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INSTRUMENT FOR STRUCTURAL POLICIES FOR PRE-ACCESSION AS AN INTRODUCTION TO THE USE OF THE COHESION FUND

Abstract

The transformation processes of 1989 initiated Central European countries' aspirations to integrate with Western Europe. In response, the world's leading industrialized nations pledged support for systemic transformation, leading to the European Community's establishment of the PHARE program in 1989 for Poland and Hungary. Over time, this assistance expanded to other aspiring EU member states, forming a coordinated pre-accession strategy.

A key financial instrument within this strategy was the Instrument for Structural Policies for Pre-Accession (ISPA), introduced in 2000. Modelled on the EU's Cohesion Fund, ISPA aimed to support economic and social cohesion through large-scale investments in environmental protection and transport infrastructure. The program facilitated compliance with EU environmental standards and the development of trans-European transport networks (TENs). In Poland, ISPA-funded projects improved air and water quality, waste management, and integrated national transport systems with EU networks.

The literature on the use of pre-accession funding and ISPA in particular is fragmented and not abundant. Therefore, this article sheds light on ISPA's programming, application processes, implementation challenges, and outcomes in a comprehensive way. The study employs legal analysis, critical evaluation of reports, and statistical data to assess ISPA's performance. The findings provide insights into optimizing pre-accession assistance mechanisms and guiding future EU cohesion policy funding. It also serves as a source of policy-learning for the prospective EU Member States.

Key Words: *ISPA, pre-accession funds, EU funds, Cohesion Policy, Cohesion Fund, infrastructure, Poland*

Introduction and literature review

The fall of the Iron Curtain unleashed the aspirations of individual central European countries to integrate with the free countries of the old continent. On 14-15 July 1989, the seven most industrialised countries of the world decided at a summit in Paris to provide assistance to countries embarking on systemic transformation. Consequently, by a decision of 18 December 1989. The Council of Ministers of the European Community defined the legal framework for the support given to Poland and Hungary¹. This created a two-country aid program for Poland and Hungary (Poland and Hungary Assistance for Restructuring their Economies). The adoption of such an instrument made it possible to provide support to countries that were clearly trying to rebuild the structures of their regained sovereignty. However, the structural reforms undertaken by a whole group of countries that included Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia did not go unnoticed by the European institutions. As a result, the assistance originally provided to two countries was extended to the entire group of countries aspiring to join the EU structures. The progressive process of political and economic rapprochement resulted, in the case of Poland, in the conclusion of the Europe Agreement establishing an association between the Republic of Poland and the European Communities and their Member States on 16 December 1991². This arrangement enabled the development of further

economic relations between European states³.

Between 1998 and 2002, negotiations were held to agree the conditions necessary for full membership.

As part of the process of harmonising the Polish legal system with the solutions in place in the European Communities, issues related to environmental protection were a priority⁴. In fact, this was due to the fact that they were regulated at both the primary and secondary levels of Community law. At the same time, this coincided with the signing on 25 June 1998, during the Pan-European Conference of Ministers Responsible for the Environment in Aarhus, of the Convention on Access to Information, Public Participation in Environmental Decision-making and Access to Justice in Environmental Matters (known as the Aarhus Convention signed on 25 June 1998). Upon becoming a full member, Poland had to fulfil its environmental protection obligations under both the European Agreement and Community treaties and directives, as well as take into account the provisions of the Aarhus Convention⁵. The costs of implementing all the aforementioned environmental regulations required increased expenditure on new institutional and procedural solutions. At the same time, this was in line with the process of transforming the entire state apparatus, including through the decentralisation of tasks, which were divided between state and local government bodies⁶.

¹ Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to the Republic of Hungary and the Polish People's Republic, *Official Journal L* 375, 23/12/1989 P. 0011 - 0012

² Journal of Laws. 1994, No. 11, item 38, as amended; hereinafter: the Association Agreement.

³ P. Kalka, *Proces dostosowawczy na rynku dóbr a wymiana handlowa między Polską a państwami członkowskimi Europejskiej Wspólnoty Gospodarczej (Wspólnoty Europejskiej)* [w:] *Dostosowania do wymogów Unii Europejskiej. Przykład Polski*, ed. Piotr Kalka, Instytut Zachodni, Poznań 2007, s. 33-55.

⁴ G. Grabowska, *Poland on the Way to the European Union: From Association to Accession in the Context of Environmental Policy* (in:) *Legal Convergence in the Enlarged Europe of the New Millennium*, (ed.) Paul L.C. Torremans, Kluwer Law International, The Hague—Boston—London 2000, p. 1–20.

⁵ Op. cit.

⁶ B. Popowska, *Ustrój polityczno-gospodarczy Polski między centralizacją a decentralizacją*, [in:] *Dostosowania do wymogów Unii Europejskiej. Przykład Polski*, ed. Piotr Kalka, Instytut Zachodni, Poznań 2007, s. 13-32.

