

Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (repealed)

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 referred to as the Structural Funds) and the Cohesion Fund, without prejudice of the specific provisions laid down in Regulations (EC) No 1080/2006, (EC) No 1081/2006 and (EC) No 1084/2006.

This Regulation defines the objectives to which the Structural Funds and the Cohesion Fund (hereinafter referred to as 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 establishing the Community strategic guidelines on cohesion, the national strategic reference framework and the process for examination at Community level.

To this end, this 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 a Member State and adopted by the Commission setting out a development strategy with a coherent set of priorities to be carried out with the aid of a Fund, or, in the case of the Convergence objective, with the aid of the Cohesion Fund and the ERDF;

- (2) ‘priority axis’: 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 axis to which it relates;
- (4) ‘beneficiary’: an operator, body or firm, whether public or private, responsible for initiating or initiating and implementing operations. In the context of aid schemes under Article 87 of the Treaty, beneficiaries are public or private firms carrying out an individual project 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 acting in accordance with 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⁽¹⁾ shall be regarded as similar expenditure;
- (6) ‘intermediate body’: any public or private body or 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;
- (7) ‘irregularity’: any infringement of a provision of Community law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the European Union by charging an unjustified item of expenditure to the general budget.

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 European Union 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 reducing the economic, social and territorial disparities which have arisen particularly in countries and regions whose development is lagging behind and in connection with economic and social restructuring and the ageing of the population.

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, employment and social inclusion and by protecting and improving the quality of the environment.

2 To that end, the ERDF, the ESF, the Cohesion Fund, the 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, which shall be aimed at speeding up the convergence of the least-developed Member States and regions by improving conditions for growth and employment through the increasing and improvement of the quality of investment in physical and human capital, the development of innovation and of the knowledge society, adaptability to economic and social changes, the protection and improvement of the environment, and administrative efficiency. This objective shall constitute the priority of the Funds;
- b the Regional competitiveness and employment objective, which 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 the increasing and improvement of the quality of investment in human capital, innovation and the promotion of the knowledge society, entrepreneurship, the protection and improvement of the environment, and the improvement of accessibility, adaptability of workers and businesses as well as the development of inclusive job markets; and
- c the European territorial cooperation objective, which shall be aimed at strengthening cross-border cooperation through joint local and regional initiatives, strengthening transnational cooperation by means of actions conducive to integrated territorial development linked to the Community priorities, and strengthening interregional cooperation and exchange of experience at the appropriate territorial level.

3 Under the three objectives referred to in paragraph 2, assistance from the Funds shall, according to their nature, take into account specific economic and social features, on the one hand, and specific territorial features, on the other. The assistance shall, in an appropriate manner, support sustainable urban development 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 as referred to in Article 299(2) of the Treaty as well as the northern areas with very low population density, certain islands and island Member States, and mountainous 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 referred to in Article 3(2) 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; and
- c the European territorial cooperation objective: the ERDF.

2 The Cohesion Fund shall also intervene in those regions not eligible for support from the Convergence objective under the criteria set out in Article 5(1) which belong to:

- a a Member State eligible for support from the Cohesion Fund under the criteria set out in Article 5(2); and
- b a Member State eligible for support from the Cohesion Fund under the criteria set out in Article 8(3).

3 The Funds shall contribute towards the financing of 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 2 of the common classification of territorial units for statistics (hereinafter NUTS level 2) within the meaning of Regulation (EC) No 1059/2003 whose gross domestic product (GDP) per capita, measured in purchasing power parities and calculated on the basis of Community figures for the period 2000 to 2002, is less than 75 % of the average GDP of the EU-25 for the same reference period.

2 The Member States eligible for funding from the Cohesion Fund shall be those whose gross national income (GNI) per capita, measured in purchasing power parities and calculated on the basis of Community figures for the period 2001 to 2003, is less than 90 % of the average GNI of the EU-25 and which have a programme for meeting the economic convergence conditions referred to in Article 104 of the Treaty.

3 Immediately following the entry into force of this Regulation, the Commission shall adopt the list of regions fulfilling the criteria under paragraph 1 and of Member States fulfilling the criteria under paragraph 2. This list shall be valid from 1 January 2007 to 31 December 2013.

The eligibility of Member States for the Cohesion Fund shall be reviewed in 2010 on the basis of Community GNI figures for the EU-25.

Article 6

Regional competitiveness and employment

The regions eligible for funding from the Structural Funds under the Regional competitiveness and employment objective shall be those not covered by Article 5(1) and Article 8(1) and (2).

When presenting the national strategic reference framework referred to in Article 27, each Member State concerned shall indicate the NUTS level 1 or NUTS level 2 regions for which it will present a programme for financing by the ERDF.

Article 7

European Territorial Cooperation

1 For the purpose of cross-border cooperation, the NUTS level 3 regions of the Community along all internal and certain external land borders and all NUTS level 3 regions of the Community along maritime borders separated, as a general rule, by a maximum of 150 kilometres shall be eligible for financing 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 103(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, the Commission, in accordance with the procedure referred to in Article 103(2), shall adopt the list of the eligible transnational areas broken down by programme. This list shall be valid from 1 January 2007 to 31 December 2013.

3 For the purpose of interregional cooperation, cooperation networks and exchange of experience, the entire territory of the Community shall be eligible.

Article 8

Transitional support

1 The NUTS level 2 regions which would have been eligible for Convergence objective status under Article 5(1) had the eligibility threshold remained at 75 % of the average GDP of the EU-15, but which lose eligibility because their nominal GDP per capita level will exceed 75 % of the average GDP of the EU-25, measured and calculated according to Article 5(1), shall be eligible, on a transitional and specific basis, for financing by the Structural Funds under the Convergence objective.

2 The NUTS level 2 regions totally covered by Objective 1 in 2006 under Article 3 of Regulation (EC) No 1260/1999 whose nominal GDP level per capita, measured and calculated according to Article 5(1), will exceed 75 % of the average GDP of the EU15 shall be eligible, on a transitional and specific basis, for financing by the Structural Funds under the Regional competitiveness and employment objective.

Recognising that, on the basis of revised figures for the period 1997 to 1999, Cyprus should have been eligible for Objective 1 in 2004 to 2006, Cyprus shall benefit in 2007 to 2013 from the transitional financing applicable to the regions referred to in the first subparagraph.

3 The Member States eligible for funding from the Cohesion Fund in 2006 which would have continued to be eligible had the eligibility threshold remained at 90 % of the average GNI of the EU-15, but which lose eligibility because their nominal per capita GNI will exceed 90 % of the average GNI of the EU-25 measured and calculated according to Article 5(2), shall be eligible, on a transitional and specific basis, for financing by the Cohesion Fund under the Convergence objective.

4 Immediately following the entry into force of this Regulation, the Commission shall adopt the list of regions fulfilling the criteria under paragraphs 1 and 2 and of Member States fulfilling the criteria under paragraph 3. This list shall be valid from 1 January 2007 to 31 December 2013.

CHAPTER IV

Principles of assistance

Article 9

Complementarity, consistency, coordination and compliance

1 The Funds shall provide assistance which complements national actions, including actions at the regional and local levels, integrating into them the priorities of the Community.

2 The Commission and the Member States shall ensure that assistance from the Funds is consistent with the activities, policies and priorities of the Community and complementary to other financial instruments of the Community. This consistency and complementarity shall be indicated in particular in Community strategic guidelines on cohesion, in the national strategic reference framework and in the operational programmes.

3 The assistance co-financed by the Funds shall target the European Union priorities of promoting competitiveness and creating jobs, including meeting the objectives of the Integrated Guidelines for Growth and Jobs (2005 to 2008) as set out by Council Decision 2005/600/EC of 12 July 2005⁽²⁾. To this end, in accordance with their respective responsibilities, the Commission and the Member States shall ensure that 60 % of expenditure for the Convergence objective and 75 % of expenditure for the Regional competitiveness and employment objective for all the Member States of the European Union as constituted before 1 May 2004 is set for the abovementioned priorities. These targets, based on the categories of expenditure in Annex IV, shall apply as an average over the entire programming period.

With a view to ensuring that specific national circumstances, including the priorities identified in the national reform programme of each Member State concerned, are taken into account, the Commission and that Member State may decide to complement in an appropriate manner the list of categories of Annex IV.

Each Member State concerned shall contribute to these targets.

At their own initiative, Member States that acceded to the European Union on or after 1 May 2004 may decide to apply these provisions.

4 In accordance with their respective responsibilities, the Commission and the Member States shall ensure the coordination between the assistance from the Funds, the EAFRD, the EFF and the interventions of the EIB and of other existing financial instruments.

5 Operations financed by the Funds shall comply with the provisions of the Treaty and of acts adopted under it.

Article 10

Programming

The objectives of the Funds shall be pursued in the framework of a multiannual programming system organised in several stages comprising the identification of the priorities, the financing, and a system of management and control.

Article 11

Partnership

1 The objectives of the Funds shall be pursued in the framework of close cooperation, (hereinafter referred to as partnership), between the Commission and each Member State. Each Member State shall organise, where appropriate and in accordance with current national rules and practices, a partnership with authorities and bodies such as:

- 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, social, environmental or other spheres (hereinafter referred to as partners), 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 powers of each partner category as defined in paragraph 1.

The partnership shall cover the preparation, implementation, monitoring and evaluation of operational programmes. Member States shall involve, where appropriate, each of the relevant partners, and particularly the regions, in the different stages of programming within the time limit set for each stage.

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

Article 12

Territorial level of implementation

Implementation of operational programmes referred to in Article 32 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.

Article 13

Proportional intervention

1 The financial and administrative resources employed by the Commission and Member States in the implementation of the Funds in relation to:

- a the choice of indicators provided for in Article 37(1)(c);
- b the evaluation under Articles 47 and 48;
- c the general principles of management and control systems referred to in Article 58(e) and (f);
- d the reporting as referred to in Article 67,

shall be proportional to the total amount of expenditure allocated to an operational programme.

2 In addition, specific provisions relating to proportionality in relation to controls are set out in Article 74 of this Regulation.

Article 14

Shared management

1 The budget of the European Union 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(1)(b) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities⁽⁹⁾, with the exception of the technical assistance referred to in Article 45 of this Regulation.

The principle of sound financial management shall be applied in accordance with Article 48(2) of Regulation (EC, Euratom) No 1605/2002.

2 The Commission shall exercise its responsibility for implementing the general budget of the European Union 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 Articles 71, 72 and 73;
- b the Commission shall interrupt the payment deadline or suspend all or part of payments in accordance with Articles 91 and 92 if the national management and control systems fail, and shall apply any other financial correction required, in accordance with the procedures described in Articles 100 and 101;
- c the Commission shall check reimbursements of payments on account and automatically decommit budget commitments in accordance with the procedures laid down in Article 82(2) and Articles 93 to 97.

Article 15

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.

The level of expenditure by a Member State shall be one of the items covered by the decision of the Commission on the national strategic reference framework referred to in Article 28(3). The methodological paper of the Commission, adopted in accordance with the procedure referred to in Article 103(3), shall provide guidance.

