



Council of the European Union
General Secretariat

Brussels, 22 January 2020

Interinstitutional files:
2018/0247(COD)

WK 707/2020 INIT

LIMITE

ELARG

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

MEETING DOCUMENT

From:	Presidency
To:	Working Party on Enlargement and Countries Negotiating Accession to the EU
N° prev. doc.:	WK 8691/19
N° Cion doc.:	COM (2018) 465 final
Subject:	Draft IPA III Regulation: – examination of the EP amendments in Articles 8-9

In view of the upcoming technical meeting on the IPA III Regulation, scheduled to take place on 28 January 2020, delegations will find enclosed a table, containing the text of the proposal of the Commission, the partial general approach of the Council and the first reading position of the EP in relation to Articles 8-9 of this proposal.

Delegations are kindly invited to indicate **their position in relation to the EP amendments** in the aforementioned Articles, supported by **arguments in favour or against such amendments**, in particular underlining those which they have difficulties to agree to (focusing on lines 198-207 and 294-299).

As regards the addition by the EP of the new Chapter IIIa (lines 209 - 293), delegations are invited to note that the EP copied these provisions, which stem from the current common implementing rules, from its position on the NDICI Regulation. As discussions on the content of these provisions take place in the Ad Hoc Working Party on NDICI, delegations are **invited to only indicate whether they prefer the Council partial general approach in Article 8 (lines 198-200), making a cross-reference to the NDICI Regulation, or could in principle accept the EP suggestion** to copy these provisions into the IPA III Regulation.

WK 707/2020 INIT

LIMITE

EN

Proposal for a Regulation of the European Parliament and of the Council establishing the Instrument for Pre-accession Assistance (IPA III):
Articles 8-9

	COM proposal (14.6.2018, doc. 10184/19)	Council position (partial general approach approved on 19.03.2019, doc. 7539/19)	EP position (vote on 27.03.2019, doc. 7802/19)	Compromise proposals	Comments
198	<i>Article 8</i>				
199	<i>Implementing measures and methods</i>		<i>Implementing Executing measures and methods [Am. 62]</i>		
200	1. Assistance under IPA III shall be implemented in direct management or in indirect management in accordance with the Financial Regulation through annual or multi-annual action plans and measures as referred to in Chapter III of Title II of [NDICI Regulation]. Chapter III of Title II of [NDICI Regulation] shall apply to this Regulation with the exception of paragraph 1 of Article 24 [eligible persons and entities].	1. Assistance under IPA III shall be implemented in direct management or in indirect management in accordance with the Financial Regulation through annual or multi-annual action plans and measures as referred to in Chapter III of Title II of [NDICI Regulation]. <i>Action plans and measures shall be adopted by means of implementing acts adopted in accordance with the examination procedure referred to in Article 16.</i> Chapter III of Title II of [NDICI Regulation] shall apply to this Regulation with the exception of paragraph 1	1. Assistance under IPA III shall be implemented <i>executed</i> in direct management or in indirect management in accordance with the Financial Regulation through annual or multi-annual action plans and measures as referred to in Chapter <i>III a</i> of Title II of [NDICI Regulation]. Chapter III of Title II of [NDICI Regulation] shall apply to this Regulation with the exception of paragraph 1 of Article 24 [eligible persons and entities]. [Am. 63]		

		of Article 24 [eligible persons and entities].			
201			<i>1a. Indirect management may be reversed if the beneficiary is unable or unwilling to administer the awarded funds in accordance with the established rules, principles and objectives under this Regulation. In the event of a beneficiary's failure to observe the principles of democracy, the rule of law and respect for human rights and fundamental freedoms or in the event of violation of the commitments taken in the relevant agreements concluded with the Union, the Commission may, in specific policy areas or programmes, revert from indirect management with that beneficiary to indirect management by one or more entrusted entities other than a beneficiary or to direct management.</i> [Am. 64]		

