

The Instrument for Pre-Accession Analysis of regulations past and present and proposals for amendments

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IPA 2007–2013

General description

Joining previous instruments such as CARDS, ISPA, PHARE, and SAPARD, the Instrument for Pre-Accession (IPA) aims to assist candidate and potential candidate countries introduce the necessary political, economic and institutional reforms to bring them in line with EU standards. The reforms necessary for EU membership also intend to improve the lives of citizens in beneficiary countries. A key aim of this assistance is to support political reform, in particular institution building, by strengthening the rule of law, human rights, protection of minorities and the development of civil society.

IPA assistance envisages improving the quality of life in EU Member States too, as candidates and potential candidates should align to and gradually adopt EU rules, for example concerning protection of the environment and the fight against crime, drugs and illegal immigration. Furthermore pre-accession aid should encourage regional cooperation and contribute to sustainable development and poverty reduction.

The purpose of IPA is to support countries in their transition from potential candidates to candidate countries and towards eventual EU membership. IPA will assist these countries meet Accession Criteria

CEE Bankwatch Network's mission is to prevent environmentally and socially harmful impacts of international development finance, and to promote alternative solutions and public participation.

(including the political, economic and acquis-related criteria for membership by building their administrative and judicial capacity) and prepare for the programming, management and implementation of EU Cohesion, Structural and Rural Development Funds after accession.

Analysis of the IPA Regulation 2007–2013

Environmental protection

Given these objectives, IPA Regulation 2007–2013 needs to ensure that sustainable development and environmental protection are considered important issues and that these issues are both understood and enforced in beneficiary countries. However the regulation text lacks the necessary provisions to ensure this. For example Article 2 of the Regulation, in describing the scope of the Instrument, lacks one of the most important aspects:

- sustainable development in line with the EU's overall long-term climate, biodiversity and resource efficiency objectives.

In general, the Regulation fails to mention environmental protection throughout the entire text and is much weaker when compared to the ERDF Regulation. Even though in some beneficiary countries the EU environmental *acquis* might not be fully transposed, environmental provisions in the IPA Regulation would ensure that environmental destruction is unlikely to happen if these provisions are followed. Environmental protection requirements should be part of legal provisions, as this is the area where beneficiary countries have significant deficits. In cases where environmental protection provisions and existing or functioning environmental legislation are lacking entirely in beneficiary countries, environmental protection remains the good will of the beneficiary country, a situation that is easily avoidable given these countries aspirations of EU membership. Moreover achieving the EU's 20/20/20 targets is a challenging task for all beneficiary countries, and the EU needs to provide the stimulus and binding provisions via the IPA Regulation to ensure that countries are moving in the right direction towards resource preservation and environmental protection.

Transparency and partnership principle

In IPA beneficiary countries, the EU recognises the need for strengthening its fundamental values like political stability, the full establishment of principles of democracy and the respect for human rights and good governance. Moreover one of IPA's foci is the development of civil society. However the Regulation text fails to transpose these objectives because it does not provide the necessary tools to do so.

The Proposal for the Regulation on CSF Funds¹ clearly identifies the transparency and partnership principles under Article 5 of the General Provisions and states that civil society and environmental organisations will actively take part in the “preparation, implementation, monitoring and evaluation of programmes”. However the IPA Regulation fails to include the transparency and partnership principles in its text and its willingness to develop civil society organisations is unclear. If IPA is intended to bring beneficiary countries closer to the EU, it is expected that the countries should start begin by respecting and implementing EU principles before they actually join the EU. IPA as an instrument is the appropriate tool to make this happen, and this opportunity should not be missed.

European Commission's IPA 2014–2020 proposal

General description

The new IPA should continue to *focus on delivering principles of the Enlargement Policy*, one of the core priorities of EU External Action

¹ Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006.

that can contribute to promoting stability, security and prosperity in Europe. To this end, the new instrument should continue to pursue the general policy objective of supporting candidate countries and potential candidates in implementing the appropriate political, institutional, legal, administrative and economic reforms required to bring those countries closer to EU values and to progressively align to EU rules, standards, policies and practices with a view to EU membership.

In the Proposal on the Regulation of the Instrument for Pre-Accession from 7 December 2011, several options were explored for the changing IPA. An option to "Maintain the scope and adjust implementation arrangements" was considered optimal, as this option would have an overall positive impact compared to the other options. This option would cover both compliance with accession criteria and support for socioeconomic development. In addition, it would adjust aspects of the current IPA set-up and its implementation modalities.

