

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 II

SPECIFIC PROVISIONS

TITLE I

TRANSITION ASSISTANCE AND INSTITUTION BUILDING COMPONENT

CHAPTER I

Object of assistance and eligibility

Article 64

Areas of assistance

1 Assistance under this component may be granted to the beneficiary countries in particular in the following areas:

- a strengthening of democratic institutions and the rule of law;
- b promotion and protection of the fundamental rights and freedoms contained in the European Charter of Fundamental Rights;
- c public administration reform;
- d reform in the field of justice and home affairs, such as reform of the legal system, the police, the prosecution, the judiciary, the penitentiary systems, and the customs and border control system, with particular emphasis on improving the fight against corruption, organised crime, terrorism, and illegal migration, and establishing information systems linked to these areas;
- e modernisation of the regulatory framework, including support for investment to equip key institutions whose infrastructures or capacity to monitor and enforce legislation need strengthening;
- f establishment or reinforcement of financial control systems;
- g strengthening of the market economy, notably by helping self-organisation of economic actors and directly supporting economic activity, including through assistance to the private sector and help in industrial restructuring, as well as diversifying the economy, modernising key sectors and improving specific areas;
- h development of civil society and dialogue between the government and non-governmental bodies to promote democracy, the rule of law, human rights, respect for and protection of minorities, as well as civil society dialogue;
- i establishment of social dialogue as an element of good governance and to promote fair and just working conditions;
- j promotion of minority integration, reconciliation and confidence-building measures on all levels of society;

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- k environmental policy, based on a high level of protection, promotion of the polluter-pays principle, sustainable utilisation of natural resources, energy efficiency, renewable sources and the progressive adoption of the Community policy in all areas including climate change;
- l improvement of access to financial facilities for small and medium- scale enterprises and public administrations;
- m institution building in the field of nuclear safety, radioactive waste management and radiation protection, in line with the *acquis communautaire* and European Union best practices;
- n support for participation in community programmes, notably those aimed at increasing awareness of European citizenship, and preparation for participation in Community agencies.

2 In addition to the areas covered in paragraph 1, assistance may also be granted under this component to beneficiary countries listed in Annex II to the IPA Regulation, for the following areas:

- a in accordance with Article 2(3)(b) of the IPA Regulation, social, economic and territorial development including, *inter alia*, investments in the areas of regional development, human resources development, and rural development;
- b removal of obstacles to social inclusion and support for inclusive labour markets, in particular through actions aiming at improving living standards, fighting against unemployment and empowering human resources;
- c support to productive sector and services and to the improvement of business-related infrastructures;
- d adaptation, reform or, where appropriate, establishment of educational systems and professional training systems;
- e improvement of access to, and interconnections of, transport, information, energy and other networks;
- f reform of health care systems;
- g improvement of information and communication systems.

Article 65

Forms of assistance

- 1 Assistance under this component may, in particular, be provided through:
 - a administrative cooperation measures for the purpose of training and information exchange involving public-sector experts dispatched from Member States or international organisations, in particular through twinning, twinning light and TAIEX;
 - b technical assistance;
 - c investments in the regulatory infrastructure, including independent external multilateral institutions, in particular to support alignment with European Union norms and standards. This shall be aimed at key regulatory institutions and made on the basis of a clear strategy for public administrative reform and alignment with the *acquis*;
 - d grant schemes;
 - e project preparation facilities;
 - f implementation of finance facilities in cooperation with financial institutions;
 - g budgetary support, in accordance with the provisions of Article 15(1) of the IPA Regulation.

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2 For beneficiary countries listed in Annex II to the IPA Regulation, assistance under this component may also be provided through measures and actions of a similar nature as those foreseen under the regional development, human resources development and rural development components, including investment type operations.

3 Assistance may also be used to cover the costs of the Community's contribution to international missions, initiatives or organisations active in the interest of the beneficiary country, including administrative costs.