202			<i>1b. The Commission shall hold a dialogue with the European Parliament, and take into account the European Parliament's views on areas in which the latter is running its own assistance programmes, such as capacity-building and election observation.</i> [Am. 65]		
203	2. Under this Regulation, action plans may be adopted for a period of up to seven years.				
204			<i>2a. The Commission shall keep the European Parliament fully involved on issues related to the planning and implementation of measures pursuant to this Article, including any envisaged substantial changes or allocations.</i> [Am. 66]		
205			<i>2b. Disbursement of the general or sector budget support shall be conditional upon satisfactory progress being made towards achieving the objectives agreed with a beneficiary.</i>		

206			<i>The Commission shall apply the budget support conditionality criteria set out in the Article 23(4) of Regulation (EU) .../... [NDICI Regulation]. It shall take steps to reduce or suspend Union funding through budget support in cases of systemic irregularities in the management and control systems or unsatisfactory progress being made in achieving the objectives agreed with the beneficiary.</i>		
207			<i>The reintroduction of assistance by the Commission following the suspension referred to in this Article shall be accompanied by a targeted assistance to national audit authorities. [Am. 67]</i>		
208					
209			<i>Chapter IIIa</i>		
210			<i>Execution [Am. 68]</i>		
211			<i>Article 8a</i>		
212			<i>Action plans and measures</i>		
213			<i>1. The Commission shall adopt annual or</i>		

			<i>multiannual action plans or measures. The measures may take the form of individual measures, special measures, support measures or exceptional assistance measures. Action plans and measures shall specify for each action the objectives pursued, the expected results and main activities, the methods of application, the budget and any associated support expenditures.</i>		
214			<i>2. Action plans shall be based on programming documents, except for cases referred to in paragraphs 3 and 4.</i>		
215			<i>When necessary, an action may be adopted as an individual measure before or after the adoption of action plans. Individual measures shall be based on programming documents, except for cases referred to in paragraph 3 and in other duly justified cases.</i>		

216			<i>In the event of unforeseen needs or circumstances, and when funding is not possible from more appropriate sources, the Commission is empowered to adopt delegated acts in accordance with Article 34 of Regulation ...[NDICI Regulation] laying down special measures not based on the programming documents.</i>		
217			<i>3. Annual or multiannual action plans and individual measures may be used to execute rapid response actions referred to in Article 4(4)(b) of Regulation ...[NDICI Regulation].</i>		
281			<i>4. The Commission may adopt exceptional assistance measures for rapid response actions as referred to in Article 4(4)(a) of Regulation ...[NDICI Regulation].</i>		
219			<i>5. Measures taken under Article 19 (3) and (4) may have a duration of up to 18 months, which may be extended twice by a further</i>		

			<i>period of up to six months, up to a total maximum duration of 30 months, in the event of objective and unforeseen obstacles to execution, provided that there is no increase in the financial amount of the measure.</i>		
220			<i>In cases of protracted crisis and conflict, the Commission may adopt a second exceptional assistance measure of a duration of up to 18 months. In duly justified cases, further measures may be adopted where the continuity of the Union's action under this paragraph is essential and cannot be ensured by other means. [Am. 69]</i>		
221			<i>Article 8b</i>		
222			<i>Support measures</i>		
223			<i>1. Union financing may cover expenditure to support the execution of the Instrument and the achievement of its objectives, including administrative support</i>		

			<i>associated with the preparation, follow-up, monitoring, control, audit and evaluation activities necessary for such execution, as well as expenditure at headquarters and Union delegations for the administrative support needed for the programme, and to manage operations financed under this Regulation, including information and communication actions, and corporate information technology systems.</i>		
224			<i>2. When support expenditure is not included in the action plans or measures referred to in Article 8c, the Commission shall adopt, where applicable, support measures. Union financing under support measures may cover:</i>		
225			<i>(a) studies, meetings, information, awareness-raising, training, preparation and exchange of lessons learnt and best</i>		