As the enlargement process extends the internal policies of the EU to the beneficiary countries, it automatically should contribute to, among other things, the protection of the environment and the reduction of transboundary air and water pollution, and as well as resource efficiency. The Proposal on the Regulation of IPA recognizes this and states that "*convergence with EU's climate policy and legislation will bring significant benefits to the beneficiary countries through low-carbon development and greener jobs in a region highly vulnerable to the impact of climate change.*" It also recognizes that "*... these countries need to be prepared to withstand global challenges such as climate change and to align with the EU's efforts to address this complex issue. The EU 2020 Strategy for smart, sustainable, and inclusive growth includes addressing climate change and renewable energy targets among its 5 headline objectives. The EU has confidence in the low-carbon growth model and this must be projected externally, also in the process of enlargement.*"

Given this, it is clear that the new IPA should place the protection of the environment and sustainable development as one of its highest

priorities in its assistance to beneficiary countries in order to help prepare these countries for EU membership.

Analysis of the IPA Regulation proposal 2014–2020

Environmental protection

Article 2 of the proposed Regulation text describes the specific objectives of the Instrument: *“Support for economic, social and territorial development, with a view to a smart, sustainable and inclusive growth, inter alia, through...economic reforms necessary to cope with competitive pressure and market forces within the Union, while pursuing economic, social and environmental goals.”* Compared to the old Regulation, there is improvement in the text, and the environmental agenda is definitely receiving attention. The concept of ‘sustainable and inclusive growth’ covers a wide variety of issues, among which protection of the biodiversity, energy efficiency and new renewables, low-carbon development, sustainable transport and so on.

However aside from the inclusion of these issues under the specific objective in the Regulation proposal, the remaining text does not mention sustainable development or environmental protection.

The Proposal for a Regulation establishing common rules and procedures for implementation of the Unions instruments for external action, including IPA, accounts for environmental screening in Article 2, point 4:

“Appropriate environmental screening, including for climate change and biodiversity impacts, shall be undertaken at project level including where applicable environmental impact assessment (EIA) for environmentally sensitive projects, in particular for major new infrastructure. Where relevant, strategic environmental assessments (SEA) shall be used in the implementation of sectoral programmes. The involvement of interested stakeholders in environmental assessments and public access to the results shall be ensured.”

Although this article recognises the need to address environmental concerns by performing environmental impact assessments and strategic environmental assessment processes, it only envisions these procedures for major infrastructure projects. Experience shows that even small-scale projects can cause significant damage and that these assessment principles should be applied to all types of projects with a potential impact to the environment and human health. Additionally Article 2 speaks of procedures applicable to the adoption of action programmes, whereas point 4 in particular mentions “sectoral” programmes, thus creating confusion. These procedures need to be implemented exactly as the title of the Article stipulates – on action programmes, which logically also includes Operational Programmes.

Moreover, this point of Article 2 proposes using SEA only during the implementation phase, instead of during the preparatory phase, which is key in the process of identification of environmental impacts.

While the involvement of stakeholders is ensured by Article 2, it does not specify how this will be achieved. Public participation and stakeholder engagement need to be ensured through formal mechanisms and procedures that will enable this in practice.

Article 8, point 8 stipulates that “*Tenderers, applicants and candidates who have been awarded contracts shall respect applicable environmental legislation including multilateral environmental agreements*”.

Article 14 of the Proposal, focused on climate action and biodiversity expenditure states “*The funding allocated in the context of the Instruments shall be subject to an annual tracking system based on the OECD methodology (‘Rio markers’), integrated into the existing methodology for performance management of EU programmes, to quantify the expenditure related to climate action and biodiversity at the level of the action programmes, individual and special measures.... An annual estimate of the overall spending related to climate action and biodiversity shall be made on the basis of the adopted indicative programming documents.*”

The document also commits to a revision of the external instruments (including IPA) by the end of 2017 with respect to the results achieved and impact indicators, one that measures the efficiency with which resources are used and the European added-value of the instruments. When it comes to indicators, the Proposal for Regulation in IPA mentions indicators in Article 2, point 1 and 2. However, if the indicators mentioned are not well designed and clearly linked to relevant policy goals, they will not fulfill their initial purposes – to provide objective information on the results of policy implementation, to serve as communication and guidance tools and to motivate and support beneficiary countries. Looking into the proposed common indicators for the ERDF and CF, CEE Bankwatch Network has prepared a proposal for the introduction of result indicators, which we believe should be used also in IPA². We suggest that the Commission introduces a list of common indicators that are specific and result oriented.

