes. These programmes constitute the framework for defining the overall macroeconomic effort which is needed for integration into the EMU. The Community will contribute to this effort through the Cohesion Fund. This contribution constitutes a commitment spread over several years.

3. Geographical coverage

The geographical coverage concerns 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. At present four Member States have a per capita GNP of less than 90% of the Community average, viz. Greece, Ireland, Portugal and Spain.

4. Projects to be financed by the Cohesion Fund

Projects to be considered for Cohesion Fund financing must contribute to the achievement of Community objectives for the environment and trans-European transport networks. The selection of the projects or groups of related projects and more especially the distribution between environment and transport infrastructure are matters for the Member States concerned and the Commission.

There should be no a priori breakdown between environment and transport infrastructure, but a reasonable balance should be ensured between the two fields of intervention.

For the field of the environment, projects financed by the Fund should contribute to the realization of Community environmental objectives. Moreover, the Fund should permit adaptation to the requirements of legislation, including future legislation which involves investment costs deemed to be disproportionate for the public authorities of the Member States concerned. The implementation of the guidelines of the Fifth Programme of Environmental Action will be facilitated.

The Cohesion Fund will provide support for transport infrastructure projects consistent with guidelines where such guidelines exist. The absence of guidelines in any particular field of transport networks should not prevent the financing of projects in that field. However, in order to ensure that projects assisted are as consistent as possible with the objectives of Community policy on trans-European networks the Commission will speed up the presentation of guidelines to the Council for aspects not yet covered.

5. Economic conditionality

The protocol states that Member States benefiting from the Cohesion Fund must have a programme leading to the fulfilment of the conditions of economic convergence. This requirement must be translated into a practical form of economic conditionality which takes account of the nature of the Fund.

Economic conditionality must be based on the economic convergence programme for the Member State concerned and on the examination by the Council of that programme and its implementation by the Member State.

If it is established by the Council on the basis of a proposal from the Commission that in spite of recommendations a Member State is not making satisfactory progress towards the fulfilment of the conditions of economic convergence as set out in Article 104c of the Treaty, the Council may invite the Commission to make no commitments to new projects in that Member State.

The European Parliament should be informed immediately about any decision concerning the suspension of the granting of assistance from the Fund. Once such a decision has been taken the Commission is in favour of convening, should the need arise, a consultation between the European Parliament, the Council and the Commission in order to examine possible budgetary consequences which may arise pursuant to the suspension of Fund assistance.

This suspension shall cease once the Council finds that the Member State has resumed convergence.

The Commission will have to manage the Fund in a manner which allows economic conditionality to be effectively applied. Mechanisms for ensuring appropriate conditionality are outlined in point 6 below. However, the precise arrangements for the procedure will be established at a later stage.

Since the Cohesion Fund should be concerned with large projects or groups of related projects, it is important that projects are actually carried out, i.e. not stopped mid-way through realization. Conditionality can therefore apply only to the possibility of not undertaking commitments for new projects before the Member State has resumed convergence as set out in Article 104c.

6. Distribution and management

Given the need for Member States to be able to plan the programming of projects, an indicative distribution for the whole period of the total resources between Member States will be made by the Commission in the light of economic, social and other relevant factors.

The Commission will approve an initial set of projects such as to ensure a substantial flow of payments on the basis of the first three years' commitment appropriations. Further projects for the following years will be approved in good time. The approval of the latter projects may be suspended if it is established in the multilateral surveillance procedure that a Member State's convergence programme is not proceeding in a broadly satisfactory manner. In managing the approval of projects the Commission will also ensure that it has the necessary flexibility to cater for the accompaniment of environmental legislation with financial assistance, which may be required in accordance with Article 130s(5).

7. Rates of assistance

Community assistance granted by the Cohesion Fund in respect of the various objectives listed will be set at 85% to 90% of public or similar expenditure. If assistance is given to a project which yields revenue, the cost basis for assistance from the Fund will be established by the Commission in agreement with the Member State concerned.

The Fund may contribute 100% of the cost of preparatory studies and technical support measures.

8. Volume and timing of Community financing

The contribution proposed by the Commission in the financial perspectives 1993-1997 rises from ECU 1.5 billion in 1993 to ECU 2.5 billion in 1997 (1992 prices) in commitment appropriations. This amount should make the Cohesion Fund an adequate instrument, both in terms of the size of the projects to be financed and in relation to the need for financial transfers to the beneficiary Member States.

There is a particular need for substantial transfers early in the period in order to achieve the objectives of the Fund. Therefore adequate commitment and payment appropriations must be available so that they can be deployed as soon as the Fund is set up, i.e. as early as possible in 1993. It will also be necessary to ensure that the Fund can make sufficient advance payments at an early stage towards projects already identified. This will make it possible to avoid a system of mere reimbursement of expenditure which would weaken the impact of Community assistance. The financial figures included in the draft regulation take account of these considerations.

9. Complementarity and consultation

Projects to be financed will be established in agreement between the Commission and the Member State concerned.