3 As a general rule, 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.

Furthermore, 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 or exceptional economic situations, such as 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 for the Convergence objective. As part of this mid-term verification, the Commission, in consultation with the Member State, may decide to modify the required level of structural expenditure if the economic situation in the Member State concerned has significantly changed from the one existing at the moment of the determination of the level of public or equivalent structural expenditure referred to in paragraph 2. The decision of the Commission referred to in Article 28(3) shall be amended to reflect this adjustment.

The Commission shall, in cooperation with each Member State, verify additionality *ex post* on 31 December 2016 for the Convergence objective.

The Member State shall transmit to the Commission the information required to enable the verification of compliance with the level of public or equivalent structural expenditure determined *ex ante*. Where necessary, methods of statistical estimation should be used.

The Commission shall publish the results by Member State of the verification of the additionality, including the methodology and sources of information, after the conclusion of each of the three stages of verification.

Article 16

Equality between men and women and non-discrimination

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

The Member States and the Commission shall take appropriate steps to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the various stages of implementation of the Funds and, in particular, in the access to them. In particular, accessibility for disabled persons shall be one of the criteria to be observed in defining operations co-financed by the Funds and to be taken into account during the various stages of implementation.

Article 17

Sustainable development

The objectives of the Funds shall be pursued in the framework of sustainable development and the Community promotion of the goal of protecting and improving the environment as set out in Article 6 of the Treaty.

CHAPTER V

Financial framework

Article 18

Global resources

1 The resources available for commitment from the Funds for the period 2007 to 2013 shall be EUR 308 041 000 000 at 2004 prices in accordance with the annual breakdown shown in Annex I.

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

The breakdown of budgetary resources by the objectives defined in Article 3(2) shall be such as 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 and methodology set out in Annex II without prejudice to the provisions referred to in Articles 23 and 24.

3 The amounts referred to in paragraphs 12 to 30 of Annex II shall be included in the amounts referred to in Articles 19, 20 and 21 and shall be clearly identified in the programming documents.

Article 19

Resources for the Convergence objective

Overall resources for the Convergence objective shall amount to 81,54 % of the resources referred to in Article 18(1) (i.e. a total of EUR 251 163 134 221) and shall be distributed between the different components as follows:

- (a) 70,51 % (i.e. a total of EUR 177 083 601 004) for the financing referred to in Article 5(1), using eligible population, regional prosperity, national prosperity and unemployment rate as the criteria for calculating the indicative breakdowns by Member State;
- (b) 4,99 % (i.e. a total of EUR 12 521 289 405) for the transitional and specific support referred to in Article 8(1), using eligible population, regional prosperity, national prosperity and unemployment rate as the criteria for calculating the indicative breakdowns by Member State;
- (c) 23,22 % (i.e. a total of EUR 58 308 243 811) for the financing referred to in Article 5(2), using population, national prosperity, and surface area as the criteria for calculating the indicative breakdowns by Member State;
- (d) 1,29 % (i.e. a total of EUR 3 250 000 000) for the transitional and specific support referred to in Article 8(3).

Article 20

Resources for the Regional competitiveness and employment objective

Overall resources for the Regional competitiveness and employment objective shall amount to 15,95 % of the resources referred to in Article 18(1) (i.e. a total of EUR 49 127 784 318) and shall be distributed between the different components as follows:

- (a) 78,86 % (i.e. a total of EUR 38 742 477 688) for the financing referred to in Article 6, using eligible population, regional prosperity, unemployment rate, employment rate and population density as the criteria for calculating the indicative breakdowns by Member State; and
- (b) 21,14 % (i.e. a total of EUR 10 385 306 630) for the transitional and specific support referred to in Article 8(2), using eligible population, regional prosperity, national prosperity and unemployment rate as the criteria for calculating the indicative breakdowns by Member State.

Article 21

Resources for the European territorial cooperation objective

1 Overall resources for the European territorial cooperation objective shall amount to 2,52 % of the resources referred to in Article 18(1) (i.e. a total of EUR 7 750 081 461) and, excluding the amount referred to in paragraph 22 of Annex II, shall be distributed between the different components as follows:

- a 73,86 % (i.e. a total of EUR 5 576 358 149) for the financing of cross-border cooperation referred to in Article 7(1), using eligible population as the criterion for calculating the indicative breakdowns by Member State;
- b 20,95 % (i.e. a total of EUR 1 581 720 322) for the financing of transnational cooperation referred to in Article 7(2), using eligible population as the criterion for calculating the indicative breakdowns by Member State;
- c 5,19 % (i.e. a total of EUR 392 002 991) for the financing of interregional cooperation, cooperation networks and exchange of experience referred to in Article 7(3).

2 The contribution from the ERDF to the cross-border and sea-basin programmes under the European Neighbourhood and Partnership Instrument and to the cross-border programmes under the Instrument for Pre-Accession Assistance pursuant to Regulation (EC) No 1085/2006 shall be EUR 813 966 000, as a result of the indication of each Member State concerned, deducted from their allocations under paragraph 1(a). These ERDF contributions shall not be subject to reallocation between the Member States concerned.

3 The contribution from the ERDF to each cross-border and sea-basin programme under the instruments referred to in paragraph 2 shall be granted provided that the contribution from such instruments to each such programme is at least equivalent to the contribution from the ERDF. However, this equivalence shall be subject to a maximum amount of EUR 465 690 000 under the European Neighbourhood and Partnership Instrument and of EUR 243 782 000 under the Instrument for Pre-Accession Assistance.

4 The annual appropriations corresponding to the contribution from the ERDF mentioned in paragraph 2 shall be entered in the relevant budget lines of the cross-border strand of the instruments referred to in paragraph 2 with the 2007 budgetary exercise.

5 In 2008 and in 2009, the annual contribution from the ERDF mentioned in paragraph 2 for which no operational programme has been submitted to the Commission by 30 June at the latest under the cross-border and sea-basin strands of the instruments referred to in paragraph 2 shall then be made available to the Member State concerned for the financing of cross-border cooperation under paragraph 1(a), including cooperation on external borders.

If by 30 June 2010 at the latest, there are still operational programmes under the cross-border and sea-basin strands of the instruments referred to in paragraph 2 which have not been submitted to the Commission, the entire contribution from the ERDF mentioned in paragraph 2 for the remaining years up to 2013 shall then be made available to the Member States concerned for financing cross-border cooperation under paragraph 1(a), including cooperation on external borders.

6 If, following the adoption by the Commission of the cross-border and sea basin programmes mentioned in paragraph 2, such programmes need to be discontinued on the grounds that:

- a the partner country does not sign the financing agreement by the end of the year following the adoption of the programme; or
- b the programme cannot be implemented owing to problems arising in relations between the participating countries,

the contribution from the ERDF mentioned in paragraph 2 corresponding to the annual instalments not yet committed shall be made available to the Member States concerned, at their request, for the financing of cross-border cooperation under paragraph 1(a), including cooperation on external borders.

Article 22

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 from the first subparagraph, each Member State under the European territorial cooperation objective may transfer up to 15 % of the financial allocation of one of the components referred to in Article 21(1)(a) and (b) to the other.

Article 23

Resources for the performance reserve

Three per cent of the resources referred to in Article 19(a) and (b) and Article 20 may be allocated in accordance with Article 50.

Article 24

Resources for technical assistance

Of the resources referred to in Article 18(1), 0,25 % shall be devoted to technical assistance for the Commission as defined in Article 45.

TITLE II

STRATEGIC APPROACH TO COHESION

CHAPTER I

Community strategic guidelines on cohesion

Article 25

Content

The Council shall establish at Community level concise strategic guidelines on economic, social and territorial cohesion defining an indicative framework for the intervention of the Funds, taking account of other relevant Community policies.

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 promoting the harmonious, balanced and sustainable development of the Community referred to in Article 3(1).

Those guidelines shall be established taking into account the integrated guidelines, comprising broad economic policy guidelines and employment guidelines, adopted by the Council in accordance with the procedures laid down in Articles 99 and 128 of the Treaty.

Article 26

Adoption and review

The Commission shall propose, following close cooperation with Member States, the Community strategic guidelines on cohesion referred to in Article 25 of this Regulation. By 1 February 2007 the Community strategic guidelines on cohesion shall be adopted in accordance with the procedure laid down in Article 161 of the Treaty. The Community strategic guidelines on cohesion shall be published in the *Official Journal of the European Union*.

The Community strategic guidelines on cohesion may be subject, following close cooperation with Member States, to mid-term review in accordance with the procedure laid down in the first subparagraph if required in order to take account of any major changes in the priorities of the Community.

The mid-term review of the Community strategic guidelines on cohesion shall not impose an obligation on Member States to revise either the operational programmes or their respective national strategic reference frameworks.

CHAPTER II

National strategic reference framework

Article 27

Content

1 The Member State shall present a national strategic reference framework which ensures that assistance from the Funds is consistent with the Community strategic guidelines on cohesion, and which identifies the link between Community priorities, on the one hand, and its national reform programme, on the other.

2 Each national strategic reference framework shall constitute a reference instrument for preparing the programming of the Funds.

3 The national strategic reference framework shall apply to the Convergence objective and the Regional competitiveness and employment objective. It may also, if a Member State so decides, apply to the European territorial cooperation objective, without prejudice to the future choices of other Member States concerned.

4 The national strategic reference framework shall contain the following elements:

- a an analysis of development disparities, weaknesses and potential, taking into account trends in the European and world economy;
- b the strategy chosen on the basis of that analysis, including the thematic and territorial priorities. Where appropriate these priorities shall include actions relating to sustainable urban development, the diversification of rural economies and areas dependent on fisheries;
- c the list of operational programmes for the Convergence and Regional competitiveness and employment objectives;
- d a description of how the expenditure for the Convergence and Regional competitiveness and employment objectives will contribute to the European Union priorities of promoting competitiveness and creating jobs, including meeting the objectives of the Integrated Guidelines for Growth and Jobs (2005 to 2008) as laid down in Article 9(3).
- e the indicative annual allocation from each Fund by programme;
- f for regions of the Convergence objective only:
 - (i) the action envisaged for reinforcing the Member State's administrative efficiency;
 - (ii) the amount of the total annual appropriation provided for under the EAFRD and the EFF;
 - (ii) the information required for *ex ante* verification of compliance with the additionality principle referred to in Article 15;
- g for Member States eligible for the Cohesion Fund under Articles 5(2) and 8(3), information on the mechanisms for ensuring coordination between operational programmes themselves and between these and the EAFRD, the EFF and, where appropriate, the interventions of the EIB and of other existing financial instruments.

5 In addition, the national strategic reference framework may also contain, where relevant, the following elements:

- a the procedure for coordination between Community cohesion policy and the relevant national, sectoral and regional policies of the Member State concerned;
- b for Member States other than those referred to in paragraph 4(g), information on the mechanisms for ensuring coordination between operational programmes themselves and between these and the EAFRD, the EFF and the interventions of the EIB and of other existing financial instruments.

6 The information contained in the national strategic reference framework shall take account of the specific institutional arrangements of each Member State.

