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COUNCIL REGULATION (EC) No 1164/94

of 16 May 1994

establishing a Cohesion Fund

(OJ L 130 , 25.5.1994, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Regulation (EC) No 1264/1999 of 21 June 1999	L 161	57	26.6.1999
►**M2**	Council Regulation (EC) No 1265/1999 of 21 June 1999	L 161	62	26.6.1999

Amended by:

►**A1**	Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded	L 236	33	23.9.2003

Corrected by:

►**C1** Corrigendum, OJ L 126 , 28.4.2004, p. 1 (2003T0000)

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

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COUNCIL REGULATION (EC) No 1164/94

of 16 May 1994

establishing a Cohesion Fund

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission ([1]),

Having regard to the assent of the European Parliament ([2]),

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

Having regard to the opinion of the Committee of the Regions ([4]),

Whereas Article 2 of the Treaty includes the task of promoting economic and social cohesion and solidarity among Member States as objectives essential to the Community's development and success; whereas the strengthening of such cohesion is referred to in point (j) of Article 3 of the Treaty as one of the activities of the Community for the purposes set out in Article 2 of the Treaty;

Whereas Article 130a of the Treaty provides for the Community to develop and pursue its actions leading to the strengthening of its economic and social cohesion, and provides in particular that it shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least-favoured regions; whereas Community action through the Cohesion Fund should support the achievement of the objectives set out in Article 130a;

Whereas the conclusions of the European Councils held in Lisbon on 26 and 27 June 1992 and in Edinburgh on 11 and 12 December 1992 concerning the establishment of the Cohesion Fund set out the principles governing it;

Whereas the promotion of economic and social cohesion requires action by the Cohesion Fund in addition to that taken through the Structural Funds, the European Investment Bank and the other financial instruments in the fields of the environment and transport infrastructure of common interest;

Whereas the Protocol on economic and social cohesion annexed to the Treaty establishing the European Community reaffirms the Community's task of promoting economic and social cohesion and solidarity between Member States and specifies that a Cohesion Fund will provide a financial contribution to projects in the fields of the environment and trans-European networks in the Member States subject to two conditions: firstly that they have a per capita gross national product (GNP) of less than 90 % of the Community average and secondly that they have a programme leading to the fulfilment of the conditions of economic convergence as set out in Article 104c of the Treaty; whereas the relative prosperity of Member States is best assessed on the basis of per capita GNP, measured in purchasing power parities;

Whereas meeting the convergence criteria which are a precondition for moving to the third stage of economic and monetary union calls for a determined effort from the Member States concerned; whereas, in this context, all of the beneficiary Member States are to submit to the Council a convergence programme designed for that purpose and to avoid excessive government deficits;

([1]) OJ No C 39, 9. 2. 1994, p. 6.
([2]) Assent given on 5 May 1994 (not yet published in the Official Journal).
([3]) OJ No C 133, 16. 5. 1994.
([4]) Opinion delivered on 5 April 1994 (not yet published in the Official Journal).

▼**M1**

Whereas, with regard to the economic convergence criterion, the current macroeconomic conditionality provisions will continue to apply; whereas, accordingly, no new projects or new project stages shall be financed by the Fund in a Member State in the event of the Council, acting by qualified majority on a recommendation from the Commission, finding that the Member State has not respected the Stability Growth Pact;

Whereas the provisions to speed up and clarify the excessive deficit procedure, having as its objective to deter excessive general government deficits and, if they occur, to further their prompt correction were set out in Council Regulation (EC) No 1467/97 ([1]);

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Whereas the second subparagraph of Article 130d of the Treaty states that the Council is to set up a Cohesion Fund before 31 December 1993 to provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure;

Whereas Article 129c (1) of the Treaty provides that the Community may contribute through the Cohesion Fund to the financing of specific projects in the Member States in the area of transport infrastructure, whilst taking into account the potential economic viability of the projects; whereas projects financed by the Fund should form part of trans-European network guidelines which have been adopted by the Council including those covered by the plans for trans-European networks approved by the Council or proposed by the Commission before the entry into force of the Treaty on European Union; whereas, however, other transport infrastructure projects contributing to the attainment of the objectives of Article 129b of the Treaty may be financed until the Council has adopted the appropriate guidelines;

Whereas Article 130r of the Treaty defines the objectives and principles of the Community in the field of the environment; whereas the Community may contribute, through the Cohesion Fund, to actions designed to achieve those objectives; whereas, in accordance with Article 130s (5) of the Treaty and without prejudice to the principle that the polluter should pay, the Council may decide on financial assistance from the Cohesion Fund where a measure based on paragraph 1 of that Article involves costs deemed disproportionate for the public authorities of a Member State;

Whereas the principles and objectives of sustainable development are established in the Community's programme of policy and action in relation to the environment and sustainable development as set out in the Council Resolution of 1 February 1993 ([2]);

Whereas a suitable balance must be struck between financing for transport infrastructure projects and financing for environmental projects;

Whereas the Commission's Green Paper on the Impact of Transport on the Environment reiterates the need to develop a more environment-friendly transport system which takes into account the sustainable development needs of the Member States;

Whereas any calculation of the cost of transport infrastructure projects must encompass environmental costs;

Whereas, in the light of the undertaking by the Member States concerned not to decrease their investment efforts in the fields of environmental protection and transport infrastructure, the principle of 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 the other existing financial instruments ([3]) will not apply to the Cohesion Fund;

([1]) OJ L 209, 2.8.1997, p. 6.
([2]) OJ No C 138, 17. 5. 1993, p. 1.
([3]) OJ No L 374, 31. 12. 1988, p. 1. Regulation as amended by Regulation (EEC) No 2082/93 (OJ No L 193, 31. 7. 1993, p. 20).