On 24-25 March 1999, at the Berlin European Council, it was decided that from the year 2000, new financial instruments called pre-accession instruments would be introduced in the candidate countries, namely SAPARD and ISPA, and the rules for the disbursement of the Structural Funds were reformed (Agenda 2000). In this way, the candidate countries for full membership of the European Communities were covered by coordinated assistance within the framework of the adopted pre-accession strategy⁷. Support within the framework of market transformation and preparation for full membership was to be provided by special transitional financial instruments⁸. Another *pre-accession* assistance program for EU candidate countries, already closed, was the *Instrument for Structural Policies for Preaccession*⁹, which was intended to support economic and social cohesion by co-financing large investment projects in the environment and transport sectors. The ISPA program was set up along similar lines to the Cohesion Fund used by the Member States¹⁰. The ISPA program was intended to help the countries of central and eastern Europe prepare for full membership by supporting projects to reduce developmental delays in the environment and transport sectors. In practice, ISPA was intended to help candidate countries achieve certain standards and norms under

Community environmental law and agreements on the creation of trans-European networks, taking into account uniform conditions for the use of the candidate countries' national networks. In the field of environmental protection, the priority was to improve air quality and drinking water supplies by reducing water and air pollution, and to assist in waste management (waste treatment) and waste water collection and treatment. Projects in rail and road infrastructure co-financed under the ISPA program were intended to integrate Polish infrastructure within the national transport networks with the trans-European transport networks (TENs) of the European Union (road, rail or air). In cooperation between the European Commission and all the countries concerned, Polish routes of international importance were also agreed to become part of the TENs after full membership in the framework of the so-called Pan-European Transport Corridors agreed at the conferences in Crete (1994) and Helsinki (1997).¹¹

Going beyond literature on historical process of Poland preparing itself to the EU accession the body of academic output on ISPA is fragmented and not very abundant. Papers report that projects funded under instruments like ISPA often faced financing, planning, and administrative

⁷ Council Regulation (EC) No 1266/1999 of 21 June 1999 on coordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation (EEC) No 3906/89 (OJ L 161, 26.6.1999, p. 68).

⁸ J. W. Tkaczyński, G. Rossmann, *Fundusze Unii Europejskiej*, Wydawnictwo Temida 2, Białystok 2003, pp. 63-77.

⁹ Council Regulation (EC) No 1267/1999 of 21 June 1999 establishing an Instrument for Structural Policies for Pre-Accession (OJ L 161, 26.6.1999, p. 73); amended by Regulation (EC) No 2382/2001 (OJ L 323, 7.12.2001, p. 1).

¹⁰ The Cohesion Fund was established under the Maastricht Treaty on the establishment of the European Union of 7 February 1992, which entered into force on 1 November 1993. The main objective of the Fund is to reduce disparities between the levels of development of the various regions and to reduce the backwardness of the least favoured regions. The Cohesion Fund (Cohesion Fund) was introduced as a result of discussions on the accession to the European Union of Ireland, Greece, Spain and Portugal, with a view to reinforcing the structural policies of those countries whose per capita Gross National Product (GNP) was less than 90% of the average GNP of all the Member States and

which had a program for meeting the convergence criteria set out in Article 104 of the Treaty establishing the European Community. The Cohesion Fund was directly established under Article 161 of the Treaty establishing the European Community, although in fact the basis for its operation was laid down in Council Regulation No. 1164/94/EC of 16 May 1994 establishing the Cohesion Fund (as amended on 21 June 1999 by two Regulations No. 1264/EC and No. 1265/EC). The Cohesion Fund is not a structural fund but an instrument of economic and social cohesion policy. It implements these objectives by making a financial contribution to projects in the fields of the environment and trans-European networks in the field of transport infrastructure. Projects with a value in excess of €10 million may receive funding of up to 85% of the eligible costs if, in the field of transport, they are part of trans-European transport networks (road, rail or air), and environmental projects address problems in the fields of water and wastewater management, waste management, air protection or energy production. Since 1 January 2004, Ireland has no longer been eligible for the Cohesion Fund.

¹¹ L. Grudzińska, A. Harassek, W. Wojtkielewicz, *Kolejowe programy inwestycyjne realizowane ze współudziałem środków Unii Europejskiej*, Prawo i Finanse, 2003, no 3, s 39

challenges¹². For example, analyses of motorway and transport projects note difficulties securing consistent co-financing and managing institutional capacity, while evaluations of ISPA projects in water, waste, and rail reveal that inconsistent appraisal and demand-driven selection sometimes hindered regional benefits¹³. Several studies document that infrastructure investments did not uniformly reduce regional disparities. In some cases, they even contributed to divergent growth patterns in disadvantaged areas¹⁴. Key challenges identified in the literature covered also: financial or co-financing difficulties¹⁵, regional disparities or risk of divergence¹⁶; appraisal, planning, or selection challenges¹⁷; political, legislative, or institutional environment¹⁸; management or capacity building¹⁹; environmental controversy, poor infrastructure condition, policy controversy related to infrastructure policy design²⁰; project design issues²¹; or transition from socialism or regulatory challenges²².

Administrative and financial mechanisms were a recurring theme, particularly regarding the management of European Union funds (including the Instrument for Structural Policies for Pre-Accession, and later the Cohesion Fund) and the challenges of project appraisal and co-financing. The authors underlined that robust administrative frameworks are necessary for effective infrastructure investment. Also transparent and consistent financial mechanisms are needed to maximize the impact of European Union funds²³. While capacity building and adoption of best practices from older member states are important for successful project delivery²⁴.

Success factor related to effectiveness of infrastructural projects under integration processes in general lie in European integration conditions²⁵, policy interventions targeting proper investment choices²⁶, policy learning²⁷, improved institutional environment²⁸ or evaluation of performance-based approach²⁹.

¹² M. Florio, S. Vignetti, *Cost-Benefit Analysis of Infrastructure Projects in an Enlarged European Union: An Incentive-Oriented Approach* Working Paper n.13/2003. Evaluation Conference, European Union, Budapest 26-27.06.2003 <https://air.unimi.it/bitstream/2434/610151/2/30.pdf>

¹³ Op. cit.