			<i>practices, publication activities and any other administrative or technical assistance expenditure necessary for the programming and management of actions, including remunerated external experts;</i>		
226			<i>(b) research and innovation activities and studies on relevant issues and the dissemination thereof;</i>		
227			<i>(c) expenditure related to the provision of information and communication actions, including the development of communication strategies and corporate communication and visibility of the political priorities of the Union. [Am. 70]</i>		
228			<i>Article 8c</i>		
229			<i>Adoption of action plans and measures</i>		
230			<i>1. The Commission shall adopt action plans and measures by means of a Commission decision in accordance with the</i>		

			<i>Financial Regulation.</i>		
231			<i>2. The Commission shall take account of the relevant policy approach of the Council and the European Parliament for the planning and subsequent application of such action plans and measures, in the interests of consistency of the Union's external action.</i>		
232			<i>The Commission shall immediately inform the European Parliament about the planning of action plans and measures pursuant to this Article, including the financial amounts envisaged, and shall also inform the European Parliament when making substantial changes or extensions to that assistance. As soon as possible following the adoption or substantial modification of a measure, and in any case within one month thereof, the Commission shall report to the European Parliament and to the Council and give an overview of the nature</i>		

			<i>and the rationale of the measure adopted, its duration, budget and its context, including the complementarity of that measure with other ongoing and planned Union assistance. For exceptional assistance measures, the Commission shall also indicate whether to what extent and how it will ensure the continuity of the policy executed through the exceptional assistance by medium- and long-term assistance under this Regulation.</i>		
233			<i>3. Before adopting action plans and measures not based on programming documents pursuant to Article 8a(2), other than for cases referred to in Article 8a (3) and (4), the Commission shall adopt a delegated act in accordance with Article 14 in order to supplement this Regulation by setting out the specific objectives to be pursued, the results expected, the instruments to be used, the main activities and the</i>		

			<i>indicative financial allocations of these action plans and measures.</i>		
234			<i>4. Appropriate human rights, social and environmental screening, including for climate change and biodiversity impacts, shall be undertaken at the level of actions, in accordance with the applicable legislative acts of the Union, including Directive 2011/92/EU^{24a} of the European Parliament and of the Council and Council Directive 85/337/EEC^{24b}, comprising, where applicable, an environmental impact assessment for environmentally sensitive actions, in particular for major new infrastructure.</i>		
235			<i>Additionally, ex-ante human rights, gender, social and labour impact assessments, as well as conflict analysis and risk assessment shall be conducted.</i>		

236			<i>Where relevant, human rights, social and strategic environmental assessments shall be used in the execution of sectoral programmes. The Commission shall ensure the involvement of interested stakeholders in these assessments and public access to the results of such assessments.</i> [Am. 127]		
237			^{24a} (footnote): <i>Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification) (OJ L 26 28.1.2012. p.1).</i>		
238			^{24b} (footnote): <i>Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.07.1985. p. 40).</i>		

239			<i>Article 8d</i>		
240			<i>Methods of cooperation</i>		
241			<i>1. Financing under this Instrument shall be implemented by the Commission, as provided for by the Financial Regulation, either directly by the Commission itself, by Union delegations and by executive agencies, or indirectly through any of the entities listed in Article 62 (1) c) of the Financial Regulation.</i>		
242			<i>2. Financing under this Instrument may also be provided through contributions to international, regional or national funds, such as those established or managed by the EIB, by Member States, by partner countries and regions or by international organisations, or other donors.</i>		
243			<i>3. The entities listed in Article 62(1)(c) of the Financial Regulation and in Article 29(1) of of Regulation .../NDICI</i>		