▼B

Whereas, in accordance with Article 198e of the Treaty, the European Investment Bank (EIB) is to facilitate the financing of investments in conjunction with assistance from the other Community financial instruments;

Whereas it is necessary to coordinate action taken in the fields of the environment and of trans-European transport infrastructure networks through the Cohesion Fund, the Structural Funds, the EIB and the other financial instruments in order to enhance the effectiveness of Community assistance;

Whereas with a view, in particular, to helping Member States in the preparation of their projects, the Commission should be in a position to ensure that the necessary technical support is available to them, particularly in order to contribute to the preparation, implementation, monitoring and evaluation of projects;

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

Whereas assistance from the Cohesion Fund must be consistent with Community policies, including environmental protection, transport, trans-European networks, competition and the award of public contracts; whereas environmental protection includes the assessment of environmental impact;

Whereas there should be provision for an indicative allocation of the global resources available for commitment between the Member States in order to facilitate the preparation of projects;

▼M1

Whereas total annual receipt in any Member State from the Cohesion Fund under this Regulation, in combination with assistance provided under the Structural Funds, should be limited under a general capping dependent on the national absorption capacity;

Whereas provision should be made, in conjunction with the fulfilment of the conditions of economic convergence as set out in Article 104 of the Treaty and with the need for sound management of the government deficit, for a form of conditionality in the granting of financial assistance; whereas, in that context, compliance with the obligations arising from the Treaty must also be assessed having due regard to the guidelines adopted in the Resolution of the European Council of 17 June 1997 on the Stability and Growth Pact ([1]) and whereas the concept of excessive deficit is to be interpreted in the light of that Resolution; whereas, for each participating Member State, macroeconomic conditionality should be assessed taking account of the responsibilities of that Member State in respect of the stability of the euro;

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

Whereas, in order to facilitate the management of assistance from the Fund, there should be provision for identifying the stages of projects which may be be considered technically and financially separate and for grouping the projects together, if necessary;

Whereas it should be possible to opt for assistance from the Fund either by annual instalments or for the whole of the project; and whereas, in accordance with the principle laid down by the European Council meeting at Edinburgh on 11 and 12 December 1992, payment instalments following an initial advance should be closely and transparently linked with progress towards the completion of projects;

Whereas the respective powers and responsibilities of the Member States and the Commission concerning financial control over the Fund's operations should be specified;

([1]) OJ C 236, 2.8.1997, p. 1.

▼B

Whereas, in the interests of the proper management of the Cohesion Fund, provision should be made for effective methods of evaluating, monitoring and checking Community operations, specifying the principles governing the evaluation, defining the nature of and the rules governing the monitoring, and laying down the action to be taken in response to irregularities or failure to comply with one of the conditions laid down when assistance from that Fund was approved;

Whereas adequate information should be provided, *inter alia,* in the form of an annual report;

Whereas provision should be made to give adequate publicity to Community assistance from the Cohesion Fund;

Whereas publication in the *Official Journal of the European Communities* of calls for public tenders concerning projects receiving assistance from the Fund should mention the assistance;

Whereas in order to facilitate the application of this Regulation, the implementing provisions should be defined in Annex II; whereas to ensure the necessary flexibility in their application, the Council, acting by a qualified majority on a proposal from the Commission, should be able, if necessary, in the light of experience gained, to amend those provisions;

Whereas this Regulation should, without interruption, replace Council Regulation (EEC) No 792/93 of 30 March 1993 establishing a cohesion financial instrument ([1]),

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.

3. The Fund may contribute to the financing of:

— projects, or

— stages of a project which are technically and financially independent, or

— groups of projects linked to a visible strategy which form a coherent whole.

Article 2

Scope

1. The Fund shall provide financial contributions to projects, which contribute to achieving the objectives laid down in the Treaty on European Union, in the fields of the environment and trans-European transport infrastructure networks in Member States with a per capita gross national product (GNP), measured in purchasing power parities, of less than 90 % of the Community average which have a programme leading to the fulfilment of the conditions of economic convergence referred to in Article 104c of the Treaty.

2. Until the end of 1999, only the four Member States which currently meet the criterion regarding per capita GNP referred to in paragraph 1 shall be eligible for assistance from the Fund. Those Member States are Greece, Spain, Ireland and Portugal.

3. With regard to the GNP criterion referred to in paragraph 1, the Member States referred to in paragraph 2 shall continue to be eligible for assistance from the Fund provided that, after a mid-term review in

([1]) OJ No L 79, 1. 4. 1993, p. 74.

▼B

1996, their GNP remains below 90 % of the Community average. Any eligible Member State whose GNP exceeds the 90 % threshold at that time shall lose its entitlement to assistance from the Fund for new projects or, in the case of important projects split into several technically and financially separate stages, for new stages of a project.

▼M1

4. To be eligible under the Fund from 1 January 2000, the beneficiary Member States must have introduced a programme as provided for in Articles 3 and 7 of Council Regulation (EC) No 1466/97 ([1]).

The four Member States meeting the GNP criterion referred to in paragraph 1 are Spain, Greece, Portugal and Ireland.

A mid-term review as provided for in paragraph 3 shall be carried out before the end of 2003 based on per capita GNP as shown by Community data for the period 2000 to 2002.

▼A1

5. From the date of accession until 31 December 2006 the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia shall also be eligible for assistance from the Fund.

6. For the purposes of applying this Regulation, GNP shall mean GNI for the year at market prices as provided by the Commission in application of the ESA 95 in accordance with Regulation (EC) No 2223/96.

