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COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

**COUNCIL REGULATION**

**laying down general provisions on the European Regional Development Fund,  
the European Social Fund and the Cohesion Fund**

(presented by the Commission)

{SEC(2004)924}

## **EXPLANATORY MEMORANDUM**

### **1. INTRODUCTION: NECESSITY TO REVISE THE REGULATIONS**

On 10 February 2004, the Commission adopted a proposal for the financial perspectives of the enlarged European Union of 27 Member States for the period 2007-2013 [COM(2004)101]. In this context, the Commission took the view that the Union's intervention in a number of key policy fields required strengthening. In particular, the Commission decided that an ambitious cohesion policy should be an essential element of the financial package.

The decision reflected the work that had been undertaken since the publication of the Second cohesion report in 2001 which launched the debate on the future of cohesion policy in the enlarged Union [COM(2001)24]. On 18 February 2004, the Commission adopted the Third cohesion report [COM(2004)107] which presented a detailed proposal for the priorities and delivery system for the new generation programmes under cohesion policy for the period 2007-2013. The proposal is coherent with the broad guidelines set out in the Commission's communication on the next financial perspective.

The Third cohesion report concluded that the enlargement of the Union to 25 Member States, and subsequently to 27 or more, presents an unprecedented challenge for the competitiveness and internal cohesion of the Union. Enlargement has resulted in the widening of the economic development gap, a geographical shift in the problem of disparities towards the east and a more difficult employment situation:

- the gap in per capita GDP between the 10% of the population living in the most prosperous regions and the same percentage living in the least prosperous ones has more than doubled compared with the situation in EU15.
- in EU25, 123 million people - representing some 27% of the total population - live in regions with a per capita GDP below 75% of the EU average as against 72 million people, or 19% of the total, in EU15. Of these, four out of ten citizens are living in regions belonging to the 15 "old" Member States while the other six are nationals of the 10 "new" Member States.
- Four million jobs will have to be created if the average level of employment in the 10 new Member States is to be aligned with that of the rest of the EU. Within the enlarged EU, appreciable employment gaps also persist according to age and gender.

At the same time, the whole of the Union faces challenges arising from a likely acceleration in economic restructuring as a result of globalisation, trade opening, the technological revolution, the development of the knowledge economy and society, an ageing population and a growth in immigration.

Finally, economic growth in the EU has slowed appreciably since 2001. As a result, unemployment has risen again in many parts of the Union with all the social implications which this entails. As a springboard to the future, the Union should fully exploit the opportunities provided by the current trend towards recovery.

In an effort to improve the performance of the EU economy, the Heads of State and of Government of the Union meeting in Lisbon in March 2000 set out a strategy designed to

make Europe the most successful and competitive knowledge based economy in the world by 2010. The Nice Council in December 2000 translated the Lisbon objectives on poverty reduction into a co-ordinated EU strategy for social inclusion. At the Gothenburg Council in June 2001, the Lisbon strategy was widened adding a new emphasis on protecting the environment and achieving a more sustainable pattern of development.

Cohesion policy makes an important contribution to realising these aims. In effect, growth and cohesion are mutually supportive. By reducing disparities, the Union helps to ensure that all regions and social groups can contribute to, and benefit from, the overall economic development of the Union. Articles 3 and 158 of the Treaty reflect this vision, which has been reinforced in the draft Treaty establishing a Constitution by the introduction of a clearer reference to the territorial dimension of cohesion.

Cohesion policy is also necessary in a situation where other Community policies have important benefits combined with limited but localised costs. Cohesion policy helps to spread the benefits. By anticipating change and facilitating adaptation cohesion policy can help to limit the negative impacts.

For this reason, cohesion policy in all its dimensions must be seen as an integral part of the Lisbon strategy, even if today, as the Commission pointed out in its proposal on the next financial perspective, the policy design underlying Lisbon needs to be completed and updated. In other words, cohesion policy needs to incorporate the Lisbon and Gothenburg objectives and to become a key vehicle for their realisation via the national and regional development programmes.

Strengthening regional competitiveness through well-targeted investment throughout the Union and providing economic opportunities which help people fulfil their capabilities will thus underpin the growth potential of the EU economy as a whole to the common benefit of all. By securing a more balanced spread of economic activity across the Union, regional policy helps to reduce the pressures of over-concentration, congestion and bottlenecks.

The reform of cohesion policy also should provide an opportunity to bring greater efficiency, transparency and political accountability. This requires, first and foremost, the definition of a strategic approach for the policy spelling out its priorities, ensuring co-ordination with the system of economic and social governance, and allowing for a regular, open review of progress made. It calls for further simplifying the management system by introducing differentiation and proportionality in the context of sound financial management. Furthermore, it is necessary to further decentralise the responsibility toward the partners on the ground in Member States, regions and local authorities.

The present draft regulation is the proposal of the Commission for the next generation of cohesion policy programmes. It constitutes the basis on which, according to Article 55 of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds, the Council shall review the mentioned regulation by 31 December 2006 at the latest. The Commission outlines the need to adopt the regulations in the course of 2005 in order to dedicate 2006 to the programming for the period 2007-2013.

## **2. THE NEW ARCHITECTURE FOR EU COHESION POLICY AFTER 2006**

The Commission proposes that actions supported by cohesion policy should focus on investment in a limited number of Community priorities, reflecting the Lisbon and Gothenburg agendas, where Community intervention can be expected to bring about a leverage effect and significant added value. Accordingly, for the operational programmes, the Commission proposes a core list of a limited number of key themes as follows: innovation and the knowledge economy, environment and risk prevention, accessibility and services of general economic interest. For employment related programmes, the focus will be on implementing the reforms needed to progress towards full employment, improve quality and productivity at work, and promote social inclusion and cohesion, in line with the guidelines and recommendations under the European Employment Strategy (EES).

### ***Concentration on three Community objectives***

The pursuit of the priority themes would be organised around a simplified and more transparent framework with the future generation of programmes grouped under three headings: convergence; regional competitiveness and employment; territorial co-operation.

#### **2.1. Convergence**

The “Convergence” objective concerns the less developed Member States and regions which in accordance with the Treaty are the top priority for Community cohesion policy. The Treaty calls for a reduction in disparities between “the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas” (Article 158). Enlargement will bring about an unprecedented increase in the disparities within the Union, the reduction of which will require long-term, sustained efforts.

This objective concerns, first and foremost, those regions, whose per capita GDP is less than 75% of the Community average. The key objective of cohesion policy in this context would be to promote growth-enhancing conditions and factors leading to real convergence. Strategies should plan for the development of long-term competitiveness and employment.

The Commission also proposes that temporary support should apply under this priority to those regions where per capita GDP would have been below 75% of the Community average as calculated for the Union of Fifteen (the so-called statistical effect of enlargement). These are regions where objective circumstances have not changed, although their GDP per head will be relatively higher in the enlarged Union. In the interest of equity, and to allow the regions concerned to complete the process of convergence, support will be higher than decided in Berlin in 1999 for the so-called “phasing out” regions of the current generation.

Programmes would be supported by the financial resources of the European Regional Development Fund (ERDF), the European Social Fund (ESF), and the Cohesion Fund, in accordance with the principles set out in the Treaty.

The Cohesion Fund will apply to Member States with GNP lying below 90% of the Community average. The assistance of the Cohesion Fund will be conditioned to the fulfilment of the conditions of economic convergence as well as of the necessity to avoid excessive public deficits in accordance with Article 104 of the Treaty.

In line with the priorities set by the financial perspective, the Cohesion Fund will strengthen its contribution to sustainable development. In this respect, trans-European transport networks, in particular, the projects of European interest, and environment infrastructures would remain the central priorities. In order to reach an appropriate balance to reflect the particular needs of the new Member States, it is envisaged also to support projects such as rail, maritime, inland waterways, and multimodal transport programmes outside the TEN-T, sustainable urban transport and environmentally important investments in the key fields of energy efficiency or renewable energies.

Emphasis will also be given to the strengthening of institutional capacity and the efficiency of public administration, including the capacity for managing the Structural Funds and the Cohesion Fund.

## **2.2. Regional competitiveness and employment: anticipating and promoting change**

While interventions in the less developed Member States and regions remain the priority of cohesion policy, there are important challenges that concern all EU Member States such as rapid economic and social change and restructuring, trade globalisation, a move towards a knowledge-based economy and society, an ageing population, growing immigration, labour shortages in key sectors and social inclusion problems.

In this context, the Union must have an important role to play. For cohesion policy outside the least developed Member States and regions, the Commission proposes a two-fold approach:

- First, through regional programmes financed by the ERDF, cohesion policy will help regions and the regional authorities to anticipate and promote economic change in industrial, urban and rural areas by strengthening their competitiveness and attractiveness, taking into account existing economic, social and territorial disparities.
- Second, through programmes, financed by the ESF, cohesion policy will help people to anticipate and to adapt to economic change, in line with the policy priorities of the EES, by supporting policies aiming at full employment, quality and productivity at work, and social inclusion.

Under the new regional programmes financed by the ERDF the Commission proposes a stricter concentration of interventions on the three priority themes: innovation and the knowledge economy, environment and risk prevention, accessibility and services of general economic interest.

The single funding source for the new programmes will be the ERDF. From a resource allocation point of view, two groups of regions need to be distinguished:

- The regions currently eligible for Objective 1 not fulfilling the criteria for the convergence priority even in the absence of the statistical effect of enlargement. Such regions will benefit from support on a transitional basis (under the heading “phasing in”) which will follow a path comparable to that for regions no longer eligible for Objective 1 in the period 2000-2006.
- All other regions of the Union covered neither by the convergence programmes nor by the “phasing in” support described above.

As regards the operational programmes financed by the ESF, the Commission proposes to underpin the implementation of the employment recommendations and to strengthen social inclusion, in line with the objectives and guidelines of the EES.

To this end, support should focus on four policy priorities that are crucial for the implementation of the EES and where Community funding can provide added value: increasing the adaptability of workers and enterprises; enhancing access to employment and increasing participation in the labour market; reinforcing social inclusion and combating discrimination, mobilising reforms in the fields of employment and inclusion.

### **2.3. European territorial cooperation**

Building on the experience of the present INTERREG Initiative, the Commission proposes to create a new objective dedicated to further the harmonious and balanced integration of the territory of the Union by supporting co-operation between its different components on issues of Community importance at cross-border, transnational and interregional level.

Action will be financed by the ERDF and will focus on integrated programmes managed by a single authority in pursuit of key Community priorities linked to the Lisbon and Gothenburg agendas.

All regions along the internal terrestrial and certain regions along the external terrestrial borders as well as along certain neighbouring maritime borders will be eligible for cross-border co-operation. The aim will be to promote joint solutions to common problems between neighbouring authorities, such as urban, rural and coastal development and development of economic relations and networking of SMEs.

As far as the broader actions to promote transnational co-operation is concerned, the Member States and regions are invited to assess the usefulness and effectiveness of the existing 13 transnational cooperation zones (defined under INTERREG IIIB) in the light of enlargement. The objective will be to decide together with the Commission on a number of zones for transnational cooperation which are sufficiently coherent and where there are common interests and opportunities to be developed. It is envisaged that such cooperation will focus on strategic priorities with a transnational character such as R&D, environment, risk prevention and integrated water management.

Finally, the Commission proposes that regions should in future incorporate actions in the field of interregional cooperation within their regional programmes. To achieve this, regional programmes will need to dedicate a certain amount of resources to exchanges, cooperation and networking with regions in other Member States.

## **3. AN INTEGRATED RESPONSE TO SPECIFIC TERRITORIAL CHARACTERISTICS**

An effective cohesion policy needs to take into account the specific needs and characteristics of territories such as the outermost regions of the Union, islands, mountain areas, in sparsely populated parts in the far north of the Union and certain border areas of the Union.

It also needs to support in an appropriated manner, urban regeneration, rural areas and areas dependent on fisheries, ensuring complementarity and consistency with the specific agricultural and fisheries financial instruments.

Consequently, the Commission intends, within the convergence objective, to set up a specific allocation to compensate for the specific constraints of the outermost regions, as recognised by article 299.2 of the Treaty and requested by the European Council of 21-22 June 2002 in Seville. In addition, an action “Grand Voisinage” aimed at facilitating cooperation with the neighbouring countries will be included under the new “European territorial co-operation” programmes.

Since the problems of accessibility and remoteness from large markets are particularly acute in many islands, mountain areas and sparsely-populated regions, particularly in the far north of the Union, the allocation of the resources for the regional competitiveness and employment priority will take account of this by using “territorial” criteria, thus reflecting the relative disadvantage of regions with geographical handicaps.

Member States should ensure that the specificities of these regions are taken into account when it comes to the targeting of resources within regional programmes. In an effort to promote more action in these sometimes neglected areas and to take account of the higher cost of public investment in per capita terms, for the next period it is proposed that territories with permanent geographical handicaps should benefit from an increase in the maximum Community contribution.

Building on the strengths of the URBAN initiative, the Commission intends to reinforce the place of urban issues by fully integrating actions in this field into the regional programmes. Regional programmes will need to indicate how urban actions are dealt with and how the sub-delegation of responsibilities to city authorities for these actions is organised.

#### **4. A BETTER ORGANISATION OF THE INSTRUMENTS OPERATING IN RURAL AREAS AND IN FAVOUR OF THE RESTRUCTURING OF THE FISHERIES SECTOR**

The Commission proposes to simplify and to clarify the role of the different instruments in support of rural development and the fisheries sector. The current instruments linked to rural development policy will be grouped in one single instrument under the Common Agricultural Policy designed to:

- Increase the competitiveness of the agricultural sector through support for restructuring
- Enhance the environment and country side through support for land management, including co-financing of rural development actions related to Natura 2000 nature protection sites
- Enhance the quality of life in rural areas and promoting diversification of economic activities through measures targeting the farm sector and other rural actors.

The present Community Initiative, LEADER+, will be integrated into the mainstream programming.

Similarly, action in favour of the restructuring of the fisheries sector would be grouped under a single instrument, which would focus on actions to accompany the restructuring needs of the fisheries sector, and to improve the working and living conditions in areas where the fisheries sector, including aquaculture, plays an important role.

An important part of these proposals is that the financial resources transferred from cohesion policy to these new instruments will continue to be deployed in such a way that the same degree of concentration is achieved as today on helping the less developed regions and countries covered by the convergence programmes.

Outside these interventions, cohesion policy would support the diversification of the rural economy and of the areas dependent on fisheries away from traditional activities.

## **5. SIMPLIFICATION AND DECENTRALISATION: A REFORMED DELIVERY SYSTEM**

Whereas the delivery mechanism for cohesion policy has demonstrated its capacity to implement quality programmes and projects of European interest on the ground, a number of problems have been encountered in the management of current programmes.

The Commission therefore intends to maintain the key principles of cohesion policy – programming, partnership, co-financing and evaluation. However, it proposes to enhance the efficiency of the policy by introducing a number of reforms designed, firstly, to encourage a more strategic approach to programming, secondly, to introduce further decentralisation of responsibilities to partnerships on the ground in the Member States, regions and local authorities, thirdly, to reinforce the performance and quality of programmes co-financed through a reinforced, more transparent partnership and clear and more rigorous monitoring mechanisms, and fourthly, to simplify the management system by introducing more transparency, differentiation and proportionality while ensuring sound financial management.

### **5.1. More strategic orientation on the priorities of the Union**

The Commission proposes that an overall strategic document for cohesion policy should be adopted by the Council, with an opinion of the Parliament, in advance of the new programming period and on the basis of a Commission proposal, defining clear priorities for Member States and regions.

This strategic approach would guide the policy in its implementation and make it more politically accountable. It would help to more tightly specify the desired level of synergy to be achieved between cohesion policy and the Lisbon and Gothenburg agendas and would increase the consistency with the Broad Economic Policy Guidelines and the European Employment Strategy.

Each year, the European Institutions would examine progress on the strategic priorities and results achieved on the basis of a report by the Commission summarising Member States' progress reports.

In addition, the Commission proposes to simplify further the system in a number of key aspects.

### **5.2. Programming**

The programming system will be simplified as follows:

At the political level: on the basis of the strategic guidelines adopted by the Council, each Member State would prepare a national framework document on its development strategy, which would be negotiated with the Commission and constitute the framework for preparing

the thematic and regional programmes, but not having the role – as the existing Community Support Framework – of a management instrument;

At the operational level: on the basis of the policy document, the Commission would adopt national and regional programmes for each Member State. The programmes would be defined at an aggregate or priority level only, highlighting the most important operations. Additional detail, reflected today in the so-called “programme complement” would be abandoned as well as the management by measure.

The number of funds will be limited to three (ERDF, ESF and Cohesion Fund) compared to the current six.

As opposed to current multi-Fund programmes, future ERDF and ESF interventions would aim at operating with only one fund per programme. In this respect, the action of each fund would be made more coherent by allowing the ERDF and the ESF to finance, respectively, residual activities related to human and physical capital. Funding of these activities would be limited and directly linked to the main domains of interventions of each Fund. This would allow both for a simplification and increased effectiveness of programming.

The Cohesion Fund and the ERDF will follow a single programming system, where transport and environment infrastructures are concerned. Large projects would be adopted by the Commission separately, but managed within the related programmes.