Article 66

Eligibility of expenditure

1 Expenditure under this component shall be eligible if it has been incurred after the procurements, contracts and grants have been signed, except in the cases explicitly provided for in Regulation (EC, Euratom) No 1605/2002.

2 In addition to the rules set out in Article 34(3), the following expenditure shall not be eligible:

- a any leasing costs;
- b depreciation costs.

3 By way of derogation from Article 34(3), it shall be decided on a case by case basis whether the following expenditure is eligible:

- a operating costs, including rental costs, exclusively related to the period of co-financing of the operation;
- b value added taxes, if the following conditions are fulfilled:
 - (i) the value added taxes are not recoverable by any means;
 - (ii) it is established that they are borne by the final beneficiary, and
 - (iii) they are clearly identified in the project proposal.

Article 67

Aid intensities and rate of Community contribution

1 For the purposes of this component, the eligible expenditure as referred to in Article 38(1) shall be based on the public expenditure in the case of decentralised management, and on the total expenditure in the case of centralised and joint management.

2 In the case of decentralised management, in addition to the general rules set out in Articles 37 and 38, this paragraph shall apply to assistance under this component.

In the event of grants, final beneficiaries may be required to contribute to the operation's eligible costs. In the case of an investment operation, the Community contribution shall not exceed 75 % of the public expenditure, the other 25 % being provided from public funds in the beneficiary country. In exceptional and duly justified cases, however, the Community contribution can exceed 75 % of the public expenditure.

Institution building activities shall require a degree of co-financing by the final beneficiary and/or public funds in the beneficiary country. In duly justified cases,

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however, institution building activities may be financed up to 100 % by Community funds.

Assistance provided through administrative cooperation measures as referred to in Article 65(1)(a) may be funded 100 % by Community funds.

3 In the event of centralised or joint management, the Commission shall decide the rate of the Community contribution, which may amount to 100 % of the eligible expenditure.

CHAPTER II

Programming

Article 68

Programming framework

Assistance shall in principle take the form of:

- national programmes,
- regional and horizontal programmes and facilities.

Article 69

National programmes

1 National programmes shall be adopted annually by the Commission on the basis of project proposals from the beneficiary country, which shall take into account the principles and priorities set out in the multi-annual indicative planning documents referred to in Article 5.

2 Project proposals shall in particular list the priority axes to be covered in the beneficiary country concerned, which may include the areas of assistance laid down in Article 64. The relevant stakeholders shall be consulted while the project proposals are being drafted.

3 Each year, following discussions between the Commission and the beneficiary country about the project proposals, project fiches shall be submitted to the Commission by the beneficiary country. The project fiches shall set out clearly the priority axes, the envisaged operations and their chosen implementing methods. Financing proposals shall be prepared by the Commission in view of the project fiches.

4 Financing proposals shall be adopted by means of a financing decision, in accordance with Article 8.

5 A financing agreement as provided for in Article 8 shall be concluded by the Commission and the beneficiary country.

Article 70

Participation in Community programmes within national programmes

1 Assistance may be granted to support the participation of beneficiary countries in Community programmes. The participation shall be set down in the national programmes.

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2 The total funds given in Community support for participation in Community programmes shall not exceed the limit set down in the national programme.

3 The participation of beneficiary countries in Community programmes shall follow the specific terms and conditions set out for each such programme in the memorandum of understanding to be concluded by the Commission and the beneficiary country, in accordance with the agreements establishing the general principles for participation of the beneficiary countries in Community programmes. It shall include provisions on both the total amount of the beneficiary country's contribution and the amount funded by assistance under the IPA regulation.

Article 71

Participation in Community agencies within national programmes

1 Assistance may be granted to support the participation of the beneficiary countries in Community agencies. The participation shall be set down in the national programmes.

2 The beneficiary countries may be invited to participate on an *ad hoc* basis in the work of various Community agencies. The costs of their participation may be funded by assistance provided under the IPA Regulation in a similar way to that applicable to participation in Community programmes.

Article 72

Regional and horizontal programmes

1 The Commission shall draw up regional and horizontal programmes, in full coherence and coordination with national programmes, on the basis of the relevant multi-annual indicative planning documents and in consultation with the relevant stakeholders.