Article 28

Preparation and adoption

1 The national strategic reference framework shall be prepared by the Member State, after consultation with relevant partners as referred to in Article 11, in accordance with the procedure that it considers most appropriate and with its institutional structure. It shall cover the period 1 January 2007 to 31 December 2013.

The Member State shall prepare the national strategic reference framework in dialogue with the Commission, with a view to ensuring a common approach.

2 Each Member State shall transmit the national strategic reference framework to the Commission within five months following the adoption of the Community strategic guidelines on cohesion. The Commission shall take note of the national strategy and the priority themes chosen for assistance from the Funds, and make such observations as it considers appropriate within three months from the date of receipt of the framework.

The Member State may present at the same time the national strategic reference framework and the operational programmes referred to in Article 32.

3 Before or at the same time as the adoption of the operational programmes referred to in Article 32(5), the Commission, following consultation with the Member State, shall take a decision covering:

- a the list of operational programmes referred to in Article 27(4)(c);
- b the indicative annual allocation from each Fund by programme referred to in Article 27(4)(e); and
- c for the Convergence objective only, the level of expenditure guaranteeing compliance with the additionality principle referred to in Article 15 and the action envisaged for reinforcing administrative efficiency as referred to in Article 27(4)(f)(i).

CHAPTER III

Strategic follow-up

Article 29

Strategic reporting by the Member States

1 For the first time in 2007, each Member State shall include in the annual implementation report on its national reform programme a concise section on the contribution

of the operational programmes co-financed by the Funds towards the implementation of the national reform programme.

2 At the latest by the end of 2009 and 2012, the Member States shall provide a concise report containing information on the contribution of the programmes co-financed by the Funds:

- a towards implementing the objectives of cohesion policy as established by the Treaty;
- b towards fulfilling the tasks of the Funds as set out in this Regulation;
- c towards implementing the priorities detailed in the Community strategic guidelines on cohesion referred to in Article 25 and specified in the priorities set by the national strategic reference framework referred to in Article 27; and
- d towards achieving the objective of promoting competitiveness and job creation and working towards meeting the objectives of the Integrated Guidelines for Growth and Jobs (2005 to 2008) as laid down in Article 9(3).

3 Each Member State shall define the content of the reports referred to in paragraph 2, with a view to identifying:

- a the socio-economic situation and trends;
- b achievements, challenges and future prospects in relation to implementation of the agreed strategy; and
- c examples of good practice.

4 References to the national reform programme in this Article shall relate to the Integrated Guidelines for Growth and Jobs (2005 to 2008) and shall equally apply to any equivalent guidelines defined by the European Council.

Article 30

Strategic reporting by the Commission and debate on cohesion policy

1 For the first time in 2008, and annually thereafter, the Commission shall include in its Annual Progress Report to the Spring European Council a section summarising the reports of the Member States referred to in Article 29(1), in particular progress towards achieving the European Union priorities of promoting competitiveness and creating jobs, including meeting the objectives of the Integrated Guidelines for Growth and Jobs (2005 to 2008) as laid down in Article 9(3).

2 In the years 2010 and 2013, and at the latest by 1 April, the Commission shall prepare a strategic report summarising the reports of the Member States referred to in Article 29(2). As appropriate, this report shall be incorporated as a specific section in the report referred to in Article 159 of the Treaty.

3 The Council shall examine the strategic report referred to in paragraph 2 as soon as possible after its publication. It shall be submitted to the European Parliament, the European Economic and Social Committee and the Committee of the Regions, and these institutions shall be invited to hold a debate on it.

Article 31

Cohesion report

1 The report of the Commission referred to in Article 159 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 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.
- 2 The report shall also contain, if necessary:
- a any proposals on Community measures and policies which should be adopted in order to strengthen economic and social cohesion;
 - b any proposed adjustments to the Community strategic guidelines on cohesion needed to reflect changes in Community policy.

TITLE III

PROGRAMMING

CHAPTER I

General provisions on the structural funds and the cohesion fund

Article 32

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 cooperation with the partners referred to in Article 11.

3 The Member State shall submit a proposal for an operational programme to the Commission containing all the components referred to in Article 37 as soon as possible but no later than five months following the adoption of the Community strategic guidelines on cohesion, as referred to in 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 the Community strategic guidelines on cohesion. Where the Commission, within two months following the receipt of the operational programme, considers that an operational programme does not contribute to the achievement of the objectives of the national strategic reference framework and the Community strategic guidelines on cohesion, it may invite the Member State to provide all necessary additional information and, where appropriate, to revise the proposed programme accordingly.

5 The Commission shall adopt each operational programme as soon as possible but no later than four months following its formal submission by the Member State and not before 1 January 2007.

Article 33

Revision of operational programmes

1 At the initiative of the Member State or the Commission in agreement with the Member State concerned, operational programmes may be re-examined and, if necessary, the remainder of the programme revised, in one or more of the following cases:

- a following significant socio-economic changes;
- b in order to take greater or different account of major changes in Community, national or regional priorities;
- c in the light of the evaluation referred to in Article 48(3); or
- d following implementation difficulties.

Operational programmes shall, if necessary, be revised following allocation of the reserves referred to in Articles 50 and 51.

2 The Commission shall adopt a decision on a request for revision of operational programmes as soon as possible but no later than three months after its formal submission by the Member State.

3 The revision of operational programmes shall not require revision of the decision of the Commission referred to in Article 28(3).

Article 34

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 10 % of Community funding for each priority axis of an operational programme, actions 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 for major projects.

Article 35

Geographical scope

1 Operational programmes submitted under the Convergence objective shall be drawn up at the appropriate geographical level and at least at NUTS level 2.

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 NUTS level 1 or NUTS level 2, 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, as a general rule, for each border or group of borders by an appropriate grouping at NUTS level 3, 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. Interregional cooperation and exchange of experience programmes shall relate to the whole territory of the Community.

Article 36

Participation by the European Investment Bank and the European Investment Fund

1 The EIB and the 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 projects, in particular 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 decision referred to in Article 28(3) and of the operational programmes. That consultation shall relate in particular to 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 the technical quality and economic and financial viability of the projects concerned, in particular as regards the financial engineering instruments to be implemented or developed.

5 The Commission, in implementing the provisions of this Article, may award a grant to the EIB or the EIF.

CHAPTER II

Programming content

Section 1

Operational programmes

Article 37

Operational programmes for the Convergence and Regional competitiveness and employment objectives

1 Operational programmes relating to the Convergence and Regional competitiveness and employment objectives shall contain:

- a an analysis of the situation of the eligible area or sector 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 on cohesion, the national strategic reference framework, as well as the results of the *ex ante* evaluation referred to in Article 48;
- c information on the priority axes and their specific targets. Those targets shall be quantified using a limited number of indicators for output and results, taking into account the proportionality principle. The indicators shall make it possible to measure the progress in relation to the baseline situation and the achievement of the targets of the priority axis;
- d for information purposes, an indicative breakdown by category of the programmed use of the contribution from the Funds to the operational programme in accordance with the implementing rules of this Regulation adopted by the Commission in accordance with the procedure referred to in Article 103(3);
- e a financing plan containing two tables:
 - (i) a table breaking down for each year, in accordance with Articles 52, 53 and 54, the amount of the total financial appropriation envisaged for the contribution from each Fund. The financing plan shall show separately within the total annual 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 framework taking into account the phased reduction laid down in paragraph 6 of Annex II;
 - (ii) a table specifying, for the whole programming period, for the operational programme and for each priority axis, the amount of the total financial appropriation of the Community contribution and the national counterparts and the rate of contribution from the Funds. Where in accordance with Article 53, the national counterpart is made up of public and private expenditure, the table shall give the indicative breakdown between the public and the private components. Where in accordance with Article 53, the national counterpart is made up of public expenditure, the table shall indicate the amount of the national public contribution. It shall show, for information, the contribution from the EIB and the other existing financial instruments;

- f information on complementarity with measures financed by the EAFRD and those financed by the EFF, where relevant;
- g the implementing provisions for the operational programme, including:
 - (i) designation by the Member State of all the entities referred to in Article 59 or, if the Member State exercises the option provided for in Article 74, the designation of other bodies and procedures in accordance with the rules laid down in Article 74;
 - (ii) a description of the monitoring and evaluation systems;
 - (iii) information about the competent body for receiving the payments made by the Commission and the body or bodies responsible for making payments to the beneficiaries;
 - (iv) a definition of the procedures for the mobilisation and circulation of financial flows in order to ensure their transparency;
 - (v) the elements aiming at ensuring the publicity and the information of the operational programme as referred to in Article 69;
 - (vi) 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 an indicative list of major projects within the meaning of Article 39, which are expected to be submitted within the programming period for Commission approval.

2 Operational programmes financed jointly by the ERDF and the Cohesion Fund with respect to transport and the environment shall contain priority axis specific to each Fund and a specific commitment by Fund.

3 Without prejudice to the second subparagraph of Article 5 of Regulation (EC) No 1080/2006, each operational programme under the Regional competitiveness and employment objective shall include a justification for the thematic, geographical and financial concentration on the priorities as laid down respectively in Article 5 of that Regulation and in Article 4 of Regulation (EC) No 1081/2006.

4 Operational programmes financed by the ERDF shall contain in addition for the Convergence and Regional competitiveness and employment objectives:

- a information on the approach to the sustainable urban development where appropriate;
- b Specific priority axis for the measures financed under the additional allocation referred to in paragraph 20 of Annex II in operational programmes providing assistance in outermost regions;

5 Operational programmes affected by one or more specific allocations referred to in the additional provisions in Annex II shall contain information on the procedures foreseen to allocate and ensure the monitoring of these specific allocations.

6 At the initiative of the Member State, the operational programmes financed by the ERDF may also contain for the Convergence and Regional competitiveness and employment objectives:

- a the list of cities chosen for addressing urban issues and the procedures for sub-delegation to urban authorities, possibly by means of a global grant;
- b actions for interregional cooperation with, at least, one regional or local authority of another Member State.

7 At the initiative of the Member State concerned, the operational programmes for the ESF may also contain for the Convergence and Regional Competitiveness and Employment objectives a horizontal approach or a dedicated priority axis for interregional and transnational actions involving the national, regional or local authorities of at least one other Member State.

Article 38

Operational programmes for the European territorial cooperation objective

Specific rules on operational programmes are laid down in the Regulation (EC) No 1080/2006 as regards operational programmes under the European territorial cooperation objective.

Section 2

Major projects

Article 39

Content

As part of an operational programme, the ERDF and the Cohesion Fund may finance expenditure in respect of 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 EUR 25 million in the case of the environment and EUR 50 million in other fields (hereinafter referred to as major projects).

Article 40

Information submitted to the Commission

The Member State or 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 to 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 and where appropriate, of other regions of the Community;
- (f) an analysis of the environmental impact;

- (g) a justification for the public contribution;
- (h) 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 indicative annual plan of the financial contribution from the ERDF or the Cohesion Fund for the major project.

The Commission shall provide indicative guidance on the methodology to be used in carrying out the cost-benefit analysis in (e) above in accordance with the procedure referred to in Article 103(2).