Transparency and partnership principle

With respect to transparency and the partnership principle, the Regulation proposal mentions in Article 2 the “*development of civil society and social dialogue*” (specific objectives).

Article 4, point 5 states, “*When preparing, implementing and monitoring assistance under this Regulation, the Commission shall in principle act in partnership with the beneficiary countries. The partnership shall involve, as appropriate, competent national, regional and local authorities, economic and social partners, civil society and non-state actors.*”

In order to achieve practical implementation of this principle in beneficiary countries, the actual partnership should be a compulsory

² A system of indicators to measure progress towards respective objectives and targets in EU Cohesion Policy – An essential tool to drive EU countries on a sustainable development path, CEE Bankwatch Network, February 2012, <http://bankwatch.org/sites/default/files/Briefing-CPindicators-Feb2012.pdf>

mechanism, not optional. The phrase “as appropriate” might stipulate the optional implementation of this practice.

Additionally, the European Code of Conduct on partnership to be developed by the Commission should be followed in order to support partnership and inclusion of CSOs. Apart from the application of this Code of Conduct in the implementation of Cohesion Policy, it should be applicable in the case of IPA and other external actions as well.

For example in the Proposal for the Common Provisions Regulation for CSF Funds³, article 5 clearly outlines the inclusion of civil society and environmental organisations in the process of “*preparation of Partnership Contracts and progress reports and in the preparation, implementation, monitoring and evaluation of programmes*”. This article provides clear and concrete guidance and procedures for Member States. For IPA beneficiary countries (mainly in the Western Balkans and Turkey), where proper public participation procedures and open dialogue is severely lacking, this kind of article would define the expected processes and inclusion of partners in creating the Strategy papers (article 6 of the Regulation proposal). An article providing for this is also absent from the Proposal for a Regulation establishing common rules and procedures for implementation of the Unions instruments for external action.

Proposal for amendments to the IPA Regulation

The IPA regulation needs to explicitly state the necessity in the region to protect the environment and to lead the countries towards low-carbon development. Additionally, as one of the EU’s focuses in the

³ Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006.

region is the development of civil society as well as fostering democratic processes and the partnership principle, this aspect needs to be included in the Regulation text.

Therefore we propose the following amendments and changes to the Proposed Regulation text under the following Articles:

Article 2
Specific objectives

Text proposed by the Commission	Amendment
<p>1. Assistance under this Regulation shall pursue the following specific objectives according to the needs of each beneficiary country and their individual enlargement agenda:</p> <p>(a) Support for political reforms, inter alia:</p> <p>(i). strengthening of democratic institutions and the rule of law, including its implementation;</p> <p>(ii). promotion and protection of human rights and fundamental freedoms, enhanced respect for minority rights, promotion of gender equality, nondiscrimination and freedom of the press, and promotion of good neighbourly relations;</p> <p>(iii). the fight against corruption and organised crime;</p> <p>(iv). public administration reform and good governance;</p> <p>(v). the development of civil society and social dialogue;</p> <p>(vi). reconciliation, peace building and confidence building measures.</p> <p>(b) Support for economic, social and territorial development, with a view to</p>	<p>1. Assistance under this Regulation shall pursue the following specific objectives according to the needs of each beneficiary country and their individual enlargement agenda:</p> <p>(a) Support for political reforms, inter alia:</p> <p>(i). strengthening of democratic institutions and the rule of law, including its implementation;</p> <p>(ii). promotion and protection of human rights and fundamental freedoms, enhanced respect for minority rights, promotion of gender equality, nondiscrimination and freedom of the press, and promotion of good neighbourly relations;</p> <p>(iii). the fight against corruption and organised crime;</p> <p>(iv). public administration reform and good governance;</p> <p>(v). the development of civil society and social dialogue;</p> <p>(vi). reconciliation, peace building and confidence building measures.</p> <p>(b) Support for economic, social and territorial development, with a view to</p>

