COUNCIL REGULATION (EEC) No 792/93
of 30 March 1993
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 (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

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 and other financial instruments in the fields of the environment and of transport infrastructure of common interest;

Whereas the European Parliament adopted a resolution (4) on 10 June 1992 regarding the Commission's communication of 11 February 1992 (5);

Whereas the European Council, pursuant to its meeting in Lisbon on 26 and 27 June 1992, invited, at its meeting in Edinburgh on 11 and 12 December 1992, the Commission to propose and the Council to adopt, before 1 April 1993, a regulation for an interim financial instrument pending the establishment of the Cohesion Fund and determined, for this interim financial instrument, the recipient States, the criteria and indicative allocation brackets in such a way as to ensure the provision of financial aid to Ireland, Greece, Portugal and Spain;

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 Treaty on European Union, signed in Maastricht on 7 February 1992, 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 said Treaty;

Whereas the finacial 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 in 1994 the commitments must be proportionate to the duration of the financial instrument for that year and must comply with the requirement of continuity from the financial instrument to the Cohesion Fund;

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 each beneficiary Member State should have a convergence programme examined by the Council, designed to avoid excessive government deficits;

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 projects financed by the financial instrument should form part, as far as possible, of trans-European network guidelines which have been adopted by the Council or proposed by the Commission;

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 actions targeted to achieve these objectives including actions taken pursuant to Article 130s of the Treaty;

Whereas an appropriate balance must be ensured between financing for transport infrastructure projects and for environmental projects;

Whereas in the light of an undertaking by the Member States concerned not to decrease their investment efforts in the field of environmental protection and transport infrastructure, additionality within the meaning 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 (6) will not apply to the cohesion financial instrument;

Whereas it is necessary to coordinate action taken in the fields of the environment and trans-European transport networks through the cohesion financial instrument, the Structural Funds, the European Investment Bank and the

(1) OJ No C 38, 12. 2. 1993, p. 18 and amended proposal transmitted on 22 March 1993.
(2) Opinion delivered on 11 March 1993 (not yet published in the Official Journal).
(3) Opinion delivered on 25 February 1993 (not yet published in the Official Journal).
(4) OJ No C 176, 13. 7. 1992, p. 74.
(5) COM(92) 2000.
(6) OJ No L 374, 31. 12. 1988, p. 1.

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 ensure that they have the necessary technical support;

Whereas in the interests of the proper management of the cohesion financial instrument, it is necessary to ensure effective methods of monitoring, assessing and carrying out checks in respect of Community operations;

Whereas, to ensure value for money, thorough appraisal should precede the commitment of Community resources in order to ensure that they yield economic benefits in keeping with the resources deployed;

Whereas the operations of the cohesion financial instrument must be consistent with Community policies, including 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 provision should be made to give adequate publicity to Community assistance provided by the cohesion financial instrument;

Whereas adequate information should be given in particular through an annual report provided for in Article 10 of this Regulation and in Annex II thereto;

Whereas the Treaty does not provide, for the adoption of this Regulation, for powers other 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 those Member States which have a per capita GNP of less than 90 % of the Community average measured according to purchasing power parities, *viz.* Greece, Spain, Ireland and Portugal, each of which shall have a convergence programme examined by the Council and designed to avoid an excessive government deficit.

Article 2

Eligible projects

The financial instrument may provide assistance for:

— environmental projects contributing to the achievement of the objectives of Article 130r of the Treaty, including projects resulting from action taken 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, in particular prior appraisals and analyses of costs and benefits, and technical support measures related to eligible projects.

Article 3

Financial resources

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

In compliance with Article 203 of the Treaty the budgetary authority shall decide in accordance with the first paragraph of this Article, as part of the budget procedure, which appropriations are to be made available for each financial year.

Commitments pursuant to this instrument in 1994 shall be proportionate to the duration of the instrument in 1994 in accordance with Article 11.

Article 4

Indicative allocation

The indicative allocation of the total resources of the financial instrument shall be based on precise and objective criteria, principally on population, GNP per capita and surface area; it shall also take account of other socio-economic factors, such as deficiencies in transport infrastructure.

The application of these criteria leads to the indicative allocation laid down in Annex I.

Article 5

Rate of assistance

1. The rate of assistance granted by the financial instrument shall be between 80 and 85 % of public or similar expenditure as defined for the purposes of the Structural Funds. The effective rate of assistance shall be established in accordance with the nature of the operations to be undertaken.

2. Preliminary studies, in particular prior appraisals and analyses of costs and benefits, and technical support measures necessary for the appraisal, assessment and possible adjustment of eligible projects may be financed at 100 % of total cost in exceptional cases.

The total expenses on the basis of this paragraph shall not exceed 0,5 % of the total allocation of the financial instrument.

Article 6

Coordination and compatibility with Community policies

1. Projects financed by the financial instrument shall be in conformity with the provisions of the Treaty, 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 European Investment Bank 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. Combined support from the financial instrument and other Community grants 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 beneficiary Member State.

2. An appropriate balance shall be ensured between projects in the fields of environment and of transport infrastructure.

3. Applications for assistance in accordance with Article 2 shall be submitted by the beneficiary Member State. Projects, including groups of related projects, shall be of a sufficient scale to have a significant impact in the fields 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 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 shjall be employed to ensure the high 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,

— the achievement of an appropriate balance between the fields of the environemnt and of transport infrastructure.

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 the applications. Commission decisions approving projects or groups of related projects shall determine the amount of financial assistance, a financing plan and 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 9

Financial provisions, monitoring and assessment

1. The Commission may, in agreement with the beneficiary Member State concerned, identify technically and financially discrete stages of a project for the purpose of granting assistance from the financial instrument.