2 The regional and horizontal programmes shall be designed to promote regional cooperation and to strengthen multi-country exchanges in the beneficiary countries, and to support initiatives encouraging beneficiary countries to cooperate in areas of common interest.

3 The regional programme shall cover beneficiary countries in the Western Balkans. The programme shall in particular target reconciliation, reconstruction and political cooperation in the Region, with a view to supporting the implementation of the Stability Pact for South East Europe.

4 Horizontal programmes shall cover some or all beneficiary countries in areas of common interest where assistance can be implemented more effectively and economically through such programmes than through national programmes.

5 Under the regional and horizontal programmes, assistance may be granted in areas such as project preparation facility, support to civil society, customs, support for small and medium-scale enterprises, municipal finance facilities and municipal infrastructure, statistics, nuclear safety, information and communication.

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CHAPTER III

Implementation

Section 1

Framework for implementation and principles

Article 73

General principles

- 1 Assistance under this component shall be granted through centralised, decentralised or joint management, in accordance with Articles 53 of Regulation (EC, Euratom) No 1605/2002.
- 2 The objective shall be decentralised management where national programmes are concerned.
- 3 Regional and horizontal programmes shall be implemented by the Commission on a centralised basis or by joint management with international organisations as defined by Article 43d of Regulation (EC, Euratom) No 1605/2002.

Article 74

Structure and authorities in the event of centralised and joint management

In the event of centralised or joint management, the national IPA coordinator shall be the sole contact person of the Commission, in accordance with Article 32.

Article 75

Structure and authorities in the event of decentralised management

- 1 Where, in the event of decentralised management, in accordance with Article 22(2)(b), the national IPA coordinator exercises his responsibility for the programming of this component at national level, he shall carry out the following tasks:
 - a organise the preparation of the project proposals as referred to in Article 69,
 - b elaborate and present to the Commission the project fiches referred to in Article 69,
 - c monitor the technical execution of the national programmes.

- 2 In accordance with Article 31, the operating structure shall consist of one or more implementing agencies, which shall be established within the national administration of the beneficiary country or under its direct control.

The national authorising officer shall, after consulting the national IPA coordinator, designate programme authorising officers to head the implementing agencies.

The programme authorising officers shall be officials within the state administration of the beneficiary country. They shall be responsible for the activities carried out by the implementing agencies in accordance with Article 28.

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3 Programme authorising officers shall designate officials within the national administration as senior programme officers. Under the overall responsibility of the programme authorising officer concerned, senior programme officers shall carry out the following tasks:

- a be responsible for the technical aspect of the operations within line ministries,
- b assist the programme authorising officers in the good and timely preparation and implementation of operations at technical level,
- c be in charge of the coordination within each priority axis set down in the beneficiary country's project proposal.

Article 76

Accreditation of the operating structure and conferral of management powers

1 Where Community funds have been managed by existing national bodies in the beneficiary countries under Regulation (EEC) No 3906/89 or Regulation (EC) No 2500/2001 prior to the date of entry into force of this Regulation, those bodies (hereinafter referred to as the 'existing national bodies') shall manage funds under the transition assistance and institution building component, until the Commission adopts a Decision on conferral of management powers.

2 In no case the existing national bodies can manage funds under the transition assistance and institution building component without a conferral of management powers under this Regulation for more than one year from the entry into force of this Regulation.

3 The Commission shall decide whether to confer management powers on the existing national bodies in particular having regard to the list of deviations submitted in accordance with paragraph 4 and the decision taken by the national authorising officer in accordance with paragraph 5.

4 The national authorising officer shall carry out an assessment of the operating structure, which include the existing national bodies, with regard to the requirements referred to in Article 11. In particular, he shall establish a list of any requirements under this Regulation, as set out in Article 11, which the operating structure does not comply with, based on an opinion of an external auditor functionally independent from all actors in the management and control system.