¹⁴ Bartłomiej Rokicki, Mieczysław W. Socha, Effects of Poland's Integration with the EU: Structural Interventions and Economic Development in the Eastern Border Regions, *The Journal of Comparative Economic Studies*, The Japanese Society for Comparative Economic Studies (JSCES), 2008, vol. 4, pp 81-114.

¹⁵ M. Florio, S. Vignetti, op. cit.

¹⁶ Bartłomiej Rokicki, Mieczysław W. Socha, op. cit.

¹⁷ M. Florio, S. Vignetti, op. cit; Thomas Laursen, Bernard Myers, *Public Investment Management in the New EU Member States: Strengthening Planning and Implementation of Transport Infrastructure Investments*. World Bank Working Paper No. 161, 2009. <https://doi.org/10.1596/978-0-8213-7894-6> ; Tomasz Komornicki, Barbara Szejjec-Kolenda, The development of transport infrastructure in Poland and the role of spatial planning and cohesion policy in investment processes. *Planning Practice & Research*, 2020, 38(5), 694–713. <https://doi.org/10.1080/02697459.2020.1852677>

¹⁸ A. Brenck, Torsten Beckers, M. Heinrich, C. Hirschhausen. *Public-private partnerships in new EU member countries of Central and Eastern Europe: An economic analysis with case studies from the highway sector.* (2005). *Public Sector Management and Regulation Working Papers* Reprint from *EIB Papers*, Vol. 10, No. 2 (2005), 82-112; C. Hirschhausen, *Modernizing Infrastructure in Transformation Economies: Paving the Way to European Enlargement*, Edward Elgar Publishing, pp.280, 2002

¹⁹ A. Fraser, F. Gross, J. Bachtler, S. Miller, *Ex Post Evaluation of the Cohesion Fund (Including Former ISPA): Work Package D: Management and Implementation*. EPRC, Glasgow. <https://pureportal.strath.ac.uk/en/publications/ex-post-evaluation-of-the-cohesion-fund-including-former-ispa-wor>

²⁰ C. Hirschhausen, op. cit.

²¹ A. Brenck, Torsten Beckers, M. Heinrich, C. Hirschhausen, op. cit.

²² C. Hirschhausen, op. cit.

²³ M. Florio, S. Vignetti, op. cit.

²⁴ A. Fraser, F. Gross, J. Bachtler, S. Miller, op. cit.

²⁵ T. Komornicki, B. Szejjec-Kolenda, op. cit.; A. Brenck, Torsten Beckers, M. Heinrich, C. Hirschhausen, op. cit.

²⁶ M. Wegener, T. Komornicki, P. Korcelli, Spatial Impacts of the Trans-European Networks for the New EU Member States, in (eds.) T. Komornicki and K. Czapiewski "New Spatial Relations in New Europe" EUROPA XXI, 2005, 13, 27-43; Warszawa, https://rcin.org.pl/igipz/Content/3092/Wa51_13309_r2005-t13_EuropaXXI.pdf

²⁷ I. Musiałkowska, *Wykorzystanie doświadczeń Unii Europejskiej w zakresie polityki spójności przez Mercosur*, Difin, Warszawa, 2017; M. Dąbrowski, I. Musiałkowska, and L. Polverari. "Introduction: Drawing Lessons from International Policy-Transfer Initiatives in Regional and Urban Development and Spatial Planning." *Regional Studies* 2018, 52 (9): 1165–68. <https://www.tandfonline.com/doi/full/10.1080/00343404.2018.1462490>.

²⁸ A. Brenck, Torsten Beckers, M. Heinrich, C. Hirschhausen, op. cit.

²⁹ M. Florio, S. Vignetti, op. cit.

Against this background this paper provides a comprehensive analysis and case study of the ISPA implementation in Poland with the focus on institutional aspects and processes. The purpose of this article is: 1) to characterise the programming of ISPA and the application for funds under the program, 2) to identify implementation problems and to assess the system and results, 3) to formulate policy recommendations for the future Member States. The methods used in the article include an analysis of legal acts, a critical analysis of reports and statistical data

ISPA programming

The ISPA program prepared by the European Commission was part of the pre-accession partnership, which involved preparing the candidate countries in priority areas of the *acquis communautaire*. When adopting the *acquis communautaire*, Poland declared that it would apply Community solutions even before full accession, treating the integration process as irreversible³⁰. As a result, in January 1997, the National Strategy for Integration (NSI) was adopted³¹. In June 1998, the National Program of Preparation for Membership in the European Union (NPPM) was adopted³².

Candidate countries were not legally obliged to develop national strategies for the transport and environment sectors on the basis of national investment plans and programs. However, the European Commission recommended that such national strategies for the transport and environment sectors should be developed on the basis of national investment plans and programs. The European Commission's

available from Polish and European institutions responsible for ISPA implementation. The paper is structured as follows: ISPA programming, application procedure, challenges related to the implementation of the program and program evaluation. Conclusions close the paper and point out that experiences from the programming of ISPA in Poland can be used to create a system for the use of pre-accession assistance and, in the future, of EU cohesion policy funds or infrastructural and regional policy development in the candidate countries.

environment and transport sector documents provided a reference framework (overall program priorities) for setting out the key implementation criteria for the national ISPA strategies. The European Commission provided assistance to remove inconsistencies that appeared in the national ISPA strategies. Candidate countries developed national strategies in either the environment or transport sectors. The national sectoral strategies of the candidate countries defined the criteria for the appraisal and selection of project proposals for funding under ISPA. These national ISPA strategies defined the objectives to be achieved under the program in each candidate country. Sometimes they were also part of the implementation of already existing national development strategies (national development plans), which could accelerate the implementation of already existing projects (undertakings) of international importance³³. In this respect, the planned projects were interwoven into

³⁰ G. Grabowska, *Poland on the Way to the European Union: From Association to Accession in the Context of Environmental Policy* (in:) *Legal Convergence in the Enlarged Europe of the New Millennium*, (ed.) Paul L.C. Torremans, Kluwer Law International, The Hague—Boston—London 2000, p. 1–20.