2. Expenditure shall not be considered eligible for assistance from the financial instrument if incurred before the date on which the corresponding application reaches the Commission. However, for applications presented to the Commission before 1 September 1993, expenditure incurred after 1 January 1993 may be regarded as eligible.

3. For the implementation of this Regulation, the following provisions of Titles VI and VII of Regulation (EEC) No 4253/88 shall apply *mutatis mutandis*: Articles 19 (1), 20 (1), 21 (1) except the last sentence, 21 (5) and (7), 22, 23, 24, 25 except the last sentence of (4) and (7).

4. The total amount of assistance from the financial instrument for each operation (project, stage of a project, study or technical support measure) shall be committed when the Commission adopts the decision approving the operation.

5. Payments of financial assistance for a project or a stage of a project shall be made in accordance with the following provisions :

(a) the advance made following the decision may be up to 50 % of the amount of assistance related to the expenditure planned for the first year as indicated in the financial plan approved by the Commission. However, for 1993 exceptionally, the advance may be up to two-thirds of this amount, for the projects submitted before 1 September 1993 ;

(b) interim payments may be made provided that the project is progressing satisfactorily towards completion and that two-thirds of the expenditure relating to the preceding payment and all the expenditure relating to previous payments has been incurred. Interim payments may be up to 50 % of the assistance related to the expenditure planned for the year concerned as indicated in the financial plan approved by the Commission, adjusted, where necessary, to take account of progress in implementing the project ;

(c) the balance of assistance for an operation shall be paid provided

— the project or stage has been completed in accordance with the objectives laid down,

— the beneficiary Member State or the designated authority submits a request for payment to the Commission within the six months following physical completion of the project, and

— the final report referred to in Article 25 (4) of Regulation (EEC) No 4253/88 has been submitted to the Commission.

The balance may not be less than 20 % of the total assistance granted.

6. Payments shall be made to the authority or body designated by the Member States and shall, as a general rule, be made not more than two months after receipt of a valid request for payment.

7. The beneficiary Member States concerned shall provide the Commission with a description of the management and audit systems established to ensure that projects are effectively implemented.

The Commission shall examine applications with a view in particular to checking that the administrative and financial mechanisms are adequate to ensure effective implementation.

Beneficiary Member States shall regularly inform the Commission of all cases of irregularity that have been discovered by an administrative authority or have been the subject of judicial proceedings. Beneficiary Member States and the Commission must take all the security measures necessary to ensure that information exchanged between them remains confidential.

8. In order to ensure the effectiveness of Community assistance, the Commission and the beneficiary Member States concerned shall, in cooperation with the European Investment Bank where appropriate, carry out a systematic assessment of projects.

On receipt of a request for assistance and before approving a project, the Commission shall carry out a thorough prior appraisal in order to assess the project's consistency with the criteria laid down in Article 8 (5) and to establish its expected impact, quantified on the basis of appropriate indicators, by reference to the objectives of the financial instrument. The beneficiary Member State concerned shall provide the necessary information, including the results of feasibility studies and prior assessments, to enable this appraisal to be carried out as effectively as possible.

During the implementation of projects, and after their completion, the Commission and the beneficiary Member States concerned shall assess the manner in which they have been carried out and the potential and actual impact of their implementation in order to judge whether the original objectives can be or have been achieved.

9. The detailed rules for monitoring and assessment shall be laid down in the decisions approving projects.

Article 10

Information and publicity

1. The Commission shall submit a report on the operation of the financial instrument for consideration by the European Parliament, the Council and the Economic and Social Committee five months, at the latest, after the date of expiry of the instrument.

The information mentioned in this report is listed in Annex II.

2. Member States shall ensure that adequate publicity is given to the operation 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

Entry into force

This Regulation shall enter into force on 1 April 1993.

It shall remain in force until the entry into force of a regulation establishing a Cohesion Fund and until 1 April 1994 at the latest.

Should a regulation establishing a Cohesion Fund not be in force by 1 April 1994, the Council, acting by a qualified majority on a proposal from the Commission, shall take a decision regarding the extension of the financial instrument, for a limited period, in order to ensure continuity between the financial instrument and the Cohesion Fund.

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

Done at Brussels, 30 March 1993.

For the Council

The President

S. AUKEN

ANNEX I

Indicative allocation of the total resources of the financial instrument among beneficiary Member States

— Spain :	52 to 58 % of the total.
— Greece :	16 to 20 % of the total.
— Portugal :	16 to 20 % of the total.
— Ireland :	7 to 10 % of the total.

ANNEX II

Information referred to in Article 10 (1)

The Annual Report will provide information on the following :

1. Financial assistance committed and paid from the financial instrument, with an annual breakdown by Member States and by category of projects (environment and transport).
2. The economic and social impact of the financial instrument in Member States.
3. Summary information on the convergence programmes in Greece, Spain, Ireland and Portugal.
4. The contribution which the financial instrument has made to the efforts of beneficiary Member States to implement Community environment policy and to strengthen trans-European transport infrastructure networks ; the balance between projects in the fields of environment and projects relating to transport infrastructure.
5. Assessment of the comptability of the operations of the financial instrument with Community policies including those concerning environmental protection, transport, competition and the award of public contracts.
6. Information on measures to ensure coordination and coherence between projects financed under the financial instrument and measures undertaken with contributions from the Community budget, the European Investment Bank and the other financial instruments of the Community.
7. Information on the investment efforts of the beneficiary Member States in the fields of environmental protection and transport infrastructure.
8. Information on preparatory studies and on technical support measures financed, including a specification of the types of such studies and measures.
9. Information on the results of monitoring and assessment of projects including information on any adjustment of projects to accord with the results of monitoring and assessment.
10. Information on the contribution of the European Investment Bank to the assessment of projects.