### **5.3. Financial management and control**

Within the framework of shared management, one of the key objectives of the future regulatory package for the 2007-2013 programming period is to clearly delimit on the basis of experience gained from the current body of law, the framework, the nature, and the division of responsibility between the different actors concerned by the execution of the Community budget. These include the Member States and the implementing bodies, on the one hand, and the Commission, on the other. In this respect, a clarification will contribute to improve efficiency, efficacy and the overall balance of the system.

#### ***Management and control system***

The draft regulation laying down general provisions for the ERDF, the ESF and the Cohesion Fund increase the coherence and transparency of the overall architecture of the management and control systems of the Funds:

- The coherence, as is clearly define the minimum conditions applicable to the control and audit systems at all levels of the process, as well as the respective tasks and obligations of the different actors;
- The transparency, as it is necessary that the different actors concerned by the controls become aware of the results of the controls of each part, in order to improve efficiency, efficacy and the overall balance of the system.

The draft regulation defines a common basis of a minimum set of conditions which any management and internal control system concerned by the management of the Funds shall comply with, and the responsibilities of Member States and of the Commission for ensuring the respect of the principle of sound financial management. To this end, the Member States shall provide an assurance in relation with the management and control systems:

- At the beginning of the period, via the opinion on the system by an independent audit body;
- Each year, via the opinion of the audit authority supported by an annual control report; and
- At the end of the period, via the assurance on the final statement of expenditure.

When the Commission disposes of the assurance on the existence and sound functioning of the national management and control systems – assurance based on its own audits and national audits -, it will be able to base its assurance concerning the legality and regularity of the declared expenditure on the results on national controls. Accordingly, it will be able to limit its own on-the-spot audits to exceptional circumstances only.

Along the same lines, the regulatory architecture proposes that the degree of Community intervention in the management, evaluation, and control is a function – among other things – of the importance of its contribution. The draft general regulation allows Member States to apply their own rules and management and control structures when the national contribution is prevailing to a significant degree. This option applies only if the Commission has received an assurance on the reliability of national management and control systems.

The principle of additionality – i.e. EU resources should add to rather than replace national resources - will remain a key principle of cohesion policy. However, in line with the principle of proportionality, the Commission will verify its application only within the “convergence” objective. Member States would be responsible for ensuring that the principle of additionality applies within the “Regional competitiveness and employment” and “European territorial co-operation” programmes.

### ***Financial management***

Concerning financial management, two important aspects are introduced to simplify the system. Indeed, payments will be operated at the level of the priorities, and no longer at the level of the measures as it is the case today. In addition, the Community contribution will be calculated on the basis of public expenditure only. The payment system (payment on account and reimbursement) as well as the principle of the automatic de-commitment are maintained.

The draft regulation also proposes the setting up of a procedure of interruption, withholding and suspension of payments in case of serious problems at the moment of the presentation of the request for interim payment.

With a view to simplify the financial management, the Commission proposes to allow partial closure of programmes for operations, which have been completed. The schedule of this closure is decided by each Member State.

National rules would largely determine eligibility of expenditure, with the exception of a limited number of fields such as VAT, where Community rules would continue to apply.

### **5.4. Concentration of resources**

The major concentration of resources should remain on the poorest Member States and regions with an emphasis on the new Member States. At the level of the individual development programmes, concentration would be achieved by focusing on the Lisbon and

Gothenburg priorities as well as, in the “convergence” regions, on institutional capacity building.

With regard to the regional competitiveness programmes, the current emphasis (under Objective 2) on the zoning of eligible areas at the level of communes, municipalities and wards has meant that concentration has been understood almost exclusively in micro-geographical terms. While the geographical concentration of resources in the worst affected pockets or areas must remain an essential part of the effort in the future, it must also be recognised that the prospects of such areas are intimately linked to the success of the region as whole.

As many regions have recognised, this requires the development of a coherent strategy for the whole region as a way of addressing the needs of its weakest parts. For the future, it is therefore proposed to abandon the current system of micro-zoning, allowing the appropriate balance between the geographical and other forms of concentration to be determined in the drawing up of the regional competitiveness programmes in partnership with the Commission.

This should not imply any dilution of the level of effort in deploying EU financial resources. Under the “regional competitiveness” strand, each operational programme should justify its geographical, thematic and financial concentration.

In the context of the partnership, regions would have the responsibility in the first instance for concentrating financial resources on the themes necessary to address the economic, social and territorial disparities at regional level. The Commission would verify and confirm consistency at the moment of deciding the programmes.

Finally, through the principle of de-commitment of unused funds (the “N+2 rule”), a discipline unique to regional and cohesion policy, there would remain a strong incentive in favour of the efficient and rapid realisation of the programmes.

### **5.5. A stronger accent on performance and quality**

Effectiveness calls for a greater focus on impact and performance, and for a better definition of the results to be achieved. Overall, the efficiency of cohesion policy would be improved by the establishment of an annual dialogue with the European Institutions to discuss – on the basis of the Commission’s yearly report – the progress and results of national and regional programmes, so to enhance transparency and accountability towards the institutions and the citizens.

Evaluation before, during and after the end of the programmes would remain essential to the overall effort to maintain quality. In addition, the Commission proposes to set up a Community performance reserve whose main objective would be to reward the Member States and regions which show the most significant progress towards the agreed objectives.

Finally, the Commission proposes that Member State create within their national allocation a small reserve enabling them to respond swiftly to unexpected sectoral or local shocks resulting from industrial restructuring or the effects of trade agreements. This reserve would be used for providing ancillary support to affected workers and to the diversification of the economy in the areas concerned, acting as a complement to the national and regional programmes which should constitute the principal instrument for restructuring in anticipation of economic change.

These proposed changes should bring greater transparency to the operation of the policy, facilitating the access of citizens and companies thus increasing the number of projects coming forward and helping to make a contribution to greater value-for-money through increased competition for support.

## **6. FINANCIAL RESOURCES**

The financial resources dedicated to cohesion policy reflect the ambition of an enlarged Union to promote growth and job creation in its less favoured areas. For the period 2007-2013, the Commission proposes to allocate a EUR 336.1 billion (which equates to EUR 373.9 billion before the transfers to the proposed single rural and fisheries instruments) in support of the three priorities of the reformed cohesion policy.

The indicative repartition of this amount among the three objectives of the reformed policy would be as follows:

- Around 78% for the “Convergence” objective (less developed regions, cohesion fund, and “statistical effect” regions), with the emphasis on help to the twelve new Member States. The absorption limit (“capping”) for financial transfers to any given Member State under cohesion policy will be maintained at its current 4% of national GDP, taking into account amounts included under the rural development and fishery instruments. The regions concerned by the so-called statistical effect would benefit from a specific, decreasing allocation under the Convergence objective to facilitate their “phasing out”.
- Around 18% for the “Regional competitiveness and employment” objective. Outside the phasing-in regions the distribution between the regional programmes financed by the ERDF and the national programmes financed by the ESF would be 50-50.
- Around 4% for the “European territorial co-operation” objective.

For the distribution of the financial resources among Member States, the Commission proposes to apply the method based on objective criteria used at the time of the Berlin Council (1999) for the “convergence” priority, taking into account the need for fairness regarding the regions affected by the statistical effect of enlargement.

Resources for the objective “regional competitiveness and employment” would be allocated by the Commission between Member States on the basis of Community economic, social and territorial criteria.

Finally, the population living in the eligible regions as well as the total population of the Member States concerned would guide the distribution of resources under the “European territorial co-operation” objective.

Proposal for a

**COUNCIL REGULATION**

**laying down general provisions on the European Regional Development Fund,  
the European Social Fund and the Cohesion Fund**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 161 thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the assent of the European Parliament<sup>2</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>3</sup>,

Having regard to the opinion of the Committee of the Regions<sup>4</sup>,

Having regard to the opinion of the Court of Auditors,

Whereas:

- (1) Article 158 of the Treaty states that, in order to strengthen its economic and social cohesion, the Community shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas. Article 159 requires this action to be supported by the Structural Funds, the European Investment Bank (EIB) and the other existing financial instruments.
- (2) Cohesion policy should contribute to increasing growth, competitiveness and employment by incorporating the Community's priorities for sustainable development as defined at the European Councils in Lisbon and Göteborg.
- (3) Economic, social and territorial disparities at both regional and national level have increased in the enlarged Community. Competitiveness and employment should therefore be increased throughout the Community.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

<sup>4</sup> OJ C , , p. .

- (4) The increase in the number of the Union's land and sea borders and the extension of its territory mean that the value added of cross-border, transnational and interregional cooperation in the Union should be increased.
- (5) The work of the Cohesion Fund should be integrated into the programming of structural assistance to seek greater coherence among the various Funds.
- (6) Under Article 55 of Council Regulation (EC) No 1260/99 of 21 June 1999 laying down general provisions on the Structural Funds<sup>5</sup>, the Council is to review that Regulation on the basis of a proposal from the Commission by 31 December 2006 at the latest. In order to implement the reform of the Funds proposed by this Regulation, Regulation (EC) No 1260/99 should be repealed.
- (7) The role of the various instruments providing aid for rural development, namely Regulation (EC) No , and for the fisheries sector, namely to Regulation (EC) No <sup>6</sup>, should be specified and they should be integrated into the instruments under the common agricultural policy and the common fisheries policy; these instruments should be coordinated with those under the cohesion policy.
- (8) The number of Funds providing assistance under the cohesion policy is therefore limited to the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund. The rules applicable to each Fund are to be specified in implementing regulations adopted under Articles 148, 161 and 162 of the Treaty.
- (9) To increase the value added of Community cohesion policy, the work of the Structural Funds and of the Cohesion Fund should be concentrated and simplified and so the objectives set out in Regulation (EC) No 1260/99 should be redefined. Accordingly, they should be defined as seeking the convergence of the Member States and the regions, regional competitiveness and employment and European territorial cooperation.
- (10) Within those three objectives, both economic and social characteristics and territorial characteristics should be taken into account in an appropriate fashion.
- (11) The outermost regions should benefit from specific measures and additional funding to offset the handicaps resulting from the factors referred to in Article 299(2) of the Treaty.
- (12) The northern areas of the Union, which are very thinly populated, require appropriate financial treatment to offset the effects of that handicap.
- (13) In view of the importance of the urban dimension and the contribution of towns and cities, particularly medium-sized ones, to regional development, greater account should be taken of them by developing their role in programming to promote urban regeneration.

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<sup>5</sup> OJ L 161, 26.6.1999, p.1. Regulation as last modified by the Accession Act 2003.

<sup>6</sup> OJ L [...], [...], p. [...].

- (14) The Funds should take special and complementary action over and above that of the European Agricultural Fund for Rural Development (EAFRD) and of the European Fund for Fisheries (EFF) to promote the economic diversification of rural areas and of areas dependent from fisheries. Furthermore, the regions whose development is lagging behind should continue to benefit from the same financial concentration as in the 2000-2006 period through assistance from these instruments supporting that from the Funds.
- (15) Action for areas with a natural handicap, i.e. certain islands, mountainous areas and areas with a low density of population, should be strengthened to cope with their particular development difficulties, as well as for certain border areas of the Community following its enlargement.
- (16) Objective criteria for designating eligible regions and areas should be fixed. To this end, the identification of the priority regions and areas at Community level should be based on the common system of classification of the regions established by Regulation (EC) No 1059/2003 of the European Parliament and the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS)<sup>7</sup>.
- (17) A “Convergence” objective is to cover the Member States and regions whose development is lagging behind; the regions targeted by the “Convergence” objective are those whose per capita gross domestic product (GDP) measured in purchasing power parities is less than 75% of the Community average. The regions suffering from the statistical effect linked to the reduction in the Community average following the enlargement of the Union will benefit for that reason from substantial transitional aid in order to complete their convergence process. This aid will end in 2013 and would not be followed by a further transitional period. The Member States targeted by the Convergence objective whose per capita gross national income (GNI) is less than 90% of the Community average will benefit under the Cohesion Fund.
- (18) A “Regional competitiveness and employment” objective is to cover the territory of the Community outside the “Convergence” objective. The regions eligible are those under Objective 1 in the 2000-06 programming period which no longer satisfy the regional eligibility criteria of the “Convergence” objective and which therefore benefit from a transitional aid, as well as all the other regions of the Community.
- (19) A “European territorial cooperation” objective is to cover regions having land or sea frontiers, the areas for transnational cooperation defined with regard to actions promoting integrated territorial development and support for networks for interregional cooperation and exchange of experience. The improvement and simplification of cooperation along the external borders of the Community entail the use of the European neighbouring and partnership instrument pursuant to Regulation (EC) No and of the pre-accession instrument pursuant to Regulation (EC) No .
- (20) The activities of the Funds and the operations which they help finance should be coherent and compatible with the other Community policies and comply with Community legislation.

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<sup>7</sup> OJ L 154, 21.6.2003, p. 1.

- (21) Action by the Community should be complementary to that carried out by the Member States or seek to contribute to it. The partnership should be strengthened through arrangements for the participation of various types of partners, in particular the regions, with full regard to the institutional arrangements of the Member States.
- (22) Multiannual programming shall be directed towards achieving the Funds' objectives by ensuring the availability of the necessary financial resources and the consistency and continuity of joint action by the Community and the Member States.
- (23) The Community may take steps, in accordance with the principle of subsidiarity laid down in Article 5 of the Treaty, to promote the objectives of "Convergence", "Regional competitiveness and employment" and "European territorial cooperation". These goals cannot be achieved adequately by the Member States because of the extent of the disparities and the limit on the financial resources of the Member States and regions eligible under the "Convergence" objective. These goals can therefore be better achieved at Community level through the multiannual guarantee of Community finance which allows cohesion policy to be concentrated on the Community's priorities. In accordance with the principle of proportionality laid down in the above mentioned Article, this Regulation does no more than is required to achieve those goals.
- (24) It is appropriate to strengthen the subsidiarity and proportionality of the intervention of the Structural Funds and of the Cohesion Fund.
- (25) Under Article 274 of the Treaty, in the context of shared management, the conditions allowing the Commission to exercise its responsibilities for implementation of the general budget of the European Communities should be specified and the obligations of cooperation on the Member States clarified. Applying these conditions will enable the Commission to satisfy itself that Member States are utilising the Funds in a lawful and correct manner and in accordance with the principle of sound financial management within the meaning of the Financial Regulation.
- (26) In order to ensure a genuine economic impact, contributions from the Structural Funds may not replace public expenditure by the Member States under the terms of this Regulation. Verification, through partnership, of the principle of additionality should concentrate on the regions under the "Convergence" objective because of the extent of the financial resources allocated to them and may result in a financial correction if additionality is not respected.
- (27) In the context of its effort in favour of economic and social cohesion, the Community promotes the goal of eliminating inequalities and promoting equality between women and men as enshrined in Articles 2 and 3 of the Treaty.
- (28) Financial concentration on the "Convergence" objective should be increased because of the greater disparities in the enlarged Union, the effort in favour of the "Regional competitiveness and employment" objective to helping improve competitiveness and employment in the rest of the Union should be maintained and the resources for "European territorial cooperation" objective increased in view of its particular value added.

- (29) There should be provisions on the allocation of the available resources. These are allocated annually and a significant concentration on the regions whose development is lagging behind, including those receiving transitional support because of the statistical effect, shall be ensured.
- (30) The annual appropriations allocated to a Member State under the Funds shall be limited to a ceiling fixed with regard to its capacity for absorption.
- (31) The Commission should establish the indicative breakdown of available commitment appropriations using an objective and transparent method. 3% of the appropriations of the Structural Funds allocated to the Member States under the “Convergence” and “Regional competitiveness and employment” objectives should be placed in a Community reserve for rewarding quality and performance.
- (32) The appropriations available under the Funds should be indexed on a flat-rate basis for use in programming.
- (34) To increase the strategic content of the cohesion policy through integration with the Community’s priorities and so promote its transparency, the Council should adopt strategic guidelines on a proposal from the Commission; the Council should examine their implementation by the Member States on the basis of a report by the Commission.
- (35) On the basis of the strategic guidelines adopted by the Council, each Member State should prepare a national reference document on its development strategy, which is negotiated with the Commission and decided by the Commission, and constitutes the framework for preparing the operational programmes.
- (36) The programming and management of the Structural Funds should be simplified having regard to their specific features by providing for operational programmes to be financed by either the ERDF or the ESF, each being able to finance in a complementary and limited fashion actions which fall under the scope of the other Fund.
- (37) With a view to improve their complementarity and to simplify their implementation, the assistance of the Cohesion Fund and the ERDF shall be jointly programmed in the operational programmes on transport and the environment.
- (38) Programming should ensure coordination of the Funds between themselves and with the other existing financial instruments and the EIB and the European Investment Fund. Such coordination also covers the preparation of complex financial schemes and public private partnerships.
- (39) The programming period is to last for a single period of seven years, in order to maintain the simplification of the management system defined in Regulation (EC) No 1260/1999.
- (40) The Member States and managing authorities should organise within the operational programmes co-financed by the ERDF the arrangements for interregional cooperation and take account of the special features of areas with natural handicaps.

