

Commission Regulation (EC) No 718/2007 of 12 June  
2007 implementing Council Regulation (EC) No 1085/2006  
establishing an instrument for pre-accession assistance (IPA)

PART II

**SPECIFIC PROVISIONS**

TITLE I

**TRANSITION ASSISTANCE AND INSTITUTION BUILDING COMPONENT**

CHAPTER I

**Object of assistance and eligibility**

*Article 64*

**Areas of assistance**

1 Assistance under this component may be granted to the beneficiary countries in particular in the following areas:

- a strengthening of democratic institutions and the rule of law;
- b promotion and protection of the fundamental rights and freedoms contained in the European Charter of Fundamental Rights;
- c public administration reform;
- d reform in the field of justice and home affairs, such as reform of the legal system, the police, the prosecution, the judiciary, the penitentiary systems, and the customs and border control system, with particular emphasis on improving the fight against corruption, organised crime, terrorism, and illegal migration, and establishing information systems linked to these areas;
- e modernisation of the regulatory framework, including support for investment to equip key institutions whose infrastructures or capacity to monitor and enforce legislation need strengthening;
- f establishment or reinforcement of financial control systems;
- g strengthening of the market economy, notably by helping self-organisation of economic actors and directly supporting economic activity, including through assistance to the private sector and help in industrial restructuring, as well as diversifying the economy, modernising key sectors and improving specific areas;
- h development of civil society and dialogue between the government and non-governmental bodies to promote democracy, the rule of law, human rights, respect for and protection of minorities, as well as civil society dialogue;
- i establishment of social dialogue as an element of good governance and to promote fair and just working conditions;
- j promotion of minority integration, reconciliation and confidence-building measures on all levels of society;

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- k environmental policy, based on a high level of protection, promotion of the polluter-pays principle, sustainable utilisation of natural resources, energy efficiency, renewable sources and the progressive adoption of the Community policy in all areas including climate change;
- l improvement of access to financial facilities for small and medium- scale enterprises and public administrations;
- m institution building in the field of nuclear safety, radioactive waste management and radiation protection, in line with the *acquis communautaire* and European Union best practices;
- n support for participation in community programmes, notably those aimed at increasing awareness of European citizenship, and preparation for participation in Community agencies.

2 In addition to the areas covered in paragraph 1, assistance may also be granted under this component to beneficiary countries listed in Annex II to the IPA Regulation, for the following areas:

- a in accordance with Article 2(3)(b) of the IPA Regulation, social, economic and territorial development including, *inter alia*, investments in the areas of regional development, human resources development, and rural development;
- b removal of obstacles to social inclusion and support for inclusive labour markets, in particular through actions aiming at improving living standards, fighting against unemployment and empowering human resources;
- c support to productive sector and services and to the improvement of business-related infrastructures;
- d adaptation, reform or, where appropriate, establishment of educational systems and professional training systems;
- e improvement of access to, and interconnections of, transport, information, energy and other networks;
- f reform of health care systems;
- g improvement of information and communication systems.

#### *Article 65*

#### **Forms of assistance**

- 1 Assistance under this component may, in particular, be provided through:
  - a administrative cooperation measures for the purpose of training and information exchange involving public-sector experts dispatched from Member States or international organisations, in particular through twinning, twinning light and TAIEX;
  - b technical assistance;
  - c investments in the regulatory infrastructure, including independent external multilateral institutions, in particular to support alignment with European Union norms and standards. This shall be aimed at key regulatory institutions and made on the basis of a clear strategy for public administrative reform and alignment with the *acquis*;
  - d grant schemes;
  - e project preparation facilities;
  - f implementation of finance facilities in cooperation with financial institutions;
  - g budgetary support, in accordance with the provisions of Article 15(1) of the IPA Regulation.

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2 For beneficiary countries listed in Annex II to the IPA Regulation, assistance under this component may also be provided through measures and actions of a similar nature as those foreseen under the regional development, human resources development and rural development components, including investment type operations.

3 Assistance may also be used to cover the costs of the Community's contribution to international missions, initiatives or organisations active in the interest of the beneficiary country, including administrative costs.