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Article 3

Eligible measures

1. The Fund may provide assistance for the following:

— 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 and, in particular, projects in line with the priorities conferred on Community environmental policy by the ►M1 ——————— ◄Programme of Policy and Action in relation to the Environment and Sustainable Development,

▼M1

— transport infrastructure projects of common interest, supported by Member States, which are identified within the framework of the guidelines adopted by Decision No 1692/96/EC of the European Parliament and the Council of 23 July 1996 on the development of the trans-European transport network ([2]).

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2. Assistance may also be granted for:

— preliminary studies related to eligible projects, including those necessary for their implementation,

— ►M1 technical support measures, including publicity and information campaigns, particularly: ◄

(a) horizontal measures such as comparative studies to assess the impact of Community assistance;

(b) measures and studies which contribute to the appraisal, monitoring ►M1 , supervision ◄ or evaluation, of projects, and to strengthening and ensuring the coordination and consistency of projects, particularly their consistency with other Community policies;

(c) measures and studies helping to make the necessary adjustments to the implementation of projects.

([1]) OJ L 209, 2.8.1997, p. 2.
([2]) OJ L 228, 9.9.1996, p. 1.

▼B

Article 4

Financial resources

For the period 1993 to 1999, the total resources available for commitment for the Fund under this Regulation and Regulation (EEC) No 792/93, as set out in the Interinstitutional Agreement of 29 October 1993, shall be ECU 15 150 million at 1992 prices.

The financial perspectives established with regard to the commitment appropriations available for each year of the period under the Regulations referred to in the first paragraph are as follows:

— **1993:** ECU 1 500 million,

— **1994:** ECU 1 750 million,

— **1995:** ECU 2 000 million,

— **1996:** ECU 2 250 million,

— **1997:** ECU 2 500 million,

— **1998:** ECU 2 550 million,

— **1999:** ECU 2 600 million.

▼A1

From 1 January 2000, total resources available for commitments for Greece, Spain, Portugal and Ireland in the period 2000 to 2006 should be EUR 18 billion at 1999 prices.

▼M1

Commitment appropriations for each year of that period should be:

— **2000:** EUR 2,615 billion,

— **2001:** EUR 2,615 billion,

— **2002:** EUR 2,615 billion,

— **2003:** EUR 2,615 billion,

— **2004:** EUR 2,515 billion,

— **2005:** EUR 2,515 billion,

— **2006:** EUR 2,510 billion.

▼A1

Total resources available for commitments for the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia in the period from the date of accession to 2006 should be EUR 7,5905 billion at 1999 prices.

Commitment appropriations for each year of that period should be:

— 2004: EUR 2,6168 billion

— 2005: EUR 2,1517 billion

— 2006: EUR 2,8220 billion

▼M1

In the event of a Member State becoming ineligible, resources for the Cohesion Fund will be reduced accordingly.

Article 5

Indicative allocation

An indicative allocation of the total resources of the Fund shall be made on the basis of precise and objective criteria, principally population, per capita GNP taking account of the improvement in national prosperity attained over the previous period, and surface area; it shall also take account of other socioeconomic factors such as deficiencies in transport infrastructure.

The indicative allocation of the total resources resulting from the application of those criteria is set out in Annex I.

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Total annual receipts from the Cohesion Fund under this Regulation, in combination with assistance provided under the Structural Funds, should not exceed 4 % of national GDP.

Article 6

Conditional assistance

1. No new projects or, in the event of important projects, no new project stages shall be financed by the Fund in a Member State in the event of the Council, acting by a qualified majority on a recommendation from the Commission, finding that the Member State in the application of this Regulation has not implemented the programme referred to in Article 2(4) in such a way as to avoid an excessive government deficit.

The suspension of financing shall cease when the Council, acting under the same conditions, finds that the Member State concerned has taken measures to implement that programme in such a way as to avoid an excessive government deficit.

2. Exceptionally, in the case of projects directly effecting more than one Member State, the Council acting by a qualified majority on a recommendation from the Commission may decide to defer suspension of financing.

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Article 7

Rate of assistance

1. The rate of Community assistance granted by the Fund shall be 80 % to 85 % of public or equivalent expenditure, including expenditure by bodies whose activities are undertaken within an administrative or legal framework by virtue of which they may be deemed to be equivalent to public bodies.

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However, from 1 January 2000 this rate may be reduced to take account, in cooperation with the Member State concerned, of the estimated revenue generated by projects and of any application of the polluter-pays principle.

To achieve this, the Commission shall support beneficiary Member States' efforts to maximise the leverage of Fund resources by encouraging greater use of private sources of funding.

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2. Where assistance is granted for a project which generates revenue, the amount of ►M1 ——— ◄the assistance from the Fund ►M1 ——— ◄shall be established by the Commission, taking account of revenue where it constitutes substantial net revenue for the promoters and in close collaboration with the beneficiary Member State.

‘Project which generates revenue’ means:

— infrastructures the use of which involves fees borne directly by users,

— productive investments in the environment sector.

3. The beneficiary Member States may submit proposals for preparatory studies and technical support measures.

4. Preliminary studies and technical support measures, including those undertaken at the Commission's initiative, may be financed exceptionally at 100 % of the total cost.

Total expenditure carried out pursuant to this paragraph may not exceed 0,5 % of the total allocation to the Fund.

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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, trans-European networks, competition and the award of public contracts.

2. The Commission shall ensure coordination and consistency between projects undertaken pursuant to this Regulation and measures undertaken with contributions from the Community budget, the European Investment Bank (EIB) and the other financial instruments of the Community.

Article 9

Cumulation and overlapping

1. No item of expenditure may benefit both from the Fund and from the European Agricultural Guidance and Guarantee Fund, the European Social Fund, the European Regional Development Fund or the financial instrument of fisheries guidance.

