

Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument

REGULATION (EC) No 1638/2006 OF THE
EUROPEAN PARLIAMENT AND OF THE COUNCIL

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laying down general provisions establishing a
European Neighbourhood and Partnership Instrument

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 179 and 181a thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽¹⁾,

Whereas:

- (1) A new framework for planning and delivering assistance is proposed in order to make the Community's external assistance more effective. This Regulation constitutes one of the general instruments providing direct support for the European Union's external policies.
- (2) The Copenhagen European Council of 12 and 13 December 2002 confirmed that enlargement of the European Union presents an important opportunity to take forward relations with neighbouring countries based on shared political and economic values, and that the European Union remains determined to avoid new dividing lines in Europe and to promote stability and prosperity within and beyond the new borders of the European Union.
- (3) The Brussels European Council of 17 and 18 June 2004 reiterated the importance it attached to strengthening cooperation with those neighbours, on the basis of partnership and joint ownership and building on shared values of democracy and respect for human rights.
- (4) The privileged relationship between the European Union and its neighbours should build on commitments to common values, including democracy, the rule of law, good governance and respect for human rights, and to the principles of market economy, open, rule-based and fair trade, sustainable development and poverty reduction.
- (5) It is important that Community assistance under this Regulation be provided in compliance with the international agreements and international conventions to which the Community, the Member States and the partner countries are parties and that it be delivered taking into account the general principles of international law commonly accepted by the parties.

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- (6) In eastern Europe and the southern Caucasus, the Partnership and Cooperation Agreements provide the basis for contractual relations. In the Mediterranean, the Euro-Mediterranean Partnership (the Barcelona Process) provides a regional framework for cooperation which is complemented by a network of Association Agreements.
- (7) Under the European Neighbourhood Policy, a set of priorities are defined together by the European Union and the partner countries, to be incorporated in a series of jointly agreed Action Plans, covering a number of key areas for specific action, including political dialogue and reform, trade and economic reform, equitable social and economic development, justice and home affairs, energy, transport, information society, environment, research and innovation, the development of civil society and people-to-people contacts. Progress towards meeting these priorities will contribute to realising the full potential of the Partnership and Cooperation Agreements and the Association Agreements.
- (8) In order to support the partner countries' commitment to common values and principles and their efforts in the implementation of the action plans, the Community should be in a position to provide assistance to those countries and to support various forms of cooperation among them and between them and the Member States with the aim of developing a zone of shared stability, security and prosperity involving a significant degree of economic integration and political cooperation.
- (9) Promotion of political, economic and social reforms across the neighbourhood is an important objective of Community assistance. In the Mediterranean this objective will be further pursued within the Mediterranean strand of the Strategic Partnership with the Mediterranean and the Middle East. The relevant elements of the European Union strategy for Africa will be taken into account in the relations with the Mediterranean neighbours from North Africa.
- (10) It is important that support to be provided to neighbouring developing countries within the framework established by the European Neighbourhood Policy should be coherent with the objectives and principles of the European Community Development Policy, as outlined in the Joint Statement entitled 'The European Consensus on Development'⁽²⁾ adopted on 20 December 2005 by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission.
- (11) The European Union and Russia have decided to develop their specific strategic partnership through the creation of four common spaces, and Community assistance will be used to support the development of this partnership and to promote cross-border cooperation at the border between Russia and its European Union neighbours.
- (12) The Northern Dimension provides a framework for cooperation between the European Union, Russia, Norway and Iceland and it is important that Community assistance be also used to support activities contributing to the implementation of such a framework. The new objectives of this policy will be set out in a political declaration and a policy framework document to be prepared on the basis of the guidelines approved by the Northern Dimension ministerial meeting of 21 November 2005.

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- (13) For Mediterranean partners, assistance and cooperation should take place within the framework of the Euro-Mediterranean Partnership established by the Barcelona Declaration of 28 November 1995 and affirmed at the 10th anniversary Euro-Mediterranean Summit of 28 November 2005, and should take into account the agreement reached in that context on establishing a free-trade area for goods by 2010 and beginning a process of asymmetric liberalisation.
- (14) It is important to foster cooperation both at the European Union external border and among partner countries, especially those among them that are geographically close to each other.
- (15) In order to avoid the creation of new dividing lines, it is particularly important to remove obstacles to effective cross-border cooperation along the external borders of the European Union. Cross-border cooperation should contribute to integrated and sustainable regional development between neighbouring border regions and harmonious territorial integration across the Community and with neighbouring countries. This aim can best be achieved by combining external policy objectives with environmentally sustainable economic and social cohesion.
- (16) In order to assist neighbouring partner countries in achieving their objectives, and to promote cooperation between them and Member States, it is desirable to establish a single policy-driven instrument which will replace a number of existing instruments, ensuring coherence and simplifying assistance programming and management.
- (17) This instrument should also support cross-border cooperation between partner countries and the Member States bringing substantial efficiency gains operating through a single management mechanism and with a single set of procedures. It should build on the experience acquired from the implementation of the Neighbourhood Programmes in the period 2004 to 2006 and operate on the basis of principles such as multi-annual programming, partnership and cofinancing.
- (18) It is important that border regions which belong to countries of the European Economic Area (EEA) and which are currently taking part in cross-border cooperation involving Member States and partner countries may continue to do so on the basis of their own resources.
- (19) This Regulation establishes for the period 2007 to 2013 a financial envelope which constitutes the prime reference amount for the budgetary authority according to point 37 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management⁽³⁾.
- (20) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽⁴⁾.
- (21) The use of the management procedure should be applicable when defining the implementing rules which will govern the implementation of cross-border cooperation and when adopting strategy papers, action programmes and special measures not provided for in strategy papers whose value exceeds the threshold of EUR 10 000 000.