- (41) In order to address the need for simplification and decentralisation, programming and financial management should be carried out at the level of the priorities alone, the Community support framework and the programme complement as foreseen by Regulation (EC) No 1260/99 being discontinued.
- (42) The Member States, regions and managing authorities should organise, within the operational programmes co-financed by the ERDF under the “Convergence” and the “Regional competitiveness and employment” objectives, sub-delegation to the urban authorities for the priorities concerning the regeneration of towns and cities.
- (43) The additional allocation to compensate for the additional costs faced by the outermost regions should be integrated into the operational programmes financed by the ERDF in those regions.
- (44) There should be separate arrangements for implementation of the “European territorial cooperation” objective financed by the ERDF.
- (45) The Commission should be able to approve major projects included in the operational programmes, if necessary in association with the EIB, in order to evaluate their purpose, impact and the arrangements for the planned use of Community resources.
- (46) Under technical assistance, the Funds should provide support for evaluations, improvement of administrative capacity linked to the management of the Funds, studies, pilot projects and exchanges of experience intended, in particular, to encourage innovative approaches and practices.
- (47) The effectiveness of assistance from the Funds also depends on the incorporation of a reliable evaluation into programming and monitoring; the responsibilities of the Member States and the Commission in this regard should be specified.
- (48) Member States should foresee, within their national envelope under the “Convergence” and “Regional competitiveness and employment” objectives, a small reserve to respond swiftly to unexpected sectoral or local shocks resulting from socio-economic restructuring or the effects of trade agreements.
- (49) It is necessary to determine the elements for modulating the participation of the Funds to the operational programmes. To increase the multiplier effect of Community resources, it is therefore necessary to take into account the nature and gravity of problems faced by the concerned areas, the implementation of Community’s priorities including the protection and improvement of the environment, as well as the mobilisation of private sources in the operational programmes through public private partnership. To that end, it is also necessary to define the notion of revenue-generating project and to identify for this type of projects the basis for calculating the participation of the Funds.
- (50) In accordance with the principle of subsidiarity and subject to exceptions foreseen in the Regulations (EC) No on the European Regional Development Fund, No on the European Social Fund and No on the Cohesion Fund, there should be national rules on the eligibility of expenditure.

- (51) To ensure the effectiveness, fairness and sustainable impact of the intervention of the Funds, there should be provisions guaranteeing that investments in businesses are long-lasting and avoiding these Funds being used to introduce unfair competition. It is necessary to ensure that investments which benefit from assistance from the Funds can be written off over a sufficiently long period.
- (52) Member States shall adopt adequate measures to guarantee the proper functioning of management and control system. To this end, it is necessary to establish the general principles and the necessary functions which the systems of all operation programmes shall fulfil on the basis of the Community body of law in force for the programming period 2000-2006.
- (53) It is therefore necessary to maintain the designation of a single managing authority for each intervention and to clarify its responsibility as well as the functions of the audit authority. It is also necessary to guarantee uniform quality standards concerning the certification of expenditures and of the payment requests before their transmission to the Commission; it is necessary to clarify the nature and quality of the information on which these requests are based and, to this end, to establish the function of the certification authority.
- (54) The monitoring of operational programmes is necessary to ensure the quality of their implementation. To this end, the responsibilities of the monitoring committees shall be defined as well as the information that needs to be transmitted to the Commission and the framework for examining this information.
- (55) In accordance with the principles of subsidiarity and proportionality, Member States have the primary responsibility for the implementation and control of the interventions.
- (56) The obligations on the Member States as regards management and control systems, the certification of expenditure, and the prevention, detection and correction of irregularities and infringements of Community law should be specified to guarantee the efficient and correct implementation of operational programmes. In particular, concerning management and control, it is necessary to establish the modalities by which Member States give the assurance that the systems are in place and function satisfactorily.
- (57) Without prejudice to the Commission's powers as regards financial control, cooperation between the Member States and the Commission in this field should be increased and the criteria should be established which allow the Commission to determine, in the context of its strategy of control of national systems, the level of assurance it can obtain from national audit bodies.
- (58) The extent and intensity of Community controls should be proportionate to the extent of its contribution. Where a Member State is very substantially the main provider of the financing for a programme, it is appropriate that there should be an option for that Member State to organise certain elements of the control arrangements according to national rules. In these same circumstances, it is necessary to establish that the Commission differentiates the means by which Member States should fulfil the functions of certification of expenditures and of verification of the management and

control system and to establish the conditions under which the Commission is entitled to limit its own audit and rely on the assurances provided by national bodies.

- (59) The payment on account at the start of operational programmes ensures a regular cash flow which facilitate payments to beneficiaries in the implementation of the operational programme. Therefore, a payment on account of 7% for the Structural Funds and 10,5% for the Cohesion Fund will help speed up implementation of operational programmes.
- (60) In addition to the suspension of payments where shortcomings are detected in the management and control systems, there should be measures allowing the authorising officer by delegation to suspend payments where there are doubts about the sound operation of these systems or for the Commission to make a deduction from payments if the Member State concerned has not implemented all remaining measures in a corrective plan of action.
- (61) The rule on automatic de-commitment will help speed up the implementation of programmes and improve sound financial management. To this end, it is appropriate to define the modalities of its application and the parts of the budgetary commitment which may be excluded from it, notably when the delays in implementation result from circumstances which are independent from the subject appealing to it, abnormal or unforeseeable and whose consequences cannot be avoided despite the diligence which it has shown.
- (62) The procedures for closure should be simplified offering the possibility to those Member States which so wish, in accordance with the schedule they select, to partially close an operational programme in respect of the operations completed; the appropriate framework for doing so should be provided.
- (63) It is necessary to adopt the measures required for the implementation of this Regulation in conformity with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>8</sup>,

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<sup>8</sup> OJ L 184, 17.7.1999, p. 23.

HAS ADOPTED THIS REGULATION:

## TITLE I

### OBJECTIVES AND GENERAL RULES ON ASSISTANCE

#### CHAPTER I SCOPE AND DEFINITIONS

##### *Article 1*

##### **Subject matter**

This Regulation lays down the general rules governing the European Regional Development Fund (ERDF), the European Social Fund (ESF) (hereinafter: the “Structural Funds”) and the Cohesion Fund, without prejudice of the specific provisions laid down in the Regulations on the ERDF, ESF and the Cohesion Fund.

This Regulation defines the objectives to which the Structural Funds and the Cohesion Fund (hereinafter: the “Funds”) are to contribute, the criteria for Member States and regions to be eligible under those Funds, the financial resources available and the criteria for their allocation.

This Regulation defines the context for cohesion policy, including the method for fixing the Community’s strategic guidelines for cohesion policy, the national strategic reference framework and the annual examination at Community level.

The Regulation lays down the principles and rules on partnership, programming, evaluation, management, including financial management, monitoring and control on the basis of responsibilities shared between the Member States and the Commission.

##### *Article 2*

##### **Definitions**

For the purposes of this Regulation, the following terms shall have the meanings assigned to them here:

- 1) **‘operational programme’**: document submitted by the Member State and adopted by the Commission as part of the strategic reference framework setting out a development strategy using a coherent set of priorities, to achieve which aid from a Fund, or, in the case of the “Convergence” objective, the Cohesion Fund and the ERDF, will be sought;

- 2) **‘priority’**: one of the priorities of the strategy in an operational programme comprising a group of operations which are related and have specific measurable goals;
- 3) **‘operation’**: a project or group of projects selected by the managing authority of the operational programme concerned or under its responsibility according to criteria laid down by the monitoring committee and implemented by one or more beneficiaries allowing achievement of the goals of the priority to which it relates;
- 4) **‘beneficiary’**: an operator, body or firm, whether public or private, responsible for initiating and/or implementing operations. In the context of aid schemes under Article 87 of the Treaty, beneficiaries are public or private firms carrying out an individual action and receiving public aid;
- 5) **‘public expenditure’**: any public contribution to the financing of operations whose origin is the budget of the State, of regional and local authorities, of the European Communities related to the Structural Funds and the Cohesion Fund and any similar expenditure. Any contribution to the financing of operations whose origin is the budget of public law bodies or associations of one or more regional or local authorities or public law bodies within the meaning of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts<sup>9</sup> shall be regarded as public contribution;
- 6) **‘intermediate body’**: any body or public or private service which acts under the responsibility of a managing or certifying authority or which carries out duties on behalf of such an authority vis-à-vis beneficiaries implementing operations.

## CHAPTER II OBJECTIVES AND MISSIONS

### *Article 3*

#### **Objectives**

1. The action taken by the Community under Article 158 of the Treaty shall be designed to strengthen the economic and social cohesion of the enlarged Community in order to promote the harmonious, balanced and sustainable development of the Community. This action shall be taken with the aid of the Funds, the European Investment Bank (EIB) and other existing financial instruments. It shall be aimed at meeting the challenges linked to the economic, social and territorial disparities which have arisen particularly in countries and regions whose development is lagging behind, to the speeding-up of economic and social restructuring, and to the ageing of the population.

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<sup>9</sup> OJ L 134, 30.04.2004, p. 114.

The action taken under the Funds shall incorporate, at national and regional level, the Community's priorities in favour of sustainable development by strengthening growth, competitiveness and employment, social inclusion, as well as the protection and quality of the environment.

2. To that end, the ERDF, the ESF, the Cohesion Fund, the European Investment Bank (EIB) and the other existing Community financial instruments shall each contribute in an appropriate way towards achieving the following three objectives:
  - a) the "Convergence" objective shall be aimed at speeding up the convergence of the least-developed Member States and regions by improving conditions for growth and employment through increasing and improving the quality of investment in physical and human capital, the development of innovation and of the knowledge society, the adaptability to economic and social changes, the protection and improvement of the environment as well as administrative efficiency. This objective shall constitute the priority of the Funds.
  - b) the "Regional competitiveness and employment" objective shall, outside the least-developed regions, be aimed at strengthening regions' competitiveness and attractiveness as well as employment by anticipating economic and social changes, including those linked to the opening of trade, through innovation and the promotion of the knowledge society, entrepreneurship, the protection and improvement of the environment, and the improvement of accessibility, the adaptability of workers and businesses as well as the development of inclusive job markets.
  - c) the "European territorial cooperation" objective shall be aimed at strengthening cross-border cooperation through joint local initiatives, at transnational level by means of actions conducive to integrated territorial development linked to the Community priorities, and through networking and exchange of experience at the appropriate territorial level.
3. Under the three objectives, assistance from the Funds shall, according to their nature, take into account on the one hand specific economic and social features, and on the other hand specific territorial features. The assistance shall, in an appropriate manner, support urban regeneration particularly as part of regional development and the renewal of rural areas and of areas dependent on fisheries through economic diversification. The assistance shall also support areas affected by geographical or natural handicaps which aggravate the problems of development, particularly in the outermost regions (Guadeloupe, French Guiana, Martinique, Reunion, the Azores, Madeira and the Canary Islands) as well as the northern areas with very low population density, certain islands and island Member States, and mountain areas.

#### *Article 4*

#### **Instruments and missions**

1. The Funds shall contribute, each in accordance with the specific provisions governing it, towards achieving the three objectives as follows:

- a) the “Convergence” objective: the ERDF, the ESF and the Cohesion Fund;
  - b) the “Regional competitiveness and employment” objective: the ERDF and the ESF;
  - c) the “European territorial cooperation” objective: the ERDF.
2. The Funds shall contribute towards financing technical assistance on the initiative of the Member States and the Commission.

## CHAPTER III GEOGRAPHICAL ELIGIBILITY

### *Article 5*

#### **Convergence**

1. The regions eligible for funding from the Structural Funds under the “Convergence” objective shall be regions corresponding to level II of the Nomenclature of Territorial Statistical Units (hereinafter “NUTS level II”) within the meaning of Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 whose per capita Gross Domestic Product (GDP), measured in purchasing power parities and calculated on the basis of Community figures for the last three years available on [...], is less than 75% of the Community average.
2. The NUTS level II regions whose per capita GDP, measured in purchasing power parities and calculated on the basis of Community figures for the last three years available on [...], is between 75% and [...] % of the Community average shall be eligible, on a transitional and specific basis, for financing by the Structural Funds.
3. The Member States eligible for funding from the Cohesion Fund shall be Member States whose per capita Gross National Income (GNI), measured in purchasing power parities and calculated on the basis of Community figures for the last three years available on [...], is less than 90% of the Community average and which have a programme for meeting the economic convergence conditions referred to in Article 104 of the Treaty.
4. Notwithstanding paragraphs 1 and 2 of this Article, and Article 6, the outermost regions (Guadeloupe, French Guiana, Martinique, Reunion, the Azores, Madeira and the Canary Islands) shall benefit from specific funding from the ERDF to facilitate their integration into the internal market and to compensate for their specific constraints.
5. Immediately following the entry into force of this Regulation, the Commission shall adopt in accordance with the procedure referred to in Article 104(2) the list of regions fulfilling the criteria under paragraphs 1 and 2 of this Article and of Member States fulfilling the criteria under Article 5(3). This list shall be valid from 1 January 2007 to 31 December 2013.

## *Article 6*

### **Regional competitiveness and employment**

1. The areas eligible for funding from the Structural Funds under the “Regional competitiveness and employment” objective shall be those not covered by Article 5(1) and 5(2).

When presenting the national strategic reference framework referred to in Article 25, each Member State concerned shall indicate the NUTS I or NUTS II regions for which it will present a programme for financing by the ERDF.

2. The NUTS level II regions totally covered by Objective 1 in 2006 under Regulation (EC) No 1260/1999 which are not referred to in Article 5(1) and 5(2) shall be eligible for a specific and transitional financing from the Structural Funds.
3. Immediately following the entry into force of this Regulation, the Commission shall adopt, in accordance with the procedure referred to in Article 104(2) the list of the regions fulfilling the criteria under the second paragraph of this Article. This list shall be valid from 1 January 2007 to 31 December 2013.

## *Article 7*

### **European Territorial Cooperation**

1. For the purpose of cross-border cooperation, shall be eligible for financing the NUTS level III regions of the Community along the internal and certain external land borders and certain NUTS level III regions of the Community along the maritime borders separated, as a general rule, by a maximum of 150 kilometres, taking into account potential adjustments needed to ensure the coherence and continuity of the cooperation action.

Immediately following the entry into force of this Regulation, the Commission shall adopt, in accordance with the procedure referred to in Article 104(2) the list of the eligible regions. This list shall be valid from 1 January 2007 to 31 December 2013.

2. For the purpose of transnational cooperation, on the basis of the Community’s strategic guidelines referred to in Articles 23 and 24, the Commission in accordance with the procedure referred to in Article 104(2), shall adopt the list of the eligible transnational areas. This list shall be valid from 1 January 2007 to 31 December 2013.
3. For the purpose of cooperation networks and exchange of experience, the territory of the Community shall be eligible.

## CHAPTER IV PRINCIPLES OF ASSISTANCE

### *Article 8*

#### **Complementarity, consistency and compliance**

1. The Funds shall provide assistance which complements national, regional and local measures, integrating into them the priorities of the Community.
2. The Commission and the Member States shall ensure that assistance from the Funds and the Member States is consistent with the activities, policies and priorities of the Community. This consistency shall be indicated in particular in the strategic guidelines of the Community, in the national strategic reference framework and in the operational programmes.
3. Operations financed by the Funds shall comply with the provisions of the Treaty and of acts adopted under them.

### *Article 9*

#### **Programming**

The objectives of the Funds are pursued in the framework of a multiannual programming system which includes the priorities, a process of management, decision making and financing organised in several stages.

### *Article 10*

#### **Partnership**

1. Assistance from the Funds shall be decided by the Commission within the framework of close cooperation, hereinafter "partnership", between the Commission and a Member State. The Member State organises, in accordance with current national rules and practices, a partnership with the authorities and bodies which it designates, namely:
  - a) the competent regional, local, urban and other public authorities;
  - b) the economic and social partners;
  - c) any other appropriate body representing civil society, environmental partners, non-governmental organisations, and bodies responsible for promoting equality between men and women.

Each Member State shall designate the most representative partners at national, regional and local level and in the economic and social or other spheres, hereinafter

“partners”. The Member State shall ensure broad and effective involvement of all the appropriate bodies, in accordance with national rules and practices taking account of the need to promote equality between men and women and sustainable development through the integration of environmental protection and improvement requirements.

2. The partnership shall be conducted in full compliance with the respective institutional, legal and financial jurisdiction of each partner category.

The partnership shall cover preparation and monitoring of the national strategic reference framework as well as the preparation, implementation, monitoring and evaluation of the operational programmes. Member States shall involve each of the appropriate partners, and particularly the regions, in the various programming stages within the time limit set for each stage.

3. Each year the Commission shall consult the organisations representing the social partners at European level on assistance from the Funds.

#### *Article 11*

### **Subsidiary and proportional intervention**

1. Implementation of operational programmes referred to in Article 23 shall be the responsibility of Member States at the appropriate territorial level, in accordance with the institutional system specific to each Member State. That responsibility shall be exercised in accordance with this Regulation.
2. The means employed by the Commission and the Member States shall vary according to the size of the Community contribution in relation to control provisions. Differentiation also applies to provisions on evaluation, and participation by the Commission in the Monitoring Committees referred to under Article 62 and to the annual reports on operational programmes.