³¹ Monitor Integracji Europejskiej, special issue, 1997.

³² Monitor Integracji Europejskiej, No. 19 1998, pp. 19–62

³³ Signed in 1974 in Helsinki and amended in 1992, the Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention) covers the entire Baltic Sea

area, including the inland waters of the countries bordering the Baltic Sea. Under the Helsinki Convention, measures can be taken for the entire catchment area of the Baltic Sea to reduce pollution from land-based sources. In the early 1990s, Poland initiated environmental protection measures in the Baltic Sea region. The Krakow region, which includes a large concentration of industrial centres discharging into the Vistula River, was identified as a sensitive area in terms of protecting the Baltic Sea. A treatment plant project covering the entire urban area of Krakow was included in the National Urban Wastewater Treatment Program and, as one of the priority projects, was subsequently included in the national ISPA strategy for the environment sector in 1999.

the National Action Plan for Membership prepared by each candidate country.

Application procedure

The budget for the ISPA program for the period 2000-2006 in its original version assumed the disbursement of €7708 million (excluding technical assistance for preparing the beneficiaries to correctly apply for project funding). The total amount of funding for the ISPA program for the period 2000-2006 was €7280 million. Funding for ISPA projects in the environment sector amounted to €3804 million and in the transport sector to €3904 million. The annual budget of the ISPA program for the period 2000 - 2006 before the adoption of the amendments was set at €1.04 billion. Receiving such funding for the environment and transport sectors in equal amounts was contingent upon the level of preparation of projects submitted under ISPA and the possibility of partial co-financing of submitted projects from national funds. The annual allocation of the ISPA program comprised the sum of commitments allocated by the European Commission for approved projects in accordance with the procedure set out in Articles 7 and 8 of Regulation 1267/99.

An ISPA candidate country assisted by the European Communities submitted project proposals to the European Commission. Each project had to be approved by a decision of the European Commission. Project proposals submitted by the candidate countries, once assessed and approved by the European Commission, allowed for the signing of a Financing Memorandum, which specified the amount of grant awarded and the timetable for project implementation.

Subsequently, the European Commission indicated the approved projects to which co-financing had been granted staggered over the years in view of the scale of the planned projects. In this way, the maximum amounts of funding allocated under the ISPA program for individual projects were determined. In

fact, a contract was concluded between the European Commission and the beneficiary country, setting out the budgetary commitments for each project and the financial indicators of the project. Such an agreement was called a financing memorandum, which was used to monitor project implementation. The value of funds allocated by the European Commission for co-financing projects under the ISPA program was expressed in so-called financial plans (annual commitments) contained in financing memoranda separately for each project. Depending on the progress of the project, the commitment instalments set out in the memorandum could be reduced or postponed. Consequently, the financial plans could also be amended. The financial plans of the European Commission specified annual commitments for the co-financing of approved IPISA projects. Such projects were multiannual undertakings, which meant that project expenditure was incurred over a number of years up to the project completion date specified in the financing memorandum. Commitments by the European Commission to ISPA projects in a given year did not imply an obligation to pay the amount allocated at that time. Payments were made at the request of the ISPA beneficiary candidate country on the basis of expenditure incurred and accepted. The exception was an advance payment representing 20% of the ISPA grant, half of which was paid upon signature of the Financing Memorandum for each approved project and the remainder upon signature of the first contract of a multiannual project under implementation. The funds allocated by the European Commission for a given project could be requested over several years. Once the infrastructure which was the subject of an ISPA funded project was in use, the ISPA funded projects were considered to have been completed. Each

applicant country was required to submit a final report to the European Commission

within 6 months of completing a project co-financed by ISPA.

<i>Year</i>	<i>Eligible cost project</i>	<i>Total amount ISPA co-financing</i>
<i>1</i>	<i>2</i>	<i>3</i>
Environment sector - investment projects and technical assistance		
ISPA 2000	749 576	465 848
ISPA 2001	672 870	397 962
ISPA 2002	299 534	194 273
ISPA 2003	345 859	227 108
Total environment	2 067 838	1 285 191
Transport sector - investment projects and technical assistance		
ISPA 2000	438 677	329 008
ISPA 2001	708 007	531 006
ISPA 2002	356 461	267 496
ISPA 2003	230 621	172 966
Total transport	1 733 767	1 300 475
Technical assistance - horizontal		
ISPA 2000 ³⁴	1 630	1 630
Total	3 803 234	2 587 296

Table 1. Financial data for ISPA projects 2000-2003 - as at 31 January 2004 (€1,000) - Source: Reply of the Minister for the Economy, Labour and Social Policy to Query No. 2908 on the use of ISPA funds.

Challenges related to applying for funding under the ISPA program

Member States submitted proposals to the European Commission for projects to be co-financed under the ISPA program. Project applications submitted as proposals for ISPA funding required economic and financial justification. Each application for ISPA funding had to contain mandatory elements such as a timetable for the works; a cost-benefit analysis; a financing plan taking into account non-ISPA sources of finance (Article 7(3)(a) and Annex I of the Regulation (EC)). All projects that were expected to generate income in the future once implemented required the submission of a complete financial analysis. Applicants for funding had to demonstrate the planned feasibility of the proposed projects. A financial and cost-benefit analysis of the

project should be included in each application for ISPA funding.