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- (22) Since the objectives of this Regulation, namely to promote enhanced cooperation and progressive economic integration between the European Union and neighbouring countries, cannot be sufficiently achieved by the Member States and can, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (23) This Regulation makes it necessary to repeal Council Regulations (EEC) No 1762/92 of 29 June 1992 on the implementation of the Protocols on financial and technical cooperation concluded by the Community with Mediterranean non-member countries⁽⁵⁾, (EC) No 1734/94 of 11 July 1994 on financial and technical cooperation with the West Bank and the Gaza Strip⁽⁶⁾ and (EC) No 1488/96 of 23 July 1996 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership⁽⁷⁾. Equally, this Regulation will replace Council Regulation (EC, Euratom) No 99/2000 of 29 December 1999 concerning the provision of assistance to the partner States in eastern Europe and central Asia⁽⁸⁾, which expires on 31 December 2006,

HAVE ADOPTED THIS REGULATION:

TITLE I

OBJECTIVES AND PRINCIPLES

Article 1

Subject matter and scope

- 1 This Regulation establishes a Neighbourhood and Partnership Instrument to provide Community assistance for the development of an area of prosperity and good neighbourliness involving the European Union, and the countries and territories listed in the Annex (hereinafter partner countries).
- 2 Community assistance shall be used for the benefit of partner countries. Community assistance may be used for the common benefit of Member States and partner countries and their regions, for the purpose of promoting cross-border and trans-regional cooperation as defined in Article 6.
- 3 The European Union is founded on the values of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law and seeks to promote commitment to these values in partner countries through dialogue and cooperation.

Article 2

Scope of Community assistance

1 Community assistance shall promote enhanced cooperation and progressive economic integration between the European Union and the partner countries and, in particular, the implementation of partnership and cooperation agreements, association agreements or other existing and future agreements. It shall also encourage partner countries' efforts aimed at promoting good governance and equitable social and economic development.

2 Community assistance shall be used to support measures within the following areas of cooperation:

- (a) promoting political dialogue and reform;
- (b) promoting legislative and regulatory approximation towards higher standards in all relevant areas and in particular to encourage the progressive participation of partner countries in the internal market and the intensification of trade;
- (c) strengthening of national institutions and bodies responsible for the elaboration and the effective implementation of policies in areas covered in association agreements, partnership and cooperation agreements, and other multilateral agreements to which the Community and/or its Member States and partner countries are parties, whose purpose is the achievement of objectives as defined in this Article;
- (d) promoting the rule of law and good governance, including strengthening the effectiveness of public administration and the impartiality and effectiveness of the judiciary, and supporting the fight against corruption and fraud;
- (e) promoting sustainable development in all aspects;
- (f) pursuing regional and local development efforts, in both rural and urban areas, in order to reduce imbalances and improve regional and local development capacity;
- (g) promoting environmental protection, nature conservation and sustainable management of natural resources including fresh water and marine resources;
- (h) supporting policies aimed at poverty reduction, to help achieve the UN Millennium Development Goals;
- (i) supporting policies to promote social development, social inclusion, gender equality, non-discrimination, employment and social protection including protection of migrant workers, social dialogues, and respect for trade union rights and core labour standards, including on child labour;
- (j) supporting policies to promote health, education and training, including not only measures to combat the major communicable diseases and non-communicable diseases and disorders, but also access to services and education for good health, including reproductive and infant health for girls and women;
- (k) promoting and protecting human rights and fundamental freedoms, including women's rights and children's rights;
- (l) supporting democratisation, *inter alia*, by enhancing the role of civil society organisations and promoting media pluralism, as well as through electoral observation and assistance;

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- (m) fostering the development of civil society and of non-governmental organisations;
- (n) promoting the development of a market economy, including measures to support the private sector and the development of small and medium-sized enterprises, to encourage investment and to promote global trade;
- (o) promoting cooperation in the sectors of energy, telecommunication and transport, including on interconnections, networks and their operations, enhancing the security and safety of international transport and energy operations and promoting renewable energy sources, energy efficiency and clean transport;
- (p) providing support for actions aimed at increasing food safety for citizens, in particular in the sanitary and phytosanitary domains;
- (q) ensuring efficient and secure border management;
- (r) supporting reform and strengthening capacity in the field of justice and home affairs, including issues such as asylum, migration and readmission, and the fight against, and prevention of, trafficking in human beings as well as terrorism and organised crime, including its financing, money laundering and tax fraud;
- (s) supporting administrative cooperation to improve transparency and the exchange of information in the area of taxation in order to combat tax avoidance and evasion;
- (t) promoting participation in Community research and innovation activities;
- (u) promoting cooperation between the Member States and partner countries in higher education and mobility of teachers, researchers and students;
- (v) promoting multicultural dialogue, people-to-people contacts, including links with communities of immigrants living in Member States, cooperation between civil societies, cultural institutions and exchanges of young people;
- (w) supporting cooperation aimed at protecting historical and cultural heritage and promoting its development potential, including through tourism;
- (x) supporting participation of partner countries in Community programmes and agencies;
- (y) supporting cross-border cooperation through joint local initiatives to promote sustainable economic, social and environmental development in border regions and integrated territorial development across the Community's external border;
- (z) promoting regional and sub-regional cooperation and integration, including, where appropriate, with countries not eligible for Community assistance under this Regulation;
- (aa) providing support in post-crisis situations, including support to refugees and displaced persons, and assisting in disaster preparedness;
- (bb) encouraging communication and promoting exchange among the partners on the measures and activities financed under the programmes;
- (cc) addressing common thematic challenges in fields of mutual concern and any other objectives consistent with the scope of this Regulation.