#### *Article 12*

### **Shared management**

1. The Community budget allocated to the Funds shall be implemented within the framework of shared management between the Member States and the Commission, in accordance with Article 53, paragraph 1, point b) of Regulation (EC, Euratom) No 1605/2002<sup>10</sup> of the Council, with the exception of the technical assistance referred to in Article 43.

The Member States and the Commission shall ensure compliance with the principle of sound financial management.

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<sup>10</sup> OJ L 248, 16.9.2002, p.1

2. The Commission exercises its responsibility for implementing the general budget of the European Communities in the following ways:
  - a) the Commission shall check the existence and proper functioning of management and control systems in the Member States in accordance with the procedures described in Article 69 and 70;
  - b) the Commission shall interrupt, withhold or suspend all or part of payments in accordance with Articles 89, 90 and 91 if the national management and control systems fail, and shall apply any other financial correction required, in accordance with the procedures described in Articles 101 and 102;
  - c) the Commission shall check reimbursement of payment on account and automatically de-commit budget commitments in accordance with the procedures laid down in Articles 81(2), 93 and 96.

### *Article 13*

#### **Additionality**

1. Contributions from the Structural Funds shall not replace public or equivalent structural expenditure by a Member State.
2. For regions covered by the “Convergence” objective, the Commission and the Member State shall determine the level of public or equivalent structural expenditure which the Member State shall maintain in all the regions concerned during the programming period.

That expenditure shall be agreed by the Member State and the Commission within the national strategic reference framework referred to in Article 25.

3. The level of the expenditure referred to in paragraph 2 shall be at least equal to the amount of average annual expenditure in real terms attained during the previous programming period.

The level of expenditure shall be determined with reference to the general macroeconomic conditions in which the financing is carried out and taking into account certain specific economic situations, namely privatisations as well as an exceptional level of public or equivalent structural expenditure by the Member State during the previous programming period.

4. The Commission shall, in cooperation with each Member State, verify additionality mid-term in 2011 and ex-post by 30 June 2016 for the “Convergence” objective.

Where a Member State is unable to prove on 30 June 2016 that the additionality agreed within the national strategic reference framework has been respected, the Commission shall proceed to a financial correction in accordance with procedure laid down in Article 101.

## *Article 14*

### **Equality between men and women**

The Member States and the Commission shall ensure that equality between men and women and the integration of gender perspective is promoted during the various stages of implementing the Funds.

## **CHAPTER V FINANCIAL FRAMEWORK**

## *Article 15*

### **Global resources**

1. The resources available for commitment from the Funds for the period 2007 to 2013 shall be EUR 336.1 billion at 2004 prices in accordance with the annual breakdown is shown in the Annex 1.

For the purpose of their programming and subsequent inclusion in the general budget of the European Communities, these amounts referred to in the first subparagraph shall be indexed at to 2 % per year.

The breakdown of budgetary resources between the objectives defined in Article 3(2) shall be such to achieve a significant concentration on the regions of the “Convergence” objective.

2. The Commission shall make indicative annual breakdowns by Member States in accordance with the criteria established in Articles 16, 17 and 18 and without prejudice to the provisions referred to in Articles 20 and 21.

## *Article 16*

### **Resources for the “Convergence” objective**

1. Overall resources for the “Convergence” objective shall amount to 78,54% of the resources referred to in the first paragraph of Article 15 (i.e. a total of EUR 264.0 billion) and shall be distributed between the different components as follows:
  - a) 67.34% for the financing referred to in Article 5(1), using eligible population, regional prosperity, national prosperity and unemployment as the criteria for calculating the indicative breakdowns by Member State;
  - b) 8.38% for the transitional and specific support referred to in Article 5(2), using eligible population, regional prosperity, national prosperity and unemployment as criteria for calculating the indicative breakdowns by Member State;

- c) 23.86% for the financing referred to in Article 5(3), using population, per capita GNI taking into account of the improvement in national prosperity over the previous period, and surface area as criteria for calculating the indicative breakdowns by Member State; and
  - d) 0.42% for the financing referred to in Article 5(4), using eligible population as criteria for calculating the indicative breakdowns by Member State.
2. The annual breakdown of the appropriations referred to in paragraph 1, subparagraph b) shall be degressive from 1 January 2007. The appropriation in 2007 shall be lower than in 2006, except for those regions that are not fully eligible to Objective 1 on 1 January 2000 pursuant to Regulation (EC) No 1260/1999 for which the appropriation in 2007 shall be objective and fair.

### *Article 17*

#### **Resources for the “Regional competitiveness and employment” objective**

1. Overall resources for the “Regional competitiveness and employment” objective shall amount to 17.22% of the resources referred to in the first paragraph of Article 15 (i.e. a total of EUR 57.9 billion) and shall be distributed between the different components as follows:
- a) 83.44% for the financing as referred to in Article 6(1), using eligible population, regional prosperity, unemployment, employment rate and population density as the criteria for calculating the indicative breakdowns by Member State; and
  - b) 16.56% for the transitional and specific support referred to in Article 6(2), using eligible population, regional prosperity, national prosperity and unemployment as the criteria for calculating the indicative breakdowns by Member State.
2. The appropriations referred to in paragraph 1, subparagraph a) shall be divided equally between the programmes financed by the ERDF and the programmes financed by the ESF.
3. Operational programmes financed by the ESF benefit from up to 50% of the available credits as referred to in paragraph 1, subparagraph b). To this end, operational programmes financed by the ESF shall foresee a specific priority.
4. The annual breakdowns of the appropriations referred to in paragraph 1, subparagraph b) shall be degressive from 1 January 2007. The appropriations in 2007 shall be lower than in 2006, except for those regions whose eligibility to Objective 1 pursuant to Regulation (EC) No 1260/1999 started in 2004 for which the appropriation in 2007 shall be objective and fair.

## *Article 18*

### **Resources for the “European territorial cooperation” objective**

Overall resources for the “European territorial cooperation” objective shall amount to 3.94% of the resources referred to under the first paragraph of Article 15 (i.e. a total of EUR 13.2 billion) and shall be distributed between the different components as follows:

- a) 35.61% for the financing of cross-border co-operation as referred to in Article 7(1), using the eligible population as the criteria for calculating the indicative breakdowns by Member State.  
  
12.12% for the contribution of the ERDF to the cross-border strand of the European Neighbourhood and Partnership Instrument pursuant to Regulation (EC) No [...] and of the Instrument for Pre-Accession pursuant to Regulation (EC) No [...]. These Regulations indicate that the contribution of the two instruments to cross-border cooperation with Member States is equivalent to the one of the ERDF.
- b) 47.73% for the financing of transnational co-operation as referred to in Article 7(2), using the eligible population as criteria for calculating the indicative breakdowns by Member State.
- c) 4.54% for the financing of co-operation networks and exchange of experience as referred to in Article 7(3).

## *Article 19*

### **Non transferability of resources**

The total appropriations allocated by Member State under each of the objectives of the Funds and their components shall not be transferable between them.

By way of derogation, the financial allocation by Member State under the “European territorial cooperation” objective may be subject to flexibility of 10% of the amounts allocated between the cross-border component and the transnational component.

## *Article 20*

### **Resources for the performance and quality reserve**

3,0% of the resources referred to in Article 16(1), subparagraphs a) and b), and Article 17(1) shall be allocated in accordance with Article 48.

## *Article 21*

### **Resources for technical assistance**

0,30% of the resources referred to in Article 15(1), shall be devoted to technical assistance for the Commission as defined in Article 43.

## *Article 22*

### **Capping of resources**

The Commission ensures that total annual allocations from the Funds for any Member State pursuant to this Regulation, including the contribution of the ERDF to the financing of the cross-border strand of the European Neighbourhood and Partnership Instrument pursuant to Regulation (EC) No [...] and of the Instrument for Pre-Accession pursuant to Regulation (EC) No [...], and from the part of the European Agricultural Fund for Rural Development (EAFRD) pursuant to Regulation (EC) No [...] originating from the EAGGF Guidance section, and of the European Fund for Fisheries (EFF) pursuant to Regulation (EC) No [...] contributing to the “Convergence” objective, shall not exceed 4% of that Member State’s GDP as estimated at the time of the adoption of the interinstitutional agreement.

The Regulations of the financial instruments mentioned in the previous paragraph other than the Funds include a similar provision.

## **TITLE II**

### **STRATEGIC APPROACH TO COHESION**

#### **CHAPTER I**

#### **COMMUNITY STRATEGIC GUIDELINES ON COHESION**

## *Article 23*

### **Content**

The Council establishes at Community level strategic guidelines on economic, social and territorial cohesion defining a framework for the intervention of the Funds.

For each of the objectives of the Funds, those guidelines shall in particular give effect to the priorities of the Community with a view to promote balanced, harmonious and sustainable development.

These guidelines are established taking into account the medium-term economic policy strategy as contained in the Broad Economic Policy Guidelines (BEPGs).

In the sphere of employment and human resources, the priorities shall be those of the European Strategy for Employment taking into account regional and local specificities.

#### *Article 24*

### **Adoption and review**

At the latest three months after the adoption of this Regulation, the Community strategic guidelines referred to in Article 23 are adopted in accordance with the procedure laid down in Article 161 of the Treaty. This decision shall be published in the *Official Journal of the European Union*.

The Community strategic guidelines shall be subject, if necessary, to mid-term review in accordance with the procedure laid down in Article 161 of the Treaty, in order to take account in particular of changes in the priorities of the Community.

## **CHAPTER II NATIONAL STRATEGIC REFERENCE FRAMEWORK**

#### *Article 25*

### **Content**

1. The Member State shall present a national strategic reference framework which ensures that Community structural aid is consistent with the Community strategic guidelines, and which identifies the link between Community priorities, on the one hand, and national and regional priorities in order to promote sustainable development, and the national action plan on employment, on the other hand.

The framework shall constitute a reference instrument for preparing the programming of the Funds.

2. Each national strategic reference framework shall contain a summary description of the Member State's strategy and its operational implementation.
3. The strategic section of the national strategic reference framework shall specify the strategy chosen for the "Convergence" objective and the "Regional competitiveness and employment" objective, demonstrating how the choices made are consistent with the Community strategic guidelines on the basis of an analysis of development disparities, weaknesses and potential related, in particular, to the expected changes in the European and world economies. It shall specify:
  - a) the thematic and territorial priorities, including for urban regeneration and the diversification of rural economies and of areas dependent on fisheries;

- b) for the “Convergence” objective only, the action envisaged for reinforcing the Member State’s administrative efficiency, including as regards management of the Funds, and the evaluation plan referred to in Article 46(1);
- c) for the “Regional competitiveness and employment” objective only, the list of regions chosen for regional competitiveness as referred to in the second subparagraph of Article 6(1).

In order to permit monitoring, the main goals of the priorities referred to in point a) shall be quantified and a limited number of performance and impact indicators shall be identified;

4. For the “Convergence” objective and the “Regional competitiveness and employment” objective, the operational section shall contain:
  - a) the list of operational programmes and the indicative annual allocation from each Fund by programme, ensuring an appropriate balance between regional and thematic action. This list shall include the amount of the national contingency reserve referred to in Article 49;
  - b) the mechanisms for ensuring coordination between the operational programmes and the Funds;
  - c) the contribution from other financial instruments, in particular the EIB, and their coordination with the Funds.
5. For the regions of the “Convergence” objective, the operation section shall also contain:
  - a) the amount of the total annual appropriation provided for under the European Agricultural Fund for Rural Development and the European Fund for Fisheries;
  - b) the information required for ex-ante verification of compliance with the additionality principle referred to in Article 13.
6. The information contained in the national strategic reference framework takes account of the specific institutional arrangements of each Member State.

#### *Article 26*

#### **Preparation and adoption**

1. The national strategic reference framework shall be prepared by the Member State according to its institutional structure and in close cooperation with the partners referred to in Article 10. It shall cover the period 1 January 2007 to 31 December 2013.
2. Each Member State shall send the Commission a proposal for a national strategic reference framework as soon as possible after adoption of the Community strategic guidelines. Member States may decide to present at the same time the operational

programmes referred to in Article 31. The Commission negotiates this proposal in the framework of the partnership.

3. Before the adoption of the operational programmes referred to in Article 36, the Commission shall take a decision, after consultation of the committee referred to in Article 105, in accordance with the procedure referred to in Article 104(2) covering the following aspects:
  - a) the strategy and the priority themes chosen for assistance from the Funds and their monitoring arrangements;
  - b) the list of operational programmes and the indicative distribution of resources by programme for each of the objectives of the Funds, including the amount of the national contingency reserve referred to in Article 49;
  - c) and, for the “Convergence” objective only, the level of expenditure guaranteeing compliance with the additionality principle referred to in Article 13 and the action envisaged for reinforcing the administrative efficiency and sound management.

That decision shall be without prejudice to any changes to the operational programmes referred to in Article 32.

### **CHAPTER III STRATEGIC FOLLOW-UP AND ANNUAL DEBATE**

#### *Article 27*

##### **Annual report by Member States**

1. For the first time in 2008 and at the latest by 1 October each year, each Member State shall present to the Commission a report on the progress in implementing its strategy and achieving its goals, taking particular account of the indicators set, and their contribution towards implementing the Community strategic guidelines on cohesion, as well as of available evaluations.

The report shall refer to the national action plan on employment.

2. The national action plan on employment describes each year how the guidelines of the European strategy on employment are implemented in each Member State.

#### *Article 28*

##### **Annual report by the Commission**

1. For the first time in 2009 and at the beginning of each year, the Commission shall adopt an annual report summarising the main developments, trends and challenges

relating to implementation of the Community strategic guidelines and the national strategic reference frameworks.

2. The report shall be based on examination and assessment by the Commission of the Member States' annual reports referred to in Article 27 and of any other available information. The report shall state the follow-up measures to be taken by the Member States and the Commission in the light of its conclusions.

### *Article 29*

#### **Annual examination**

1. The annual report by the Commission referred to in Article 28 shall be sent to the Council together with the BEPG implementation report, the joint report on employment and the Internal Market Strategy implementation report, with a view to the spring European Council.

It shall be sent for opinion to the European Parliament, the European Economic and Social Committee and the Committee of the Regions.

2. Each spring the Council shall examine the annual report by the Commission, together with the BEPG implementation report, the joint report on employment and the Internal Market Strategy implementation report.
3. On the basis of the annual report by the Commission referred to in Article 28 and on a proposal from the Commission, the Council shall adopt conclusions on the implementation of the Community strategic guidelines. The Commission shall ensure that the conclusions are followed up.

### *Article 30*

#### **Cohesion report**

The report of the Commission referred to in Article 159, second subparagraph, of the Treaty shall include in particular:

- a) a record of the progress made on economic and social cohesion, including the socio-economic situation and development of the regions, as well as the integration of the Community priorities;
- b) a record of the role of the Funds, the EIB and the other financial instruments, as well as the effect of other Community and national policies on the progress made.

The report shall contain, if necessary, any proposals on Community measures and policies which should be adopted in order to strengthen economic and social cohesion. It shall also propose, if necessary, proposals concerning any adjustments linked to new Community policy initiatives in the strategic guidelines on cohesion.

In the year in which the report is presented, it shall replace the annual report by the Commission referred to in Article 28. It shall be the subject of an annual debate in accordance with the procedure laid down in Article 29.

## TITLE III

### PROGRAMMING

#### CHAPTER I

#### GENERAL PROVISIONS ON THE STRUCTURAL FUNDS AND THE COHESION FUND

##### *Article 31*

##### **Preparation and approval of operational programmes**

1. The activities of the Funds in the Member States shall take the form of operational programmes within the national strategic reference framework. Each operational programme shall cover a period between 1 January 2007 and 31 December 2013. An operational programme shall cover only one of the three objectives referred to in Article 3, save as otherwise agreed between the Commission and the Member State.
2. Each operational programme shall be drawn up by the Member State or any authority designated by the Member State, in close cooperation with the partners referred to in Article 10.
3. The Member State shall submit a proposal for an operational programme to the Commission containing all the components referred to in Article 36, as soon as possible following the Commission decision referred to in Article 26 or at the same of the presentation of the national strategic reference framework referred to in the same Article 26.
4. The Commission shall appraise the proposed operational programme to determine whether it contributes to the goals and priorities of the national strategic reference framework and to the Community strategic guidelines. Where the Commission considers that an operational programme is inconsistent with the Community strategic guidelines or the national strategic reference framework, it shall request the Member State to revise the proposed programme accordingly.
5. The Commission shall adopt each operational programme as soon as possible after its formal submission by the Member State.

## *Article 32*

### **Revision of operational programmes**

1. At the initiative of the Member State or the Commission, and after approval by the Monitoring Committee, operational programmes shall be re-examined and, if necessary, revised for the rest of the programming period following significant socio-economic changes or in order to take greater or different account of the Community priorities, particularly in the light of Council conclusions. Operational programmes may be re-examined in the light of evaluation and following implementation difficulties. Operational programmes shall, if necessary, be revised following allocation of the reserves referred to in Articles 48 and 49.
2. The Commission shall adopt a decision on the requests for revision of operational programmes as soon as possible after formal submission of the request by the Member State.