<p>a smart, sustainable and inclusive growth, inter alia through:</p> <p>(i). the achievement of Union standards in the economy and economic governance;</p> <p>(ii) economic reforms necessary to cope with competitive pressure and market forces within the Union, while pursuing economic, social and environmental goals;</p> <p>(iii). fostering employment and developing human capital;</p> <p>(iv). social and economic inclusion, in particular of minorities and vulnerable groups;</p> <p>(v). development of physical capital, the improvement of connections with Union and regional networks.</p> <p>(c) Strengthening of the ability of beneficiary countries to fulfil the obligations stemming from membership by supporting progressive alignment with and adoption, implementation and enforcement of the acquis communautaire, structural, cohesion, agricultural and rural development funds and policies of the Union.</p> <p>(d) Regional integration and territorial cooperation involving beneficiary countries, Member States and, where appropriate, third countries within the scope of Regulation (EU) No [...] establishing a European Neighbourhood Instrument⁸.</p> <p>2. Progress towards achievement of the specific objectives set out in paragraph 1 shall be assessed through indicators that cover inter alia:</p> <p>– Progress in the areas of democracy,</p>	<p>a smart, sustainable and inclusive growth, inter alia through:</p> <p>(i). the achievement of Union standards in the economy and economic governance;</p> <p>(ii) economic reforms necessary to cope with competitive pressure and market forces within the Union, while pursuing economic, social and environmental goals;</p> <p>(iii). fostering employment and developing human capital;</p> <p>(iv). social and economic inclusion, in particular of minorities and vulnerable groups;</p> <p>(v). development of physical capital, the improvement of connections with Union and regional networks;</p> <p><u>(vi). Promoting the principle of sustainable development and environmental protection, in particular through climate mitigation and adaptation measures.</u></p> <p>(c) Strengthening of the ability of beneficiary countries to fulfil the obligations stemming from membership by supporting progressive alignment with and adoption, implementation and enforcement of the acquis communautaire, structural, cohesion, agricultural and rural development funds and policies of the Union.</p> <p>(d) Regional integration and territorial cooperation involving beneficiary countries, Member States and, where appropriate, third countries within the scope of Regulation (EU) No [...] establishing a European Neighbourhood Instrument⁸.</p>
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<p>the rule of law, the respect of human rights and fundamental freedoms, the justice system and the level of administrative capacity;</p> <ul style="list-style-type: none"> - Progress in economic reforms; the soundness and effectiveness of social and economic development strategies, progress towards smart, sustainable and inclusive growth, including through public investments supported by IPA; - The body of legislation aligned with the acquis; progress in Union-related institutional reform, including transition to decentralised management of the assistance provided under this Regulation; - The relevance of regional and territorial cooperation initiatives and the evolution of trade flows. <p>The indicators shall be used for monitoring, evaluation and review of performance, as appropriate.</p>	<p>2. Progress towards achievement of the specific objectives set out in paragraph 1 shall be assessed through <u>results-oriented</u> indicators that cover inter alia:</p> <ul style="list-style-type: none"> - Progress in the areas of democracy, the rule of law, the respect of human rights and fundamental freedoms, the justice system and the level of administrative capacity; - Progress in economic reforms; the soundness and effectiveness of social and economic development strategies, progress towards smart, sustainable and inclusive growth, including through public investments supported by IPA; - The body of legislation aligned with the acquis; progress in Union-related institutional reform, including transition to decentralised management of the assistance provided under this Regulation; - The relevance of regional and territorial cooperation initiatives and the evolution of trade flows. <p>The <u>results-oriented</u> indicators shall be used for monitoring, evaluation and review of performance, as appropriate.</p>
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Article 4

Compliance, coherence and complementarity

Text proposed by the Commission	Amendment
<p>5. When preparing, implementing and monitoring assistance under this Regulation, the Commission shall in principle act in partnership with the beneficiary countries. The partnership shall involve, as appropriate, competent national, regional and local authorities, economic and social partners, civil society and non-state actors.</p>	<p>5. a) When preparing, implementing and monitoring assistance under this Regulation, the Commission shall in principle act in partnership with the beneficiary countries. <u>The partnership shall involve the following partners:</u></p> <ul style="list-style-type: none"> <u>(i) competent regional, local, urban and other public authorities;</u> <u>(ii) economic and social partners;</u> <u>(iii) bodies representing civil society, including environmental partners, nongovernmental organisations, and bodies responsible for promoting equality and non-discrimination and</u> <u>(iv) non-state actors.</u> <p><u>b) The partners shall participate in the monitoring committees for programmes.</u></p> <p><u>c) Involvement of partners shall be in accordance with the European code of conduct.</u></p>