Article 41

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 40, its consistency with the priorities of the operational programme, its contribution to achieving the goals of those priorities and its consistency with other Community policies.

2 The Commission shall adopt a decision as soon as possible but no later than three months after the submission by the Member State or the managing authority of a major project, provided that the submission is in accordance with Article 40. That decision shall define the physical object, the amount to which the co-financing rate for the priority axis applies, and the annual plan of financial contribution from the ERDF or the Cohesion Fund.

3 Where the Commission refuses to make a financial contribution from the Funds to a major project, it shall notify the Member State of its reasons within the period and the related conditions laid down in paragraph 2.

Section 3

Global grants

Article 42

General provisions

1 The Member State or 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 Member State or the managing authority, including local authorities, regional development bodies or non-governmental organisations, in accordance with the provisions of an agreement concluded between the Member State or 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 intermediate body responsible for managing the global grant shall provide guarantees of its solvency and competence in the domain concerned as well as in administrative and financial management. It shall as a general rule be established or represented in the region or regions covered by the operational programme at the moment of its designation.

Article 43

Implementing rules

The agreement referred to in the first subparagraph of Article 42(1) shall detail in particular:

- (a) the types of operation to be covered by the global grant;
- (b) the criteria for selecting beneficiaries;
- (c) the rates of assistance from the Funds and the rules governing that assistance, including as regards 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 59(1) vis-à-vis the managing authority, including the arrangements for recovering amounts unduly paid and the presentation of accounts;
- (e) where applicable, any use of a financial guarantee or equivalent facility, unless the Member State or the managing authority provides such guarantee according to the institutional arrangements of each Member State.

Section 4

Financial engineering

Article 44

Financial engineering instruments

As part of an operational programme, the Structural Funds may finance expenditure in respect of an operation comprising contributions to support financial engineering instruments for enterprises, primarily small and medium-sized ones, such as venture capital funds, guarantee funds and loan funds, and for urban development funds, that is, funds investing in public-private partnerships and other projects included in an integrated plan for sustainable urban development.

When such operations are organised through holding funds, that is, funds set up to invest in several venture capital funds, guarantee funds, loan funds and urban development funds, the Member State or the managing authority shall implement them through one or more of the following forms:

- (a) the award of a public contract in accordance with applicable public procurement law;
- (b) in other cases, where the agreement is not a public service contract within the meaning of public procurement law, the award of a grant, defined for this purpose as a direct financial contribution by way of a donation:
 - (i) to the EIB or to the EIF; or
 - (ii) to a financial institution without a call for proposal, if this is pursuant to a national law compatible with the Treaty.

The implementing rules of this Article shall be adopted by the Commission in accordance with the procedure referred to in Article 103(3).

Section 5

Technical assistance

Article 45

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 0,25 % 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.

Those actions shall include, in particular:

- a assistance for project preparation and appraisal, including with the EIB through a grant or other forms of cooperation, as appropriate;
- b studies linked to the drawing up of the Community strategic guidelines on cohesion, the Commission's reporting on cohesion policy and the three-yearly cohesion report;
- c evaluations, expert reports, statistics and studies, including those of a general nature concerning the operation of the Funds, which may be carried out where appropriate by the EIB or the EIF through a grant or other forms of cooperation;
- d measures aimed at the partners, the beneficiaries of assistance from the Funds and the general public, including information measures;
- e measures to disseminate information, networking, raise awareness, promote cooperation and exchange experiences throughout the Community;
- f the installation, operation and interconnection of computerised systems for management, monitoring, inspection and evaluation;
- g improvements in evaluation methods and the exchange of information on practices in this field.

2 The Commission shall adopt a decision concerning the types of action listed under paragraph 1 of this Article, in accordance with the procedure referred to in Article 103(2), when a contribution from the ERDF or the Cohesion Fund is foreseen.

3 The Commission shall adopt a decision concerning the types of action listed under paragraph 1 of this Article, after consulting the committee referred to in Article 104, in accordance with the procedure referred to in Article 103(2), when a contribution from the ESF is foreseen.

Article 46

Technical assistance of the Member States

1 At the initiative of the Member State, the Funds may finance the preparatory, management, monitoring, evaluation, information and control activities of operational programmes together with activities to reinforce the administrative capacity for implementing the Funds within the following limits:

- a 4 % of the total amount allocated under the Convergence and Regional competitiveness and employment objectives;
- b 6 % of the total amount allocated under the European territorial cooperation objective.

2 For each of the three objectives, technical assistance actions, within the limits set in paragraph 1, shall, in principle, be undertaken within the framework of each operational programme. On a complementary basis, however, such actions may be undertaken partially and subject to the overall limits for technical assistance set in paragraph 1, in the form of a specific operational programme.

3 If the Member State decides to undertake technical assistance actions in the framework of each operational programme, the proportion of the total amount of expenditure for technical assistance in respect of each operational programme shall not exceed the limits set in paragraph 1.

In this case, where technical assistance actions are also undertaken in the form of a specific operational programme, the total amount of expenditure for technical assistance in such a specific programme shall not cause the total proportion of Funds allocated to technical assistance to exceed the limits set in paragraph 1.

TITLE IV

EFFECTIVENESS

CHAPTER I

Evaluation

Article 47

General provisions

1 Evaluations shall aim to improve the quality, effectiveness and consistency of the assistance from the Funds and the strategy and implementation of operational programmes with respect to the specific structural problems affecting the Member States and regions concerned, while taking account of the objective of sustainable development and of the relevant Community legislation concerning environmental impact and strategic environmental assessment.

2 Evaluations may 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, or of an operational nature in order to support the monitoring of an operational programme. Evaluations shall be carried out before, during and after the programming period.

3 Evaluations shall be carried out under the responsibility of the Member State or the Commission, as appropriate, in accordance with the principle of proportionality laid down in Article 13.

Evaluations shall be carried out by experts or bodies, internal or external, functionally independent of the authorities referred to in Article 59(b) and (c). The results shall be published according to the applicable rules on access to documents.

4 Evaluations shall be financed from the budget for technical assistance.

5 The Commission shall provide indicative guidance on evaluation methods, including quality standards, in accordance with the procedure laid down in Article 103(2).

Article 48

Responsibility of Member States

1 The Member States shall provide the 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 may also draw up, where appropriate, under the Convergence objective, in accordance with the principle of proportionality set out in Article 13, an evaluation plan presenting the indicative evaluation activities which 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 each operational programme separately under the Convergence objective. In duly justified cases, taking into account the proportionality principle as set out in Article 13 and as agreed between the Commission and the Member State, Member States may carry out a single *ex ante* evaluation covering more than one operational programme.

For the Regional competitiveness and employment objective, Member States shall carry out either an *ex ante* 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.

For the European territorial cooperation objective, the Member States shall jointly carry out an *ex ante* evaluation covering either each operational programme or several operational programmes.

Ex ante evaluations shall be carried out under the responsibility of the authority responsible for the preparation of the programming documents.

Ex ante evaluations shall aim to optimise the allocation of budgetary resources under operational programmes and improve programming quality. They shall identify and appraise the disparities, gaps and potential for development, 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.

3 During the programming period, Member States shall carry out evaluations linked to the monitoring of operational programmes in particular where that monitoring reveals a significant departure from the goals initially set or where proposals are made for the revision of operational programmes, as referred to in Article 33. The results shall be sent to the monitoring committee for the operational programme and to the Commission.

Article 49

Responsibility of the Commission

1 The Commission may carry out strategic evaluations.

2 The Commission may carry out, at its initiative and in partnership with the Member State concerned, evaluations linked to the monitoring of operational programmes where the monitoring of programmes reveals a significant departure from the goals initially set. The results shall be sent to the monitoring committee for the operational programme.

3 The Commission shall carry out an *ex post* evaluation for each objective in close cooperation with the Member State and managing authorities.

Ex post evaluation 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 and the socio-economic impact.

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

It shall identify the factors contributing to the success or failure of the implementation of operational programmes and identify good practice.

Ex post evaluation shall be completed by 31 December 2015.

CHAPTER II

Reserves

Article 50

National performance reserve

1 At its own initiative, a Member State may decide to establish a national performance reserve for the Convergence objective and/or the Regional competitiveness and employment objective, consisting of 3 % of its total allocation for each one.

2 Where a Member State has decided to establish such a reserve, it shall assess under each of the objectives not later than 30 June 2011 the performance of its operational programmes.

3 Not later than 31 December 2011, on the basis of proposals from and in close consultation with each Member State concerned, the Commission shall allocate the national performance reserve.

Article 51

National contingency reserve

At its own initiative, a Member State may reserve an amount of 1 % of the annual Structural Fund contribution to the Convergence objective and 3 % of the annual Structural Fund contribution to the Regional competitiveness and employment objective to cover unforeseen local or sectoral crises linked to economic and social restructuring or to the consequences of the opening up of trade.

The Member State may allocate the reserve for each objective to a specific national programme or within operational programmes.

TITLE V

FINANCIAL CONTRIBUTION FROM THE FUNDS

CHAPTER I

Contribution from the funds

Article 52

Modulation of the contribution rates

The contribution from the Funds may 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 axis for the Community's priorities as set out in the Community strategic guidelines on cohesion, as well as for national and regional priorities;
- (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;
- (e) the inclusion of interregional cooperation as referred to in Article 37(6)(b) under the Convergence and Regional competitiveness and employment objectives;
- (f) under the Regional competitiveness and employment objective, the coverage of areas with a geographical or natural handicap defined as follows:
 - (i) island Member States eligible under the Cohesion Fund, and other islands except those on which the capital of a Member State is situated or which have a fixed link to the mainland;
 - (ii) mountainous 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 ceased to be so on the day after that date.

Article 53

Contribution from the Funds

1 The contribution from the Funds, at the level of operational programmes, shall be calculated with reference to:

- a either the total eligible expenditure including public and private expenditure;

b or the public eligible expenditure.

2 The contribution from the Funds at the level of operational programmes under the Convergence and Regional competitiveness and employment objectives shall be subject to the ceilings set out in Annex III.

3 For operational programmes under the European territorial cooperation objective in which at least one participant belongs to a Member State whose average GDP per capita for the period 2001 to 2003 was below 85 % of the EU-25 average during the same period, the contribution from the ERDF shall not be higher than 85 % of the eligible expenditure. For all other operational programmes, the contribution from the ERDF shall not be higher than 75 % of the eligible expenditure co-financed by the ERDF.

4 The contribution from the Funds at the priority axis level shall not be subject to the ceilings set out in paragraph 3 and in Annex III. However, it shall be fixed so as to ensure compliance with the maximum amount of contribution from the Funds and the maximum contribution rate per Fund fixed at the level of the operational programme.

5 For operational programmes co-financed jointly:

- a by the ERDF and the Cohesion Fund; or
- b by the additional allocation for the outermost regions provided for in Annex II, the ERDF and/or the Cohesion Fund,

the decision adopting the operational programme shall fix the maximum rate and the maximum amount of the contribution for each Fund and allocation separately.

6 The Commission's decision adopting an operational programme shall fix the maximum rate and the maximum amount of the contribution from Fund for each operational programme and for each priority axis. The decision shall show separately the appropriations for regions receiving transitional support.