Article 3

Policy framework

1 The partnership and cooperation agreements, the association agreements and other existing or future agreements which establish a relationship with partner countries, and the relevant Commission communications and Council conclusions laying down guidelines for European Union policy towards these countries, shall provide an overall policy framework for the programming of Community assistance under this Regulation. Jointly agreed action plans or other equivalent documents shall provide a key point of reference for setting Community assistance priorities.

2 Where no agreements, as mentioned in paragraph 1, between the European Union and partner countries exist, Community assistance may be provided when it proves useful to pursue European Union policy objectives, and shall be programmed on the basis of such objectives.

Article 4

Complementarity, partnership and co financing

1 Community assistance under this Regulation shall normally complement or contribute to corresponding national, regional or local strategies and measures.

2 Community assistance under this Regulation shall normally be established in partnership between the Commission and the beneficiaries. The partnership shall involve, as appropriate, national, regional and local authorities, economic and social partners, civil society and other relevant bodies.

3 The beneficiary countries shall involve, as appropriate, the relevant partners at the appropriate territorial level, in particular at regional and local level, in the preparation, implementation and monitoring of programmes and projects.

4 Community assistance under this Regulation shall normally be co-financed by the beneficiary countries through public funds, contributions from the beneficiaries or other sources. Co-financing requirements may be waived in duly justified cases and when this is necessary to support the development of civil society and non-state actors for measures aimed at promoting human rights and fundamental freedoms and supporting democratisation.

Article 5

Coherence, compatibility and coordination

1 Programmes and projects financed under this Regulation shall be consistent with European Union policies. They shall comply with the agreements concluded by the Community and its Member States with the partner countries and respect commitments under multilateral agreements and international conventions to which they are parties, including commitments on human rights, democracy and good governance.

2 The Commission and the Member States shall ensure coherence between Community assistance provided under this Regulation and financial assistance provided by the Community and the Member States through other internal and external financial instruments and by the European Investment Bank (EIB).

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3 The Commission and the Member States shall ensure coordination of their respective assistance programmes with the aim of increasing effectiveness and efficiency in the delivery of assistance in line with the established guidelines for strengthening operational coordination in the field of external assistance, and for the harmonisation of policies and procedures. Coordination shall involve regular consultations and frequent exchanges of relevant information during the different phases of the assistance cycle, in particular at field level, and shall constitute a key step in the programming processes of the Member States and the Community.

4 The Commission shall, in liaison with the Member States, take the necessary steps to ensure proper coordination and cooperation with multilateral and regional organisations and entities, such as international financial institutions, United Nations agencies, funds and programmes, and non-European Union donors.

TITLE II

PROGRAMMING AND ALLOCATION OF FUNDS

Article 6

Type of programmes

- 1 Community assistance under this Regulation shall be implemented through:
- a country, multi-country and cross-border strategy papers and multi-annual indicative programmes referred to in Article 7, covering:
 - (i) country or multi-country programmes, which deal with assistance to one partner country or address regional and sub-regional cooperation between two or more partner countries, in which Member States may participate;
 - (ii) cross-border cooperation programmes, which deal with cooperation between one or more Member States and one or more partner countries, taking place in regions adjacent to their shared part of the external border of the Community;
 - b joint operational programmes for cross-border cooperation referred to in Article 9, annual action programmes referred to in Article 12 and special measures referred to in Article 13.

2 Multi-country programmes may include trans-regional cooperation measures. For the purposes of this Regulation, trans-regional cooperation shall mean cooperation between Member States and partner countries, addressing common challenges, intended for their common benefit, and taking place anywhere in the territory of the Member States and of partner countries.

Article 7

Programming and allocation of funds

1 For country or multi-country programmes, strategy papers shall be adopted in accordance with the procedure referred to in Article 26(2). Strategy papers shall reflect the policy framework and the action plans referred to in Article 3 and be consistent with the principles and modalities laid down in Articles 4 and 5. Strategy papers shall be established for a period compatible with the priorities set in the policy framework and shall contain multi-annual indicative programmes including indicative multi-annual financial allocations and

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priority objectives for each country or region consistent with those listed in Article 2(2). They shall be reviewed at mid-term or whenever necessary and may be revised in accordance with the procedure referred to in Article 26(2).

2 In establishing country or multi-country programmes, the Commission shall determine the allocations for each programme, using transparent and objective criteria and taking into account the specific characteristics and needs of the country or the region concerned, the level of ambition of the European Union's partnership with a given country, progress towards implementing agreed objectives, including on governance and on reform, and the capacity of managing and absorbing Community assistance.

3 For the sole purpose of cross-border cooperation, in order to establish the list of joint operational programmes referred to in Article 9(1), the indicative multi-annual allocations and the territorial units eligible to participate in each programme, one or, if necessary, more strategy papers shall be adopted in accordance with the procedure referred to in Article 26(2). Such strategy papers shall be drawn up taking into account the principles and modalities laid down in Articles 4 and 5 and shall, in principle, cover a period of up to seven years from 1 January 2007 to 31 December 2013.