## *Article 33*

### **Specific character of the Funds**

1. Operational programmes shall receive financing from only one Fund, save as otherwise provided in paragraph 3.
2. Without prejudice to the derogations laid down in the specific regulations of the Funds, the ERDF and the ESF may finance, in a complementary manner and subject to a limit of 5% of each priority of an operational programme, measures falling within the scope of assistance from the other Fund, provided that they are necessary for the satisfactory implementation of the operation and are directly linked to it.
3. In the Member States receiving support from the Cohesion Fund, the ERDF and the Cohesion Fund shall jointly provide assistance for operational programmes on transport infrastructure and the environment, including major projects.

## *Article 34*

### **Geographical scope**

1. Operational programmes submitted under the “Convergence” objective shall be drawn up at the appropriate geographical level and at least at regional level NUTS II.  
  
Operational programmes submitted under the “Convergence” objective with a contribution from the Cohesion Fund shall be drawn up at national level.
2. Operational programmes submitted under the “Regional competitiveness and employment” objective shall be drawn up at regional NUTS I or NUTS II level, in accordance with the institutional system specific to the Member State, for regions

benefiting from financing by the ERDF, save as otherwise agreed between the Commission and the Member State. They shall be drawn up by the Member State at the appropriate level if they are financed by the ESF.

3. Operational programmes submitted under the “European territorial cooperation” objective for cross-border cooperation shall be drawn up for each border or group of borders by an appropriate grouping at NUTS III level, including enclaves. Operational programmes submitted under the “European territorial cooperation” objective for transnational cooperation shall be drawn up at the level of each transnational cooperation area. Networking programmes shall relate to the whole territory of the Community.

#### *Article 35*

### **Participation by the European Investment Bank and the European Investment Fund**

1. The EIB and the European Investment Fund (EIF) may participate, in accordance with the modalities laid down in their statutes, in the programming of assistance from the Funds.
2. The EIB and the EIF may, at the request of Member States, participate in the preparation of national strategic reference frameworks and operational programmes, as well as in activities relating to the preparation of major projects, the arrangement of finance, and public-private partnerships. The Member State, in agreement with the EIB and the EIF, may concentrate the loans granted on one or more priorities of an operational programme, in particular in the spheres of innovation and the knowledge economy, human capital, the environment and basic infrastructure projects.
3. The Commission may consult the EIB and the EIF before adoption of the national strategic reference frameworks and the operational programmes. That consultation shall relate in particular to the operational programmes containing an indicative list of major projects or programmes which, by the nature of their priorities, are suitable for mobilising loans or other types of market-based financing.
4. The Commission may, if it considers it appropriate for the appraisal of major projects, request the EIB to examine those projects’ technical quality and economic and financial viability, in particular as regards the financial engineering instruments to be implemented or developed.

## CHAPTER II PROGRAMMING CONTENT

### SECTION 1 OPERATIONAL PROGRAMMES

#### *Article 36*

#### **Operational programmes for the “Convergence” and “Regional competitiveness and employment” objectives**

1. Operational programmes relating to the “Convergence” and the “Regional competitiveness and employment” objectives shall contain:
  - a) an analysis of the situation in terms of strengths and weaknesses and the strategy chosen in response;
  - b) a justification of the priorities chosen having regard to the Community strategic guidelines, the national strategic reference framework and the resultant priorities of the operational programme, as well as the expected impact resulting from the *ex ante* evaluation referred to in Article 46;
  - c) an information on the priorities and their specific targets. Those targets shall be quantified using a limited number of indicators for implementation, results and impact, taking into account the proportionality principle. The indicators must make it possible to measure the progress in relation to the baseline situation and the effectiveness of the targets implementing the priorities;
  - d) a breakdown of the spheres of assistance by category in accordance with the detailed rules for the implementation of this Regulation;
  - e) a financing plan containing two tables:
    - i) a table breaking down for each year, in accordance with Articles 50 to 53, the amount of the total financial appropriation envisaged for the contribution from each Fund. The financing plan shall show separately within the total contribution from the Structural Funds the appropriations provided for regions receiving transitional support. The total contribution from the Funds provided for annually shall be compatible with the applicable Financial Perspective and taking into account the phased reduction laid down in Articles 16(2) and 17(4);
    - ii) a table specifying, for the whole programming period and for each priority, the amount of the total financial appropriation of the Community contribution and the public national counterparts and the rate of contribution from the Funds. It shall show, for information, the contribution from the EIB and the other financial instruments;

- f) information on complementarity with measures financed by the European Agricultural Fund for Rural Development and those financed by the European Fund for Fisheries;
- g) the implementing provisions for the operational programme, including:
  - i) designation by the Member State of all the entities stipulated in Article 58 or, if the Member State exercises the option provided for in Article 73, the designation of other bodies and procedures in accordance with the rules laid down in Article 73;
  - ii) a description of the monitoring and evaluation systems as well as the composition of the Monitoring Committee;
  - iii) a definition of the procedures for the mobilisation and circulation of financial flows in order to ensure their transparency;
  - iv) the provisions laid down to ensure that the operational programme is publicised;
  - v) a description of the procedures agreed between the Commission and the Member State for the exchange of computerised data to meet the payment, monitoring and evaluation requirements laid down by this Regulation;
- h) designation of the “compliance assessment body” referred to in Article 70.
- i) an indicative list of major projects within the meaning of Article 38 due to be submitted within the programming period, including an indicative annual schedule.

The rules of implementation of point d) are adopted by the Commission in accordance with the procedure referred to in Article 104(2).

2. Operational programmes financed jointly by the ERDF and the Cohesion Fund with respect to transport and the environment shall be the subject of priorities specific to each Fund and a specific commitment by Fund.
3. Each operational programme under the “Regional competitiveness and employment” objective includes a justification for the thematic, geographical and financial concentration.

For the operational programmes financed by the ERDF, this justification shall be based on:

- a) the verifiable link between the goal related to the balanced development of the region and the priorities chosen;
- b) the leverage effect on the key priorities for the development of the region concerned, particularly in the sphere of innovation, exerted by a financial critical mass and a significant number of beneficiaries.

For the operational programmes financed by the ESF, this justification shall be based on:

- a) the contribution of the chosen priorities to the implementation of the recommendations of the Council on the implementation of employment policies in Member States;
  - b) the leverage effect on the key priorities and goals of the European Employment Strategy and on the goals of the Community in the sphere of social inclusion.
4. Operational programmes financed by the ERDF shall contain in addition for the “Convergence” and the “Regional competitiveness and employment” objective:
- a) actions for inter-regional cooperation with, at least, one region of another Member State in each regional programme;
  - b) information on the approach to the urban issue, including the list of cities chosen and the procedures for sub-delegation to urban authorities, possibly by means of a global grant;
  - c) actions for adapting the regional economies, in a preventive manner, to the changes of the European and international economic environment;
  - d) specific priorities for the measures financed under the additional allocation referred to in point (d), of the first paragraph of Article 16 in operational programmes providing assistance in outermost regions;
5. By derogation to paragraph 1, the operational programme proposed by each Member State for the contingency reserve referred to in Article 49, in accordance with Article 31, include only the information referred to in paragraph 1, points e) indent i), h) and g) as well as:
- a) an analysis of the situation of the vulnerable sectors and sectors, which may be affected by the consequences of trade opening;
  - b) an indication of the priorities related to the adaptation of the worked potentially concerned and to the diversification of the regional economies.
6. When one of the unforeseen event referred to in Article 49 takes place, the Member State request the Commission for a revision of the operational programme in accordance with Article 32, including the information referred to points c), e) indent ii) of paragraph 1.

#### *Article 37*

#### **Operational programmes for the “European territorial cooperation” objective**

Without prejudice to Article 36, specific rules on programming are laid down in the Regulation (EC) No of the European Parliament and the Council on the European Regional

Development Fund as regards operational programmes under the “European territorial cooperation” objective.

## SECTION 2 MAJOR PROJECTS

### *Article 38*

#### **Content**

As part of an operational programme, the ERDF and the Cohesion Fund may finance expenditure in respect to an operation comprising a series of works, activities or services intended in itself to accomplish an indivisible task of a precise economic or technical nature, which has clearly identified goals and whose total cost exceeds €25 million in the case of the environment and €50 million in other fields, hereinafter “major projects”.

### *Article 39*

#### **Information submitted to the Commission**

The managing authority shall provide the Commission with the following information on major projects:

- a) information on the body to be responsible for implementation;
- b) information on the nature of the investment and a description of it, its financial volume and location;
- c) the results of the feasibility studies;
- d) a timetable for implementing the project and, where the implementation period for the operation concerned is expected to be longer than the programming period, the phases for which Community co-financing is requested during the 2007-2013 programming period;
- e) a cost-benefit analysis, including a risk assessment and the foreseeable impact on the sector concerned and on the socio-economic situation of the Member State and/or the region and, when possible, of the other regions of the Community;
- f) a guarantee of compliance with Community law;
- g) an analysis of the environmental impact;
- h) a justification for the public contribution;
- i) the financing plan showing the total planned financial resources and the planned contribution from the Funds, the EIB, the EIF and all other sources of Community financing, including the annual schedule of the project.

## *Article 40*

### **Decision of the Commission**

1. The Commission shall appraise the major project, if necessary consulting outside experts, including the EIB, in the light of the factors referred to in Article 39, its consistency with the priorities of the operational programme, its contribution to achieving the goals of those priorities and its coherence with other Community policies.
2. The Commission shall offer the Member States methodological support and shall agree reference values for the principal parameters of the cost-benefit analysis.
3. The Commission shall adopt a decision as soon as possible after the submission by the Member State or the managing authority of all the information referred to in Article 39. That decision shall define the physical object, the amount to which the co-financing rate for the priority applies, and the annual schedule.
4. Where the Commission refuses to make a financial contribution to a major project, it shall notify the Member State of its reasons.

### **SECTION 3 GLOBAL GRANTS**

## *Article 41*

### **General provisions**

1. The managing authority may entrust the management and implementation of a part of an operational programme to one or more intermediate bodies, designated by the managing authority, including local authorities, regional development bodies or non-governmental organisations, which shall ensure the implementation of one or more operations in accordance with the provisions of an agreement concluded between the managing authority and that body.

Such delegation shall be without prejudice to the financial responsibility of the managing authority and of the Member States.

2. The intermediary body responsible for managing the global grant must provide guarantees of its solvency and competence in administrative and financial management. It must normally be established or represented in the region or regions covered by the operational programme at the moment of its designation.

## *Article 42*

### **Implementing rules**

The agreement concluded between the managing authority and the intermediate body shall detail in particular:

- a) the operations to be implemented;
- b) the criteria for selecting beneficiaries;
- c) the rates of assistance from the Funds and the rules governing that assistance, including regarding the use of any interest accruing;
- d) the arrangements for monitoring, evaluating and ensuring the financial control of the global grant referred to in Article 58(1) vis-à-vis the managing authority, including the modalities for recovering amounts unduly paid and the presentation of accounts;
- e) the use of a financial guarantee or equivalent facility.

## SECTION 4

### **TECHNICAL ASSISTANCE**

## *Article 43*

### **Technical assistance at the initiative of the Commission**

1. At the initiative of and/or on behalf of the Commission, subject to a ceiling of 0.30% of their respective annual allocation, the Funds may finance the preparatory, monitoring, administrative and technical support, evaluation, audit and inspection measures necessary for implementing this Regulation. These actions are executed in accordance with Article 53(2) of Regulation (EC, Euratom) No 1605/2002 and any other provisions of that Regulation and of its implementing modalities applicable to this form of execution of the budget.

Those actions shall include:

- a) studies linked to the drawing up of the strategic guidelines of the Community, the Commission's annual report and the three-yearly cohesion report;
- b) evaluations, expert reports, statistics and studies, including those of a general nature concerning the operation of the Funds;
- c) measures aimed at the partners, the beneficiaries of assistance from the Funds and the general public, including information measures;
- d) measures to disseminate information, networking, raise awareness, promote cooperation and exchange experiences throughout the Union;

- e) the installation, operation and interconnection of computerised systems for management, monitoring, inspection and evaluation;
  - f) improvements in evaluation methods and the exchange of information on practices in this field.
2. The Commission adopts a decision for the actions listed under the first paragraph, in accordance with the procedure referred to in Article 104(2), when a contribution from the ERDF or the Cohesion Fund is foreseen.
  3. The Commission adopts a decision for the actions listed under the first paragraph, after consulting the committee referred to in Article 105, in accordance with the procedure referred to in Article 104(2), when a contribution from the ESF is foreseen.

#### *Article 44*

#### **Technical assistance of the Member states**

1. At the initiative of the Member State, for each operational programme, the Funds may finance preparatory, management, monitoring, evaluation, information and control activities and activities to reinforce the administrative capacity for implementing the Funds within the following limits:
  - a) 4% of the total amount allocated to each operational programme under the “Convergence” and the “Regional competitiveness and employment” objectives;
  - b) 6% of the total amount allocated to each operational programme under the “European territorial cooperation” objective.
2. For the “Convergence” objective, technical assistance measures may be implemented, up to the limit of 4% of the total allocation, in the form of specific operational programmes.

# TITLE IV

## EFFECTIVENESS

### CHAPTER I EVALUATION

#### *Article 45*

##### **General provisions**

1. The strategic guidelines of the Community, the national strategic reference framework, and the operational programmes shall be the subject of evaluation.

Evaluations shall aim to improve the quality, effectiveness and consistency of Fund assistance and the implementation of operational programmes. They shall also appraise their impact with respect to the strategic objectives of the Community, to Article 158 of the Treaty and to the specific structural problems affecting the Member States and regions concerned, while taking account of the needs of sustainable development and of the relevant Community legislation concerning environmental impact and strategic environmental assessment.

2. Evaluation can be of a strategic nature in order to examine the evolution of a programme or group of programmes in relation to Community and national priorities. It can be of an operational nature in order to support the monitoring of an operational programme. Evaluations are carried out before, during and after the programming period.
3. The evaluation activities referred to in paragraph 1 shall be organised under the responsibility of the Member State or the Commission, as appropriate, in accordance with the principle of proportionality and on the basis of a partnership between the Member State and the Commission. Evaluations shall be carried out by independent assessors. The results shall be published, except where the authority responsible for the evaluation expressly objects in accordance with Regulation (EC) No 1049/2001 on access to documents<sup>11</sup>.
4. Evaluations shall be financed from the budget for technical assistance.
5. The Commission establishes the evaluation methods and standards to be applied in accordance with the procedure referred to in Article 104(2).

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<sup>11</sup> OJ L 118, 19.5.2000, p. 26.

### Responsibility of Member States

1. The Member States shall provide the human and financial resources necessary for carrying out evaluations, organise the production and gathering of the necessary data and use the various types of information provided by the monitoring system.

They shall also draw up, under the “Convergence” objective, an evaluation plan to improve the management of operational programmes and their evaluation capacity. This plan presents the indicative evaluation activities the Member State intends to carry out in the different phases of the implementation.

2. Member States shall carry out an *ex-ante* evaluation for the national strategic reference framework to assess the impact of the intervention proposed and the coherence with the Community strategic guidelines and the national and regional priorities chosen.
3. Member States shall carry out an *ex-ante* evaluation for each operational programme under the “Convergence” objective.

For the “Regional competitiveness and employment” objective, they shall carry out either an evaluation covering all the operational programmes or an evaluation for each Fund or an evaluation for each priority or an evaluation for each operational programme.

*Ex-ante* evaluation shall aim to optimise the allocation of budgetary resources under operational programmes and improve programming quality. It shall identify and appraise medium- and long-term needs, the goals to be achieved, the results expected, the quantified targets, the coherence, if necessary, of the strategy proposed for the region, the Community value-added, the extent to which the Community’s priorities have been taken into account, the lessons drawn from previous programming and the quality of the procedures for implementation, monitoring, evaluation and financial management.

4. To appraise the progress of programming in relation to the commitments taken at the beginning of the period, to the integration of the Community strategic guidelines, and to the national strategic reference framework, each Member State shall carry out, at the latest in 2010, either an evaluation covering all the operational programmes for each objective, or an evaluation for each operational programme.
5. During the programming period, Member States carry out ad hoc evaluation linked to the monitoring of operational programmes where the monitoring of programmes reveals a significant departure from the goals initially set and where proposals are made for the revision of operational programmes. The results shall be sent to the monitoring committee for the operational programme and to the Commission.

## Article 47

### **Responsibility of the Commission**

1. The Commission shall carry out evaluations to prepare and monitor the Community strategic guidelines.
2. The Commission may carry out, at its initiative or in partnership with the Member State concerned, ad hoc evaluations as referred to in Article 46(5).
3. The Commission shall carry out an *ex-post* evaluation for each objective in cooperation with the Member State and managing authorities, who shall provide for the gathering of the necessary data.

It shall cover all the operational programmes under each objective and examine the extent to which resources were used, the effectiveness and efficiency of Fund programming, the socio-economic impact and the impact on the Community's priorities.

It shall be carried out for each of the Objectives and shall aim to draw conclusions for the policy on economic, social and territorial cohesion.

It shall identify the factors contributing to the success or failure of the implementation of operational programmes, including in terms of sustainability, and identify good practice.

*Ex-post* evaluation shall be completed by 31 December 2015.

