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

COMMISSION REGULATION (EU) No 80/2010

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA)[(1)] (the IPA Regulation) and in particular Article 3(3) thereof,

Whereas:

(1) 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)[(2)] provides detailed rules for the implementation of the IPA Regulation.

(2) In the light of the experience gained in the first years of implementation of the IPA Regulation, it has appeared necessary to proceed with a limited revision of Regulation (EC) No 718/2007 with a view to removing some inconsistencies and erroneous cross–references, enhancing clarity in the text of some articles and amending some of the specific provisions with a view to enhancing coherence, efficiency and effectiveness in the implementation of the instrument.

(3) It is necessary to further clarify when common provisions are subject to specific provisions under different IPA components. The provisions concerning the evaluation of assistance should be brought into line with the requirements of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities[(3)] and Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities[(4)] while ensuring a better consistency between common provisions applicable to all IPA components and specific provisions applicable to each IPA component.

(4) The specific provisions concerning the Transition assistance and institution building component should better reflect the provisions of the IPA Regulation, namely as regards the areas of assistance to countries listed in Annex I to the IPA Regulation and the possibility to programme assistance through multi-annual as well as annual programmes. Furthermore, in view to ensure a coherent approach among IPA components, the ceiling of the Community contribution in the case of investment

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 80/2010. (See end of Document for details)*

operations should be raised to 85 % of the eligible expenditure so as to align with the revised aid intensity for investments applicable under the Regional development component.

(5) In the specific provisions of the Cross-border cooperation component, namely for cross-border programmes between beneficiary countries and Member States, it appears necessary to substantially increase the pre-financing amount paid to the body designated by the participating countries to receive the payments made by the Commission.

(6) Some of the specific provisions of the Regional development component, the Human resources development component and the Rural development component need to be further aligned with the rules governing the Structural and Cohesion funds and the Rural development funds in EU Member States, of which they are the precursor.

(7) The provisions laid down in this Regulation are in accordance with the opinion of the IPA Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 718/2007 is amended as follows:

1. in Article 8(4), point (c) is replaced by the following:

   (c) provisions relating to the establishment and regular updating, by the beneficiary country, of a road map with indicative benchmarks and time limits to achieve decentralisation without *ex ante* controls by the Commission as referred to in Articles 14 and 18; these provisions are only required for those components or programmes where the Commission Decision of the conferral of management powers as referred to in Article 14 provides for *ex ante* controls to be performed by the Commission.;

2. Article 31 is replaced by the following:

Article 31

Specific bodies

Within the overall framework defined by the structures and authorities as set out in Article 21, the functions described in Article 28 may be grouped and assigned to specific bodies within or outside the operating structures designated. This grouping and assignation shall respect the appropriate segregation of duties imposed by Regulation (EC, Euratom) No 1605/2002 and ensure that the final responsibility for the functions described in the said Article shall remain with designated operating structure. Such a structure shall be formalised in written agreements and shall be subject to accreditation by the national authorising officer and the conferral of management by the Commission.;

3. Article 34 is amended as follows:

   (a) in paragraph 2, the second subparagraph is replaced by the following:

Launch of calls for proposals or calls for tenders may also be eligible prior to the initial conferral of management and after 1 January 2007, subject to this initial conferral of management being in place within the time limits defined in a reserve clause to be inserted in the operations or calls concerned, and, except for the rural development component, subject to the prior approval of the documents concerned by the Commission. The calls for proposal or calls for tender concerned may be cancelled or modified depending on the decision on conferral of management.;

(b) in paragraph 3, the introductory phrase is replaced by the following:

3. Unless otherwise provided for under the specific provisions laid down under each IPA component, the following expenditure shall not be eligible under the IPA Regulation:;

4. in Article 35(3), the second indent is replaced by the following:

— the regional development component.;

5. Article 36 is replaced by the following:

Article 36

Property of interests

Any interest earned on any of the component-specific euro accounts opened by the national fund in the event of decentralised management remains the property of the beneficiary country. Interest generated by the financing by the Community of a programme shall be posted exclusively to that programme, being regarded as a resource for the beneficiary country in the form of a national public contribution, and shall be declared to the Commission, at the time of the final closure of the programme.;