2. The combined assistance of the Fund and other Community aid for a project shall not exceed 90 % of the total expenditure relating to that project.

Article 10

Approval of projects

1. The projects to be financed by the Fund shall be adopted by the Commission in agreement with the beneficiary Member State.

2. A suitable balance shall be struck between projects in the field of the environment and projects relating to transport infrastructure. This balance shall take account of Article 130s (5) of the Treaty.

3. Applications for assistance for projects under Article 3 (1) 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 field of environmental protection or in the improvement of trans-European transport infrastructure networks. In any event, the total cost of projects or groups of projects may in principle not be less than ►M1 EUR ◄ 10 million. Projects or groups of projects costing less than this may be approved in duly justified cases.

4. Applications shall contain the following information: the body responsible for implementation, the nature of the investment and a description thereof, its costs and location, including, where applicable, an indication of projects of common interest situated on the same transport axis, the timetable for implementation of the work, a cost-benefit analysis, including the direct and indirect effects on employment, information enabling ►M1 ——————— ◄impact on the environment to be assessed, information on public contracts, the financing plan including, where possible, information on the economic viability of the project, and the total financing the Member State is seeking from the Fund and any other Community source.

They shall also contain all relevant information providing the required proof that the projects comply with the Regulation and with the criteria set out in paragraph 5, and particularly that there are medium-term economic and social benefits commensurate with the resources deployed.

5. The following criteria shall be applied to ensure the high quality of 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 a cost-benefit analysis,

— the priorities established by the beneficiary Member States,

▼B

— the contribution which projects can make to the implementation of Community policies on the environment ►M1 including the polluter-pays principle ◄ and trans-European networks,

— the compatibility of projects with Community policies and their consistency with other Community structural measures,

— the establishment of an appropriate balance between the fields of the environment and transport infrastructure.

6. Subject to Article 6 and to the availability of commitment appropriations, the Commission shall decide on the grant of assistance from the Fund provided that the requirements of this Article are fulfilled, as a general rule within three months of receipt of the application. Commission decisions approving projects, stages of projects or groups of related projects shall determine the amount of financial support and lay down a financing plan together with all the provisions and conditions necessary for the implementation of the projects.

7. The key details of the Commission's decisions shall be published in the *Official Journal of the European Communities*.

Article 11

Financial provisions

1. The commitment appropriations entered in the budget shall be granted on the basis of the decisions approving the measures concerned, in accordance with Article 10.

2. Assistance relating to the projects referred to in Article 3 (1) shall as a general rule be committed by annual instalments. However, in appropriate cases, the Commission may commit the total amount of the assistance granted when it adopts the decision granting the assistance.

3. Expenditure within the meaning of Article 7 (1) shall not be deemed eligible for assistance from the Fund if incurred by the beneficiary Member State before the date on which the Commission receives the relevant application.

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For the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, expenditure within the meaning of Article 7(1) shall be deemed eligible for assistance from the Fund only if incurred after 1 January 2004 and provided that all requirements of this Regulation have been fulfilled.

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4. Payments made after an initial advance must be closely and transparently linked to progress made in the implementation of the projects.

5. Payments shall be made in ►M1 euro ◄ and shall be subject to the specific provisions set out in Annex II.

Article 12

Financial checks

▼M1

1. Without prejudice to the Commission's responsibility for implementing the Community budget, Member States shall take responsibility in the first instance for the financial control of projects. To that end, the measures they take shall include:

(a) verifying that management and control arrangements have been set up and are being implemented in such a way as to ensure that Community funds are being used efficiently and correctly;

(b) providing the Commission with a description of these arrangments;

(c) ensuring that projects are managed in accordance with all the applicable Community rules and that the funds placed at their disposal are used in accordance with the principles of sound financial management;

▼M1

(d) certifying that the declarations of expenditure presented to the Commission are accurate and guaranteeing that they result from accounting systems based on verifiable supporting documents;

(e) preventing and detecting irregularities, notifying these to the Commission, in accordance with the rules, and keeping the Commission informed of the progress of administrative and legal proceedings. In that context, the Member States and the Commission shall take the necessary steps to ensure that the information exchanged remains confidential;

(f) presenting to the Commission, when each project, step of project or group of projects is wound up, a declaration drawn up by a person or department having a function independent of the designated authority. This declaration shall summarise the conclusions of the checks carried out during previous years and shall assess the validity of the application for payment of the final balance and the legality and regularity of the expenditure covered by the final certificate. The Member States may attach their own opinion to this declaration if they consider it necessary;

(g) cooperating with the Commission to ensure that Community funds are used in accordance with the principles of sound financial management;

(h) recovering any amounts lost as a result of an irregularity detected and, where appropriate, charging interest on late payments.

2. The Commission in its responsibility for the implementation of the Community budget shall ensure that Member States have smoothly functioning management and control systems so that Community funds are efficiently and correctly used.

To that end, without prejudice to checks carried out by the Member States in accordance with national laws, regulations and administrative provisions, Commission officials or servants may, in accordance with arrangements agreed with the Member State in the framework of cooperation described in Article G(1) of Annex II, carry out on-the-spot checks, including sample checks, on the projects financed by the Fund and on management and control systems with a minimum of one working day's notice. The Commission shall give notice to the Member State concerned with a view to obtaining all the assistance necessary. Officials or servants of the Member State concerned may take part in such checks.

The Commission may require the Member State concerned to carry out an on-the-spot check to verify the correctness of one or more transactions. Commission officials or servants may take part in such checks.