## **CHAPTER II RESERVES**

### Article 48

#### **Community reserve for quality and performance**

1. Within the context of the annual debate referred to in Article 29, the Council shall in 2011, in accordance with the procedure laid down in Article 161 of the Treaty, allocate the reserve referred to in Article 20 among the Member States to reward progress made as compared with the initial situation:
  - a) for the "Convergence" objective, on the basis of the following criteria:
    - i) growth in the per capita gross domestic product measured at NUTS II level, in relation to the Community average, on the basis of the data available for the 2004-2010 period;
    - ii) growth in the employment rate at NUTS II level, on the basis of the data available for the 2004-2010 period;

- b) for the “Regional competitiveness and employment” objective, on the basis of the following criteria:
    - i) pro rata to those regions having spent between 2007 and 2010 at least 50% of their ERDF allocation on innovation-related activities as referred to in Article 5(1) of Regulation (EC) No [...];
    - ii) growth in the employment rate at NUTS II level, on the basis of the data available for the 2004-2010 period.
2. Each Member State shall allocate the amounts concerned among operational programmes taking into account the criteria referred to in the previous paragraph.

#### *Article 49*

#### **National contingency reserve**

1. The Member State shall reserve an amount of 1% of the Structural Fund annual contribution for the “Convergence” objective and 3% of the Structural Fund annual contribution for the “Regional competitiveness and employment” objective to cover unforeseen local or sectoral crises linked to economic and social restructuring or to the consequences of trade opening.

This reserve assists the adaptability of the concerned workers and the economic diversification of the regions concerned, as a complement to the operational programmes.

2. Each Member State proposes specific operational programmes for the budgetary commitments covering the entire period in order to respond to the crises referred to in the previous paragraph.

## TITLE V

### **FINANCIAL CONTRIBUTION BY THE FUNDS**

#### **CHAPTER I CONTRIBUTION OF THE FUNDS**

#### *Article 50*

#### **Modulation of the contribution rates**

The contribution of the Funds shall be modulated in the light of the following:

- a) the gravity of the specific problems, in particular of an economic, social or territorial nature;
- b) the importance of each priority for the Community's priorities as set out in the strategic guidelines of the Community;
- c) protection and improvement of the environment, principally through the application of the precautionary principle, the principle of preventive action, and the polluter-pays principle;
- d) the rate of mobilisation of private financing, in particular under public-private partnerships, in the fields concerned.

### *Article 51*

#### **Contribution by the Funds**

1. The decision adopting an operational programme shall fix the maximum rate and the maximum amount of the contribution by Fund for each operational programme under each priority. The decision shall show separately the appropriations for regions receiving transitional support.
2. The contribution from the Funds shall be calculated in relation to the total public expenditure.
3. The contribution from the Funds for each priority shall be subject to the following ceilings:
  - a) 85% of the public expenditure co-financed by the Cohesion Fund;
  - b) 75% of the public expenditure co-financed by the ERDF or the ESF under operational programmes in regions eligible under the "Convergence" objective;
  - c) 50% of the public expenditure co-financed by the ERDF or the ESF under operational programmes under the "Regional competitiveness and employment" objective;
  - d) 75% of the public expenditure co-financed by the ERDF under operational programmes under the "European territorial cooperation" objective;
  - e) the co-financing rate for specific measures financed under the additional allocation for the outermost regions provided for in Article 5(4) shall be 50% of the public expenditure.

By derogation to point b), where the regions are located in a Member State covered by the Cohesion Fund, the Community contribution may rise, in exceptional and duly justified cases, to a maximum of 80% of the public expenditure co-financed by the ERDF or the ESF.

4. The maximum contribution from the Funds shall be increased to 85% of public expenditure for operational programmes under the “Convergence” and the “Regional competitiveness and employment” objectives in the outermost regions and for operational programmes of the outlying Greek islands under the “Convergence” objective.

#### *Article 52*

#### **Increase of the contribution**

1. Notwithstanding the ceilings set out in Article 51, the ERDF contribution for priorities of operational programmes may be increased by:
  - a) 10 percentage points for interregional cooperation as referred to in Article 36(4), point b), under the “Convergence” and “Regional competitiveness and employment” objectives;
  - b) 5 percentage points under the “Regional competitiveness and employment” objective where the priority principally concerns areas with a geographical or natural handicap, defined as follows:
    - i) island Member States eligible under the Cohesion Fund, and other islands except those where the capital of a Member State is sited or which have a fixed link to the mainland.
    - ii) mountain areas as defined by the national legislation of the Member State;
    - iii) sparsely (less than 50 inhabitants per square kilometre) and very sparsely (less than 8 inhabitants per square kilometre) populated areas;
    - iv) the areas which were external borders of the Community on 30 April 2004 and which are no longer so since that date.

The increase for areas with a geographical or natural handicap must not result in the total support granted for a priority exceeding 60% of public expenditure on that priority.

2. Notwithstanding the ceilings set out in Article 51, the ESF contribution for priorities of operational programmes under the “Convergence” and “Regional competitiveness and employment” objectives for actions in favour of interregional and transnational cooperation may be increased by 10 percentage points. These actions shall be part of a specific priority.

### *Article 53*

#### **Other provisions**

1. The contribution from the Funds for each priority shall not be less than 20% of the public expenditure.
2. Technical assistance measures implemented at the initiative of or on behalf of the Commission may be financed at the rate of 100%.
3. During the period of eligibility referred to in Article 55(1):
  - a) A priority may receive assistance from only one Fund at a time;
  - b) An operation may receive assistance from a Fund under only one operational programme at a time.
4. For aid to businesses, public aid granted under operational programmes shall respect the ceilings on state aid.
5. An expenditure co-financed by the Funds shall not receive assistance by another Community financial instrument.

## **CHAPTER II REVENUE-GENERATING PROJECTS**

### *Article 54*

#### **Revenue-generating projects**

1. For the purposes of this Regulation, a revenue-generating project shall be any project involving an infrastructure the use of which involves fees borne directly by users and any operation resulting from the sale or rent of land or buildings.
2. Public expenditure on revenue-generating projects shall be calculated on the basis of the investment cost less the current value of the net revenue from the investment over a specific reference period. The calculation shall take account of the profitability normally expected of the category of investment concerned and of the application of the polluter-pays principle, and, if necessary, of the principle of equity linked to the relative prosperity of the Member State concerned.
3. Paragraphs 1 and 2 shall not apply to projects subject to the rules on state aid within the meaning of Article 87 of the Treaty.
4. Where the operation involves a sale, in whole or in part, which generates revenue, that revenue must be deducted from the base for calculating the eligible amount which the Managing Authority declares to the Commission.

## CHAPTER III ELIGIBILITY OF EXPENDITURE

### *Article 55*

#### **Eligibility of expenditure**

1. Expenditure shall be eligible for a contribution from the Funds if it has actually been incurred by the beneficiary for carrying out an operation between 1 January 2007 and 31 December 2015. Operations co-financed must not have been completed before the starting date for eligibility.

Expenditure on major projects shall be eligible from the date of submission of the project to the Commission.

2. Expenditure shall be eligible for a contribution from the Funds only where incurred for operations decided on by the managing authority of the operational programme concerned or under its responsibility, in accordance with criteria fixed by the monitoring committee.

A new expenditure, added at the moment of the modification of an operational programme referred to in Article 32, shall be eligible from the date of the reception by the Commission of the request for modification of the operational programme. This provision shall not apply to the operational programmes referred to in Article 36(5).

3. The rules on the eligibility of expenditure shall be laid down at national level subject to the exception provided in the specific Regulations for each Fund. They cover the entirety of the public expenditure declared under the operational programme.
4. Paragraphs 1, 2 and 3 of this Article shall be without prejudice to the expenditure referred to in Article 43.

## CHAPTER IV DURABILITY OF OPERATIONS

### *Article 56*

#### **Durability of operations**

1. The Member State or managing authority shall ensure that an operation retains the contribution from the Funds only if that operation does not, within seven years of the date of the financing decision of the competent national authorities or the Managing Authority, undergo a substantial modification:

- a) affecting its nature or its implementation conditions or giving to a firm or a public body an undue advantage;
  - b) resulting either from a change in the nature of ownership of an item of infrastructure or the cessation of a productive activity.
2. The Managing Authority shall inform the Commission of any such modification. The Commission shall inform the other Member States.
  3. Sums unduly paid shall be recovered in accordance with Articles 99 to 103.
  4. The Member States and the Commission shall ensure that undertakings which are or have been subject to a procedure of recovery in accordance with paragraph 3 following the transfer of a productive activity within a Member State or toward another Member State do not benefit from a contribution from the Funds.

## TITLE VI

### **MANAGEMENT, MONITORING AND CONTROLS**

#### CHAPTER I

#### **MANAGEMENT AND CONTROL SYSTEMS**

##### *Article 57*

##### **General principles of the management and control systems**

1. The management and control systems of operational programmes set up by Member States shall provide for:
  - a) a clear definition of the functions of the bodies concerned in management and control and a clear allocation of functions within each body;
  - b) a clear separation of functions between bodies concerned in management, certification of expenditure and control and between those functions within each body;
  - c) adequate resources for each body to carry out the functions allocated to it;
  - d) effective internal audit arrangements;
  - e) reliable accounting, monitoring and financial reporting systems in computerised form;
  - f) an effective system of reporting and monitoring where the performance of tasks is delegated;
  - g) the existence of manuals of procedures for the functions to be performed;

- h) effective arrangements for auditing the proper operation of the system;
  - i) systems and procedures to ensure an adequate audit trail;
  - j) reporting and monitoring procedures of irregularities and of recovery of amounts unduly paid.
2. The measures laid down in paragraph 1, points b), c), d), f), and h) shall be proportionate to public expenditure under the operational programme concerned.

#### *Article 58*

#### **Designation of authorities**

1. For each operational programme the Member State shall designate the following:
- a) a managing authority: an authority, or public or private national, regional or local body designated by the Member State, or the Member State itself when it carries out that task, to manage an operational programme;
  - b) a certifying authority: a body or local, regional or national authority designated by the Member State to certify declarations of expenditure and applications for payment before they are sent to the Commission;
  - c) an audit authority: a body operationally independent of the managing authority and the certifying authority designated by the Member State for each operational programme and responsible for verifying the sound operation of the management and control system.
2. In addition to the authorities referred to in the previous paragraph, the Member State shall also designate a competent body for receiving the payments made by the Commission and a body or bodies responsible for making payments to the beneficiaries.
3. The Member State shall lay down rules governing its relations with those authorities and bodies and their relations with the Commission.
- Without prejudice to this Regulation, the Member State shall lay down the mutual relations of those authorities, which shall carry out their tasks in full accordance with the institutional, legal and financial systems of the Member State concerned.
4. Subject to Article 57(1), point b), several or all management, payment, certification and control functions may be carried out by the same body.
5. Specific rules on management and control shall be laid down in the Regulation (EC) No [...], for operational programmes under the “European territorial cooperation” objective.
6. The Commission adopt detailed rules to implement Articles 59, 60 and 61 in accordance with the procedure referred to in Article 104(3).

### **Functions of the Managing Authority**

The Managing Authority shall be responsible for managing and implementing the operational programme efficiently, effectively and correctly and in particular for:

- a) ensuring that operations are selected for funding in accordance with the criteria applicable to the operational programme and that they comply, for their whole implementation period, with applicable Community and national rules;
- b) verifying the delivery of the co-financed products and services and that the expenditure declared for operations has actually been incurred and complies with Community and national rules;
- c) ensuring that there is a system for recording and storing in computerised form detailed accounting records of each operation under the operational programme and that the data on implementation necessary for financial management, monitoring, control and evaluation is collected;
- d) ensuring that beneficiaries and other bodies involved in the implementation of operations maintain either a separate accounting system or an adequate accounting code for all transactions relating to the operation;
- e) ensuring that the evaluations of operational programmes referred to in Article 46 are carried out within the time limits laid down in this Regulation and meet the quality standards agreed between the Commission and the Member State;
- f) setting up procedures to ensure that all documents regarding expenditure and audits required to ensure an adequate audit trail are held in accordance with the requirements of Articles 88 and 98;
- g) ensuring that the certifying authority receives all necessary information on the procedures and audits carried out in relation to expenditure for the purpose of certification;
- h) leading the Monitoring Committee and providing it with the documents required to permit the quality of the implementation of the operational programme to be monitored in the light of its specific goals;
- i) drawing up and, after approval by the Monitoring Committee, submitting to the Commission the annual and final reports on implementation;
- j) ensuring compliance with the information and publicity requirements laid down in Article 68;
- k) providing the Commission with information to allow it to appraise major projects.

## *Article 60*

### **Functions of the Certifying Authority**

The Certifying Authority of an operational programme shall be responsible in particular for:

- a) drawing up and submitting to the Commission certified statements of expenditure and applications for payment in computerised form;
- b) certifying that:
  - i) the statement of expenditure is accurate, results from reliable accounting systems and is based on verifiable supporting documents,
  - ii) the expenditure declared complies with applicable Community and national rules and has been incurred in respect of operations selected for funding in accordance with the criteria applicable to the programme and complying with Community and national rules;
- c) ensuring for the purposes of certification that it has received adequate information from the Managing Authority on the procedures and audits carried out in relation to expenditure included in statements of expenditure;
- d) taking account for the purposes of certification of the results of all audits carried out by or under the responsibility of the Audit Authority;
- e) maintaining accounting records in computerised form of expenditure declared to the Commission;
- f) ensuring the recovery of any Community financing found to have been unduly paid as a result of irregularities detected, together with interest where appropriate, keeping an account of amounts recoverable and repaying amounts recovered to the Commission, where possible by deducting them from the next statement of expenditure.

## *Article 61*

### **Functions of the Audit Authority**

1. The Audit Authority of an operational programme shall be responsible in particular for:
  - a) ensuring that audits are carried out in accordance with international audit standards to verify the effective operation of the management and control system of the operational programme;
  - b) ensuring that audits are carried out on operations on the basis of an appropriate sample to verify expenditure declared;

- c) presenting to the Commission within six months of the approval of the operational programme an audit strategy covering the bodies which will perform the audits referred to under subparagraphs a) and b), the method to be used, the sampling method for audits on operations and the indicative planning of audits to ensure that the main bodies are audited and that audits are spread evenly throughout the programming period;
  - d) where common systems apply in more than one operational programme, a single combined audit strategy may be submitted under subparagraph c);
  - e) by 30 June each year from 2008 to 2016:
    - i) establishing an annual control report setting out the findings of the audits carried out in accordance with the audit strategy in respect of the operational programme during the previous year and reporting any shortcomings found in the systems for the management and control of the programme. The information concerning years the 2014 and 2015 may be included in the final report to accompany the declaration of validity;
    - ii) issuing an opinion as to whether the management and control system has operated effectively to give a reasonable assurance on the correctness of the statements of expenditure presented to the Commission during that year and the legality and regularity of the underlying transactions.
  - f) providing the information on the audits and opinions, which can be grouped in a single report when a common system applies to several operational programmes;
  - g) providing a declaration at the closure of the operational programme assessing the validity of the application for payment of the final balance and the legality and regularity of the underlying transactions covered by the final statement of expenditure, which shall be supported by a final control report.
2. Where the audits referred to in subparagraphs a) and b) are carried out by a body other than the Audit Authority, the Audit Authority shall ensure that such bodies have the necessary operational independence and that the work is performed to internationally accepted audit standards.

## CHAPTER II MONITORING

### *Article 62*

#### **Monitoring Committee**

The Member State shall set up a monitoring committee for each operational programme, in agreement with the Managing Authority after consultation with the partners.

Each Monitoring Committee shall be set up within three months of the decision approving the operational programme.

It shall draw up its rules of procedure within the institutional, legal and financial framework of the Member State concerned and adopt them in agreement with the Managing Authority.

### *Article 63*

#### **Composition**

1. The Monitoring Committee shall be chaired by a representative of the Member State or the Managing Authority.

Its composition shall be decided by the Member State and shall include the partners referred to in Article 10 and the Managing Authority.

2. At its own initiative, a representative of the Commission may participate in the work of the monitoring committee in an advisory capacity. A representative of the EIB and the EIF may participate in an advisory capacity for those operational programmes to which it makes a contribution.

### *Article 64*

#### **Tasks**

The Monitoring Committee shall satisfy itself as to the effectiveness and quality of the implementation of the operational programme, in accordance with the following provisions:

- a) it shall consider and approve the criteria for selecting the operations financed within four months of the approval of the operational programme. The selection criteria shall be revised in accordance with programming needs;
- b) it shall periodically review progress made towards achieving the specific targets of the operational programme on the basis of documents submitted by the Managing Authority;
- c) it shall examine the results of implementation, particularly achievement of the targets set for each priority and the evaluations referred to in Article 46(5);
- d) it shall consider and approve the annual and final reports on implementation referred to in Article 66 before they are sent to the Commission;
- e) it shall be informed of the annual control report and of any comments the Commission may make after examining that report;
- f) at the initiative of the Member State, it may be informed of the annual report referred to in Article 27;

- g) it may propose to the Managing Authority any adjustment or review of the operational programme likely to make possible the attainment of the Funds' objectives referred to in Article 3 or to improve its management, including its financial management;
- h) it shall consider and approve any proposal to amend the contents of the Commission decision on the contribution of the Funds.