For Cohesion Fund operations, the Community's partners are the national rather than the regional authorities; consultation arrangements have thus to be made with the Member States; these arrangements have to be kept as simple as possible but they must ensure coherence with the Structural Fund operations in which regional authorities are fully involved. The principle of concentration will be complied with by the financing of a limited number of projects or groups of related projects; it should be applied in a flexible way taking into account the general objective of contributing to cohesion.

10. Coordination between the Cohesion Fund, the Structural Funds, the EIB and the other financial instruments

The Structural Funds, given their general role of supporting development, operate essentially on the basis of programmes agreed between regional, national and Community partners. The Cohesion Fund will be based on projects. Although the criteria for intervention are different, the fields in which they operate overlap at least partly, and it is therefore necessary to ensure practical coordination between their operations.

For any given period, projects assisted by the Cohesion Fund may contribute to the implementation of programmes financed by the Structural Funds, but an individual project may not benefit simultaneously from the Fund and from one of the existing Structural Funds or EAGGF Guarantee section.

Coordination at Community level and within the Member States between the activities of the Structural Funds, the Cohesion Fund, the EIB, the ECSC and other financial contributions to support Community policies in the fields of the environment (Life, Habitat, agri-environmental measures) and transport infrastructure (budget support for European networks) should be carried out in particular through the assessment of coherence between operations financed under the different instruments.

Draft
Council Regulation (EC)
establishing a Cohesion Fund

The COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, 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 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 in particular for it to 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 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 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 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 by Member States in pursuit of the objectives of Community policy on the environment; whereas the Cohesion Fund is to 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 the operational rules of the Cohesion Fund should be in keeping with the principle of subsidiarity as set out in Article 3b of the Treaty;

Whereas in accordance with Article 198e of the Treaty the EIB is to 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 in the field of the environment and trans-European networks in the area of transport infrastructure taken 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 as regards 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 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

The Fund shall provide financial contributions to projects in the fields of 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.

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 which contribute to the achievement of the objectives of Article 129b of the Treaty, including projects resulting from the guidelines adopted pursuant to Article 129c of the Treaty;
- preparatory studies and technical support measures related to eligible projects.

Article 4

Financial resources

1. For the period 1993-1997 the total commitment appropriations deemed necessary for the Fund shall be ECU 10 000 million at 1992 prices.
2. In accordance with paragraph 1, the commitment appropriations for 1993 shall amount to ECU 1 500 million and for each subsequent year from 1994 an annual increase of ECU 250 million in commitment appropriations shall be added, resulting in 1997 in a figure of ECU 2 500 million at 1992 prices.

Article 5

Indicative allocation

In order to facilitate the planning of assistance in the Member States concerned the Commission shall establish on the basis of an indicative allocation of the total resources of the Fund the commitment appropriations for each Member State. The indicative allocation shall take account of social, economic and other relevant factors such as population, GNP per head and surface area.

Article 6

Conditional assistance

1. If the Council, acting by a qualified majority on a proposal from the Commission, establishes that a Member State is not acting consistently with the Council recommendation which would allow it to make satisfactory progress towards the fulfilment of the conditions of economic convergence as set out in Article 104c of the Treaty, the Council, acting by a qualified majority, may request the Commission to suspend the granting of assistance from the Fund for further projects in that Member State.
2. A decision to suspend the granting of assistance shall not be taken before the third year of the implementation of this Regulation. It shall take effect from the end of the calendar year in which it is taken.
3. The suspension shall cease when the Council decides that the situation described in paragraph 1 has been corrected.

Article 7

Rate of assistance

1. The rate of assistance granted by the Fund shall be 85% to 90% of public or similar expenditure as defined for the purposes of the Structural Funds.
2. Preparatory 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 the framework of this Regulation and measures undertaken with contributions from the Community budget, the EIB and the other Community financial instruments.

Article 9

Combination and overlapping

1. A project may not benefit simultaneously 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 grant assistance from the Community shall not exceed 90% of public or similar expenditure.

Article 10

Approval of projects

1. The projects to be financed under 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 of transport infrastructure. This balance shall take account of Article 130s(5) of the Treaty. To that end, the Commission may take appropriate financial measures for each Member State concerned.
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 fields of environmental protection or 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 implementation schedule, 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 establish that projects are in accordance with this Regulation.
5. 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 from the Member State. 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.
6. The Commission decisions 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

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.

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.

When submitting requests for payment, Member States shall make available to the Commission any appropriate national control reports on the projects concerned.

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 188b of the Treaty or to any inspection arranged on the basis of Article 209(c) of the Treaty, the Commission 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.

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 Commission shall establish detailed rules for the application of this Regulation.

Article 16

Review

On a proposal from the Commission, the Council shall re-examine this Regulation four years after its entry into force. It shall act on the proposal in accordance with the procedure laid down in Article 130d of the Treaty.

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,

For the Council

The President

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DOCUMENTS

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