▼M2

Before carrying out an on-the-spot check, the Commission shall give notice to the Member State concerned with a view to obtaining all the assistance necessary. On-the-spot checks by the Commission without notice shall be subject to agreements reached in accordance with the Financial Regulation. Officials or agents of the Member State concerned may take part in checks.

The Commission may require the Member State concerned to carry out an on-the-spot check to verify the correctness of payment applications. Officials or agents of the Commission may take part in such checks, and must do so if the Member State concerned so requests.

The Commission shall ensure that any checks that it carries out are performed in a coordinated manner so as to avoid repeating checks in respect of the same subject matter during the same period. The Member State concerned and the Commission shall immediately exchange any relevant information concerning the results of the checks carried out.

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3. Member States shall make available to the Commission any appropriate national control reports on the projects concerned.

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►M1 4. ◄ As soon as this Regulation enters into force, the Commission shall adopt detailed rules for the application of this Article and shall inform the European Parliament thereof.

Article 13

Appraisal, monitoring and evaluation

1. The Member States and the Commission shall ensure that the implementation of projects under this Regulation is effectively monitored and evaluated. Projects must be adjusted on the basis of the results of monitoring and evaluation.

2. In order to ensure the effectiveness of Community assistance, the Commission and the beneficiary Member States shall, in cooperation with the EIB where appropriate, carry out a systematic appraisal and evaluation of projects.

3. On receipt of a request for assistance and before approving a project, the Commission shall carry out a thorough appraisal in order to assess the project's consistency with the criteria laid down in Article 10 (5). The Commission shall invite the EIB to contribute to the assessment of projects as necessary.

4. During the implementation of projects and after their completion, the Commission and the beneficiary Member States shall evaluate the manner in which they have been carried out and the potential and actual impact of their implementation in order to assess whether the original objectives can be, or have been, achieved. This evaluation shall, *inter alia,* address the environmental impact of the projects, in compliance with the existing Community rules.

5. In vetting individual applications for assistance, the Commission shall take into account the findings of appraisals and evaluations made in accordance with this Article.

6. The detailed rules for monitoring and evaluation, as provided for in paragraph 4, shall be laid down in the decisions approving projects.

Article 14

Information and publicity

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

The European Parliament shall deliver an opinion on the report as soon as possible. The Commission shall report on how it has applied the observations contained in the European Parliament's opinion.

The Commission shall ensure that Member States are informed of the activities of the Fund.

2. The Member States responsible for implementing a measure receiving a financial contribution from the Fund shall ensure that adequate publicity is given to the measure with a view to:

— making the general public aware of the role played by the Community in relation to the measure,

— making potential beneficiaries and professional organizations aware of the possibilities afforded by the measure.

Member States shall ensure, in particular, that directly visible display panels are erected showing the percentage of the total cost of a given project which is being financed by the Community, together with the Community logo, and that representatives of the Community institutions are duly involved in the most important public activities connected with the Fund.

They shall inform the Commission of the initiatives taken under this paragraph.

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3. As soon as this Regulation enters into force, the Commission shall adopt detailed rules on information and publicity, shall inform the European Parliament thereof and shall publish them in the *Official Journal of the European Communities*.

Article 15

Implementation

The provisions for the implementation of this Regulation are set out in Annex II hereto.

Article 16

Final and transitional provisions

1. The Council, acting on a proposal from the Commission in accordance with the procedure laid down in Article 130d of the Treaty, shall re-examine this Regulation ►M1 by 31 December 2006 at the latest ◄.

2. As soon as it enters into force, this Regulation shall replace Regulation (EEC) No 792/93.

3. This Regulation shall not affect the continuation of measures approved by the Commission on the basis of the provisions of Regulation (EEC) No 792/93 applicable before the entry into force of this Regulation, which shall consequently apply thereafter to those measures.

4. Applications presented within the framework of Regulation (EEC) No 792/93 before the entry into force of this Regulation shall remain valid provided such applications are supplemented, where necessary, so as to comply with the requirements of this Regulation within not more than two months of the entry into force of this Regulation.

▼A1

Article 16a

Specific provisions following the accession to the European Union of a new Member State which has benefited from pre-accession aid under the Instrument for Structural Policies for Pre-Accession (ISPA)

1. Measures which, on the date of accession of the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia, have been the subject of Commission decisions on assistance under Regulation (EC) No 1267/99 establishing an instrument for Structural Policies for Pre-accession ([1]) and the implementation of which has not been completed by that date ►C1 shall be considered to have been approved by the Commission under this Regulation. ◄ Unless stated otherwise in paragraphs 2 to 5, the provisions governing the implementation of measures approved pursuant to this Regulation shall apply to these measures.

2. Any procurement procedure relating to a measure referred to in paragraph 1 which, on the date of accession, has already been the subject of an invitation to tender published in the Official Journal of the European Union shall be implemented in accordance with the rules laid down in that invitation to tender. The provisions contained in Article 165 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ([2]) shall not apply.

Any procurement procedure relating to a measure referred to in paragraph 1 which has not yet been the subject of an invitation to tender published in the Official Journal of the European Union shall follow the rules and provisions referred to in Article 8.

([1]) OJ L 161, 26.6.1999, p. 73 as amended.
([2]) OJ L 248, 16.9.2002, p. 1.

▼A1

3. The Commission may decide, in duly justified cases, on request from the Member State concerned and only in respect of the annual instalments still to be committed under the general budget, to modify the Community assistance to be granted, taking account of the criteria laid down in Article 7. The modification of the Community assistance shall not affect the part of the measure already covered by a loan signed with the EIB, the European Bank for Reconstruction and Development or another international financial institution.

Payments made by the Commission under a measure referred to in paragraph 1 shall be posted to the earliest open commitment made in first instance pursuant to Regulation (EC) No 1267/1999, and then pursuant to this Regulation.