When deficiencies were found in the financial and cost-benefit analyses accompanying the submitted projects, these could have been grounds for withholding the projects. In many cases, however, candidate countries were called upon to provide clarifications or corrections when inconsistencies were found in the submitted applications in order to increase the credibility of the analyses contained therein. The European Commission, assumed that the implementation of projects submitted for funding, despite aforementioned shortcomings in the cost-benefit analysis, was necessary to meet the basic needs of the candidate countries.³⁵ Cost-benefit analysis was less relevant for environmental projects

³⁴ Since 2000, ISPA has replaced PHARE as the funding source for project preparation assistance applying for EU funding. Despite the low capacity in the candidate countries to prepare projects for the program, the candidate countries were slow to use technical assistance funds. In 2000, only two projects were approved for a total of 3.7 million euro - cf. Court of Auditors 2003/C 167/01 Special Report No 5/2003 concerning PHARE and ISPA funding of environmental projects in the candidate countries together with the Commission's replies.

³⁵ Court of Auditors Special Report No 12/2008 - Instrument for Structural Policies for Pre-Accession (ISPA), 2000-2006

as there were no alternatives for them. There were also no generally accepted methods for quantifying environmental benefits. Environmental projects therefore did not have to include complete cost-benefit analyses and it was sufficient to submit a socio-economic analysis or a proxy statement of compliance with EU directives without quantifying the value of the project. This approach was justified by the situation related to the guidelines for applying for funding.

In 2000-2001 the first ISPA projects were submitted which included a cost-benefit analysis. The European Court of Auditors³⁶ audited the ISPA project proposals for financial and cost-benefit analyses. As a result, recurrent weaknesses were revealed.

First among the shortcomings were deficiencies in the assumptions made about the scenarios for the ISPA projects being implemented and the lack of information in the risk analysis about the discount rates for the projects being implemented.

A second group of weaknesses in the ISPA projects audited were inconsistencies in the cost-benefit and financial analyses in the project files. In many of the projects funded, implementation costs could not be maintained at the planned level due to inadequate financial preparation of the projects (underestimation of the costs of the project submitted for funding). A number of funded projects could not maintain their implementation costs at the planned level due to inadequate technical preparation of the projects (sending grant applications to the European Commission too early without detailed technical documentation for the best solution). This was also the case for projects coming from countries that had used international consultancy services. In many cases, it was not possible to keep costs at the planned level due to their insufficient control during the implementation phase of

the projects. A not insignificant factor in keeping costs at the planned level was the sharp rise in inflation, which was reflected in the construction sector in some candidate countries as a result of rapid economic growth. In some of the candidate countries after accession, there was again an unforeseen and unexpected rise in inflation, which on the one hand was a consequence of faster economic growth, which was also reflected in the development of the construction sector, and on the other hand was a consequence of the rise in raw material prices on world markets. Both factors indicated were the cause of the above-average price increase in the construction industry. In all these situations, an increase in the cost of implementing projects co-financed from ISPA funds was not a basis for amending signed Financing Memoranda. As a rule, ISPA financing memoranda were not amended to take account of cost increases. As a result, it was the candidate countries that were forced to cover the increased costs of the projects, which also entailed increased scrutiny of the funds spent on their completion. Also mentioned as factors for cost increases were large fluctuations in the exchange rate between the euro and the national currencies of the candidate countries, as well as delays between the award of ISPA funding and the commencement of construction work on a funded project. Such factors also included premature submission of project applications to the European Commission without proper technical documentation. Underestimated project implementation costs sometimes prevented the awarding of tenders due to the lack of bids submitted on the financial terms and conditions set out in the tender specifications.

The third group of shortcomings in the ISPA projects audited were the unproven socio-economic benefits and the

³⁶ Court of Auditors Special Report No 5/2003 concerning PHARE and ISPA funding of environmental projects in the candidate countries together with the Commission's replies, *OJ C 167*, 17.7.2003, p. 1–20

Court of Auditors Special Report No 6/2005 on the trans-European network for transport (TEN-T) together with the Commission's replies, *OJ C 94*, 21.4.2006, p. 1–36

incomplete estimation of the effects of the implementation of the co-financed projects on the transport sector. The European Commission was not in a position to state

unequivocally that the projects submitted represented the highest added value (on the basis of a cost-benefit analysis).

Evaluation of the implementation of the ISPA program

The lack of a consistent methodological approach to cost-benefit and financial analysis and the inadequacy of the European Commission's guidelines for applying for assistance under the program were undoubtedly one of the reasons for the shortcomings of the national administrations of the candidate countries, which were not provided with specialist knowledge. In addition, the short deadlines for preparing and submitting project proposals under ISPA further adversely affected the level of projects submitted for funding. Nevertheless, the European Commission³⁷ in monitoring the implementation of the ISPA program emphasised the insufficient administrative capacity of the candidate countries, which affected the preparation of the national authorities for the implementation of ISPA. According to the ECA³⁸ the inadequate preparation of projects for ISPA funding was also a result of the lack of administrative capacity of the candidate countries as well as the "mixed effectiveness of international consultancy services" used by the candidate countries. This approach seems too one-sided from the point of view of the European institutions. Indeed, it should not be underestimated that certain shortcomings and inadequacies in the submission of applications for ISPA programs were definitely dictated by the lack of availability of guidelines before the deadlines for submitting project proposals to the European Commission with projects to be funded. In 2000. The European Commission developed and made available the first methodological guide on policies, procedures and rules for financing ISPA projects, which in essence provided advice