4 The Commission shall determine the allocation of funds to the cross-border cooperation programmes, taking into account objective criteria, such as the population of the eligible areas and other factors affecting the intensity of cooperation, including the specific characteristics of the border areas and the capacity for managing and absorbing Community assistance.

5 The European Regional Development Fund (ERDF) shall contribute to cross-border cooperation programmes established and implemented under the provisions of this Regulation. The amount of the contribution from the ERDF for borders with partner countries is set out in the relevant provisions of 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⁽⁹⁾.

6 In the event of crises or threats to democracy, the rule of law, human rights and fundamental freedoms, or of natural or man-made disasters, an emergency procedure may be used to conduct an ad hoc review of strategy papers. This review shall ensure coherence between Community assistance provided under this Regulation and assistance provided under other Community financial instruments, including Regulation (EC, Euratom)⁽¹⁰⁾ of the European Parliament and of ... the Council of establishing an Instrument for Stability.

TITLE III

CROSS-BORDER COOPERATION

Article 8

Geographical eligibility

1 The cross-border cooperation programmes referred to in Article 6(1)(a)(ii) may cover all of the following border regions:

- a all territorial units corresponding to NUTS level 3 or equivalent along the land borders between Member States and partner countries;
- b all territorial units corresponding to NUTS level 3 or equivalent along sea crossings of significant importance;

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- c all coastal territorial units corresponding to NUTS level 2 or equivalent facing a sea basin common to Member States and partner countries.

2 In order to ensure the continuation of existing cooperation and in other justified cases, territorial units adjoining those referred to in paragraph 1 may be allowed to participate in cross-border cooperation programmes under the conditions laid down in the strategy papers referred to in Article 7(3).

3 When programmes are established pursuant to paragraph (1)(b), the Commission may, in agreement with the partners, propose that participation in cooperation be extended to the whole NUTS level 2 territorial unit in whose area the NUTS level 3 territorial unit is located.

4 The list of sea crossings of significant importance shall be defined by the Commission in the strategy papers referred to in Article 7(3) on the basis of distance and other relevant geographical and economic criteria.

Article 9

Programming

1 Cross-border cooperation under this Regulation shall be carried out in the framework of multi-annual programmes covering cooperation for a border or a group of borders and comprising multi-annual measures which pursue a consistent set of priorities and which may be implemented with the support of Community assistance (hereinafter joint operational programmes). The joint operational programmes shall be based on the strategy papers referred to in Article 7(3).

2 Joint operational programmes for land borders and sea crossings of significant importance shall be established for each border at the appropriate territorial level and include eligible territorial units belonging to one or more Member States and one or more partner countries.

3 Joint operational programmes for sea basins shall be multilateral and include eligible territorial units facing a common sea basin belonging to several participating countries, including at least one Member State and one partner country, taking into account the institutional systems and the principle of partnership. They may include bilateral activities supporting cooperation between one Member State and one partner country. These programmes shall be closely coordinated with trans-national cooperation programmes having a partially overlapping geographical coverage and having been established in the European Union pursuant to Regulation (EC) No 1083/2006.

4 Joint operational programmes shall be established by the Member States and partner countries concerned at the appropriate territorial level, in accordance with their institutional system and taking into account the principle of partnership referred to in Article 4. They shall normally cover a period of seven years running from 1 January 2007 to 31 December 2013.

5 Countries, other than the participating countries, which face a common sea basin where a joint operational programme is being established may be associated with that joint operational programme and benefit from Community assistance under the conditions determined in the implementing rules referred to in Article 11.

6 Within one year of the approval of the strategy papers referred to in Article 7(3), the participating countries shall jointly submit proposals for joint operational programmes to the Commission. The Commission shall adopt each joint operational programme after assessing its consistency with this Regulation and the implementing rules.

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7 Joint operational programmes may be revised at the initiative of the participating countries, participating border regions or the Commission to take into account changes in cooperation priorities, socio-economic developments, the results observed from implementation of the measures concerned and from the monitoring and evaluation process, and the need to adjust the amounts of aid available and reallocate resources.

8 Following the adoption of the joint operational programmes, the Commission shall conclude a financing agreement with the partner countries in accordance with the relevant provisions 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⁽¹¹⁾. The financing agreement shall include the legal provisions necessary for the implementation of the joint operational programme and should also be signed by the joint managing authority referred to in Article 10.

9 Participating countries shall, taking into account the principle of partnership, jointly select those actions consistent with the priorities and measures of the joint operational programme that will receive Community assistance.

10 In specific and duly justified cases, where:

- a a joint operational programme cannot be established owing to problems arising in relations between participating countries or between the European Union and a partner country,
- b by 30 June 2010, at the latest, the participating countries have not yet submitted to the Commission a joint operational programme,
- c the partner country does not sign the financing agreement by the end of the year following the adoption of the programme,
- d the joint operational programme cannot be implemented owing to problems arising in relations between participating countries,

the Commission, following consultations with the Member State(s) concerned, shall take the necessary steps to allow the Member State concerned to use the ERDF contribution to the programme pursuant to Regulation (EC) No 1083/2006.

Article 10

Management of programmes

1 Joint operational programmes shall, in principle, be implemented through shared management by a joint managing authority located in a Member State. The joint managing authority may be assisted by a joint technical secretariat.

2 The participating countries may propose to the Commission that the joint managing authority should be located in a partner country, provided that the designated body is in a position to apply in full the criteria laid down in the relevant provisions of Regulation (EC, Euratom) No 1605/2002.