4. For the measures referred to in paragraph 1, the rules governing the eligibility of expenditure pursuant to Regulation (EC) No 1267/1999 shall remain applicable, except in duly justified cases to be decided on by the Commission at the request of the Member State concerned.

5. The Commission may decide, in exceptional and duly justified cases, to authorise specific exemptions from the rules applicable pursuant to this Regulation for the measures referred to in paragraph 1.

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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.

▼A1

ANNEX I

Indicative allocation among the beneficiary Member States of the total resources of the Cohesion Fund, as referred to in the third paragraph of Article 4:

— Greece: 16 % to 18 % of the total

— Spain: 61 % to 63,5 % of the total

— Ireland: 2 % to 6 % of the total

— Portugal: 16 % to 18 % of the total.

Indicative allocation among the beneficiary Member States of the total resources of the Cohesion Fund, as referred to in the fifth paragraph of Article 4:

— Czech Republic: 9,76 % to 12,28 % of the total

— Estonia: 2,88 % to 4,39 % of the total

— Cyprus: 0,43 % to 0,84 % of the total

— Latvia: 5,07 % to 7,08 % of the total

— Lithuania: 6,15 % to 8,17 % of the total

— Hungary: 11,58 % to 14,61 % of the total

— Malta: 0,16 % to 0,36 % of the total

— Poland: 45,65 % to 52,72 % of the total

— Slovenia: 1,72 % to 2,73 % of the total

— Slovakia: 5,71 % to 7,72 % of the total.

▼B

ANNEX II

IMPLEMENTING PROVISIONS

▼M2

Article A

Designation of projects, of stages or groups of projects

1. The Commission may, in agreement with the beneficiary Member State, group projects together and designate technically and financially separate stages of a project for the purpose of granting assistance.

2. For the purpose of this Regulation, the following definitions shall apply:

(a) a 'project' shall be an economically indivisible series of works fulfilling a precise technical function and with clearly identified aims from which to judge whether the project complies with the criterion laid down in the first indent of Article 10(5);

(b) a 'technically and financially independent stage' shall be a stage which can be identified as operational in its own right.

3. A stage may also cover preliminary, feasibility and technical studies needed for carrying out a project.

4. To comply with the criterion in the third indent of Article 1(3), projects meeting the following three conditions may be grouped:

(a) they must be located in the same area or situated along the same transport corridor;

(b) they must be carried out under an overall plan for the area or corridor with clearly identified goals, as provided for in Article 1(3);

(c) they must be supervised by a body responsible for coordinating and monitoring the group of projects in cases where the projects are carried out by different competent authorities.

▼B

Article B

Ex-ante evaluation

1. The Commission shall examine applications for assistance to verify in particular that the administrative and financial mechanisms are adequate for the effective implementation of the project.

2. Pursuant to Article 13 (3), the Commission shall appraise projects to determine their anticipated impact in terms of the objectives of the Fund, quantified using appropriate indicators. ►M2 The beneficiary Member States shall provide all necessary information, as set out in Article 10(4), including the results of feasibility studies and *ex ante* appraisals. In order to make this appraisal as effective as possible, Member States shall also provide the results of the environmental impact assessment in conformity with the Community legislation, and their consistency with a general environmental or transport strategy at administrative unit or sector level, and, where appropriate:

— an indication of the possible alternatives that were not chosen, and

— the links between projects of common interest located along the same transport corridor. ◄

Article C

Commitments

1. Budgetary commitments shall be made on the basis of the Commission decisions approving the measures concerned (project, stage of project, group of projects, study or technical support measure). Commitments shall be valid for a period determined by the nature of the measure and the specific conditions for its implementation.

2. Budgetary commitments in respect of assistance granted to projects, stages of projects or groups of projects shall be carried out in one of two ways:

(a) commitments in respect of the projects referred to in Article 3 (1) to be carried out over a period of two or more years shall, as a general rule and subject to the provisions of subparagraph (b), be effected in annual instalments.

The commitments in respect of the first annual instalment shall be made when the decision granting Community assistance is adopted by the Commission. ►M2 Commitments in respect of subsequent annual instalments shall be based on the initial or revised financing plan for the project and shall

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normally be made at the beginning of each budget year and as a general rule by 30 April each year, based on the expenditure forecasts for the project for that current year; ◄

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(b) for projects to be carried out over a period of less than two years or where Community assistance is less than EUR 50 million, an initial commitment of 80 % of assistance may be made when the Commission adopts the decision to grant Community assistance.

The balance shall be committed according to the implementation of the project.

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3. In the case of the studies and technical support measures referred to in Article 3 (2), the assistance shall be committed when the Commission approves the measure concerned.

4. The arrangements for commitments shall be specified in the Commission decisions approving the measures concerned.

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5. Except in duly justified cases, the assistance granted to a project, group of projects or project stage on which work has not begun within two years from the date of its expected start as indicated in the decision granting assistance or the date of its approval if later, shall be cancelled.

In any case the Commission shall inform in good time the Member States and the designated authority whenever there is a risk of cancellation.

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Article D

Payments

1. Payments of financial assistance shall be made in accordance with the corresponding budget commitments, to the authority or body designated for the purpose in the application submitted by the beneficiary Member State concerned. ►M2 Payments may take the form of payments on account, interim payments or payments of the final balance. Interim payments and payments of the balance shall relate to expenditure actually paid out, which must be supported by receipted invoices or accounting documents of equivalent probative value. ◄

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2. Payments shall be made as follows:

(a) a single payment on account of 20 % of the Fund assistance as initially decided shall be paid when the decision granting Community assistance is adopted and, except where duly justified, after signature of the contracts relating to public procurement.