on how to apply for financial assistance under the program. However, the first ISPA manual containing, inter alia, guidelines for cost-benefit analysis was only made available to ISPA beneficiaries during the preparation phase of the first round of project applications by candidate countries. For the first round of applications, it was not possible to use the three guidance documents, which were made available too late by the Commission. A second version of the ISPA manual was produced in 2002 with explanations of the tendering and contracting procedures. Updated guidance on cost-benefit analysis was made available in 2002, setting out average rates of return and recommended 'timeframes' for the different sectors and addressing the weaknesses of the earlier version. However, the guidelines did not include rules for determining the environmental impact of planned projects. An important shortcoming of the program was that the ISPA methodological guides were only produced after the candidate countries had submitted their projects to the European Commission for approval under the ISPA program. Indeed, the methodological guides made available to the candidate countries with such a delay could only be of relevance for future submissions to the European Commission with projects scheduled for funding under the program. Only in this way could the methodological guides have influenced the candidate countries' knowledge of EU policies, procedures and funding rules. The belated release of the ISPA manuals could not make any difference in principle to the projects submitted in the procedures already underway. However, this was approached

³⁷ Court of Auditors Special Report No 12/2008 - Instrument for Structural Policies for Pre-Accession (ISPA), 2000-2006, 33.

³⁸ Court of Auditors Special Report No 12/2008 - Instrument for Structural Policies for Pre-Accession (ISPA), 2000-2006, 33.

differently by the European Court of Auditors³⁹, which considered that the guidance contained in the detailed program application forms made available in 1999, as well as the guidance developed under previous pre-accession instruments on tendering procedures, was sufficient for candidate countries. In this respect, a 'Guide to Cost-Benefit Analysis of Investment Projects' was available for the PHARE program from 1997, which explained the main principles of cost-benefit analysis. In addition, from 1998 onwards, the European Commission organised PHARE support meetings in all Candidate Countries on the occasion of which issues were also raised to prepare for the introduction of ISPA, taking into account the changing implementation conditions in the Candidate Countries. In 1999, the European Commission made available application forms for funding, which were also intended to provide guidelines for the proper drafting of applications for funding, with the guidelines developed under the previous pre-accession instruments as an additional point of reference for tendering procedures. The European Commission developed an instruction manual for PHARE implementing bodies on how to apply the standard procedures called the *Extended Decentralised Implementation System*.⁴⁰ From 01 January 2001 to 30 April 2004 the Practical Guide for PHARE, ISPA and SAPARD contracting procedures was in force, which replaced the relevant chapters of the *Extended Decentralised Implementation System (EDIS) Manual* on

procedures and standard documents for contracting services, supplies and works. The European Commission repeatedly amended the PRAG Manual (Practical Guide for PHARE, ISPA, SAPARD), which undoubtedly affected the implementation of the Phare SEC Program of the 2001 edition.⁴¹ This undoubtedly also adversely affected the appropriate application of this document for the ISPA program. In contrast, the 2002 version of the ISPA manual mainly took into account significant changes concerning the regulatory environment⁴². However, the above documents creating a system of regulations requiring appropriate application was not sufficient at the start of the ISPA program, or even during its implementation, as evidenced by the modifications made to individual documents by the European Commission. For example, the ECA's recommendations on improving the risk analysis of projects planned for co-financing from pre-accession funds (as an element of cost-benefit analysis) were taken into account in subsequent documents addressed to the EU candidate countries after 2004⁴³. The lack of uniform methodological rules for the preparation of projects applying for ISPA funding was a wider systemic problem. Even specialised international consultancies struggled to read the guidelines for correctly applying for ISPA financial assistance, and they certainly cannot be accused of lacking the necessary administrative capacity. A lack of administrative capacity on the part of the

³⁹ Court of Auditors Special Report No 12/2008 - Instrument for Structural Policies for Pre-Accession (ISPA), 2000-2006, 33.

⁴⁰ The EDIS manual contained a definition of the principles of programming the implementation, monitoring and reporting of programs financed from the European Union, and also defined the duties related to the control exercised by the supervisory authority, with regard to the implementation of the program, the use of funds originating from the program and the principles of rational financial management of funds originating from the program - cf. Krzysztof Gasparski, Magdalena Iwaniecka, Marta Krępska, Rita Kubylis, Zuzanna Kucińska, Marzena Rożnowicz, Witold Witowski, Anna Włodarczak, Małgorzata Zalewska, PHARE Cohesion Społeczno-Gospodarcza. Programme Summary, edited by Agnieszka Haber

and Witold Witowski, Ministry of Regional Development, Polish Agency for Enterprise Development, p. 12.

⁴¹ Krzysztof Gasparski, Magdalena Iwaniecka, Marta Krępska, Rita Kubylis, Zuzanna Kucińska, Marzena Rożnowicz, Witold Witowski, Anna Włodarczak, Małgorzata Zalewska, PHARE Socio-Economic Cohesion. Programme Summary, edited by Agnieszka Haber and Witold Witowski, Ministry of Regional Development, Polish Agency for Enterprise Development, p. 12.

⁴² Court of Auditors Special Report No 12/2008 - Instrument for Structural Policies for Pre-Accession (ISPA), 2000-2006.

