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*Committee on Budgets*

## **Adjustment of Financial Perspective in view of enlargement**

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## **WORKING DOCUMENT No. 3**

on Annex XV of the Accession Treaty

Committee on Budgets

Rapporteur: Reimer Böge, Joan Colom i Naval

## LEGAL ASPECTS

1. The Treaty is the highest legal act of the European Union, signed by all Member states and ratified in accordance with their respective national procedures.

Below the Treaty are Regulations, Directives, Decisions...which should be published in the Official Journal L (legislation) series. The Interinstitutional Agreement (IIA) of 6<sup>th</sup> May 1999 is an **agreement** between Parliament, Council and Commission on budgetary discipline and the financial framework until 2006. It is published in the O.J. C (Information and Notices) series. It is not compulsory and can be denounced at any time by Parliament or Council.

The financial perspective has been created by an IIA in 1988 for a period of 5 years. In 1992 and 1999 new financial perspectives have been agreed for a 7-year period each time.

2. The third paragraph of Article 161 of the Treaty of Nice<sup>1</sup>, which entered into force on 3<sup>rd</sup> February 2003, makes for the first time a reference to the Financial Perspective (starting in 2007) with regard to the Structural Funds and the Cohesion Fund. However the reference doesn't define what the financial perspective is, but refers to the adoption, or not, of an already existing instrument.
3. The last paragraph of Annex XV of the Accession Treaties reads:

*"This is without prejudice to the E.U.-25 ceiling for category la for 2007-2013 set out in the Decision of the Representatives of the Governments of the Member States, meeting within the Council on 14 November 2002, concerning the conclusions of the European Council meeting in Brussels on 24 and 25 October 2002."*

This Annex reflects the result of the conclusions of the European Council of Brussels (October 2002) and Copenhagen (December 2002). Although these decisions have been adopted at what can be seen as the highest political level of the Union, they are not legally binding with respect to the principles of the Treaty if endorsed by only one branch of the Budgetary Authority. Moreover, the European Council itself is not an institution set up by the Treaty and does not have budgetary competences; formally, it can only give political guidelines which need to be formalised in accordance with the procedures foreseen in the Treaties, as the Conclusions of Copenhagen make clear when stating, in Annex I, *"The European Council invites the Commission to take into account this expenditure in its*

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<sup>1</sup> Article 161

Without prejudice to Article 162, the Council, acting unanimously on a proposal from the Commission and after obtaining the assent of the European Parliament and consulting the Economic and Social Committee and the Committee of the Regions, shall define the tasks, priority objectives and the organisation of the Structural Funds, which may involve grouping the Funds. The Council, acting by the same procedure, shall also define the general rules applicable to them and the provisions necessary to ensure their effectiveness and the co-ordination of the Funds with one another and with the other existing financial instruments.

A Cohesion Fund set up by the Council in accordance with the same procedure shall provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure.

From 1 January 2007, the Council shall act by a qualified majority on a proposal from the Commission after obtaining the assent of the European Parliament and after consulting the Economic and Social Committee and the Committee of the Regions if, by that date, the multiannual Financial Perspective applicable from 1 January 2007 and the Interinstitutional Agreement relating thereto have been adopted. If such is not the case, the procedure laid down by this paragraph shall apply from the date of their adoption.

*proposal to adjust the Financial Perspective, to be adopted by the European Parliament and the Council in accordance with paragraph 25 of the Interinstitutional Agreement of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure.”*

4. Technically, the wording of the last paragraph of annex XV raises some questions:
  - What does "**category 1a**" mean in a Treaty? Does it refer to a Financial Perspective not yet created by a Treaty or a Regulation?
  - In mentioning "**for 2007-2013**" is it taken for granted that a new Financial Perspective for this period will exist? How can a Treaty fix a commitment on something (such as the F.P.) that should be agreed (*or not*) in 2 or 3 years time by a new Parliament and a new Council, both representing 25 Member States?
  - Has it been considered that although a new financial perspective could be agreed from 2007 onwards, the period covered could be different? Indeed, the proposals currently discussed at the Convention prefer a period of a length similar to the mandate of the Commission and the Parliament.
  - Has it been considered that any (old or new) Member State could use this paragraph in the near future for defending its own interests?
  - In case that this Annex XV is definitely embodied in the Accession Treaty, does it imply that any revision or adjustment of the mentioned ceiling of the so-called **category 1a** would require the ratification by the 25 - or more - Member States ?

## **OTHER QUESTIONS**

The Rapporteurs would like to raise other questions that can help to define EP's position in this matter.

### **Is Annex XV of the Accession Treaty compatible with the existing Treaties?**

5. The accession countries by agreeing to the "*acquis*" have accepted the budgetary procedure set out in art. 272 of the EU Treaty, where the European Parliament has definitively the **last word**, concerning all non-compulsory expenditures.
6. Is the Council aware of the fact that the attachment of the figures to the Annex XV of the Accession Treaty might violate the provisions of article 272 and in particular the budgetary powers of Parliament ? Therefore, the rapporteurs consider it indispensable that the institutional balance between the two arms of the budgetary authority will not be affected.

### **Is there a link between Annex XV of the Accession Treaty and the adjustment of the Financial Perspective?**

7. Annex XV is certainly a very important element of the new Treaty and the EP will take it into serious consideration when preparing the budget in accordance with art. 272 of the EU Treaty.
8. The Rapporteurs believe that there is no direct and automatic link between the Accession Treaty and the adjustment of the Financial Perspective. The financial framework is an evaluation of the impact of the enlargement that could be wider than the results of the negotiations, which concerns strictly the 10 new Member States. The adjusted Financial

Perspective should cover the 25 MS. For instance, it might be necessary to increase the margin for the period 2004-2006 because of the necessity to include the needs resulting from the extension of legislation to the 10 new MS for the next three years.

9. The Rapporteurs consider therefore that Annex XV of the Accession Treaty, although very important, is not the only element to take into account in the adjustment of the FP.
10. The provisions of the IIA are very clear and article 25 of the IIA foresees that “*when the Union is enlarged to include the new Member states during the period covered by the Financial Perspective, the European Parliament and the Council [...] will jointly adjust the Financial Perspective [...]*”
11. The Rapporteurs believe that this exercise can only be conducted jointly and should be agreed by both arms of the Budgetary Authority. This means that in absence of such an agreement the Financial Perspective will not be adjusted and the annual budget will be prepared in accordance with art. 272 of the Treaty, taking into account as the minimum threshold, the financial perspective for 15 and the figures expressed in annexe XV for the 10 new MS.

**Should the adjustment of financial perspectives be done before or after the modification of the financial framework of the co-decisions?**

12. The two Rapporteurs believe that this problem cannot be avoided. A large part of the Heading 3 legal basis has been adopted in co-decision. A new co-decision could modify these amounts. Agreement should be reached on the question as to whether that co-decision should be concluded before or after the adjustment of the Financial Perspective.
13. The Rapporteurs consider that this problem is not just a technical problem, as mentioned by the Commission. A solution must be found between the Institutions which share the role of Budgetary and Legislative Authorities.