All or part of a payment on account shall be repaid by the designated authority or body referred to in paragraph 1 if no payment application is sent to the Commission within 12 months from the date on which the payment on account is paid;

(b) interim payments may be paid provided that the project is progressing satisfactorily towards completion and shall be made to refund the expenditure certified and actually paid, subject to the following conditions:

— the Member State has submitted an application describing the progress of the project in terms of its physical and financial indicators and its conformity with the decision to grant asssistance, including where appropriate any specific conditions attached to the assistance,

— the observations and recommendations of the national and/or Community inspection authorities have been acted on, in particular as regards the correction of any observed or presumed irregularities,

— the main technical, financial and legal problems that have arisen and the measures taken to correct them have been indicated,

— any departures from the original financing plan have been analysed,

— the steps taken to publicise the project have been described.

The Member States shall be informed without delay by the Commission if one of the abovementioned conditions is not fulfilled;

(c) the total amount of the payments made under (a) and (b) may not exceed 80 % of the total assistance granted. This percentage may be increased to 90 % for important projects committed in annual instalments and in justified cases;

(d) the final balance of Community assistance calculated on the basis of expenditure certified and actually paid shall be paid provided that:

▼M2

— the project, stage of project, or group of projects has been carried out according to its objectives,

— the designated authority or body referred to in paragraph 1 submits an application for payment to the Commission within six months of the deadline for completion of the work and for expenditure laid down in the decision granting assistance to the project, stage of project or group of projects,

— the final report referred to in Article F(4) is submitted to the Commission,

— the Member State certifies to the Commission that the information given in the application for payment and in the report is correct,

— the Member State has sent the Commission the declaration referred to in Article 12(1),

— all the information and publicity measures drawn up by the Commission under Article 14(3) have been implemented.

3. If the final report referred to in paragraph 2 is not sent to the Commission within 18 months of the final date for completion of the works and payments as given in the decision granting assistance, that part of the assistance representing the remaining balance for the project shall be cancelled.

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4. Member States shall designate the authorities empowered to issue the certificates referred to ►M2 in paragraph 2(d). ◄

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4a. Member States shall ensure that applications for payment are submitted to the Commission as a general rule three times a year, by 1 March, 1 July and 1 November at the latest.

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5. Payment shall be made to the authority or body designated by the Member State, as a general rule not later than two months after receipt of an admissible application for payment ►M2 provided budget funds are available ◄.

6. In the case of the studies and other measures referred to in Article 3 (2), the Commission shall determine the appropriate payment procedures.

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7. The Commission shall lay down common rules on the eligibility of expenditure.

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Article E

Use of the ►M2 euro ◄

1. Applications for assistance, together with the relevant financing plan, shall be submitted to the Commission in ►M2 euro ◄►M2 ——————— ◄.

2. The amounts of assistance and the financing plans approved by the Commission shall be expressed in ►M2 euro ◄.

3. Declarations of expenditure in support of the corresponding payment applications shall be expressed in ►M2 euro ◄►M2 ——————— ◄.

4. Payments of financial assistance by the Commission shall be made in ►M2 euro ◄ to the authority designated by the Member State to receive such payments.

▼M2

5. For Member States not participating in the euro, the conversion rate shall be the Commission's financial accounting rate.

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Article F

Monitoring

1. The Commission and the Member State shall ensure effective monitoring of implementation of Community projects part-financed by the Fund. Monitoring shall be carried out by way of jointly agreed reporting procedures, sample checks and the establishment of *ad hoc* committees.

2. Monitoring shall be carried out by reference to physical and financial indicators. The indicators shall relate to the specific character of the project and its objectives. They shall be arranged in such a way as to show:

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— the stage reached in the receipt in relation to the plan and objectives originally laid down;

— the progress achieved on the management side and any related problems.

3. Monitoring committees shall be set up by arrangement between the Member State concerned and the Commission.

The authorities or bodies designated by the Member State, the Commission and, where appropriate, the EIB shall be represented on the committees.

Where regional and local authorities are competent for the execution of a project and, where appropriate, where they are directly concerned by a project they shall also be represented on such committees.

4. For each project, the authority or body designated for the purpose by the Member State shall submit progress reports to the Commission within three months of the end of each full year of implementation. A final report shall be submitted to the Commission within six months of completion of the project or stage of project.

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This report shall include:

(a) a description of the work carried out, accompanied by the physical indicators, the expenditure by category of work and any measures taken under specific clauses in the decision granting assistance;

(b) information on all publicity measures;

(c) certification that the work conforms to the decision granting assistance;

(d) an initial assessment as to whether the anticipated results as indicated in Article 13(4) are likely to be achieved, including in particular:

— the actual starting date of the project,

— the way in which it will be managed once finished,

— confirmation, if appropriate, of the financial forecasts, especially as regards the operating costs and expected revenue,

— confirmation of the socioeconomic forecasts, in particular the expected costs and benefits,

— an indication of the environmental protection measures taken, and their cost, including compliance with the polluter-pays principle.

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5. On the basis of the results of monitoring, and taking account of the comments of the monitoring committee, the Commission shall adjust the amounts and conditions for granting assistance as initially approved, as well as the financing plan envisaged, if necessary on a proposal by the Member States.

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The decision granting assistance shall include appropriate arrangements for making the modifications, differentiating between them on the basis of their nature and importance.

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6. For the greater effectiveness of the Fund, the Commission shall ensure that when the Fund is administered particular attention is paid to transparency of management.