⁴³ Court of Auditors Special Report No 12/2008 - Instrument for Structural Policies for Pre-Accession (ISPA), 2000-2006.

candidate countries was certainly not the sole cause of delays and deficiencies in the grant award procedure. On the European Commission's side, there was also a lack of sound administrative capacity at the start of ISPA, as evidenced by the absence of engineering experts and economists to assess the ISPA project applications submitted⁴⁴. In fact, they were recruited on the basis of temporary contracts with the European Investment Bank, which concerned people who had experience with the Cohesion Fund. The Commission did not systematically recruit high quality specialists from the EIB due to the limited financial resources available for this purpose. In addition, it cannot be generalised that the candidate countries did not have to deal with project implementation on the scale of ISPA-funded projects. Indeed, many of the candidate countries went through a period of intensive industrialisation within the framework of the people's democracies, carrying out even larger investment projects, albeit certainly based on

completely different principles of a planned economy not always based on the criterion of profitability. In this respect, what was new for the candidate countries was the stringent planning and financial requirements that were laid down at the start of the ISPA program. The unavailability of the guidelines, which should have been made available by the European Commission much earlier, certainly had a major impact on the correct structuring of an application for ISPA funding. However, it was difficult for the candidate countries to insist on their right and demand earlier access to certain documents when they were in the weaker position of only aspiring to fully-fledged membership. This does not, however, alter the generally positive assessment of the entire ISPA program, which provided a number of positive experiences both for the candidate countries and for the European institutions, which were thus laying the foundations for cooperation with the new countries burdened by the experience of socialism for the most part.

Conclusions and recommendations

Undoubtedly, the procedures put in place to implement ISPA were necessary from the point of view of disbursing funds from the taxpayers of the countries belonging to the European Communities.

These funds had to be controlled both by the European Commission, responsible for the implementation of the EU budget, and by the European Court of Auditors, which controls all EU finances. The conclusions reached by both EU institutions were not always favorable to the candidate countries. Nor were the opinions reached always in line with the position of these countries. In addition, they had very limited influence on the shape of the accession policy implemented.

Nevertheless, the opinions of the candidate states should be taken into account as well as conclusions on the key factors contributing to effective and efficient implementation of the pre-accession funds appearing in the scholarly debate⁴⁵. Polemical, and at times even critical, positions towards the views presented by the EU institutions can be an added value in the discussion of the reasons for the effectiveness of the implementation of financial programs from EU funds. The conclusions are also of particular value to subsequent candidate countries for

⁴⁴ Court of Auditors 2003/C 167/01 Special Report No 5/2003 concerning PHARE and ISPA funding of environmental projects in the candidate countries together with the Commission's replies.

⁴⁵ E.g. A. Fraser, F. Gross, J. Bachtler, J., & S. Miller. *Ex post evaluation of the cohesion fund (including former ISPA):*

work package D: management and implementation. ECRP, Glasgow, 2012 <https://pureportal.strath.ac.uk/en/publications/ex-post-evaluation-of-the-cohesion-fund-including-former-ispa-work-package-D/>; Francesc Morata and Andrea Noferini, *Introduction to European Cohesion Policy for candidate and potential candidate countries. Framework, experiences and instruments*. Institut Universitari d'Estudis Europeus, Barcelona, 2009

accession to the European Union⁴⁶. They can benefit from the previous experience of countries that have already gone down this road. In the current political realities, the efficiency of the accession negotiations is crucial. However, there is no doubt that the negotiating requirements for agreeing on a common position are an obligation for all parties to the ongoing dialogue. There is also no doubt that it is not only the European Commission that can impose certain requirements. Member states can also expect the European Commission to provide certain conditions, such as the full availability of clearly formulated documents on the rules for the use of pre-accession financial assistance. Such documents were lacking in due course during the implementation of ISPA, for example, in terms of a consistent methodological approach to applying for funds from this program. On the other hand, the appropriate use of documents prepared for other programs co-financed by EU funds was not always sufficiently transparent for both candidate countries and specialized international companies dealing with professional application for such funds. In this situation, it seems that the accusations leveled against candidate countries in terms of insufficient administrative capacity were too one-sided. Deficiencies in this regard also occurred on the part of the European Commission, which probably also had an impact on the timely preparation of documents enabling candidate countries to apply for pre-accession funds. Arguably, this had an impact on the due level of preparation of project applications for funding of specific projects according to the criteria required by the EU institutions. Indeed, the provision of such documents to candidate countries also affected the level of preparation of the administrative

apparatus to implement the requirements of EU law.

In Poland, this situation raised concerns about the loss of pre-accession funds and, consequently, the squandering of an opportunity for faster development of the country⁴⁷. As a result, the use of funds granted by the European Communities under the ISPA program was subject to simultaneous control by the national institution responsible for the expenditure of public funds⁴⁸. The post-audit conclusions of the Supreme Audit Office confirmed 'delays in the implementation of the ISPA program in the environment sector'. The general recommendations aimed at removing the identified irregularities pointed primarily to the need for coordination between the Committee for European Integration, the Ministry of Finance, the Ministry of the Environment, and the National Fund for Environmental Protection and Water Management. Procedural problems were also confirmed, which required the introduction of precise deadlines for the verification of tender documents submitted by final beneficiaries, as well as deadlines for the conclusion of project implementation agreements with Final Beneficiaries, into the 'Agreement on the implementation of the ISPA Program'. However, such procedural details required the final position of the European Commission on tender procedures, contracting conditions and tender documentation for projects co-financed by the ISPA fund, as well as agreement with the European Commission Representation on the deadlines for the verification of tender documentation.

However, Poland's problems with implementing the ISPA program were not unique. According to the European Court of Auditors, delays occurred in 75% of projects approved between 2000 and 2003

⁴⁶ P. Žuber, *EU Pre-accession Processes in the fields of Decentralisation, Regional Policy and Coordination of Structural Instruments. The case of Poland*. Kyiv, March 2023.