Article 54

Other provisions

1 The contribution from the Funds for each priority axis shall not be less than 20 % of the eligible 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 56(1):

- a a priority axis may receive assistance from only one Fund and one objective at a time;
- b an operation may receive assistance from a Fund under only one operational programme at a time;
- c an operation shall not receive an assistance from a Fund higher than the total public expenditure allocated.

4 For State aid to enterprises within the meaning of Article 87 of the Treaty, public aid granted under operational programmes shall observe the ceilings on State aid.

5 An expenditure co-financed by the Funds shall not receive assistance from another Community financial instrument.

CHAPTER II

Revenue-generating projects

Article 55

Revenue-generating projects

1 For the purposes of this Regulation, a revenue-generating project means any operation involving an investment in infrastructure the use of which is subject to charges borne directly by users or any operation involving the sale or rent of land or buildings or any other provision of services against payment.

2 Eligible expenditure on revenue-generating projects shall not exceed the current value of the investment cost less the current value of the net revenue from the investment over a specific reference period for:

- a investments in infrastructure; or
- b other projects where it is possible to objectively estimate the revenues in advance.

Where not all the investment cost is eligible for co-financing, the net revenue shall be allocated pro rata to the eligible and non-eligible parts of the investment cost.

In the calculation, the managing authority shall take account of the reference period appropriate to the category of investment concerned, the category of project, the profitability normally expected of the category of investment concerned, the application of the polluter-pays principle, and, if appropriate, considerations of equity linked to the relative prosperity of the Member State concerned.

3 Where it is objectively not possible to estimate the revenue in advance, the revenue generated within five years of the completion of an operation shall be deducted from the expenditure declared to the Commission. The deduction shall be made by the certifying authority at the latest at partial or at final closure of the operational programme. The application for payment of the final balance shall be corrected accordingly.

4 Where, at the latest three years after closure of the operational programme, it is established that an operation has generated revenue that has not been taken into account under paragraphs 2 and 3, such revenue shall be refunded to the general budget of the European Union in proportion to the contribution from the Funds.

5 Without prejudice to their obligations under Article 70(1), Member States may adopt procedures proportionate to the amounts concerned for monitoring revenues generated by operations whose total cost is below EUR 200 000.

6 This Article shall not apply to projects subject to the rules on State aid within the meaning of Article 87 of the Treaty.

CHAPTER III

Eligibility of expenditure

Article 56

Eligibility of expenditure

1 Expenditure, including for major projects, shall be eligible for a contribution from the Funds if it has actually been paid between the date of submission of the operational programmes to the Commission or from 1 January 2007, whichever is earlier, and 31 December 2015. Operations must not have been completed before the starting date for eligibility.

2 By way of derogation from paragraph 1, in-kind contributions, depreciation costs and overheads may be treated as expenditure paid by beneficiaries in implementing operations under the following conditions:

- a the eligibility rules laid down under paragraph 4 provide for the eligibility of such expenditure;
- b the amount of the expenditure is justified by accounting documents having a probative value equivalent to invoices;
- c in the case of in-kind contributions, the co-financing from the Funds does not exceed the total eligible expenditure excluding the value of such contributions.

3 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.

New expenditure, added at the moment of the revision of an operational programme referred to in Article 33, shall be eligible from the date of the submission to the Commission of the request for revision of the operational programme.

4 The rules on the eligibility of expenditure shall be laid down at national level subject to the exceptions provided for in the specific Regulations for each Fund. They shall cover the entirety of the expenditure declared under the operational programme.

5 This Article shall be without prejudice to the expenditure referred to in Article 45.

CHAPTER IV

Durability of operations

Article 57

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 five years from the completion of the operation or three years from the completion of the operation in Member States which have exercised the option of reducing that time limit for the maintenance of an investment or jobs created by SMEs, undergo a substantial modification:

- a affecting its nature or its implementation conditions or giving to a firm or a public body an undue advantage; and

- 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 Member State and the managing authority shall inform the Commission in the annual implementation report referred to in Article 67 of any modification referred to in paragraph 1. The Commission shall inform the other Member States.

3 Sums unduly paid shall be recovered in accordance with Articles 98 to 102.

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 to 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 58

General principles of the management and control systems

The management and control systems of operational programmes set up by Member States shall provide for:

- (a) the definition of the functions of the bodies concerned in management and control and the allocation of functions within each body;
- (b) compliance with the principle of separation of functions between and within such bodies;
- (c) procedures for ensuring the correctness and regularity of expenditure declared under the operational programme;
- (d) reliable accounting, monitoring and financial reporting systems in computerised form;
- (e) a system of reporting and monitoring where the responsible body entrusts the execution of tasks to another body;
- (f) arrangements for auditing the functioning of the systems;
- (g) systems and procedures to ensure an adequate audit trail;
- (h) reporting and monitoring procedures for irregularities and for the recovery of amounts unduly paid.

Article 59

Designation of authorities

- 1 For each operational programme the Member State shall designate the following:
- a a managing authority: a national, regional or local public authority or a public or private body designated by the Member State to manage the operational programme;
 - b a certifying authority: a national, regional or local public authority or body designated by the Member State to certify statement of expenditure and applications for payment before they are sent to the Commission;
 - c an audit authority: a national, regional or local public authority or body, functionally independent of the managing authority and the certifying authority, designated by the Member State for each operational programme and responsible for verifying the effective functioning of the management and control system.

The same authority may be designated for more than one operational programme.

- 2 The Member State may designate one or more intermediate bodies to carry out some or all of the tasks of the managing or certifying authority under the responsibility of that authority.

- 3 The Member State shall lay down rules governing its relations with the authorities referred to in paragraph 1 and their relations with the Commission.

Without prejudice to this Regulation, the Member State shall lay down the mutual relations between the authorities referred to in paragraph 1, 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 58(b), some or all of the authorities referred to in paragraph 1 may be part of the same body.

- 5 Specific rules on management and control are laid down in the Regulation (EC) No 1080/2006 for operational programmes under the European territorial cooperation objective.

- 6 The Commission shall adopt implementing rules of Articles 60, 61 and 62 in accordance with the procedure referred to in Article 103(3).

Article 60

Functions of the managing authority

The managing authority shall be responsible for managing and implementing the operational programme in accordance with the principle of sound financial management 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 with applicable Community and national rules for the whole of their implementation period;
- (b) verifying that the co-financed products and services are delivered and that the expenditure declared by the beneficiaries for operations has actually been incurred and complies with Community and national rules; verifications on-the-spot of individual operations may be carried out on a sample basis in accordance with the detailed rules

- to be adopted by the Commission in accordance with the procedure referred to in Article 103(3);
- (c) ensuring that there is a system for recording and storing in computerised form accounting records for each operation under the operational programme and that the data on implementation necessary for financial management, monitoring, verifications, audits and evaluation are 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 without prejudice to national accounting rules;
 - (e) ensuring that the evaluations of operational programmes referred to in Article 48(3) are carried out in accordance with Article 47;
 - (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 Article 90;
 - (g) ensuring that the certifying authority receives all necessary information on the procedures and verifications carried out in relation to expenditure for the purpose of certification;
 - (h) guiding the work of 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 69;
 - (k) providing the Commission with information to allow it to appraise major projects.

Article 61

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;
- (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 verifications carried out in relation to expenditure included in statements of expenditure;
- (d) taking account for certification purposes 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) keeping an account of amounts recoverable and of amounts withdrawn following cancellation of all or part of the contribution for an operation. Amounts recovered shall be repaid to the general budget of the European Union prior to the closure of the operational programme by deducting them from the next statement of expenditure.

Article 62

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 to verify the effective functioning 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 nine months of the approval of the operational programme an audit strategy covering the bodies which will perform the audits referred to under points (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.

Where a common system applies to several operational programmes, a single audit strategy may be submitted.;

- d by 31 December each year from 2008 to 2015:
 - (i) submitting to the Commission an annual control report setting out the findings of the audits carried out during the previous 12 month-period ending on 30 June of the year concerned in accordance with the audit strategy of the operational programme and reporting any shortcomings found in the systems for the management and control of the programme. The first report to be submitted by 31 December 2008 shall cover the period from 1 January 2007 to 30 June 2008. The information concerning the audits carried out after 1 July 2015 shall be included in the final control report supporting the closure declaration referred to in point (e);
 - (ii) issuing an opinion, on the basis of the controls and audits that have been carried out under its responsibility, as to whether the management and control system functions effectively, so as to provide a reasonable assurance that statements of expenditure presented to the Commission are correct and as a consequence reasonable assurance that the underlying transactions are legal and regular;
 - (iii) submitting, where applicable under Article 88, a declaration for partial closure assessing the legality and regularity of the expenditure concerned.

- When a common system applies to several operational programmes, the information referred to in point (i) may be grouped in a single report, and the opinion and declaration issued under points (ii) and (iii) may cover all the operational programmes concerned;
- e submitting to the Commission at the latest by 31 March 2017 a closure declaration 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 The audit authority shall ensure that the audit work takes account of internationally accepted audit standards.

3 Where the audits and controls referred to in paragraph 1(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 functional independence.

4 The Commission shall provide its comments on the audit strategy presented under paragraph 1(c) no later than three months from receipt thereof. In the absence of comments within this period it shall be considered to be accepted.

CHAPTER II

Monitoring

Article 63

Monitoring committee

1 The Member State shall set up a monitoring committee for each operational programme, in agreement with the managing authority, within three months from the date of the notification to the Member State of the decision approving the operational programme. A single monitoring committee may be set up for several operational programmes.

2 Each monitoring committee 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 in order to exercise its missions in accordance with this Regulation.

Article 64

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 in agreement with the managing authority.

2 At its own initiative or at the request of the monitoring committee, a representative of the Commission shall 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 the EIB or the EIF makes a contribution.

Article 65

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 six months of the approval of the operational programme and approve any revision of those criteria 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 the achievement of the targets set for each priority axis and the evaluations referred to in Article 48(3);
- (d) it shall consider and approve the annual and final reports on implementation referred to in Article 67;
- (e) it shall be informed of the annual control report, or of the part of the report referring to the operational programme concerned, and of any relevant comments the Commission may make after examining that report or relating to that part of the report;
- (f) it may propose to the managing authority any revision or examination 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;
- (g) it shall consider and approve any proposal to amend the content of the Commission decision on the contribution from the Funds.

Article 66

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 the indicators referred to in Article 37(1)(c) specified in the operational programme.

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

3 Data exchange between the Commission and the Member States for this purpose shall be carried out electronically, in accordance with the implementing rules of this Regulation adopted by the Commission in accordance with the procedure referred to in Article 103(3).

Article 67

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 and by 31 March 2017 a final report on the implementation of the operational programme.