3 For the purpose of this Regulation ‘joint managing authority’ shall mean any public or private authority or body, including the state itself, at national, regional or local level, designated jointly by the Member State or States and the partner country or countries covered by a joint operational programme, having the financial and administrative capacity to manage Community assistance and having the legal capacity to conclude the agreements necessary for the purpose of this Regulation.

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4 The joint managing authority shall be responsible for managing and implementing the joint operational programme in accordance with the principle of sound technical and financial management, and for ensuring the legality and regularity of its operations. To this end, it shall put in place appropriate management, control and accounting systems and standards.

5 The management and control system of a joint operational programme shall provide for proper separation of the management, certification and audit functions, either through a proper segregation of duties within the managing authority or through the designation of separate bodies for certification and audit.

6 In order to allow the joint operational programmes to prepare adequately for implementation, after the adoption of the joint operational programme and before the signature of the financing agreement, the Commission may allow the joint managing authority to use part of the programme budget to start financing programme activities such as the incurring of operational costs of the managing authority, technical assistance and other preparatory actions. The detailed modalities of such a preparatory phase shall be included in the implementing rules referred to in Article 11.

Article 11

Implementing rules

1 Implementing rules laying down specific provisions for the implementation of this Title shall be adopted in accordance with the procedure referred to in Article 26(2).

2 Matters covered by the implementing rules shall include issues such as the rate of cofinancing, preparation of joint operational programmes, the designation and functions of the joint authorities, the role and function of the monitoring and selection committees and of the joint secretariat, eligibility of expenditure, joint project selection, the preparatory phase, technical and financial management of Community assistance, financial control and audit, monitoring and evaluation, visibility and information activities for potential beneficiaries.

TITLE IV

IMPLEMENTATION

Article 12

Adoption of action programmes

1 Action programmes, drawn up on the basis of the strategy papers referred to in Article 7(1), shall be adopted in accordance with the procedure referred to in Article 26(2), normally on an annual basis.

Exceptionally, for instance where an action programme has not yet been adopted, the Commission may, on the basis of the strategy papers and multi-annual indicative programmes referred to in Article 7, adopt measures not provided for in an action programme under the same rules and procedures as apply to action programmes.

2 Action programmes shall specify the objectives pursued, the fields of intervention, the expected results, the management procedures and the total amount of financing planned. They shall take into account the lessons learned from past implementation of Community

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assistance. They shall contain a description of the operations to be financed, an indication of the amounts allocated for each operation and an indicative implementation timetable. They shall include a definition of the type of performance indicators that shall have to be monitored when implementing the measures financed under the programmes.

3 For cross-border cooperation, the Commission shall adopt joint programmes in accordance with the procedures referred to in Article 9.

4 The Commission shall present action programmes and joint cross-border cooperation programmes to the European Parliament and the Member States for their information within one month of their adoption.

Article 13

Adoption of special measures not provided for in the strategy papers or multi-annual indicative programmes

1 In the event of unforeseen and duly justified needs or circumstances, the Commission shall adopt special measures not provided for in the strategy papers or multi-annual indicative programmes (hereinafter special measures).

Special measures may also be used to fund activities to ease the transition from emergency aid to long-term development activities, including activities intended to ensure that the public is better prepared to deal with recurring crises.

2 Where the cost of such measures exceeds EUR 10 000 000, the Commission shall adopt them in accordance with the procedure referred to in Article 26(2).

The procedure referred to in Article 26(2) need not be used for amendments to special measures such as those making technical adjustments, extending the implementation period, reallocating appropriations within the forecast budget, or increasing the size of the budget by less than 20 % of the initial budget, provided these amendments do not affect the initial objectives set out in the Commission decision.

3 Special measures shall specify the objectives pursued, the areas of activity, the expected results, the management procedures used and the total amount of financing planned. They shall contain a description of the operations to be financed, an indication of the amounts allocated for each operation and an indicative implementation timetable. They shall include a definition of the type of performance indicators that will have to be monitored when implementing the special measures.

4 The Commission shall send special measures the value of which does not exceed EUR 10 000 000 to the European Parliament and the Member States for their information within one month of adopting its decision.

Article 14

Eligibility

1 The following shall be eligible for funding under this Regulation for the purposes of implementing action programmes, joint cross-border cooperation programmes and special measures:

- a partner countries and regions and their institutions;

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- b decentralised bodies in the partner countries, such as regions, departments, provinces and municipalities;
- c joint bodies set up by the partner countries and regions and the Community;
- d international organisations, including regional organisations, UN bodies, departments and missions, international financial institutions and development banks, in so far as they contribute to the objectives of this Regulation;
- e Community institutions and bodies, but only for the purposes of implementing support measures of the type referred to in Article 16;
- f European Union agencies;
- g the following entities and bodies of the Member States, partner countries and regions and any other third country complying with the rules on access to the Community's external assistance referred to in Article 21, in so far as they contribute to the objectives of this Regulation:
 - (i) public or parastatal bodies, local authorities or administrations and consortia thereof;
 - (ii) companies, firms and other private organisations and businesses;
 - (iii) financial institutions that grant, promote and finance private investment in partner countries and regions;
 - (iv) non-state actors as defined in (h);
 - (v) natural persons;
- h the following non-state actors:
 - (i) non-governmental organisations;
 - (ii) organisations representing national and/or ethnic minorities;
 - (iii) local citizens' groups and traders' associations;
 - (iv) cooperatives, trade unions, organisations representing economic and social interests;
 - (v) local organisations (including networks) involved in decentralised regional cooperation and integration;
 - (vi) consumer organisations, women's and youth organisations, teaching, cultural research and scientific organisations;
 - (vii) universities;
 - (viii) churches and religious associations and communities;
 - (ix) the media;
 - (x) cross-border associations, non-governmental associations and independent foundations.

