

Commission Regulation (EC) No 718/2007 of 12 June
2007 implementing Council Regulation (EC) No 1085/2006
establishing an instrument for pre-accession assistance (IPA)

PART I

COMMON PROVISIONS

TITLE II

COMMON RULES FOR IMPLEMENTATION

CHAPTER IV

Financial management

Section 1

Budgetary commitments

Article 39

Principles

1 A budgetary commitment corresponding to the amount of the legal commitment, which shall take the form of a financing agreement with the beneficiary country concerned, shall be adopted on the basis of financing decisions adopting annual programmes.

2 Financing decisions adopting multi-annual programmes may provide for the conclusion of multi-annual legal commitments which shall take the form of financing agreements with the beneficiary country concerned.

The budgetary commitment corresponding to the amount of the legal commitment may in such cases be broken down over several years into annual instalments, where the financing decision so provides and taking account of the multi-annual indicative financial framework. The corresponding financing decision and financing agreement shall set out this breakdown in appropriate financial tables.

*Changes to legislation: There are currently no known outstanding effects for the
Commission Regulation (EC) No 718/2007, CHAPTER IV. (See end of Document for details)*

Section 2

Rules for decentralised management

Article 40

Payments

1 Payment by the Commission of the Community contribution shall be made within the limits of the funds available. In the case of multi-annual programmes, each payment shall be posted to the earliest open budget commitments of the IPA component concerned.

2 Payments shall take the form of pre-financing, interim payments and payment of the final balance.

3 By 28 February each year, the beneficiary country shall send to the Commission a forecast of its likely payment applications for the financial year concerned and for the subsequent financial year, in relation to each IPA component or programme. The Commission may ask for an update of the forecast as appropriate.

4 Exchange of information concerning financial transactions between the Commission and the authorities and structures referred to in Article 21 shall, where appropriate, be made by electronic means, using procedures agreed upon between the Commission and the beneficiary country.

5 The combined total of pre-financing and interim payments shall not exceed 95 % of the Community contribution as set out in the financial table of each programme.

6 When the ceiling referred to in paragraph 5 is reached, the national authorising officer shall continue transmitting to the Commission any certified statement of expenditure, as well as information about the amounts recovered.

[^{F17} Amounts set out in the programme submitted by the beneficiary country, in certified statements of expenditure, in payment applications and in expenditure mentioned in the implementation reports, shall be denominated in euro. Beneficiary countries shall convert the amounts of expenditure incurred in national currency into euro using the monthly accounting rate of the euro established by the Commission for the month during which the expenditure was registered in the accounts of the national fund or the operating structure concerned, as appropriate.]

8 Payments by the Commission to the national fund shall be made to the euro account, in accordance with the provisions laid down in Articles 41, 42, 43, 44 and 45 and in the framework, sectoral or financing agreements. One euro account shall be opened for each of the IPA programmes concerned, or, as appropriate, IPA components, and shall be used exclusively for transactions relating to that programme or component.

9 Beneficiary countries shall ensure that the final beneficiaries receive the total amount of the public contribution in due time and in full. No specific charge or other charge with equivalent effect shall be levied which would reduce these amounts for the final beneficiaries.

10 The expenditure may be covered by Community financing only if it has been incurred and paid by the final beneficiary. Expenditure paid by final beneficiaries shall be substantiated by receipted invoices or accounting documents of equivalent probative value or other relevant documents, where, according to the programme, assistance is not a function of expenditure. Expenditure must have been certified by the national authorising officer.

Changes to legislation: There are currently no known outstanding effects for the
Commission Regulation (EC) No 718/2007, CHAPTER IV. (See end of Document for details)

Textual Amendments

- F1** Substituted by [Commission Regulation \(EU\) No 80/2010 of 28 January 2010 amending Regulation \(EC\) No 718/2007 implementing Council Regulation \(EC\) No 1085/2006 establishing an instrument for pre-accession assistance \(IPA\)](#).

Article 41

Acceptability of applications for payment

In order for the Commission to approve a payment application, the minimum requirements set out in Articles 42(1), 43(1) and 45(1) must be fulfilled.

Article 42

Pre-financing

1 In the case of a payment application for a pre-financing payment, the minimum requirements referred to in Article 41 are the following:

- a the national authorising officer has notified to the Commission the opening of the euro account concerned;
- b the accreditations delivered by the competent accrediting officer and the national authorising officer are in force and the conferral of management by the Commission remains valid;
- c the relevant financing agreement has entered into force.

2 Pre-financing payments shall represent a given percentage of the Community contribution to the programme concerned, as specified in Part II of this Regulation. In the event of multi-annual programmes, the pre-financing may be split between several financial years.

3 The total amount paid as pre-financing shall be reimbursed to the Commission if no payment application for the programme concerned is sent within 15 months of the date on which the Commission pays the first pre-financing amount. The Community contribution to the programme concerned shall not be affected by such reimbursement.