⁴⁷ T.G. Grosse, *Szanse i zagrożenia dla wykorzystania funduszy Unii Europejskiej*, Studia Regionalne i Lokalne, 2003, No. 2, p. 99.

⁴⁸ Informacja Najwyższej Izby Kontroli o wynikach kontroli przygotowania jednostek sektora publicznego do wykorzystania pomocy finansowej Unii Europejskiej w ramach programu ISPA w obszarze ochrony środowiska w latach 1999-2002; <http://www.nik.gov.pl/kontrola/wyniki-kontroli-nik/kontrola,1048.html>; Accessed 22.01.2025

in accordance with the original financial memoranda in all candidate countries.

The observations made have remained valid. Similar arguments can therefore be raised from the very beginning of the ongoing membership negotiations if only because of the principle of legal certainty operating in the system of EU law. Ensuring an adequate level of functioning of the public administration from the beginning of the ongoing negotiation process is also an important factor for the proper application of the *aquis communautaire* now and in the future⁴⁹

This is important in view of the fact that, after accession to the EU, increasingly higher demands are being placed on the administrative capacity of each member state operating within the framework of the cohesion policy implementation system⁵⁰.

It was therefore rightly pointed out that there was a need for systematic analysis of the qualifications and aptitudes of persons responsible for the efficient, professional and effective performance of tasks related to the coordination and implementation of projects under the ISPA Program. In the Polish context, this concerned persons delegated to implement the ISPA program at the level of the Ministry of Finance, the Ministry of the Environment and the National Fund for Environmental Protection and Economy.

It is useful to analyze the conclusions of the reports of the EU institutions that control the implementation of the ISPA program, if only to ensure that previous systemic deficiencies are not duplicated. In the future, the use of the granted assistance will be simpler and at the

same time more effective for all parties concerned.

Summing up, the paper findings go in line with literature review on defining challenges and key success factors such as: capacity building, risk-management, proper targeting of interventions, creation of stable policy environment and robust institutions (see section 1.). However the papers shows also the interplay with the European institutions as one of the important factors contributing to the successful performance of the pre-accession programs. The requirements formulated towards the e.g. European Commission and procedural aspects are also of crucial importance. Therefore, the paper adds to the body of literature not only by providing of a comprehensive analysis of the Polish case but also highlighting other determinants of proper implementation of funds.

After analysis made, some key recommendations for Poland in the context of the implementation of ISPA that might be of use for the future Member States are the following: 1) moving to performance-based, socially-oriented appraisal and use sectoral benchmarks, 2) investing in capacity building and adopt best practices from older European Union states, 3) ensuring supportive legal and institutional frameworks and realistic demand projections for e.g. public-private partnerships or public tendering, 4) integrating spatial planning, cohesion/regional/ infrastructural policy, and legislative reforms, and finally 5) targeting interventions to regional needs and monitoring for adverse effects.

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⁴⁹ R. Formuszewicz, *Kontrola prawidłowości wykorzystania funduszy strukturalnych - wyzwania dla polskiej administracji* [in:] *Dostosowania do wymogów Unii Europejskiej. Przykład Polski*, ed. Piotr Kalka, Instytut Zachodni, Poznań 2007, pp. 197-215

⁵⁰ R. Talaga, *Zdolność administracyjna „instytucji zarządzającej” w obszarze polityki spójności* [in:] *Zdolność*

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ІНСТРУМЕНТ СТРУКТУРНОЇ ПОЛІТИКИ ПЕРЕД ВСТУПОМ ЯК ПЕРЕДУМОВА ДО ВИКОРИСТАННЯ ФОНДУ ЗГУРТУВАННЯ

Анотація

Трансформаційні процеси 1989 року поклали початок прагненню країн Центральної Європи інтегруватися із Західною Європою. У відповідь на це провідні індустриальні країни світу пообіцяли підтримку системних перетворень, що призвело до створення Європейським співтовариством у 1989 році програми PHARE для Польщі та Угорщини. Згодом ця допомога поширилася на інші країни, що прагнули стати членами ЄС, сформувавши скоординовану стратегію передвступної підготовки.

Ключовим фінансовим інструментом цієї стратегії став Інструмент структурної політики перед вступом (ISPA), запроваджений у 2000 році. Створений за зразком Фонду згуртування ЄС, ISPA мав на меті підтримку економічної та соціальної згуртованості шляхом масштабних інвестицій у захист навколишнього середовища та транспортну інфраструктуру. Програма сприяла дотриманню екологічних стандартів ЄС та розвитку трансєвропейських транспортних мереж (TEN). У Польщі проекти, фінансовані ISPA, сприяли поліпшенню якості повітря та води, управлінню відходами та інтеграції національних транспортних систем з мережами ЄС.

Література щодо використання фінансування перед вступом до ЄС, зокрема ISPA, є фрагментарною і нечисленною. Тому ця стаття всебічно висвітлює програмування ISPA, процеси подання заявок, проблеми реалізації та результати. У дослідженні використовуються правовий аналіз, критична оцінка звітів та статистичні дані для оцінки ефективності ISPA. Висновки дають уявлення про оптимізацію механізмів допомоги перед вступом та орієнтири для майбутнього фінансування політики згуртування ЄС. Вони також слугують джерелом інформації для вивчення політики для потенційних держав-членів ЄС.

Ключові слова: ISPA, передвступні фонди, фонди ЄС, політика згуртування, Фонд згуртування, інфраструктура, Польща.