2 When essential to achieve the objectives of this Regulation, Community assistance may be granted to bodies or actors which are not explicitly referred to in this Article.

Article 15

Types of measures

- 1 Community assistance shall be used to finance programmes, projects and any type of measure contributing to the objectives of this Regulation.
- 2 Community assistance may also be used:
 - a to finance technical assistance and targeted administrative measures, including those cooperation measures involving public-sector experts dispatched from the Member States and their regional and local authorities involved in the programme;
 - b to finance investments and investment-related activities;
 - c for contributions to the EIB or other financial intermediaries, in accordance with Article 23, for loan financing, equity investments, guarantee funds or investment funds;
 - d for debt relief programmes in exceptional cases, under an internationally agreed debt relief programme;
 - e for sectoral or general budget support if the partner country's management of public spending is sufficiently transparent, reliable and effective, and where it has put in place properly formulated sectoral or macroeconomic policies approved by its principal donors, including, where relevant, the international financial institutions;
 - f to provide interest-rate subsidies, in particular for environmental loans;
 - g to provide insurance against non-commercial risks;
 - h to contribute to a fund established by the Community, its Member States, international and regional organisations, other donors or partner countries;
 - i to contribute to the capital of international financial institutions or the regional development banks;
 - j to finance the costs necessary for the effective administration and supervision of projects and programmes by the countries benefiting from Community assistance;
 - k to finance microprojects;
 - l for food security measures.
- 3 In principle, Community assistance shall not be used to finance taxes, customs duties and other fiscal charges.

Article 16

Support measures

- 1 Community financing may also cover expenditure associated with the preparation, follow-up, monitoring, auditing and evaluation activities directly necessary for the implementation of this Regulation and for the achievement of its objectives, e.g. studies, meetings, information, awareness-raising, publication and training activities, including training and educational measures for partners enabling them to take part in the various stages of the programme, expenditure associated with computer networks for the exchange of information and any other administrative or technical assistance expenditure that the Commission may incur for the management of the programme. It shall also cover expenditure at Commission Delegations on the administrative support needed to manage operations financed under this Regulation.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 1638/2006 of the European Parliament and of the Council. (See end of Document for details)

2 These support measures are not necessarily covered by multi-annual programming and may therefore be financed outside the scope of strategy papers and multi-annual indicative programmes. However, they may also be financed under multi-annual indicative programmes. The Commission shall adopt support measures not covered by multi-annual indicative programmes in accordance with Article 13.

Article 17

Co-financing

1 Measures financed under this Regulation shall be eligible for cofinancing from the following, *inter alia*:

- a Member States, their regional and local authorities and their public and parastatal agencies;
- b EEA countries, Switzerland and other donor countries, and in particular their public and parastatal agencies;
- c international organisations, including regional organisations, and in particular international and regional financial institutions;
- d companies, firms, other private organisations and businesses, and other non-state actors;
- e partner countries and regions in receipt of funding.

2 In the case of parallel cofinancing, the project or programme is split into a number of clearly identifiable sub-projects which are each financed by the different partners providing cofinancing in such a way that the end-use of the financing can always be identified. In the case of joint cofinancing, the total cost of the project or programme is shared between the partners providing the cofinancing, and resources are pooled in such a way that it is not possible to identify the source of funding for any given activity undertaken as part of the project or programme.

3 In the case of joint cofinancing, the Commission may receive and manage funds on behalf of the bodies referred to in paragraph 1(a), (b) and (c) for the purpose of implementing joint measures. Such funds shall be treated as assigned revenue, in accordance with Article 18 of Regulation (EC, Euratom) No 1605/2002.

Article 18

Management procedures

1 The Commission shall implement operations under this Regulation in accordance with Regulation (EC, Euratom) No 1605/2002.

2 The Commission may entrust tasks of public authority, and in particular budget implementation tasks, to the bodies indicated in Article 54(2)(c) of Regulation (EC, Euratom) No 1605/2002 if they are of recognised international standing, comply with internationally recognised systems of management and control and are supervised by a public authority.

3 The Commission may conclude framework agreements with partner countries which shall provide for all measures necessary to ensure the effective implementation of Community assistance and protection of the Community's financial interests.

4 In the case of decentralised management, the Commission may decide to use the procurement or grant procedures of the beneficiary partner country or region, provided that:

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- a the procedures of the beneficiary partner country or region satisfy the principles of transparency, proportionality, equal treatment and non-discrimination and prevent any conflict of interests;
- b the beneficiary partner country or region undertakes to check regularly that the operations financed by the Community budget have been properly implemented, to take appropriate measures to prevent irregularities and fraud, and, if necessary, to take legal action to recover unduly paid funds.

Article 19

Budget commitments

- 1 Budget commitments shall be made on the basis of decisions taken by the Commission in accordance with Articles 9(6), 12(1), 13(1) and 16(2).
- 2 Budget commitments for measures extending over a number of financial years may be split into annual instalments, spread over a number of years.
- 3 Community financing may take one of the following legal forms, inter alia: financing agreements, grant contracts, procurement contracts, employment contracts.