The list of deviations shall be sent to the Commission at the latest four months after the entry into force of this Regulation.

5 Where the non-compliance referred to in paragraph 4 is deemed to be compatible with the efficient and effective functioning of the operating structures, the national authorising officer may decide to accredit the bodies concerned under this Regulation.

At the latest five months after the entry into force of this Regulation, he shall send to the Commission a decision relating to the accreditation of the bodies concerned. This decision shall include a roadmap, with time bound objectives, laying down the steps to be taken to remedy the non-compliance as set out in the list referred to in paragraph 4. The roadmap shall be agreed with the Commission.

6 Where the non-compliance referred to in paragraph 4 is not deemed to be compatible with the efficient and effective functioning of an operating structure, the national authorising officer shall proceed to establish an accreditation for the operating structure concerned, in accordance with the provisions of Article 13.

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7 In the event the Commission decides to confer management powers on the existing national bodies under this Regulation, the Commission Decision may lay down further conditions on the national authorities. In the event of further conditions, the Commission shall set a time limit for compliance by the national authorities for the conferral of management powers to remain effective. The Commission Decision shall also lay down the list of *ex ante* controls as referred to in Articles 14(3).

8 Irrespective of the national authorising officer's decision, the Commission may decide to maintain, suspend, or withdraw the conferral of management powers on any of the bodies concerned at any time.

9 At all stages, the national authorising officer shall ensure that all the information required by the Commission is provided by the beneficiary country.

Article 77

Implementation principles in the event of twinning projects

1 Twinning projects shall be set up in the form of a grant, whereby the selected Member State administrations agree to provide the requested public sector expertise against the reimbursement of the expenses thus incurred.

The grant may in particular provide for the long term secondment of an official assigned to provide full time counsel to the administration of the beneficiary country as resident twinning advisor.

The twinning grant shall be established in accordance with relevant provisions of Part One, Title VI on grants of Regulation (EC, Euratom) No 1605/2002 and Commission Regulation (EC, Euratom) No 2342/2002.

2 A twinning manual including notably a system of fixed rates and prices for the reimbursement of the provided public sector expertise by the selected Member State administrations shall be established by the Commission and updated regularly.

Article 78

Implementation principles in the event of participation in Community programmes and agencies

In the case of participation in Community programmes and agencies, implementation shall consist in the payment, to the programme or agency budget, of the part of the financial contribution of the beneficiary country which is financed under IPA. The payment shall be made by the national fund in the case of decentralised management and by the Commission in the case of centralised management.

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Section 2

Financial management

Article 79

Payments under decentralised management

1 By way of derogation from Article 40(6), when the ceiling of 95 % is reached, the national authorising officer shall only submit a new certified statement of expenditure and information about the amounts recovered when he requests the payment of the final balance.

2 Pre-financing shall in principle represent 50 % of the Community contribution to the programme concerned. It may be paid in yearly instalments. The rate of 50 % may be raised if the national authorising officer demonstrates that the resulting amount will not cover the pre-financing of the contracts and grants signed at national level.

3 The amount to be pre-financed shall be calculated as the sum of the estimate of the amount to be contracted by year, and the actual amount for which contractual obligations have been entered into in the previous years. With the exception of that concerning participation in Community programmes and agencies, pre-financing shall only be paid once the first call for tender or call for proposals is launched.

4 The payments for the participation in Community programmes and agencies may amount to 100 % of the Community contribution relating to this participation.

Article 80

Retention of documents

By way of derogation from Article 48, written records of the entire procurement, grant award and contracting procedure under this component shall be retained by the operating structure for a period of at least seven years from the payment of the balance of the contract.

Article 81

Property of interest

By way of derogation from Article 36, interest generated by the financing by the Community of a programme shall be declared to the Commission whenever a payment application is submitted to the Commission.

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Section 3

Evaluation and monitoring

Article 82

Evaluation

1 All programmes under the transition assistance and institution building component shall be subject to interim and/or *ex post* evaluation, in accordance with Article 21 of Commission Regulation (EC, Euratom) No 2342/2002.