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 priority axes in relation to their specific, verifiable targets, with a quantification, wherever and whenever they lend themselves to quantification, using the indicators referred to in Article 37(1)(c) at the level of the priority axis;
- b the financial implementation of the operational programme, detailing for each priority axis:
 - (i) the expenditure paid out by the beneficiaries included in applications for payment sent to the managing authority and the corresponding public contribution;
 - (ii) the total payments received from the Commission and quantification of the financial indicators referred to in Article 66(2); and
 - (iii) the expenditure paid out by the body responsible for making payments to the beneficiaries,

Where appropriate, financial implementation in areas receiving transitional support shall be presented separately within each operational programme;

- c for information purposes only, the indicative breakdown of the allocation of Funds by categories, in accordance with the implementation rules adopted by the Commission in accordance with the procedure referred to in Article 103(3);
- d the steps taken by the managing authority or 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 the response to comments made under Article 68(2) where appropriate;
 - (iii) the use made of technical assistance;
- e the measures taken to provide information on and publicise the operational programme;
- f information about significant problems relating to compliance with Community law which have been encountered in the implementation of the operational programme and the measures taken to deal with them;
- g where appropriate, the progress and financing of major projects;
- h the use made of assistance released following cancellation as referred to in Article 98(2) to the managing authority or to another public authority during the period of implementation of the operational programme;
- i cases where a substantial modification has been detected under Article 57.

The breadth of information transmitted to the Commission shall be proportional to the total amount of expenditure of the operational programme concerned. Where appropriate, such information may be provided in summary form.

Information referred to in points (d), (g), (h) and (i) shall not be included if there has been no significant modification since the previous report.

3 The reports referred to in paragraph 1 shall be judged admissible where they contain all the appropriate information listed in paragraph 2. The Commission shall inform the Member State on the admissibility of the annual report within 10 working days from the date of its receipt.

4 The Commission shall inform the Member State of its opinion on the content of an admissible annual report on implementation submitted by the managing authority within two months from the date of receipt. For the final report on an operational programme, the time limit shall be a maximum of five months from the date of receipt of an admissible report. If the Commission does not respond within the time limit laid down, the report shall be deemed to be accepted.

Article 68

Annual examination of programmes

1 Every year, when the annual report on implementation referred to in Article 67 is submitted, 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 last annual control report, referred to in Article 62(1)(d)(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 to 2006 programming period, where appropriate, are available, the overall results may be examined in the next annual examination.

CHAPTER III

Information and publicity

Article 69

Information and publicity

1 The Member State and the managing authority for the operational programme shall provide information on and publicise operations and co-financed programmes. The information shall be addressed to European Union citizens and beneficiaries with the aim of highlighting the role of the Community and ensure that assistance from the Funds is transparent.

The Commission shall adopt implementing rules for this Article in accordance with the procedure referred to in Article 103(3).

2 The managing authority for the operational programme shall be responsible for publicity in accordance with the implementing rules of this Regulation adopted by the Commission in accordance with the procedure referred to in Article 103(3).

CHAPTER IV

Responsibilities of Member States and of the Commission

Section 1

Responsibilities of Member States

Article 70

Management and control

1 Member States shall be responsible for the management and control of operational programmes, in particular through the following measures:

- a ensuring that management and control systems for operational programmes are set up in accordance with Articles 58 to 62 and function effectively;
- b preventing, detecting and correcting irregularities and recovering amounts unduly paid together with interest on late payments where appropriate. They shall notify these to the Commission and keep the Commission informed of the progress of administrative and legal proceedings.

2 When amounts unduly paid to a beneficiary cannot be recovered, the Member State shall be responsible for reimbursing the amounts lost to the general budget of the European Union, when it is established that the loss has been incurred as a result of fault or negligence on its part.

3 The implementing rules for paragraphs 1 and 2 shall be adopted by the Commission in accordance with the procedure referred to in Article 103(3).

Article 71

Setting up of management and control systems

1 Before the submission of the first interim application for payment or at the latest within twelve 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:

- a the managing and certifying authorities and intermediate bodies;
- b the audit authority and any other bodies carrying out audits under its responsibility.

2 The description referred to in paragraph 1 shall be accompanied by a report setting out the results of an assessment of the systems set up and giving an opinion on their compliance with Articles 58 to 62. If the opinion contains reservations, the report shall indicate the seriousness of

the shortcomings and, where the shortcomings do not concern the whole programme, the priority axis or axes concerned. The Member State shall inform the Commission of the corrective measures to be taken and the timetable for their implementation and subsequently provide confirmation of the implementation of the measures and the withdrawal of the corresponding reservations.

The report referred to in the first subparagraph shall be deemed to be accepted, and the first interim payment shall be made, in the following circumstances:

- a within two months of the date of receipt of the report when the opinion referred to in the first subparagraph is without reservations and in the absence of observations by the Commission;
- b if the opinion contains reservations, upon confirmation to the Commission that corrective measures concerning key elements of the systems have been implemented, and the corresponding reservations withdrawn, and in the absence of observations by the Commission within two months of the date of confirmation.

Where the reservations concern only a single priority axis, the first interim payment shall be made as regards the other priority axes of the operational programme for which there is no reservation.

3 The report and the opinion referred to in paragraph 2 shall be drawn up by the audit authority or by a public or private body functionally independent of the managing and certifying authorities, which shall carry out its work taking account of internationally accepted audit standards.

4 Where a common system applies to several operational programmes, a description of the common system may be notified under paragraph 1 accompanied by a single report and opinion under paragraph 2.

5 The implementing rules for paragraphs 1 to 4 shall be adopted by the Commission in accordance with the procedure referred to in Article 103(3).

Section 2

Responsibilities of the Commission

Article 72

Responsibilities of the Commission

1 The Commission shall satisfy itself in accordance with the procedure laid down in Article 71 that the Member States have set up management and control systems that comply with Articles 58 to 62 and, on the basis of the annual control reports and annual opinion of the audit authority and its own audits, that the systems function effectively during the periods of implementation of 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 functioning of the management and control systems, which may include audits on operations included in operational programmes, with a minimum of 10 working days' notice, except in urgent cases. Officials or authorised representatives of the Member State may take part in such audits. The implementing rules of this Regulation concerning the use of data collected during

audits shall be adopted by the Commission in accordance with the procedure referred to in Article 103(3).

Commission officials or authorised Commission representatives, duly empowered to carry out on-the-spot audits, shall have access to the books and all other documents, including documents and metadata drawn up or received and recorded on an electronic medium, relating to expenditure financed by the Funds.

The aforementioned powers of audit shall not affect the application of national provisions which reserve certain acts for agents specifically designated by national legislation. Authorised Commission representatives shall not take part, *inter alia*, in home visits or the formal questioning of persons within the framework of the national legislation of the Member State concerned. However, they shall have access to information thus obtained.

3 The Commission may require a Member State to carry out an on-the-spot audit to verify the effective functioning of systems or the correctness of one or more transactions. Commission officials or authorised Commission representatives may take part in such audits.

Article 73

Cooperation with the audit authorities of the Member States

1 The Commission shall cooperate with the audit authorities of operational programmes to coordinate their respective audit 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 resources and to avoid unjustified duplication of work.

In order to facilitate this cooperation in cases where a Member State designates several audit authorities, the Member State may designate a coordination body.

The Commission and the audit authorities, and the coordination body, where such a body has been designated, shall meet on a regular basis and at least once a year unless otherwise agreed between them in order to examine together the annual control report and opinion presented under Article 62 and to exchange views on other issues relating to the improvement of the management and control of operational programmes.

2 In determining its own audit strategy, the Commission shall identify those operational programmes for which the opinion on the compliance of systems under Article 71(2) 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 conclude that it can rely principally on the opinion referred to in Article 62(1)(d)(ii) with regard to the effective functioning of the systems and that it will carry out its own on-the-spot audits only if there is evidence to suggest shortcomings in the system affecting expenditure certified to the Commission in a year for which an opinion under Article 62(1)(d)(ii) has been provided which contains no reservation in respect of such shortcomings.

Where the Commission reaches such a conclusion, it shall inform the Member State concerned accordingly. Where there is evidence to suggest shortcomings, it may require the Member State to carry out audits in accordance with Article 72(3) or it may carry out its own audits under Article 72(2).

Section 3

Proportionality in the control of operational programmes

Article 74

Proportional control arrangements

1 For operational programmes for which the total eligible public expenditure does not exceed EUR 750 million and for which the level of Community co-financing does not exceed 40 % of the total public expenditure:

- a the audit authority is not required to present to the Commission an audit strategy under Article 62(1)(c);
- b where the opinion on the compliance of systems under Article 71(2) is without reservations, or where reservations have been withdrawn following corrective measures, the Commission may conclude that it can rely principally on the opinion referred to in Article 62(1)(d)(ii) with regard to the effective functioning of the systems and that it will carry out its own on-the-spot audits only if there is evidence to suggest shortcomings in the system affecting expenditure certified to the Commission in a year for which an opinion under Article 62(1)(d)(ii) has been provided which contains no reservation in respect of such shortcomings.

Where the Commission reaches such a conclusion, it shall inform the Member State concerned accordingly. Where there is evidence to suggest shortcomings it may require the Member State to carry out audits in accordance with Article 72(3) or it may carry out its own audits under Article 72(2).

2 For the operational programmes referred to in paragraph 1, a Member State may in addition exercise the option to establish according to national rules the bodies and procedures for carrying out:

- a the functions of the managing authority in relation to the verification of the co-financed products and services and expenditure declared under Article 60(b);
- b the functions of the certifying authority under Article 61; and
- c the functions of the audit authority under Article 62.

Where a Member State exercises this option it need not designate a certifying authority and an audit authority under Article 59(1) (b) and (c).

Article 71 shall apply *mutatis mutandis*.

When the Commission adopts implementing rules for Articles 60, 61 and 62, it shall specify the provisions which shall not apply to operational programmes for which the option in this paragraph has been exercised by the Member State concerned.

TITLE VII

FINANCIAL MANAGEMENT

CHAPTER I

Financial management

Section 1

Budget commitments

Article 75

Budget commitments

1 The Community budget commitments in respect of operational programmes (hereinafter budget commitments) shall be effected annually for each Fund and objective during the 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, as a general rule, by 30 April each year by the Commission on the basis of the decision to grant a contribution from the Funds referred to in Article 32.

2 Where no payment has been made, the Member State may request, by 30 September of the year *n* at the latest, the transfer of any commitments in respect of operational programmes related to the national contingency reserve referred to in Article 51 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 76

Common rules for payments

1 Payments by the Commission of the contribution from the Funds shall be made in accordance with the budget appropriations. Each payment shall be posted to the earliest open budget commitments of the Fund concerned.

2 Payments shall take the form of pre-financing, interim payments and payment of the final balance. They shall be made to the body designated by the Member State.

3 At the latest by 30 April each year, Member States shall send the Commission a provisional forecast of their likely applications for payment for the current financial year and the subsequent financial year.

4 All exchanges concerning financial transactions between the Commission and the authorities and bodies designated by the Member States shall be made by electronic means, in accordance with the implementing rules of this Regulation adopted by the Commission in accordance with the procedure referred to in Article 103(3). In cases of *force majeure*, and in particular of malfunction of the common computerised system or a lack of a lasting connection, Member States may forward statements of expenditure and applications for payment in hard copy.