Article 20

Protecting the Community's financial interests

- 1 Any agreements resulting from this Regulation shall contain provisions ensuring the protection of the Community's financial interests, in particular with respect to irregularities, fraud, corruption and any other illegal activity, in accordance with Council Regulations (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests⁽¹²⁾, and (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities⁽¹³⁾ and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)⁽¹⁴⁾.
- 2 Agreements shall expressly entitle the Commission and the Court of Auditors to perform audits, including document audits or an on-the-spot audit of any contractor or subcontractor who has received Community funds. They shall also expressly authorise the Commission to carry out on-the-spot checks and inspections, as provided for in Regulation (Euratom, EC) No 2185/96.
- 3 All contracts resulting from the implementation of Community assistance shall ensure the rights of the Commission and the Court of Auditors under paragraph 2 during and after the performance of the contracts.

Article 21

Participation in tenders and contracts

- 1 Participation in the award of procurement or grant contracts financed under this Regulation shall be open to all natural persons who are nationals of, and legal persons established in, a Member State of the Community, a country that is a beneficiary of this

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Regulation, a country that is a beneficiary of an Instrument for Pre-Accession Assistance set up by Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA)⁽⁴⁵⁾ or a Member State of the EEA.

2 The Commission may, in duly substantiated cases, authorise the participation of natural persons who are nationals of, and legal persons established in, a country having traditional economic, trade or geographical links with neighbouring countries, and the use of supplies and materials of different origin.

3 Participation in the award of procurement or grant contracts financed under this Regulation shall also be open to all natural persons who are nationals of, or legal persons established in, any country other than those referred to in paragraph 1, whenever reciprocal access to their external assistance has been established. Reciprocal access shall be granted whenever a country grants eligibility on equal terms to the Member States and to the recipient country concerned.

Reciprocal access to the Community's external assistance shall be established by means of a specific decision concerning a given country or a given regional group of countries. Such a decision shall be adopted by the Commission in accordance with the procedure referred to in Article 26(2) and shall be in force for a minimum period of one year.

The granting of reciprocal access to the Community's external assistance shall be based on a comparison between the Community and other donors and shall proceed at sectoral or entire country level, whether it be a donor or a recipient country. The decision to grant this reciprocity to a donor country shall be based on the transparency, consistency and proportionality of the aid provided by that donor, including its qualitative and quantitative nature. The beneficiary countries shall be consulted in the process described in this paragraph.

4 Participation in the award of procurement or grant contracts financed under this Regulation shall be open to international organisations.

5 Experts proposed in the context of procedures for the award of contracts need not comply with the nationality rules set out above.

6 All supplies and materials purchased under contracts financed under this Regulation shall originate in the Community or a country eligible under this Article. The term 'origin' for the purpose of this Regulation is defined in the relevant Community legislation on rules of origin for customs purposes.

7 The Commission may, in duly substantiated exceptional cases, authorise the participation of natural persons who are nationals of, and legal persons established in, countries other than those referred to in paragraphs 1, 2 and 3, or the purchase of supplies and materials of different origin from that set out in paragraph 6. Derogations may be justified on the basis of the unavailability of products and services in the markets of the countries concerned, for reasons of extreme urgency, or if the eligibility rules were to make the realisation of a project, a programme or an action impossible or exceedingly difficult.

8 Whenever Community funding covers an operation implemented through an international organisation, participation in the appropriate contractual procedures shall be open to all natural or legal persons who are eligible pursuant to paragraphs 1, 2 and 3 as well as to all natural or legal persons who are eligible pursuant to the rules of that organisation, care being taken to ensure that equal treatment is afforded to all donors. The same rules shall apply in respect of supplies, materials and experts.

Whenever Community funding covers an operation co-financed with a Member State, with a third country, subject to reciprocity as defined in paragraph 3, or with a regional organisation, participation in the appropriate contractual procedures shall be open to all natural or legal persons who are eligible pursuant to paragraphs 1, 2 and 3 as well as to all natural or legal persons who are eligible under the rules of such Member State, third country or regional organisation. The same rules shall apply in respect of supplies, materials and experts.

9 Where Community assistance under this Regulation is managed by a joint managing authority, as referred to in Article 10, the procurement rules shall be those laid down in the implementing rules referred to in Article 11.

10 Tenderers who have been awarded contracts under this Regulation shall respect core labour standards as defined in the relevant International Labour Organisation conventions.

11 Paragraphs 1 to 10 shall be without prejudice to the participation of categories of eligible organisations by nature or by localisation in regard to the objectives of the action.

Article 22

Prefinancing

Interest generated by prefinancing payments to beneficiaries shall be deducted from the final payment.

Article 23

Funds made available to the EIB or other financial intermediaries

1 The funds referred to in Article 15(2)(c) shall be managed by financial intermediaries, by the EIB or any other bank or organisation capable of managing them.

2 The Commission shall adopt implementing provisions for paragraph 1 on a case-by-case basis to cover risk-sharing, the remuneration of the intermediary responsible for implementation, the use and recovery of profits on funds, and the closure of the operation.

Article 24

Evaluation

1 The Commission shall regularly evaluate the results of geographical and cross-border policies and programmes and of sectoral policies and the effectiveness of programming in order to ascertain whether the objectives have been met and enable it to formulate recommendations with a view to improving future operations.

2 The Commission shall send significant evaluation reports to the committee referred to in Article 26 for discussion. These reports and discussions shall feed back into programme design and resource allocation.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 1638/2006 of the European Parliament and of the Council. (See end of Document for details)

TITLE V

FINAL PROVISIONS

Article 25

Annual report

The Commission shall examine the progress made on implementing the measures taken under this Regulation and shall submit to the European Parliament and the Council an annual report on the implementation of Community assistance. This report shall also be submitted to the European Economic and Social Committee and to the Committee of the Regions. It shall contain information relating to the previous year on the measures financed, the results of monitoring and evaluation exercises, and the implementation of budget commitments and payments broken down by country, region and cooperation sector.