4 The total pre-financing amount shall be cleared at the latest when the programme is closed. Throughout the lifetime of the programme, the national authorising officer shall use the pre-financing payment only to pay the Community contribution to expenditure in compliance with this Regulation.

Article 43

Interim payments

1 In the case of a payment application for an interim payment, the minimum requirements referred to in Article 41 are the following:

- a the national authorising officer has sent to the Commission a payment application and a statement of expenditure relating to the payment in question; the statement of expenditure shall be certified by the national authorising officer;

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- b the ceilings for Community assistance under each priority axis, as laid down in the Commission financing decision, have been respected;
- c the operating structure has sent to the Commission the sectoral annual implementation reports as referred to Article 61(1), including the most recent one;
- d the audit authority has sent to the Commission, in accordance with the first and second indent of Article 29(2)(b), the most recent annual audit activity report and opinion on the conformity of the management and control systems in place with the requirements of this Regulation and/or those of any agreement between the Commission and the beneficiary country;
- e the accreditations delivered by the competent accrediting officer and the national authorising officer are in force, and the conferral of management by the Commission remains valid.

If one or more of the conditions mentioned in this paragraph are not met, the beneficiary country shall, when so requested by the Commission and within the time limit fixed by the Commission, take the necessary steps to remedy the situation.

2 If it appears that the rules applicable have not been complied with or that Community funds have been improperly used, the Commission may reduce interim payments to the beneficiary country or temporarily suspend them, in accordance with the provisions of Article 46. It shall inform the beneficiary country accordingly.

3 The suspension or reduction of interim payments shall comply with the principle of proportionality and shall be without prejudice to the decisions of conformity and clearance-of-account decisions and financial corrections.

Article 44

Calculation of payments

Payments shall be calculated on the basis of the Community contribution to the financing of the operations concerned, up to the amount obtained by applying the co-financing rate laid down for each priority axis in the financing decision to the eligible expenditure, subject to the maximum Community contribution attached to each priority axis.

Article 45

Payment of the final balance

1 In the case of the payment of the final balance, the deadline set down in Article 166 of Regulation (EC, Euratom) No 1605/2002 shall apply and the minimum requirements referred to in Article 41 are the following:

- a the national authorising officer has sent to the Commission a final payment application and a final statement of expenditure; the final statement of expenditure shall be certified by the national authorising officer;
- b the operating structure has sent to the Commission the sectoral final reports for the programme concerned, as referred to in Article 61(1);
- c the audit authority has sent to the Commission, in accordance with the third indent of Article 29(2)(b), an opinion on any final statement of expenditure, supported by a final activity report;

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- d the accreditations delivered by the competent accrediting officer and the national authorising officer are in force and the conferral of management by the Commission remains valid.

2 That part of budget commitments referring to multi-annual programmes still open on 31 December 2017, for which the documents referred to in paragraph 1 have not been transmitted to the Commission by 31 December 2018, shall be automatically de-committed.

Article 46

Suspension of payments

- 1 All or part of the payments may be suspended by the Commission where:
 - a there is a serious deficiency in the management and control system of the programme which affects the reliability of the procedure for certification of payments and for which corrective measures have not been taken; or
 - b expenditure in a certified statement of expenditure is linked to a serious irregularity which has not been corrected; or
 - c clarifications are needed regarding the information contained in the declaration of expenditure.

2 The beneficiary country shall be given the opportunity to present its observations within a period of two months before the Commission decides on a suspension in accordance with paragraph 1.

3 The Commission shall end the suspension when the beneficiary country has taken the necessary measures to remedy the deficiency, irregularity or lack of clarity referred to in paragraph 1.

If those measures have not been taken by the beneficiary country, the Commission may decide to cancel all or part of the Community contribution to the programme in accordance with Article 51.

Article 47

Closure of a programme

- 1 After an application for final payment has been received by the Commission, a programme is considered closed as soon as one of the following occurs:
 - payment of the final balance due by the Commission,
 - issuance of a recovery order by the Commission,
 - [^{F1}de-commitment of the final balance of the budgetary commitment by the Commission.]

2 The closure of a programme does not prejudice the Commission's right to undertake a financial correction at a later stage.

3 The closure of a programme does not affect the obligations of the beneficiary country to continue to retain related documents, in accordance with Article 48.

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Commission Regulation (EC) No 718/2007, CHAPTER IV. (See end of Document for details)

Textual Amendments

- F1** Substituted by Commission Regulation (EU) No 80/2010 of 28 January 2010 amending Regulation (EC) No 718/2007 implementing Council Regulation (EC) No 1085/2006 establishing an instrument for pre-accession assistance (IPA).

Article 48

Retention of documents

All documents related to a given programme shall be retained by the beneficiary country for at least three years after the closure of the programme. This period shall be interrupted either in the case of legal proceedings or at the duly motivated request of the Commission.