6. in Article 37, paragraph 2 is replaced by the following:

2. All operations receiving assistance under the various IPA components shall require national and Community contributions, unless otherwise provided for under the specific provisions laid down under each IPA component.;

7. in Article 40, paragraph 7 is replaced by the following:

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

8. in Article 47(1), the third indent is replaced by the following:

— de-commitment of the final balance of the budgetary commitment by the Commission.;

9. Article 50 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

(b) paragraph 2 is replaced by the following:

2. In case of an irregularity, the national authorising officer shall recover the Community contribution paid to the final beneficiary in accordance with national recovery procedures.;

10. Article 57 is amended as follows:

(a) paragraph 2 is replaced by the following:

2. Multiannual indicative planning documents, as described in Article 5, shall be subject to *ex-ante* evaluation, carried out by the Commission.;

(b) paragraph 4 is replaced by the following:

4. Programmes shall be subject to *ex-ante* evaluations, as well as interim and/or *ex-post* evaluations, as appropriate, in accordance with the specific provisions laid down under each IPA component in Part II of this Regulation and in accordance with Article 21 of Regulation (EC, Euratom) No 2342/2002.;

(c) paragraphs 5 and 6 are deleted;

(d) paragraph 7 is replaced by the following:

7. The results of evaluations shall be taken into account in the programming and implementation cycle.;

11. in Article 58, paragraph 1 is replaced by the following:

1. In the case of decentralised management, the beneficiary country shall, within six months after the entry into force of the first financing agreement, set up an IPA monitoring committee, in agreement with the national IPA coordinator and the Commission, to ensure coherence and coordination in the implementation of the IPA components.;

12. in Article 59, paragraph 1 is replaced by the following:

1. The IPA monitoring committee shall be assisted by sectoral monitoring committees set up under the IPA components within six months after the entry into force of the first financing agreement, in accordance with the specific provisions laid down in Part II. The sectoral monitoring committees shall be attached to programmes or components. They may include representatives of civil society, where appropriate.;

13. Article 60 is replaced by the following:

Article 60

Monitoring in the case of centralised and joint management

In the case of centralised and joint management, the Commission may undertake any actions it deems necessary to monitor the programmes concerned. In the case of joint management, these actions may be carried out jointly with the international organisation(s) concerned. The national IPA coordinator may be associated with the monitoring actions.;

14. in Article 62, paragraph 2 is replaced by the following:

2. In the case of decentralised management, the operating structures shall be responsible for organising the publication of the list of the final beneficiaries, the names of the operations and the amount of Community funding allocated to operations. They shall ensure that the final beneficiary is informed that the acceptance of funding is also an acceptance of their inclusion in the list of final beneficiaries published. Any personal data included in this list shall be processed in accordance with the requirements of Regulation (EC) No 45/2001 of the European Parliament and the Council[(5)].;

15. in Article 64, the following phrase is added at the end of paragraph 2:

On a case-by-case basis, the Commission may decide to grant assistance under this component for the above areas to beneficiary countries listed in Annex I to the IPA Regulation that have not yet been conferred management powers referred to Article 14.;

16. in Article 66(3) the following point (c) is added:

(c) costs relating to a bank guarantee or comparable surety to be lodged by the final beneficiary of a grant.;

17. in Article 67(2) the two figures ‘75 %’ are replaced by ‘85 %’ and the figure ‘25 %’ is replaced by ‘15 %’;

18. in Article 68, the introductory phrase is replaced by the following:

Assistance under this component shall in principle take the form of:;

19. in Article 69, paragraphs 1, 2 and 3 are replaced by the following:

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

2 Beneficiary countries’ proposals shall be selected through transparent procedures, including consultation of the relevant stakeholders while proposals are being drafted.

3 Each year, following discussions between the Commission and the beneficiary country about their proposals, project fiches shall be submitted to the Commission by the beneficiary country. The project fiches shall set out clearly