#### *Article 65*

#### **Arrangements for monitoring**

- 1. The Managing Authority and the Monitoring Committee shall ensure the quality of the implementation of the operational programme.
- 2. The Managing Authority and the Monitoring Committee shall carry out monitoring by reference to financial indicators and indicators of implementation, results and impact specified in the operational programme.

Where the nature of the assistance permits, the statistics shall be broken down by sex and by the size of the recipient undertakings.

- 3. The Commission, in partnership with the Member States, shall examine the indicators necessary for monitoring and evaluating the operational programme.

#### *Article 66*

#### **Annual report and final report on implementation**

- 1. For the first time in 2008 and by 30 June each year, the Managing Authority shall send the Commission an annual report on the implementation of the operational programme. The Managing Authority shall send the Commission a final report on the implementation of the operational programme by 30 June 2016.
- 2. The reports referred to in paragraph 1 shall include the following information in order to obtain a clear view of the implementation of the operational programme:
  - a) the progress made in implementing the operational programme and priorities in relation to their specific, verifiable targets, with a quantification, wherever and whenever they lend themselves to quantification, of the physical indicators and the indicators of implementation, results and impact for the priority;
  - b) the financial implementation of the operational programme, detailing for each priority the expenditure paid out by the beneficiary and the corresponding public contribution, the total payments received from the Commission, and quantifying the financial indicators referred to in Article 65(2);

- c) where appropriate, financial implementation in areas receiving transitional support shall be presented separately within each operational programme;
- d) the financial implementation by field of assistance adopted by the Commission in accordance with the procedure referred to in Article 104(3);
- e) the steps taken by the Managing Authority and the Monitoring Committee to ensure the quality and effectiveness of implementation, in particular:
  - i) monitoring and evaluation measures, including data collection arrangements;
  - ii) a summary of any significant problems encountered in implementing the operational programme and any measures taken, including in response to comments made under Article 67;
  - iii) the use made of technical assistance;
- f) the measures taken to provide information on and publicise the operational programme;
- g) a declaration that Community law has been complied with during implementation of the operational programme and, where appropriate, identifying any problems encountered and the measures taken to deal with them;
- h) the progress and financing of major projects and global grants;
- i) information on the rules governing the grant of preferential financing in areas with a natural handicap;
- j) the use made of assistance repaid to the Managing Authority or to another public authority during the period of implementation of the operational programme.

The breadth of information transmitted to the Commission shall be proportional to the total amount of public expenditure of the operational programme concerned.

3. The reports shall be judged acceptable where they contain all the information listed in paragraph 2. The Commission shall reach a decision on the acceptability of the annual report within 10 working days.
4. The Commission shall reach a decision on the content of the annual report on implementation submitted by the Managing Authority within two months. For the final report on the operational programme, the time limit shall be five months. If the Commission does not respond within the time limit laid down, the report shall be deemed to be accepted.

## Article 67

### Annual examination of programmes

1. Every year, when the annual report on implementation referred to in Article 66 is submitted and in accordance with rules to be laid down in agreement with the Member State and the Managing Authority concerned, the Commission and the Managing Authority shall examine the progress made in implementing the operational programme, the principal results achieved over the previous year, the financial implementation and other factors with a view to improving implementation.  
  
Any aspects of the operation of the management and control system raised in the annual control report, referred to in Article 61(1), point e) i), may also be examined.
2. After the examination referred to in paragraph 1, the Commission may make comments to the Member State and the Managing Authority, which shall inform the Monitoring Committee thereof. The Member State shall inform the Commission of the action taken in response to those comments.
3. When the *ex-post* evaluations of assistance granted over the 2000-2006 programming period are available, the overall results shall be examined in the next annual examination.

## CHAPTER III INFORMATION AND PUBLICITY

### Article 68

#### Information and publicity

The Member States shall provide information on and publicise co-financed programmes and operations. The information shall be addressed to European citizens and to the beneficiaries. It shall aim to highlight the role of the Community and ensure that assistance from the Funds is transparent.

The Managing Authority for the operational programme shall be responsible for publicising it in accordance with the implementing rules of this Regulation adopted by the Commission according to the procedure referred to in Article 104(3).

## CHAPTER IV CONTROLS

### SECTION 1 RESPONSIBILITIES OF MEMBER STATES

#### *Article 69*

##### **Sound financial management**

1. Member States shall be responsible for ensuring sound financial management of operational programmes and the legality and regularity of underlying transactions.
2. They shall ensure that managing authorities, certifying authorities, intermediate bodies, audit authorities and any other bodies concerned receive adequate guidance on setting up the management and control systems referred to in Articles 57 to 61 to ensure that Community financing is used efficiently and correctly.
3. The Member States shall prevent, detect and correct irregularities. They shall notify these to the Commission, in accordance with the rules, and keep the Commission informed of the progress of administrative and legal proceedings.

When amounts unduly paid to a beneficiary cannot be recovered, the Member State is responsible for reimbursing the amounts lost to the budget of the European Communities, save when it proves that the loss incurred has not been caused by its irregularity or negligence.

4. The detailed rules for implementing paragraphs 1, 2 and 3 shall be adopted in accordance with the procedure referred to in Article 104(3).

#### *Article 70*

##### **Management and control systems**

1. Prior to the adoption of an operational programme, the Member States shall ensure that management and control systems for operational programmes have been set up in accordance with Articles 57 to 61. They shall be responsible for ensuring that the systems function effectively throughout the programming period.
2. Within three months of the approval of each operational programme, the Member States shall submit to the Commission a description of the systems, covering in particular the organisation and procedures of the managing and certifying authorities and intermediate bodies and the internal audit systems operating in those authorities and bodies, the audit authority, and any other bodies carrying out audits under its responsibility.

3. This description shall be accompanied by a report by a “compliance assessment body” setting out the results of an assessment of the systems and giving an opinion on their compliance with Articles 57 to 61. In the event that the opinion contains reservations, the report shall indicate the shortcomings and their seriousness. The Member State shall draw up, in agreement with the Commission, a plan setting out the corrective measures to be taken and the timetable for their implementation.

The “compliance assessment body” shall be designated at the latest when the operational programme is adopted. The Commission may accept the Audit Authority for the operational programme as the “compliance assessment body” where it has the necessary capacity. The “compliance assessment body” must have the necessary operational independence and must carry out its work to international audit standards.

4. Where systems are used for more than one operational programme, a description of the common systems may be notified under paragraphs 2 and 3 in a single report.
5. The detailed rules for implementing paragraphs 1 to 4 shall be adopted in accordance with the procedure referred to in Article 104(3).

## SECTION 2 RESPONSIBILITIES OF THE COMMISSION

### *Article 71*

#### **Responsibilities of the Commission**

1. The Commission shall satisfy itself in accordance with the procedure laid down in Article 70 that the Member States have set up management and control systems that comply with Articles 57 to 61 and on the basis of the annual control reports and its own audits that the systems function effectively during the period of implementation of the operational programmes.
2. Without prejudice to audits carried out by Member States, Commission officials or authorised Commission representatives may carry out on-the-spot audits to verify the effective operation of the management and control systems, which may include audits on operations included in the operational programme, with a minimum of one working day’s notice. Officials or authorised representatives of the Member State may take part in such audits.
3. The Commission may require a Member State to carry out an on-the-spot check to verify the correct functioning of the systems or the correctness of one or more transactions. Commission officials or authorised Commission representatives may take part in such audits.

## *Article 72*

### **Cooperation with the control bodies of the Member States**

1. The Commission shall cooperate with the audit authorities of operational programmes to coordinate their respective control plans and audit methods and shall immediately exchange the results of audits carried out on management and control systems in order to make the best possible use of control resources and to avoid unjustified duplication of work.

The Commission and the Audit Authorities shall meet on a regular basis, generally at least once a year, in order to examine together the annual audit report presented under Article 61 and to exchange views on other issues relating to the improvement of the management and control of the operational programmes.

The Commission shall provide its comments on the audit strategy presented under Article 61 not later than three months or at the first meeting following its reception.

2. In determining its own audit strategy, the Commission shall identify those operational programmes for which the opinion on the compliance of the system under Article 61 is without reservations, or where reservations have been withdrawn following corrective measures, where the audit strategy of the Audit Authority is satisfactory and where reasonable assurance has been obtained that the management and control systems function effectively on the basis of the results of audits by the Commission and the Member State.
3. For those programmes, the Commission may inform the Member States concerned that it will rely principally on the opinion of the Audit Authority as to the correctness, legality and regularity of expenditure declared and will carry out its own on-the-spot audits only in exceptional circumstances.

## SECTION 3

### **PROPORTIONAL PROVISIONS IN THE SPHERE OF CONTROL**

## *Article 73*

### **Proportional control arrangements**

1. For programmes for which the level of co-financing from Community funds does not exceed 33% of public expenditure under the operational programme and the amount of the Funds does not exceed EUR 250 million, the provisions referred to in Article 61, points c), d), and e) i) do not apply.
2. For the programmes referred to in paragraph 1, the Member State may exercise the option to establish according to national rules the bodies and procedures for carrying out the functions laid down in Articles 59, point b), and in Articles 60 and 61. Where a Member State exercises this option, the provisions of Article 58(1), points b) and c), and of Articles 60(1), point c) shall not apply.

When the Commission adopts the implementing rules of article 59, 60 and 61, it shall specify the provisions which shall not apply to those Member States which exercise the option referred to in the first subparagraph.

3. Article 70(3) shall apply *mutatis mutandis* where a Member State exercises the option referred to in paragraph 2, first subparagraph.
4. For all operational programmes referred to in paragraph 1, and irrespective of whether a Member State exercises the option referred to paragraph 2, where the opinion on the compliance of the system has no reservations, or where all reservations have been withdrawn following corrective measures, the Commission may inform the Member State concerned that it will rely principally on the opinion provided by the Audit Authority, or the body designated by the Member State where it has exercised the option referred to, as to the correctness, legality and regularity of expenditure declared and will carry out its own on-the-spot audits only in exceptional circumstances.

In the event that there are indications of irregularities which have not been detected in a timely way by the national audit authorities or which have not been subject to appropriate corrective measures, the Commission may require the Member state to carry out audits in accordance with Article 71(3) or it may carry out its own audits under Article 71(2) in order to obtain assurance on the correctness, legality and regularity of expenditures declared.

## TITLE VII

### FINANCIAL MANAGEMENT

#### CHAPTER I FINANCIAL MANAGEMENT

##### SECTION 1 BUDGET COMMITMENTS

###### *Article 74*

###### **Budget commitments**

1. The Community budget commitments in the operational programmes (hereinafter “budget commitments”) shall be effected annually for each Fund during a period between 1 January 2007 and 31 December 2013. The first budget commitment shall be made before the adoption by the Commission of the decision approving the operational programme. Each subsequent commitment shall be made by the Commission on the basis of the decision to grant a contribution from the Funds referred to in Article 31.

2. When the Member State does not propose any modification of the operational programmes referred to in Article 36(5) or any payment has been made, the Member State may request, by September 30<sup>th</sup> of the year n at the latest, the transfer of the commitments of the operational programmes related to the national contingency reserve to other operational programmes. The Member State shall specify in its request the operational programmes benefiting from that transfer.

## SECTION 2 COMMON RULES FOR PAYMENTS

### *Article 75*

#### **Common rules for payments**

1. Payments by the Commission of the contribution from the Funds shall be made in accordance with the budget commitments. All payments shall be posted to the earliest open budget commitment.
2. Payments shall take the form of pre-financing, interim payments and payment of the balance. They shall be made to the body designated by the Member State.
3. At the latest by 31 January every year, the Member States shall send the Commission an update of the payment request forecasts for the current financial year and the subsequent financial year.
4. All exchanges concerning financial transactions between the Commission and the authorities designated by the Member States shall be made by electronic means in accordance with the implementing rules adopted by the Commission according to the procedure referred to in Article 104(3).

### *Article 76*

#### **Rules for calculating interim payments and payments of the balance**

Interim payments and payments of the balance shall be calculated by applying the co-financing rate for each priority to public expenditure certified under that priority on the basis of a statement of expenditure certified by the authority responsible for certification.

### *Article 77*

#### **Statement of expenditure**

1. All statements of expenditure shall include, for each priority, the amount of expenditure incurred by beneficiaries in implementing the operations and the corresponding contribution from public funds. Expenditure paid by beneficiaries

shall be substantiated by receipted invoices or accounting documents of equivalent probative value.

As regards aid schemes within the meaning of Article 87 of the Treaty only, expenditure certified to the Commission shall be expenditure paid by the beneficiaries for which a payment has been made by the body granting the aid.

2. Statements of expenditure shall highlight, for each operational programme, expenditure paid relating to the regions receiving transitional assistance.
3. As regards financial engineering actions and in particular venture capital funds, guarantee funds and loan funds, the expenditure certified to the Commission shall be the expenditure paid in establishing such funds. However at the closure of the operational programme the expenditure shall be determined on the basis of the actual payments out of each Fund together with eligible management costs.

#### *Article 78*

#### **Accumulation of pre-financing and of interim payments**

1. The cumulative total of pre-financing and interim payments made shall not exceed 95% of the Funds' contribution to the operational programme.
2. When this ceiling is reached, the certification authority shall continue transmitting to the Commission any certified expenditure on the 31 December of the year n, as well as the amounts recovered during the year for each Funds, at the latest by 31 January of year n+1.

#### *Article 79*

#### **Wholeness of payment to beneficiaries**

Member States shall satisfy themselves that the body responsible for making the payments ensures that the beneficiaries receive the total amount of the contribution from public funds as quickly as possible and in full. No amounts shall be deducted or withheld, nor any further specific charge or other charge with equivalent effect shall be levied that would reduce these amounts for the beneficiaries.

#### *Article 80*

#### **Use of the euro**

Commission decisions on operational programmes, Commission commitments and payments, and the amounts of certified expenditure and requests for payment from the Member States shall be denominated and carried out in euro, in accordance with the procedure referred to in Article 104(3).

## SECTION 3 PRE-FINANCING

### *Article 81*

#### **Payment**

1. Following the Commission decision approving the contribution from the Funds to an operational programme, a single pre-financing amount shall be paid by the Commission to the body designated by the Member State. This pre-financing amount shall represent 7% of the contribution from the Structural Funds and 10.5% of the contribution from the Cohesion Fund to that operational programme. It may be spread over two financial years, in accordance with the availability of budget funds.
2. The total amount paid as pre-financing shall be reimbursed to the Commission by the body designated by the Member State if no payment request under the operational programme is sent within twenty-four months of the date on which the Commission pays the first instalment of the pre-financing amount.

### *Article 82*

#### **Interests**

Any interest generated by the pre-financing shall be posted to the operational programme in question and must be deducted from the amount of public expenditure declared in the final statement of expenditure.

### *Article 83*

#### **Clearance**

The amount paid as pre-financing shall be cleared from the accounts when the operational programme is closed.

## SECTION 4 INTERIM PAYMENTS

### *Article 84*

#### **Interim payments**

1. Interim payments shall be made for each operational programme.

2. The Commission shall make the interim payments, subject to obtaining reasonable assurance that the management and control systems for the operational programmes established by the Member State are in accordance with Articles 58 to 61. This assurance shall be based on the report by the independent audit body referred to in Article 70.

#### *Article 85*

#### **Acceptability of payment requests**

1. Each interim payment made by the Commission shall be subject to the following conditions being met:
  - a) the Commission must have been sent a payment request and statement of expenditure, in accordance with Article 75;
  - b) no more than the maximum amount of assistance from the Funds may have been granted during the whole period for each priority;
  - c) the managing authority must have sent the Commission the most recent annual implementation report by the required deadline, in accordance with Article 66(3);
  - d) neither suspension of payments as detailed in Article 91 nor any reasoned opinion by the Commission in respect of an infringement under Article 226 of the Treaty, as regards the operation(s) for which the expenditure was incurred according to the payment request in question.
2. If one of the conditions referred to in paragraph 1 is not met, the Member State and the certification authority shall be informed as soon as possible by the Commission that the payment request is unacceptable.

#### *Article 86*

#### **Date of presentation of payment requests and payment delays**

1. The certification authority shall ensure that requests for interim payments for operational programmes are grouped together and sent to the Commission, as much as possible, on three separate occasions a year. For a payment to be made by the Commission in the current year, the latest date on which a payment request may be submitted is 31 October.
2. Subject to available funding, the Commission shall make the interim payment no later than two months after the date on which a payment request meeting the above conditions referred to in Article 85 is registered.

SECTION 5  
**PAYMENT OF BALANCE AND PROGRAMME CLOSURE**

*Article 87*

**Conditions for the payment of the balance**

1. The Commission shall pay the balance provided it has received the following documents by 30 June 2016:
  - a) a request for payment of the balance and a statement of expenditure in accordance with Article 75;
  - b) the final implementation report for the operational programme, including the information set out in Article 66;
  - c) a statement of validity for the request for payment of the balance provided for in Article 61, point g), together with the final audit report;

The payment of the balance is subject to the acceptance of the final implementation report and of the statement of validity for the request for payment of the balance.