Article 49

Financial corrections

1 In order to ensure that the funds are used in accordance with the applicable rules, the Commission shall apply clearance-of-accounts procedures or financial correction mechanisms in accordance with Articles 53b(4) and 53c(2) of Regulation (EC, Euratom) No 1605/2002 and as detailed in the framework or, where they exist, sectoral agreements.

2 A financial correction may arise following:

- a identification of a specific irregularity, including fraud; or
- b identification of a weakness or deficiency in the management and control systems of the beneficiary country.

3 If the Commission finds that expenditure under the programmes covered by this Regulation has been incurred in a way that has infringed applicable rules, it shall decide what amounts are to be excluded from Community financing.

4 The calculation and establishment of any such corrections, as well as the related recoveries, shall be made by the Commission, following the criteria and procedures provided for in Articles 51, 52 and 53. Other provisions on financial corrections which have been set down in sectoral or financing agreements shall apply in addition to this Regulation.

Article 50

Financial adjustments

[^{F1} The national authorising officer, who bears in the first instance the responsibility for investigating irregularities, shall make the financial adjustments where irregularities or negligence are detected in operations or programmes, by cancelling all or part of the Community contribution to the operations or the programmes concerned. The national authorising officer shall take into account the nature and gravity of the irregularities and the financial loss to the Community contribution.]

[^{F12} In case of an irregularity, the national authorising officer shall recover the Community contribution paid to the final beneficiary in accordance with national recovery procedures.]

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Textual Amendments

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Article 51

Criteria for financial corrections

- 1 The Commission may make financial corrections, by cancelling all or part of the Community contribution to a programme, in the situations referred to in Article 49(2).
- 2 Where individual cases of irregularity are identified, the Commission shall take into account the systemic nature of the irregularity to determine whether a flat-rate or extrapolated financial correction should be applied.
- 3 The Commission shall, when deciding the amount of a correction, take into account the nature and gravity of the irregularity and/or the extent and financial implications of the weaknesses or the deficiencies found in the management and control system in the programme concerned.

Article 52

Procedure for financial correction

- 1 Before taking a decision on a financial correction, the Commission shall inform the national authorising officer of its provisional conclusions and requesting his comments within two months.

Where the Commission proposes a financial correction on the basis of extrapolation or at a flat rate, the beneficiary country shall be given the opportunity to establish the actual extent of the irregularity, through an examination of the documentation concerned. In agreement with the Commission, the beneficiary country may limit the scope of this examination to an appropriate proportion or sample of the documentation concerned. Except in duly justified cases, the time allowed for this examination shall not exceed a period of two months after the two-month period referred to in the first subparagraph.

- 2 The Commission shall take account of any evidence supplied by the beneficiary country within the time limits mentioned in paragraph 1.
- 3 The Commission shall endeavour to take a decision on the financial correction within six months after opening the procedure as set out in paragraph 1.

Article 53

Repayment

- 1 Any repayment to the general budget of the European Union shall be effected before the due date indicated in the recovery order drawn up in accordance with Article 72 of Regulation (EC, Euratom) No 1605/2002. The due date shall be the last day of the second month following the issuing of the order.

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2 Any delay in repayment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate of such interest shall be one-and-a-half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls.

Article 54

Re-use of Community contribution

1 The resources from the Community contribution cancelled according to Article 49 shall be paid to the Community Budget, including interest thereon.

2 The contribution cancelled or recovered in accordance with Article 50 may not be re-used for the operation or operations that were the subject of the recovery or the adjustment, nor, where the recovery or adjustment is made for a systemic irregularity, for existing operations within the whole or part of the priority axis in which the systemic irregularity occurred.

Section 3

Rules for centralised and joint management

Article 55

Payments

1 Payment of the Community contribution by the Commission shall be made within the limits of the funds available.

2 In accordance with Article 81 of Regulation (EC, Euratom) No 1605/2002, payments shall be made on production of proof that the relevant operation is in accordance with the provisions of the IPA Regulation, this Regulation, the contract or the grant.

3 The appropriations needed to cover expenditure as indicated in the annual programmes shall be made available through one or more of the following actions: payment of the entire amount due; pre-financing; one or more interim payments; and payment of the balance of the amounts due.

4 Payments by the Commission shall be made whenever possible in euro to a euro account.

Article 56

Closure of a programme

1 A programme is closed when all the contracts and grants funded by this programme have been closed.

2 After a final payment application has been received, a contract or grant is considered closed as soon as one of the events referred to in Article 47(1) occurs.

3 The closure of a contract or grant does not prejudice the Commission's right to undertake a financial correction at a later stage.

Changes to legislation:

There are currently no known outstanding effects for the Commission Regulation (EC) No 718/2007, CHAPTER IV.