			<i>Regulation] shall annually fulfil their reporting obligations under Article 155 of the Financial Regulation. The reporting requirements for any of these entities are laid down in the framework partnership agreement, the contribution agreement, the agreement on budgetary guarantees or the financing agreement.</i>		
244			<i>4. Actions financed under this Instrument may be implemented by means of parallel or joint co-financing.</i>		
245			<i>5. In the case of parallel co-financing, an action is split into a number of clearly identifiable components which are each financed by the different partners providing co-financing in such a way that the end-use of the financing can always be identified.</i>		
246			<i>6. In the case of joint co-financing, the total cost of an action is shared between the partners providing the</i>		

			<i>co-financing and the resources are pooled in such a way that it is no longer possible to identify the source of financing for any given activity undertaken as part of the action.</i>		
247			<i>7. Cooperation between the Union and its partners may take the form, inter alia, of:</i>		
248			<i>(a) triangular arrangements whereby the Union coordinates with third countries its assistance funding to a partner country or region;</i>		
249			<i>(b) administrative cooperation measures such as twinning between public institutions, local authorities, national public bodies or private law entities entrusted with public service tasks of a Member State and those of a partner country or region, as well as cooperation measures involving public sector experts dispatched from the Member States and their regional and local</i>		

			<i>authorities;</i>		
250			<i>(c) contributions to the necessary costs of setting up and administering a public-private partnership including support of broad participation by setting up independent third party CSO body to assess and monitor public-private partnership set-ups;</i>		
251			<i>(d) sector policy support programmes whereby the Union provides support to a partner country's sector programme</i>		
252			<i>(e) contributions to the cost of the countries' participation in Union programmes and actions implemented by Union agencies and bodies, as well as bodies or persons entrusted with implementation of specific actions in the Common Foreign and Security Policy pursuant to Title V of the Treaty on European Union;</i>		
253			<i>(f) interest rate subsidies.</i> [Am. 72]		

254			<i>Article 8e</i>		
255			<i>Forms of Union funding and methods of application</i>		
256			<i>1. The Union funding may be provided through the types of financing envisaged by the Financial Regulation and in particular:</i>		
257			<i>(a) grants;</i>		
258			<i>(b) procurement contracts for services, supplies or works;</i>		
259			<i>(c) budget support;</i>		
260			<i>(d) contributions to trust funds set up by the Commission, in accordance with Article 234 of the Financial Regulation;</i>		
261			<i>(e) financial instruments;</i>		
262			<i>(f) budgetary guarantees;</i>		
263			<i>(g) blending;</i>		
264			<i>(h) debt relief in the context of internationally agreed debt relief programme;</i>		
265			<i>(i) financial assistance;</i>		
266			<i>(j) remunerated external</i>		

			<i>experts.</i>		
267			<i>2. When working with stakeholders of partner countries, the Commission shall take into account their specificities, including their needs and the relevant context, when defining the financing modalities, the type of contribution, the award modalities and the administrative provisions for the management of grants, with a view to reaching and best responding to the widest possible range of such stakeholders. That assessment shall take into account the conditions for a meaningful participation and involvement of all stakeholders, in particular local civil society. Specific modalities shall be encouraged in accordance with the Financial Regulation, such as partnership agreements, authorisations of financial support to third parties, direct award or eligibility-restricted calls for proposals, or lump sums,</i>		

			<i>unit costs and flat-rate financing as well as financing not linked to costs as envisaged in Article 125(1) of the Financial Regulation. Those different modalities shall ensure transparency, traceability and innovation. Cooperation between local and international NGOs shall be encouraged in order to bolster local civil society's capacities with a view to achieving its full participation in development programmes.</i>		
268			<i>3. In addition of the cases referred to in Article 195 of the Financial Regulation, the direct award procedure may be used for;</i>		
269			<i>(a) low-value grants to human rights defenders and to mechanisms for the protection of human rights defenders at risk, to finance urgent protection actions, where appropriate without the need for co-financing, as well as to mediators and other civil society actors involved in crisis and</i>		