7. The monitoring arrangements shall be laid down in the Commission decisions approving the projects.

Article G

Checks

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1. The Commission and the Member State shall on the basis of bilateral administrative arrangements cooperate to coordinate plans, methods and implementation of checks so as to maximise the usefulness of those carried out. They shall immediately exchange the results of the checks carried out. At least once a year the following shall be examined and evaluated:

(a) the results of the checks carried out by the Member State and the Commission;

(b) any comments made by other national or Community control bodies or institutions;

▼M2

(c) the financial impact of the irregularities noted, the steps already taken or still required to correct them and, where necessary, adjustments to the management and control systems.

Following this examination and evaluation and without prejudice to the measures to be taken immediately by the Member State under Article H, the Commission may make observations, particularly regarding the financial impact of any irregularities detected. These observations shall be addressed to the Member State and the designated authority of the project concerned. The observations shall be accompanied, where necessary, by requests for corrective measures to remedy the management shortcomings found and correct those irregularities detected which have not already been corrected. The Member State shall have the opportunity to comment on these observations.

Where following or in the absence of comments of the Member State the Commission adopts conclusions, the Member State shall take the necessary steps within the deadline set to comply with the Commission's request and inform the Commission of its actions.

2. Without prejudice to this Article, the Commission may suspend all or part of an interim payment if it finds that the expenditure concerned is linked to a serious irregularity. The Commission shall inform the Member State concerned of the action taken and the reasons for it.

3. For a period of three years, unless otherwise decided in the bilateral administrative arrangements, following the payment by the Commission of the final balance in respect of a project, the responsible body and authorities shall keep available for the Commission all the supporting documents (either the originals or versions certified to be in conformity with the originals on commonly accepted data carriers) regarding expenditure and checks on the project concerned.

This period shall be interrupted either in the case of legal proceedings or at the duly substantiated request of the Commission.

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Article H

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Financial corrections

1. If, after completing the necessary verifications, the Commission concludes that:

(a) the implementation of a project does not justify either part or the whole of the assistance granted to it, including a failure to comply with one of the conditions in the decision to grant assistance and in particular any significant change affecting the nature or conditions of implementation of the project for which the Commission's approval has not been sought, or

(b) there is an irregularity with regard to assistance from the Fund and that the Member State concerned has not taken the necessary corrective measures,

the Commission shall suspend the assistance in respect of the project concerned and stating its reason, request that the Member State submits its comments within a specified period of time.

If the Member State objects to the observations made by the Commission, the Member State shall be invited to a hearing by the Commission, in which both sides make efforts to reach an agreement about the observations and the conclusions to be drawn from them.

2. At the end of the period set by the Commission, the Commission shall, subject to the respect of due procedure, if no agreement has been reached within three months, taking into account any comments made by the Member State, decide to:

(a) reduce the payment on account referred to in Article D(2), or

(b) make the financial corrections required. This shall mean cancelling all or part of the assistance granted to the project.

These decisions shall respect the principle of proportionality. The Commission shall, when deciding the amount of a correction, take account of the type of irregularity or change and the extent of the potential financial impact of any shortcomings in the management or control systems. Any reduction or cancellation shall give rise to recovery of the sums paid.

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3. ►M2 Any sum received unduly and to be recovered shall be paid to the Commission. Interest on account of late repayment shall be charged in accordance with the rules to be adopted by the Commission. ◄

▼M2

4. The Commission shall lay down the detailed rules for implementing paragraphs 1 to 3 and shall inform the Member States and the European Parliament thereof.

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Article I

Public contracts

In the context of the application of Community rules on the award of public contracts, notices sent for publication in the *Official Journal of the European Communities* shall specify those projects for which Community assistance has been applied for or granted.

Article J

Information

The information to be given in the annual report provided for in Article 14 shall be as set out in the Annex to this Annex.

The Commission shall be responsible for organizing an information meeting with the Member States every six months. ►M2 At this meeting the Commission shall inform the Member States in particular of the relevant subjects for the annual report and its actions and decisions taken. The Commission shall send the Member States the appropriate documents in good time before the meeting is held. ◄

Article K

Review

If necessary, in the light of experience gained, the Council may, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, amend the provisions of this Annex.

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Annex to ANNEX II

The annual report shall provide information on the following:

1. financial assistance committed and paid by the Fund, with an annual breakdown by Member State and by type of project (environment or transport);

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2. the economic and social impact of the Fund in the Member States and on economic and social cohesion in the Union, including the impact on employment;

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3. summary of information on the programmes implemented in the beneficiary Member States to fulfil the conditions of economic convergence referred to in Article 104c of the Treaty and on the application of Article 6 of the Regulation;
4. information on the conclusions drawn by the Commission, with regard to the suspension of financing, from decisions taken by the Commission, such as those mentioned in Article 6 ►M2 ——————— ◄;
5. the contribution which the Fund has made to the efforts of the beneficiary Member States to implement Community environment policy and to strengthen trans-European transport infrastructure networks; the balance between projects in the field of the environment and projects relating to transport infrastructure;
6. assessment of the compatibility of operations of the Fund with Community policies, including those concerning environmental protection, transport, competition and the award of public contracts;
7. the measures taken to ensure coordination and consistency between projects financed by the Fund and measures financed with contributions from the Community budget, the European Investment Bank and the other financial instruments of the Community;
8. the investment efforts of the beneficiary Member States in the fields of environmental protection and transport infrastructure;
9. the preparatory studies and technical support measures financed, including a specification of the types of such studies and measures;
10. the results of appraisal, monitoring and evaluation of projects, including information on any adjustment of projects to accord with the results of appraisal, monitoring and evaluation;
11. the contribution of the EIB to the evaluation of projects;
12. summary of information on the results of checks carried out, irregularities found and administrative and judicial proceedings in progress.