2 Prior to the conferral of management powers on the beneficiary country, both interim and *ex post* evaluations shall be carried out. These shall be performed by the Commission.

After the conferral of management powers, the responsibility for carrying out interim evaluations shall lie with the beneficiary country, without prejudice to the Commission's rights to perform any *ad hoc* interim evaluations of the programmes it deems necessary.

Ex post evaluation shall remain a prerogative of the Commission even after the conferral of management powers to the beneficiary country.

3 In line with Article 22 of the IPA Regulation, the executive summaries relating to interim evaluation and the *ex post* evaluation reports shall be sent to the IPA Committee for discussion.

Article 83

Monitoring

1 In the event of decentralised management, in accordance with Article 59, the national IPA coordinator shall establish a sectoral monitoring committee for the transition assistance and institution building component, hereinafter referred to as the 'TAIB committee'.

2 The TAIB committee shall meet at least twice a year, at the initiative of the beneficiary country or the Commission. It shall draw up its rules of procedure, in compliance with a sectoral monitoring committee mandate set out by the Commission, and within the institutional, legal and financial framework of the beneficiary country concerned. It shall adopt these rules of procedure in agreement with the national IPA coordinator, the national authorising officer and the IPA monitoring committee.

3 The TAIB committee shall be chaired by the national IPA coordinator. Its members shall include the national authorising officer, the programme authorising officers and, where appropriate, other representatives of the operating structure, representatives of the Commission, as well as, where appropriate, representatives of international financial institutions and civil society, designated by the beneficiary country in agreement with the Commission.

4 In accordance with Article 59(2), the TAIB committee shall satisfy itself as to the effectiveness and quality of the programmes and operations concerned by, in particular:

- a reviewing implementation status reports detailing financial and operational progress of the programmes;
- b reviewing the achievement of objectives and results of the programmes;
- c reviewing procurement plans as well as relevant evaluation recommendations;

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- d discussing problematic issues and operations;
- e proposing corrective actions as appropriate;
- f reviewing the cases of fraud and irregularities and present the measures taken to recover the funds and to avoid the recurrence of similar cases;
- g reviewing the annual audit work plan prepared by the audit authority and the findings and recommendations of the audits carried out.

5 The TAIB committee shall monitor all ongoing programmes under this component. In the case of, inter alia, investment operations, transfer of assets or privatisations, the beneficiary country shall monitor the programmes until their closure and shall notify the TAIB committee of any changes to the results of these programmes that significantly affect their impact, sustainability and ownership.

6 The TAIB committee may be assisted by sectoral monitoring sub-committees, set up by the beneficiary country to monitor programmes and operations of this component, grouped by monitoring sectors. Sub-committees shall report to the TAIB committee. They shall draw up and adopt their internal rules of procedure, in compliance with a mandate to be set out by the Commission.

Article 84

Sectoral annual and final reports on implementation

1 In the event of decentralised management, the operating structure shall send the Commission, the national IPA coordinator and the national authorising officer a sectoral annual report by 30 June each year.

2 A sectoral final report shall be submitted to the Commission, the national IPA coordinator and the national authorising officer at the latest 6 months after the closure of the programme. The sectoral final report shall cover the whole period of implementation and include the last sectoral annual report.

3 The sectoral reports shall be examined by the TAIB committee prior to their transmission to the Commission, the national IPA coordinator and the national authorising officer.

4 The sectoral reports shall include the following information:

- a quantitative and qualitative elements about the progress made in implementing the programme, priority axes or operations, in relation to specific, verifiable targets;
- b detailed information about the financial implementation of the programme;
- c information on the steps taken by the operating structure or the TAIB committee to ensure the quality and effectiveness of implementation, in particular:
 - (i) the monitoring and evaluation measures, including data collection arrangements;
 - (ii) a summary of any significant problems encountered in implementing the programme and any subsequent measures taken;
 - (iii) the use made of technical assistance;
- d information on the activities to provide information on and publicise the programme, in accordance with Article 62.

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