			<i>armed conflict related dialogue, conflict resolution, reconciliation and peace-building;</i>		
270			<i>(b) grants, where appropriate without the need for co-financing, to finance actions in the most difficult conditions where the publication of a call for proposals would be inappropriate including situations where there is a serious lack of fundamental freedoms, threats to democratic institutions, escalation of crisis, armed conflict where human security is most at risk or where human rights organisations and defenders, mediators and other civil society actors involved in crisis and armed conflict related dialogue, reconciliation and peace-building operate under the most difficult conditions. Such grants shall not exceed EUR 1 000 000 and shall have a duration of up to 18 months, which may be extended by a further 12</i>		

			<i>months in the event of objective and unforeseen obstacles to their application;</i>		
271			<i>(c) grants to the Office of the UN High Commissioner for Human Rights as well as to Global Campus, the European Inter-University Centre for Human Rights and Democratisation, providing a European Master's Degree in Human Rights and Democratisation, and its associated network of universities delivering human rights postgraduate diplomas, including scholarships to students, researchers, teachers, and human rights defenders from third countries.</i>		
272			<i>(d) Small projects as described in Article 23a of of Regulation ... [NDICI Regulation].</i>		
273			<i>Budget support as referred to in point (c) of paragraph 1, including through sector reform performance contracts, shall be based on</i>		

			<i>country ownership, mutual accountability and shared commitments to universal values, democracy, human rights, gender equality, social inclusion and human development and the rule of law, and aims at strengthening partnerships between the Union and partner countries. It shall include reinforced policy dialogue, capacity development, and improved governance, complementing partners' efforts to collect more and spend better in order to support sustainable and inclusive socio-economic development which benefits all, decent job creation, with particular attention to young people, the reduction of inequalities and poverty eradication with due regard to local economies, environmental and social rights.</i>		
274			<i>Any decision to provide budget support shall be based on budget support policies agreed by the Union, a clear set of</i>		

			<i>eligibility criteria and a careful assessment of the risks and benefits. One of the key determinants of that decision shall be an assessment of the commitment, record and progress of partner countries with regard to democracy, human rights and the rule of law.</i>		
275			<i>4. Budget support shall be differentiated in such a way as to respond better to the political, economic and social context of the partner country, taking into account situations of fragility.</i>		
276			<i>When providing budget support in accordance with Article 236 of the Financial Regulation, the Commission shall clearly define and monitor criteria for budget support conditionality, including progress in reforms and transparency, and shall support the development of parliamentary control, national audit capacities, CSO participation in</i>		

			<i>monitoring and increased transparency and public access to information and development of strong public procurement systems that support local economic development and local businesses.</i>		
277			<i>5. Disbursement of the budget support shall be based on indicators demonstrating satisfactory progress being made towards achieving the objectives agreed with the partner country.</i>		
278			<i>6. Financial instruments under this Regulation may take forms such as loans, guarantees, equity or quasi-equity, investments or participations, and risk-sharing instruments, whenever possible and in accordance with the principles laid down in Article 209(1) of the Financial Regulation under the lead of the EIB, a multilateral European finance institution, such as the European Bank for Reconstruction and</i>		

			<i>Development, or a bilateral European finance institution, such as bilateral development banks, possibly pooled with additional other forms of financial support, both from Member States and third parties.</i>		
279			<i>Contributions to Union financial instruments under this Regulation may be made by Member States as well as any entity referred to in Article 62(1)(c) of the Financial Regulation.</i>		
280			<i>7. Those financial instruments may be grouped into facilities for application and reporting purposes</i>		
281			<i>8. The Commission and the EEAS shall not enter into new or renewed operations with entities incorporated or established in jurisdictions defined under the relevant Union policy as non-cooperative, or that are identified as high risk third countries pursuant to Article 9(2) of</i>		