Article 26

Committee

- 1 The Commission shall be assisted by a committee.
- 2 Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.
The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at 30 days.
- 3 The committee shall adopt its rules of procedure.
- 4 An observer from the EIB shall take part in the committee's proceedings with regard to questions concerning the EIB.
- 5 In order to facilitate the dialogue with the European Parliament, the Commission shall regularly inform the European Parliament of the committee proceedings and provide the relevant documents including agenda, draft measures and summary records of the meetings in accordance with Article 7(3) of Decision 1999/468/EC.

Article 27

Participation by a third country not listed in the Annex

- 1 To ensure the coherence and effectiveness of Community assistance, the Commission may decide, when adopting action programmes of the type referred to in Article 12 or the special measures referred to in Article 13, that countries, territories and regions eligible for assistance under other Community external assistance instruments and the European Development Fund are eligible for measures under this Regulation where the project or programme implemented is of a global, regional or cross-border nature.
- 2 Provision may be made for this method of financing possibility in the strategy papers referred to in Article 7.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 1638/2006 of the European Parliament and of the Council. (See end of Document for details)

3 The provisions of Article 14 concerning eligibility and the provisions of Article 21 concerning participation in procurement procedures shall be adapted to allow the countries, territories or regions concerned to take part.

4 In the case of programmes financed under the provisions of different Community external assistance instruments, participation in procurement procedures may be open to all natural and legal persons of the countries eligible under the different instruments.

Article 28

Suspension of Community assistance

1 Without prejudice to the provisions on the suspension of aid in partnership and cooperation agreements and association agreements with partner countries and regions, where a partner country fails to observe the principles referred to in Article 1, the Council, acting by a qualified majority on a proposal from the Commission, may take appropriate steps in respect of any Community assistance granted to the partner country under this Regulation.

2 In such cases, Community assistance shall primarily be used to support non-state actors for measures aimed at promoting human rights and fundamental freedoms and supporting the democratisation process in partner countries.

Article 29

Financial envelope

1 The financial envelope for implementation of this Regulation over the period 2007 to 2013 shall be EUR 11 181 000 000, broken down as follows:

- a a minimum of 95 % of the financial envelope shall be allocated to the country and multi-country programmes referred to in Article 6(1)(a)(i);
- b up to 5 % of the financial envelope shall be allocated to the cross-border cooperation programmes referred to in Article 6(1)(a)(ii).

2 Annual appropriations shall be authorised by the budgetary authority within the limits of the financial framework.

Article 30

Review

The Commission shall submit to the European Parliament and the Council by 31 December 2010 a report evaluating the implementation of this Regulation in the first three years with, if appropriate, a legislative proposal introducing the necessary modifications to it, including to the financial breakdown referred to in Article 29(1).

Article 31

Repeal

1 As from 1 January 2007, Regulations (EEC) No 1762/92, (EC) No 1734/94 and (EC) No 1488/96 shall be repealed.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 1638/2006 of the European Parliament and of the Council. (See end of Document for details)

2 The repealed Regulations shall continue to apply for legal acts and commitments of pre-2007 budget years.

Article 32

Entry into force

This Regulation shall enter into force 20 days after its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2007 to 31 December 2013.

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

Done at Strasbourg, 24 October 2006.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

P. LEHTOMÄKI

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 1638/2006 of the European Parliament and of the Council. (See end of Document for details)

ANNEX

Partner countries referred to in Article 1

Algeria
Armenia
Azerbaijan
Belarus
Egypt
Georgia
Israel
Jordan
Lebanon
Libya
Moldova
Morocco
Palestinian Authority of the West Bank and Gaza Strip
Russian Federation
Syria
Tunisia
Ukraine

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 1638/2006 of the European Parliament and of the Council. (See end of Document for details)

- (1) Opinion of the European Parliament of 6 July 2006 (not yet published in the Official Journal) and Council Decision of 17 October 2006.
- (2) OJ C 46, 24.2.2006, p. 1.
- (3) OJ C 139, 14.6.2006, p. 1.
- (4) OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).
- (5) OJ L 181, 1.7.1992, p. 1. Regulation as amended by Regulation (EC) No 2112/2005 (OJ L 344, 27.12.2005, p. 23).
- (6) OJ L 182, 16.7.1994, p. 4. Regulation as last amended by Regulation (EC) No 2110/2005 of the European Parliament and of the Council (OJ L 344, 27.12.2005, p. 1).
- (7) OJ L 189, 30.7.1996, p. 1. Regulation as last amended by Regulation (EC) No 2112/2005.
- (8) OJ L 12, 18.1.2000, p. 1. Regulation as amended by Regulation (EC) No 2112/2005.
- (9) OJ L 210, 31.7.2006, p. 25.
- (10) Not yet published in the Official Journal.
- (11) OJ L 248, 16.9.2002, p. 1.
- (12) OJ L 312, 23.12.1995, p. 1.
- (13) OJ L 292, 15.11.1996, p. 2.
- (14) OJ L 136, 31.5.1999, p. 1.
- (15) OJ L 210, 31.7.2006, p. 82.

Changes to legislation:

There are currently no known outstanding effects for the Regulation (EC) No 1638/2006 of the European Parliament and of the Council.