Article 77

Common rules for calculating interim payments and payments of the final balance

Interim payments and payments of the final balance shall be calculated by applying the co-financing rate laid down in the decision on the operational programme concerned for each priority axis to the eligible expenditure mentioned under that priority axis in each statement of expenditure certified by the certifying authority.

However the Community contribution through the interim payments and payments of the final balance shall not be higher than the public contribution and the maximum amount of assistance from the Funds for each priority axis as laid down in the decision of the Commission approving the operational programme.

Article 78

Statement of expenditure

1 All statements of expenditure shall include, for each priority axis, the total amount of eligible expenditure, in accordance with Article 56, paid by beneficiaries in implementing the operations and the corresponding public contribution paid or due to be paid to the beneficiaries according to the conditions governing the public contribution. Expenditure paid by beneficiaries shall be supported by receipted invoices or accounting documents of equivalent probative value.

However, as regards aid schemes within the meaning of Article 87 of the Treaty only, in addition to the conditions set out in the previous subparagraph, the public contribution corresponding to the expenditure included in a statement of expenditure shall have been paid to the beneficiaries by the body granting the aid.

2 By way of derogation from paragraph 1, as regards State aid within the meaning of Article 87 of the Treaty, the statement of expenditure may include advances paid to the beneficiaries by the body granting the aid, under the following cumulative conditions:

- a they shall be subject to a bank guarantee or a financial public facility having an equivalent effect;
- b they shall not exceed 35 % of the total amount of the aid to be granted to a beneficiary for a given project;
- c they shall be covered by expenditure paid by beneficiaries in implementing the project and supported by receipted invoices or accounting documents of equivalent probative value at the latest three years after the year of the payment of the advance or on 31 December 2015, whichever earlier; if they are not, the next statement of expenditure shall be corrected accordingly.

3 Statements of expenditure shall identify, for each operational programme, the elements referred to in paragraph 1 relating to regions receiving transitional assistance.

4 In the case of major projects as defined in Article 39, only expenditure related to major projects already adopted by the Commission may be included in statements of expenditure.

5 Where the contribution from the Funds is calculated with reference to public expenditure as provided for in Article 53(1), any information on expenditure other than public expenditure shall not affect the amount due as calculated on the basis of the payment request.

6 By way of derogation from paragraph 1, as regards financial engineering instruments as defined in Article 44, the statement of expenditure shall include the total expenditure paid in establishing or contributing to such funds or holding funds.

However, at the partial or final closure of the operational programme, eligible expenditure shall be the total of:

- a any payments from urban development funds for investment in public private partnerships or other projects included in an integrated plan for urban development; or
- b any payments for investment in enterprises from each of the abovementioned funds; or
- c any guarantees provided including amounts committed as guarantees by guarantee funds; and
- d eligible management costs.

The co-financing rate shall be applied to the eligible expenditure paid by the beneficiary. The corresponding statement of expenditure shall be corrected accordingly.

7 Interest generated by payments from operational programmes to funds as defined in Article 44, shall be used to finance urban development projects in the case of urban development funds or financial engineering instruments for small and medium-sized enterprises in other cases.

Resources returned to the operation from investments undertaken by funds as defined in Article 44 or left over after all guarantees have been honoured shall be reused by the competent authorities of the Member States concerned for the benefit of urban development projects or of small and medium-sized enterprises.

Article 79

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 contribution from the Funds to the operational programme.

2 When this ceiling is reached, the certifying authority shall continue transmitting to the Commission any certified statement of expenditure on 31 December of year *n*, as well as the amounts recovered during the year for each Fund, at the latest by the end of February of year *n+1*.

Article 80

Wholeness of payment to beneficiaries

Member States shall satisfy themselves that the bodies responsible for making the payments ensure that the beneficiaries receive the total amount of the public contribution as quickly as possible and in full. No amount shall be deducted or withheld and no

specific charge or other charge with equivalent effect shall be levied that would reduce these amounts for the beneficiaries.

Article 81

Use of the euro

1 Amounts set out in operational programmes submitted by Member States, certified statements of expenditure, applications for payment and expenditure mentioned in the annual and final report of implementation shall be denominated in euro.

2 Commission decisions on operational programmes and Commission commitments and payments, shall be denominated and carried out in euro.

3 Member States which have not adopted the euro as their currency on the date of an application for payment shall convert into euro the amounts of expenditure incurred in national currency. This amount shall be converted into euro using the monthly accounting exchange rate of the Commission in the month during which the expenditure was registered in the accounts of the certifying authority of the operational programme concerned. This rate shall be published electronically by the Commission each month.

4 When the euro becomes the currency of a Member State, the conversion procedure set out in paragraph 3 shall continue to apply to all expenditure recorded in the accounts by the certifying authority before the date of entry into force of the fixed conversion rate between the national currency and the euro.

Section 3

Pre-financing

Article 82

Payment

1 Following the Commission decision approving a contribution from the Funds to an operational programme, a single pre-financing amount for the 2007 to 2013 period shall be paid by the Commission to the body designated by the Member State.

The pre-financing amount shall be paid in different instalments as follows:

- a for Member States of the European Union as constituted before 1 May 2004, in 2007 2 % of the contribution from the Structural Funds to the operational programme, and in 2008 3 % of the contribution from the Structural Funds to the operational programme;
- b for Member States that acceded to the European Union on or after 1 May 2004, in 2007 2 % of the contribution from the Structural Funds to the operational programme, in 2008 3 % of the contribution from the Structural Funds to the operational programme, and in 2009 2 % of the contribution from the Structural Funds to the operational programme;
- c if the operational programme falls under the European territorial cooperation objective and at least one of the participants is a Member State that acceded to the European Union on or after 1 May 2004, in 2007 2 % of the contribution from the ERDF to the operational programme, in 2008 3 % of the contribution from the ERDF to the operational programme, and in 2009 2 % of the contribution from the ERDF to the operational programme;

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- d for Member States of the European Union as constituted before 1 May 2004, in 2007 2 % of the contribution from the Cohesion Fund to the operational programme, in 2008 3 % of the contribution from the Cohesion Fund to the operational programme, and in 2009 2,5 % of the contribution from the Cohesion Fund to the operational programme;
- e for Member States that acceded to the European Union on or after 1 May 2004, in 2007 2,5 % of the contribution from the Cohesion Fund to the operational programme, in 2008 4 % of the contribution from the Cohesion Fund to the operational programme, and in 2009 4 % of the contribution from the Cohesion Fund to the operational programme.

2 The total amount paid as pre-financing shall be reimbursed to the Commission by the body designated by the Member State if no application for payment under the operational programme is sent within 24 months from the date on which the Commission pays the first instalment of the pre-financing amount.

The total contribution from the Funds to the operational programme shall not be affected by such reimbursement.

Article 83

Interest

Any interest generated by the pre-financing shall be posted to the operational programme concerned, being regarded as a resource for the Member State in the form of a national public contribution, and shall be declared to the Commission at the time of the final closure of the operational programme.

Article 84

Clearance

The amount paid as pre-financing shall be totally cleared from the Commission accounts when the operational programme is closed in accordance with Article 89.

Section 4

Interim payments

Article 85

Interim payments

Interim payments shall be made for each operational programme. The first interim payment shall be made in accordance with Article 71(2).

Article 86

Acceptability of applications for payment

1 Each interim payment made by the Commission shall be subject to the following conditions being met:

Status: This is the original version (as it was originally adopted).

- a the Commission must have been sent a application for payment and a statement of expenditure in accordance with Article 78;
- b no more than the maximum amount of assistance from the Funds as laid down in the decision of the Commission approving the operational programme has been paid by the Commission during the whole period for each priority axis;
- c the managing authority must have sent the Commission the most recent annual implementation report in accordance with Article 67(1) and (3);
- d there is no 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 is declared in the application for payment in question.

2 If one or more of the conditions referred to in paragraph 1 are not met, the Member State and the certifying authority shall be informed by the Commission within a period of one month so that the necessary steps can be taken to remedy the situation.

Article 87

Date of presentation of applications for payment and payment delays

1 The certifying authority shall satisfy itself that requests for interim payments for each operational programme are grouped together and sent to the Commission, as far 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 application for payment shall be submitted is 31 October.

2 Subject to available funding, and the absence of a suspension of payments in accordance with Article 92, the Commission shall make the interim payment no later than two months after the date on which a application for payment meeting the conditions referred to in Article 86 is registered with the Commission.

Section 5

Programme closure and payment of final balance

Article 88

Partial closure

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

Partial closure shall relate to operations completed during the period up to 31 December of the previous year. For the purposes of this Regulation, an operation shall be deemed completed where the activities under it have been actually carried out and for which all expenditure by the beneficiaries and the corresponding public contribution have been paid.

2 Partial closure shall be made on the condition that the Member State sends the following to the Commission by 31 December of a given year:

- a a statement of expenditure relating to the operations referred to in paragraph 1;
- b a declaration for partial closure in accordance with Article 62(1)(d)(iii).

3 Any financial corrections made in accordance with Articles 98 and 99 concerning operations subject to partial closure shall be net financial corrections.

Article 89

Conditions for the payment of the final balance

1 The Commission shall pay the final balance provided that:

- a the Member State has sent an application for payment comprising the following documents by 31 March 2017:
 - (i) an application for payment of the final balance and a statement of expenditure in accordance with Article 78;
 - (ii) the final implementation report for the operational programme, including the information set out in Article 67;
 - (iii) a closure declaration referred to in Article 62(1)(e); and
- b there is no 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 is declared in the application for payment in question.

2 Failure to send any of the documents referred to in paragraph 1 to the Commission shall automatically result in the decommitment of the final balance, in accordance with Article 93.

3 The Commission shall inform the Member State of its opinion on the content of the closure declaration referred to in paragraph 1(a)(iii) within five months of the date of its receipt. The closure declaration shall be deemed to be accepted in the absence of observations by the Commission within that five-month period.

4 Subject to available funding, the Commission shall pay the final balance within no more than 45 days from the later of the following dates:

- a the date on which it accepts the final report in accordance with Article 67(4); and
- b the date on which it accepts the closure declaration referred to in paragraph 1(a)(iii) of this Article.

5 Without prejudice to paragraph 6, the balance of the budgetary commitment shall be decommitted 12 months following the payment. The closure of the operational programme shall be on the date of the earliest of the following three events:

- a the payment of the final balance determined by the Commission on the basis of the documents referred to in paragraph 1;
- b the sending of a debit note for sums unduly paid by the Commission to the Member State in respect of the operational programme;
- c the decommitment of the final balance of the budgetary commitment.

The Commission shall inform the Member State about the date of the closure of the operational programme within a deadline of two months.

6 Notwithstanding the results of any audits performed by the Commission or the European Court of Auditors, the final balance paid by the Commission for the operational programme may 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. Such amendment of the balance shall not affect the date of the closure of the operational programme as set out in paragraph 5.

Article 90

Availability of documents

1 Without prejudice to the rules governing State aid under Article 87 of the Treaty, 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 for:

- a a period of three years following the closure of an operational programme as defined in Article 89(3);
- b a period of three years following the year in which partial closure took place, in the case of documents regarding expenditure and audits on operations referred to in paragraph 2.