			<i>Directive(EU) 2015/849 of the European Parliament and of the Council, or that do not effectively comply with Union or internationally agreed tax standards on transparency and exchange of information.</i>		
282			<i>9. The Union's funding shall not generate or activate the collection of specific taxes, duties or charges.</i>		
283			<i>10. Taxes, duties and charges imposed by partner countries may be eligible for financing under this Regulation. [Am. 73]</i>		
284			<i>Article 8f</i>		
285			<i>Carry-overs, annual instalments, commitment appropriations, re-payments and revenue generated by financial instruments</i>		
286			<i>1. In addition to Article 12(2) of the Financial Regulation, unused commitment and payment appropriations under this Regulation shall be</i>		

			<i>automatically carried over and may be committed up to 31 December of the following financial year. The carried-over amount shall be used first in the following financial year.</i>		
287			<i>The Commission shall submit to the European Parliament and to the Council information on appropriations which were automatically carried over, including the amounts involved, in line with Article 12(6) of the Financial Regulation.</i>		
288			<i>2. In addition to the rules laid down in Article 15 of the Financial Regulation on making appropriations available again, commitment appropriations corresponding to the amount of decommitments made as a result of total or partial non implementation of an action under this Regulation shall be made available again to the benefit of the budget line of origin.</i>		

289			<i>References to Article 15 of the Financial Regulation in Article 12(1)(b) of Regulation laying down the multi annual financial framework shall be understood as including a reference to this paragraph for the purpose of this Regulation.</i>		
290			<i>3. Budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments, in line with Article 112(2) of the Financial Regulation.</i>		
291			<i>The third subparagraph of Article 114(2) of the Financial Regulation shall not apply to these multiannual actions. The Commission shall automatically de-commit any portion of a budgetary commitment for an action that by 31 December of the fifth year following that of the budgetary commitment has not been used for the purpose of pre-financing or making interim payments</i>		

			<i>or for which no certified statement of expenditure or any payment request has been submitted.</i>		
292			<i>Paragraph 2 of this Article shall also apply to annual instalments.</i>		
293			<i>4. By way of derogation from Article 209(3) of the Financial Regulation repayments and revenues generated by a financial instrument shall be assigned to the budget line of origin as internal assigned revenue after deduction of management costs and fees. Every five years, the Commission shall examine the contribution made to the achievement of Union objectives, and the effectiveness, of existing financial instruments. [Am. 74]</i>		

294	Article 9				
295	Cross border cooperation				
296	1. Up to 3 % of the financial envelope shall be indicatively allocated to cross-border cooperation programmes between the beneficiaries listed in Annex I and the Member States, in line with their needs and priorities.				
297	2. The Union co-financing rate at the level of each priority shall not be higher than 85 % of the eligible expenditure of a cross-border cooperation programme. For technical assistance the Union co-financing rate shall be 100%.	2. The Union co-financing rate at the level of each priority shall not be higher than [85 %] of the eligible expenditure of a cross-border cooperation programme. For technical assistance the Union co-financing rate shall be 100%.			
298	3. The level of pre-financing for cross-border cooperation with member states shall be determined in the work programme, in accordance with needs of the beneficiaries listed in Annex I and may exceed the percentage referred to in Article 49 of ETC Regulation.	3. The level of pre-financing for cross-border cooperation with member states shall amount to 50 % of the first three budgetary commitments to the programme be determined in the work programme, in accordance with needs of the beneficiaries listed in Annex I and may exceed the percentage referred to in Article 49 of ETC Regulation.			

299	4. Where cross border cooperation programmes are discontinued in accordance with Article 12 of [ETC Regulation], support from this Regulation to the discontinued programme that remains available may be used to finance any other actions eligible under this Regulation.		4. Where cross border cooperation programmes are discontinued in accordance with Article 12 of [ETC Regulation], support from this Regulation to the discontinued programme that remains available may be used to finance any other actions eligible under this Regulation. <i>In such a case, if there are no eligible actions to be financed in the current year, appropriations may be carried over to the following year. [Am. 75]</i>		
-----	--	--	--	--	--