2. Failure to send any of the documents referred to in previous paragraph to the Commission by 30 June 2016 at the latest shall automatically result in the decommitment of the balance, in accordance with Article 92.
3. Subject to available funding, the Commission shall pay the balance within no more than forty-five days from the date on which it accepts the final report and the statement of validity for the request for payment of the balance. Without prejudice to paragraph 5, the balance of the budgetary commitment shall be decommitted six months following the payment.
4. After 30 June 2016, no further expenditure not certified before that date may be added to any statements of expenditure.
5. Notwithstanding the results of any audits performed by the Commission or the European Court of Auditors, the balance paid by the Commission for the operational programme can be amended within nine months of the date on which it is paid or, where there is a negative balance to be reimbursed by the Member State, within nine months of the date on which the debit note is issued.

## *Article 88*

### **Conservation of documents**

The Managing Authority shall ensure that all the supporting documents regarding expenditure and audits on the operational programme concerned are kept available for the Commission and the Court of Auditors. The documents shall be kept available at least for a period three years following the closure of an operational programme, without prejudice to the rules governing State aid. The documents shall be kept either in the form of the originals or in versions certified to be in conformity with the originals on commonly accepted data carriers. This period shall be interrupted either in the case of legal proceedings or at the request of the Commission stating the reasons.

## SECTION 6

### **INTERRUPTION, WITHHOLDING AND SUSPENSION OF PAYMENTS**

## *Article 89*

### **Interruption**

1. The payment deadline shall be interrupted by the authorising officer by delegation within the meaning of Regulation (EC, Euratom) No 1605/2002 for a maximum period of six months where there are doubts as to the proper functioning of the management and control systems or that officer requires additional information from the national authorities in the process of monitoring the observations made under the annual review, or if s/he suspects that serious irregularities, detected or presumed, are included in the expenditure declared.

The Commission shall inform the Member State and the certifying authority immediately of the reasons for the interruption. The Member State shall take the necessary steps to rectify the situation as soon as possible.

2. Where it proves necessary to adopt a decision in accordance with Articles 90 and 91, and with paragraph 1 of this Article, the period of interruption referred to above shall be extended for a maximum period of six months.

## *Article 90*

### **Withholding**

1. The Commission shall decide to withhold from interim payments 20% of the sums to be reimbursed by the Commission where the essential elements of the corrective action plan referred to in Article 70(3) have been implemented and the serious deficiencies referred to in the annual report by the audit authority for the programme referred to in Article 61, point e) i), have been rectified but amendments still need to

be made to give the Commission reasonable assurance regarding the management and control systems.

2. Any withholding decision shall be adopted by the Commission after having offered the Member State the possibility of submitting observations within a period of two months.
3. The balance of interim payments shall be paid when all the required measures have been adopted. Otherwise, a financial correction may be applied in accordance with Article 100.

#### *Article 91*

### **Suspension**

1. All or part of the interim payments at the level of priorities or programmes may be suspended by the Commission where:
  - a) there is a serious deficiency in the management and control system of the programme which affects the reliability of the procedure for certification of payments and for which corrective measures have not been taken; or
  - b) expenditure in a certified statement of expenditure is linked to a serious irregularity which has not been corrected; or
  - c) a Member State has not complied with its obligations under Articles 69 and 70.
2. The Commission may decide to suspend interim payments after having given the Member State the opportunity to present its observations within a period of two months.
3. The Commission shall end suspension of interim payments where it considers that the Member State has taken the necessary measures to enable the suspension to be lifted. Where the required measures are not taken by the Member State, the Commission may adopt a decision to reduce the net amount or cancel the Community contribution to the operational programme in accordance with Article 100.

#### SECTION 7

### **AUTOMATIC DECOMMITMENT**

#### *Article 92*

### **Principles**

1. The Commission shall automatically decommit any part of a budget commitment in an operational programme that has not been used for payment of the pre-financing or

interim payments, or for which it has not received an acceptable payment request, as defined in Article 85, by 31 December of the second year following the year of budget commitment under the programme.

2. That part of commitments still open on 31 December 2015 shall be automatically decommitted if the Commission has not received an acceptable payment request for it by 30 June 2016.
3. If this Regulation enters into force after 1 January 2007, the period after which the first automatic decommitment as referred to in paragraph 1 may be made shall be extended, for the first commitment, by the number of months between 1 January 2007 and the date of the first budget commitment.

### *Article 93*

#### **Delays for major projects and aid regimes**

Where a subsequent Commission decision is required to authorise a major project or an aid scheme, the annual amounts potentially concerned by the automatic decommitment referred to in Article 92(1) shall be corrected by the difference between the schedule of the major project or of the aid scheme initially transmitted by the Member State and the schedule of the major project or of the aid scheme, which is established at the time of the Commission decision on the major project or the aid scheme. The annual schedule may be modified in accordance with the procedure referred to in Article 40(3), in exceptional and duly justified cases.

### *Article 94*

#### **Interruption of delay for legal proceedings and administrative appeals**

The period for automatic decommitment referred to in Article 92(1) shall be interrupted, for the amount relating to the operations concerned, for the duration of legal proceedings or an administrative appeal having suspensory effect, on condition that the Member State sends the Commission information stating the reasons by 31 December of year n+2.

For that part of commitments still open on 31 December 2015, the time limit referred to in Article 92(2) shall be interrupted under the same conditions as those for the amount relating to the operations concerned.

### *Article 95*

#### **Exceptions to the automatic decommitment**

The following shall be disregarded in calculating the automatic decommitment:

- a) that part of the budget commitment for which a payment request has been made but whose reimbursement has been interrupted, withheld or suspended by the Commission on 31 December of year n+2 in accordance with Article 89, 90 and 91.

Whether these amounts are finally taken into account or not shall depend on the outcome of the problem resulting in the withholding, interruption or suspension of payment.

- b) that part of the budget commitment for which a payment request has been made but whose reimbursement has been capped in particular due to a lack of budget resources.
- c) that part of the budget commitment for which it has not been possible to make an acceptable payment request for reasons of *force majeure* seriously affecting implementation of the operational programme. The national authorities claiming *force majeure* must demonstrate the direct consequences on the implementation of all or part of the operational programme.

#### *Article 96*

#### **Procedure**

1. The Commission shall inform the Member State and the authorities concerned in good time whenever there is a risk of application of the automatic decommitment provided for in Article 92. The Commission shall inform the Member State and the authorities concerned of the amount of the automatic decommitment resulting from the information in its possession.

The Member State shall have two months' time from the date of receipt of that information to agree to the amount or submit its observations. The Commission shall carry out the automatic decommitment not later than nine months after the time limit referred to in Article 92.

2. The Fund's contribution to the operational programme shall be reduced, for the year concerned, by the amount automatically decommitted. The Member State shall produce a revised financing plan to spread the reduced amount of assistance over the priorities of the operational programme. Failing this, the Commission shall reduce the amounts allocated to each priority in proportion.

#### SECTION 8

#### **PARTIAL CLOSURE**

#### *Article 97*

#### **Partial closure**

1. Partial closure of operational programmes may be made at periods selected by the Member State.

Partial closure shall relate to completed operations for which a final payment has been made to the beneficiary not later than 31 December of year n-1. For the

purposes of this Regulation, operations shall be deemed completed where the activities under it have been actually carried out and the beneficiary has received a final payment or the beneficiary has provided a document of equivalent effect to the managing authority.

2. The amount of payments corresponding to completed operations shall be identified in the statements of expenditure.

Partial closure shall be made on condition that the managing authority sends the following to the Commission by 30 June of year n:

- a) a statement of expenditure relating to those operations;
- b) a statement certifying the legality and regularity of the transactions concerned by the statement of expenditure, issued by the audit authority for the programme referred to in Article 61.

#### *Article 98*

#### **Withholding of documents**

1. The managing authority shall keep available to the Commission a list of completed operations for which a final payment has been received.
2. The managing authority shall ensure that all the supporting documents regarding expenditure and audits on the operations concerned are kept available for the Commission and the European Court of Auditors. The documents shall be kept available at least for a period of three years following the partial closure of an operational programme without prejudice to the rules governing State aid. The documents shall be kept either in the form of the originals or in versions certified to be in conformity with the originals on commonly accepted data carriers. This period shall be interrupted either in the case of legal proceedings or at the request of the Commission stating the reasons.
3. Any financial corrections made in accordance with Articles 99 and 100 concerning operations subject to a partial closure shall be intended as net financial corrections.

## CHAPTER II FINANCIAL CORRECTIONS

### SECTION 1 FINANCIAL CORRECTION BY THE MEMBER STATES

#### *Article 99*

#### **Financial corrections by Member States**

1. The Member States shall in the first instance bear the responsibility for investigating irregularities, acting upon evidence of any major change affecting the nature or the conditions for the implementation or control of assistance and making the financial corrections required.
2. The Member State shall make the financial corrections required in connection with the individual or systemic irregularities detected in operations or operational programmes. The corrections made by a Member State shall consist in recovering all or part of the Community contribution. The Member State shall take into account the nature and gravity of the irregularities and the financial loss to the Fund.

The Community funds released in this way may be re-used by the Member State until 31 December 2015 for the operational programme concerned in accordance with the provisions referred to in paragraph 3.

Member States shall include in the annual execution and control report sent to the Commission under Article 61 and 66 a list of cancellation proceedings initiated in the year concerned.

3. The contribution of the Funds cancelled in accordance with paragraph 2 may not be re-used for the operation or operations that were the subject of the correction, nor, where a financial correction is made for a systemic error, for operations within the priority where this systemic error occurred.

Member States shall inform the Commission in the report referred to in Article 66 of how they have decided or propose to re-use the Funds cancelled and, if appropriate, to amend the financial plan for the operational programme.

4. In the case of systemic irregularities the Member State shall extend its enquiries to cover all operations liable to be affected.

SECTION 2  
**FINANCIAL CORRECTIONS BY THE COMMISSION**

*Article 100*

**Criteria for the corrections**

1. The Commission may make financial corrections by cancelling all or part of the Community contribution to an operational programme where after carrying out the necessary examination it concludes that:
  - a) there is a serious deficiency in the management and control system of the programme which has put at risk the Community contribution already paid to the programme;
  - b) expenditure contained in a certified statement of expenditure is irregular and has not been corrected by the Member State prior to the opening of the correction procedure under this paragraph;
  - c) a Member State has not complied with its obligations under Article 69 prior to the opening of the correction procedure under this paragraph.
2. The Commission shall base its financial corrections on individual cases of irregularity identified, taking account of the systemic nature of the irregularity to determine whether a flat-rate or extrapolated correction should be applied. Where the case of irregularity relates to a statement of expenditure for which a positive assurance had previously been given in accordance with the Article 61(1), point e) ii) in an annual control report, there will be a presumption of a systemic problem giving rise to the application of a flat-rate or extrapolated correction, unless the Member State can provide proof within two months to rebut this presumption.
3. The Commission shall, when deciding the amount of a correction, take account of the importance of the irregularity and the extent and financial implications of the deficiencies found in the operational programme concerned.
4. Where the Commission bases its position on the facts established by auditors other than those of its own services, it shall draw its own conclusions regarding the financial consequences, after examining the measures taken by the Member State concerned under Article 70, the reports supplied under Regulation (EC) No 1681/94, and any replies from the Member State.
5. When a Member State does not respect its obligations as referred to in Article 13(4), the Commission may make a financial correction by cancelling all or part of the Community contribution to the Member State concerned.

## *Article 101*

### **Procedure**

1. Before taking a decision on a financial correction, the Commission shall open the procedure by informing the Member State of its provisional conclusions and requesting the Member State to submit its comments within two months.

Where the Commission proposes financial corrections on the basis of extrapolation or at a flat rate, the Member State shall be given the opportunity to demonstrate, through an examination of the files concerned, that the actual extent of irregularity was less than the Commission's assessment. In agreement with the Commission, the Member State may limit the scope of this examination to an appropriate proportion or sample of the files concerned. Except in duly justified cases, the time allowed for this examination shall not exceed a further period of two months after the two-month period referred to above.

2. The Commission shall take account of any evidence supplied by the Member State within the time limits.
3. Where the Member State does not accept the provisional conclusions of the Commission, the Member State shall be invited to a hearing by the Commission, in which both sides in cooperation based on the partnership make efforts to reach an agreement concerning the observations and the conclusions to be drawn from them. The Commission shall take a decision on the financial correction in the absence of agreement within six months of the date of the hearing. If no hearing takes place, the six-month period shall begin to run from the date of reception of the Member State's rejection of the invitation to a hearing.

## *Article 102*

### **Repayment**

1. Any repayment due to be made to the Commission shall be effected before the due date indicated in the order for recovery drawn up in accordance with Article 72 of the implementing rules of the Financial Regulation applicable to the general budget of the European Communities<sup>12</sup>. This due date shall be the last day of the second month following the issuing of the order.
2. Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate of such interest shall be one-and-a-half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls.

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<sup>12</sup> Regulation (EC) No 2352/2002, OJ L 351, 28.12.2002.

*Article 103*

**Obligations of Member States**

A financial correction by the Commission shall not prejudice the Member State's obligation to pursue recoveries under Article 100 and to recover state aid under Article 14 of Regulation (EC) No 659/1999.

**TITLE VIII**

**COMMITTEES**

**CHAPTER I**

**ERDF, COHESION FUND AND FUND COORDINATION COMMITTEE**

*Article 104*

**Committee and procedures**

1. The Commission shall be assisted by the ERDF, Cohesion Fund and Fund Coordination Committee (hereinafter: the “committee”).
2. Where reference is made to this paragraph, the advisory procedure laid down in Article 3 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) thereof.
3. Where reference is made to this paragraph, the management procedure laid down in Article 4 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) thereof.

The period referred to in Article 4(3) of Decision 1999/468/EC is fixed at one month.

4. The committee shall draw up its rules of procedure.
5. The EIB and the EIF shall appoint a non-voting representative.

## CHAPTER II COMMITTEE UNDER ARTICLE 147 OF THE TREATY

### *Article 105*

#### **Committee under Article 147 of the Treaty**

1. The Committee set up under Article 147 of the Treaty which assists the Commission in the management of the ESF, shall be composed of one government representative, one representative of the workers' organisations and one representative of the employers' organisations from each Member State. The Member of the Commission responsible for chairing the Committee may delegate that responsibility to a senior Commission official.
2. Each Member State shall appoint an alternate for each representative of each category referred to in the previous paragraph. In the absence of one member, the alternate shall be automatically entitled to take part in the proceedings.
3. The members and alternates shall be appointed by the Council, acting on a proposal from the Commission, for a period of three years. They may be reappointed. The Council shall, as regards the composition of the Committee, endeavour to ensure fair representation of the different groups concerned. For the items on the agenda affecting it, the EIB and the EIF may appoint a non-voting representative.
4. The Committee shall be consulted where it discusses the following questions:
  - a) draft Commission decisions on the strategic national reference frameworks;
  - b) the categories of technical assistance measures referred to in Article 43 in the case of support from the ESF.
5. The Commission may consult the Committee on questions other than those referred to in paragraph 4.

## TITLE IX

### **FINAL PROVISIONS**

#### *Article 106*

#### **Transitional provisions**

1. This Regulation shall not affect the continuation or modification, including the total or partial cancellation, of assistance approved by the Council or by the Commission on the basis of Regulations (EEC) No 2052/88, (EEC) No 4253/88, (EC) No 1164/94

and (EC) No 1260/1999, or any other legislation which applies to that assistance on 31 December 2006.

2. In drawing up Community assistance, the Commission shall take account of any measure already approved by the Council or by the Commission before the entry into force of this Regulation and having financial repercussions during the period covered by that assistance.
3. Partial sums committed for assistance approved by the Commission between 1 January 2000 and 31 December 2006 for which the documents required for closure of the assistance have not been sent to the Commission by the deadline for submitting the final report shall be automatically decommitted by the Commission no later than 31 December 2010, giving rise to the repayment of amounts unduly paid.

The documents required for closure of the assistance shall be the request for payment of the balance, the final implementation report and the statement drawn up by a person or department having a function independent of the managing body summarising the conclusions of the audits carried out and assessing the validity of the request for payment of the final balance and the legality and regularity of the transactions covered by the final certificate of expenditure, as referred to in Article 38(1)(f) of Regulation (EC) No 1260/1999.

Amounts relating to operations or programmes which have been suspended due to legal proceedings or administrative appeals having suspensory effect shall be disregarded in calculating the amount to be automatically decommitted.

#### *Article 107*

##### **Review clause**

The Council shall review this Regulation on by 31 December 2013 at the latest in accordance with the procedure laid down in Article 161 of the Treaty.

#### *Article 108*

##### **Repeal**

Regulation (EC) No 1260/99 is hereby repealed with effect from 1 January 2007.

References to Regulation (EC) No 1260/99 shall be construed as references to this Regulation.

*Article 109*

**Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2007.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council*  
*The President*

**ANNEX**

**STRUCTURAL FUNDS AND COHESION FUND**

**Annual breakdown of commitment appropriations for 2007 to 2013  
(referred to in Article 15)**

(EUR million – 2004 prices)

2007	2008	2009	2010	2011	2012	2013
46 333	47 168	47 879	48 024	48 163	48 923	49 704