These periods shall be interrupted either in the case of legal proceedings or at the duly motivated request of the Commission.

2 The managing authority shall make available to the Commission on request a list of completed operations which have been subject to partial closure under Article 88.

3 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.

Section 6

Interruption of the payment deadline and suspension of payments

Article 91

Interruption of the payment deadline

1 The payment deadline may 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 if:

- a in a report of a national or Community audit body there is evidence to suggest a significant deficiency in the functioning of the management and control systems;
- b the authorising officer by delegation has to carry out additional verifications following information coming to his attention alerting him that expenditure in a certified statement of expenditure is linked to a serious irregularity which has not been corrected.

2 The Member State and the certifying authority shall be informed immediately of the reasons for the interruption. The interruption shall be ended as soon as the necessary measures have been taken by the Member State.

Article 92

Suspension of payments

1 All or part of the interim payments at the level of priority axes 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 there is a serious breach by a Member State of its obligations under Article 70(1) and (2).

2 The Commission may decide to suspend all or part of 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 all or part of interim payments where 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 the decision to cancel all or part of the Community contribution to the operational programme in accordance with Article 99.

Section 7

Automatic decommitment

Article 93

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 an application for payment has not been sent in conformity with Article 86 by 31 December of the second year following the year of budget commitment under the programme, with the exception mentioned in paragraph 2.

2 For Member States whose GDP from 2001 to 2003 was below 85 % of the EU-25 average in the same period, as listed in Annex II, the deadline referred to in paragraph 1 shall be 31 December of the third year following the year of the annual budget commitment from 2007 to 2010 under their operational programmes.

This deadline shall also apply to the annual budget commitment from 2007 to 2010 in an operational programme falling under the European territorial cooperation objective if at least one of the participants is a Member State referred to in the first subparagraph.

3 That part of commitments still open on 31 December 2015 shall be automatically decommitted if the Commission has not received an acceptable application for payment for it by 31 March 2017.

4 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 94

Period for interruption for major projects and aid schemes

When the Commission takes a decision to authorise a major project or an aid scheme, the amounts potentially concerned by automatic decommitment shall be reduced by the annual amounts concerned by such major projects or aid schemes.

For these annual amounts, the starting date for the calculation of the automatic decommitment deadlines referred to in Article 93 shall be the date of the subsequent decision necessary in order to authorise such major projects or aid schemes.

Article 95

Period of interruption for legal proceedings and administrative appeals

The amount potentially concerned by automatic decommitment shall be reduced by the amounts that the certifying authority has not been able to declare to the Commission because of operations suspended by a legal proceeding or an administrative appeal having suspensory effect, on condition that the Member State sends the Commission information stating the reasons by 31 December of the second or third year following the year of the budget commitment pursuant to Article 93.

For that part of commitments still open on 31 December 2015, the time limit referred to in Article 93(2) shall be interrupted under these same conditions in respect of the amount relating to the operations concerned.

The abovementioned reduction may be requested once if the suspension lasted up to one year or several times corresponding to the number of years between the date of the legal or administrative decision suspending the implementation of the operation and the date of the final legal or administrative decision.

Article 96

Exceptions to the automatic decommitment

The following shall be disregarded in calculating the automatic decommitment:

- (a) that part of the budget commitment for which an application for payment has been made but whose reimbursement has been interrupted or suspended by the Commission on 31 December of the second or third year following the year of the budget commitment pursuant to Article 93 and in accordance with Articles 91 and 92. When the problem resulting in the interruption or suspension has been resolved, the automatic decommitment rule shall be applied to that part of the budget commitment which is concerned;
- (b) that part of the budget commitment for which an application for payment 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 application for payment for reasons of *force majeure* seriously affecting

implementation of the operational programme. The national authorities claiming *force majeure* shall demonstrate its direct consequences on the implementation of all or part of the operational programme.

Article 97

Procedure

1 The Commission shall inform the Member State and the authorities concerned in good time whenever there is a risk of application of automatic decommitment under Article 93. 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.

2 The Member State shall have two months 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 deadline referred to in Article 93.

3 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 within two months of the date of decommitment a revised financing plan reflecting the reduced amount of assistance over one or several priority axes of the operational programme. Failing this, the Commission shall reduce the amounts allocated to each priority axis proportionately.

CHAPTER II

Financial corrections

Section 1

Financial correction by Member States

Article 98

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 operations or operational programmes 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 of cancelling all or part of the public contribution to the operational programme. The Member State shall take into account the nature and gravity of the irregularities and the financial loss to the Funds.

The resources from the Funds released in this way may be reused by the Member State until 31 December 2015 for the operational programme concerned in accordance with the provisions referred to in paragraph 3.

3 The contribution cancelled in accordance with paragraph 2 may not be reused for the operation or operations that were the subject of the correction, nor, where a financial correction is made for a systemic irregularity, for existing operations within the whole or part of the priority axis where the systemic irregularity occurred.

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

Section 2

Financial corrections by the Commission

Article 99

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 98 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.

3 The Commission shall, when deciding the amount of a correction, take account of the nature and gravity 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 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 98(2), the reports supplied under Article 70(1)(b), and any replies from the Member State.

5 When a Member State does not comply with its obligations as referred to in Article 15(4), the Commission may, in relation to the degree of non-compliance with these obligations, make a financial correction by cancelling all or part of the Structural Funds contribution to the Member State concerned.

The rate applicable to the financial correction referred to in this paragraph shall be laid down in the implementing rules of this Regulation adopted by the Commission in accordance with the procedure referred to in Article 103(3).

Article 100

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 a financial correction 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 documentation 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 documentation 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 in the first subparagraph.

2 The Commission shall take account of any evidence supplied by the Member State within the time limits mentioned in paragraph 1.

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 shall make efforts to reach an agreement concerning the observations and the conclusions to be drawn from them.

4 In case of an agreement, the Member State may reuse the Community funds concerned in conformity with the second subparagraph of Article 98(2).

5 In the absence of agreement, the Commission shall take a decision on the financial correction within six months of the date of the hearing taking account of all information and observations submitted during the course of the procedure. If no hearing takes place, the six-month period shall begin to run two months after the date of the letter of invitation sent by the Commission.

Article 101

Obligations of Member States

A financial correction by the Commission shall not prejudice the Member State's obligation to pursue recoveries under Article 98(2) of this Regulation and to recover State aid under Article 87 of the Treaty and under Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty⁽⁴⁾.

Article 102

Repayment

1 Any repayment due to be made to the general budget of the European Union shall be effected before the due date indicated in the order for recovery drawn up in accordance with Article 72 of Regulation (EC, Euratom) No 1605/2002. The 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.

TITLE VIII

COMMITTEES

CHAPTER I

Coordination committee of the funds

Article 103

Committee procedure

1 The Commission shall be assisted by a coordination committee of the Funds (hereinafter referred to as the Coordination Committee of the Funds).

2 Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

3 Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period referred to in Article 4(3) of Decision 1999/468/EC shall be set at three months.

4 The Coordination Committee of the Funds shall adopt its Rules of Procedure.

5 The EIB and the EIF shall each appoint a non-voting representative.

CHAPTER II

Committee under Article 147 of the treaty

Article 104

Committee under Article 147 of the Treaty

1 The Commission shall be assisted by a committee set up under Article 147 of the Treaty (hereinafter referred to as the Committee). The Committee 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 nominate a representative and an alternate for each representative of each category referred to in paragraph 1. 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 categories concerned. For the items on the agenda affecting it, the EIB and the EIF may appoint a non-voting representative.

4 The Committee shall:

- a deliver its opinion on the implementing rules of this Regulation;
- b deliver opinions on the draft Commission decisions relating to programming in the case of support from the ESF;
- c be consulted when it deals with the categories of technical assistance measure referred to in Article 45 in the case of support from the ESF and other relevant issues having an impact on the implementation of employment, training and social inclusion strategies at EU level relevant to the ESF.

5 The Commission may consult the Committee on questions other than those referred to in paragraph 4.

6 For their adoption, the opinions of the Committee shall require an absolute majority of the votes validly cast. The Commission shall inform the Committee of the manner in which it has taken account of its opinions.

TITLE IX

FINAL PROVISIONS

Article 105

Transitional provisions

1 This Regulation shall not affect the continuation or modification, including the total or partial cancellation, of assistance co-financed by the Structural Funds or of a project co-financed by the Cohesion Fund approved by the Commission on the basis of Regulations (EEC) No 2052/88⁽⁵⁾, (EEC) No 4253/88⁽⁶⁾, (EC) No 1164/94⁽⁷⁾ and (EC) No 1260/1999 or any other legislation which applies to that assistance on 31 December 2006, which shall consequently apply thereafter to that assistance or the projects concerned until their closure.

2 While taking decision on operational programmes, the Commission shall take account of any assistance co-financed by the Structural Funds or of any project co-financed by the Cohesion Fund 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 those operational programmes.

3 By way of derogation from Articles 31(2), 32(4) and 37(1) of Regulation (EC) No 1260/1999, partial sums committed for assistance co-financed by the ERDF or the ESF approved by the Commission between 1 January 2000 and 31 December 2006 for which the certified statement of expenditure actually paid, the final report on implementation and the statement referred to in Article 38(1)(f) of that Regulation have not been sent to the Commission within 15 months after the final date of eligibility of expenditure laid down in the decision granting a contribution from the Funds, shall be automatically decommitted by the Commission not later than 6 months after that deadline, giving rise to the repayment of amounts unduly paid.

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 106

Review clause

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

Article 107

Repeal

Without prejudice to the provisions laid down in Article 105(1) of this Regulation, Regulation (EC) No 1260/1999 is hereby repealed as of 1 January 2007.

References to the repealed Regulation shall be construed as references to this Regulation.

Article 108

Entry into force

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

The provisions laid down in Articles 1 to 16, 25 to 28, 32 to 40, 47 to 49, 52 to 54, 56, 58 to 62, 69 to 74, 103 to 105 and 108 shall apply from the date of entry into force of this Regulation only for programmes for the period 2007 to 2013. The other provisions shall apply from 1 January 2007.

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

Done at Brussels, 11 July 2006.

For the Council

The President

E. HEINÄLUOMA

- (1) [OJ L 134, 30.04.2004, p. 114.](#)
- (2) [OJ L 205, 6.8.2005, p. 21.](#)
- (3) [OJ L 248, 16.9.2002, p. 1.](#)
- (4) [OJ L 83, 27.3.1999, p. 1.](#) Regulation as amended by the 2003 Act of Accession. Editorial note: the title of Regulation (EC) No 659/1999 has been adjusted to take account of the renumbering of the Articles of the Treaty establishing the European Community, in accordance of Article 12 of the Treaty of Amsterdam; the original reference was to Article 93 of the Treaty.
- (5) Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments ([OJ L 185, 15.7.1988, p. 9](#)). Regulation repealed by Regulation (EC) No 1260/1999.
- (6) Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments ([OJ L 374, 31.12.1988, p. 1](#)). Regulation repealed by Regulation (EC) No 1260/1999.
- (7) Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund ([OJ L 130, 25.5.1994, p. 1](#)). Regulation as last amended by the 2003 Act of Accession.