#### *Article 66*

### **Eligibility of expenditure**

1 Expenditure under this component shall be eligible if it has been incurred after the procurements, contracts and grants have been signed, except in the cases explicitly provided for in Regulation (EC, Euratom) No 1605/2002.

2 In addition to the rules set out in Article 34(3), the following expenditure shall not be eligible:

- a any leasing costs;
- b depreciation costs.

3 By way of derogation from Article 34(3), it shall be decided on a case by case basis whether the following expenditure is eligible:

- a operating costs, including rental costs, exclusively related to the period of co-financing of the operation;
- b value added taxes, if the following conditions are fulfilled:
  - (i) the value added taxes are not recoverable by any means;
  - (ii) it is established that they are borne by the final beneficiary, and
  - (iii) they are clearly identified in the project proposal.

#### *Article 67*

### **Aid intensities and rate of Community contribution**

1 For the purposes of this component, the eligible expenditure as referred to in Article 38(1) shall be based on the public expenditure in the case of decentralised management, and on the total expenditure in the case of centralised and joint management.

2 In the case of decentralised management, in addition to the general rules set out in Articles 37 and 38, this paragraph shall apply to assistance under this component.

In the event of grants, final beneficiaries may be required to contribute to the operation's eligible costs. In the case of an investment operation, the Community contribution shall not exceed 75 % of the public expenditure, the other 25 % being provided from public funds in the beneficiary country. In exceptional and duly justified cases, however, the Community contribution can exceed 75 % of the public expenditure.

Institution building activities shall require a degree of co-financing by the final beneficiary and/or public funds in the beneficiary country. In duly justified cases,

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however, institution building activities may be financed up to 100 % by Community funds.

Assistance provided through administrative cooperation measures as referred to in Article 65(1)(a) may be funded 100 % by Community funds.

3 In the event of centralised or joint management, the Commission shall decide the rate of the Community contribution, which may amount to 100 % of the eligible expenditure.

## CHAPTER II

### Programming

#### *Article 68*

#### **Programming framework**

Assistance shall in principle take the form of:

- national programmes,
- regional and horizontal programmes and facilities.

#### *Article 69*

#### **National programmes**

1 National programmes shall be adopted annually by the Commission on the basis of project proposals from the beneficiary country, which shall take into account the principles and priorities set out in the multi-annual indicative planning documents referred to in Article 5.

2 Project proposals shall in particular list the priority axes to be covered in the beneficiary country concerned, which may include the areas of assistance laid down in Article 64. The relevant stakeholders shall be consulted while the project proposals are being drafted.

3 Each year, following discussions between the Commission and the beneficiary country about the project proposals, project fiches shall be submitted to the Commission by the beneficiary country. The project fiches shall set out clearly the priority axes, the envisaged operations and their chosen implementing methods. Financing proposals shall be prepared by the Commission in view of the project fiches.

4 Financing proposals shall be adopted by means of a financing decision, in accordance with Article 8.

5 A financing agreement as provided for in Article 8 shall be concluded by the Commission and the beneficiary country.

#### *Article 70*

#### **Participation in Community programmes within national programmes**

1 Assistance may be granted to support the participation of beneficiary countries in Community programmes. The participation shall be set down in the national programmes.

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2 The total funds given in Community support for participation in Community programmes shall not exceed the limit set down in the national programme.

3 The participation of beneficiary countries in Community programmes shall follow the specific terms and conditions set out for each such programme in the memorandum of understanding to be concluded by the Commission and the beneficiary country, in accordance with the agreements establishing the general principles for participation of the beneficiary countries in Community programmes. It shall include provisions on both the total amount of the beneficiary country's contribution and the amount funded by assistance under the IPA regulation.

#### *Article 71*

### **Participation in Community agencies within national programmes**

1 Assistance may be granted to support the participation of the beneficiary countries in Community agencies. The participation shall be set down in the national programmes.

2 The beneficiary countries may be invited to participate on an *ad hoc* basis in the work of various Community agencies. The costs of their participation may be funded by assistance provided under the IPA Regulation in a similar way to that applicable to participation in Community programmes.

#### *Article 72*

### **Regional and horizontal programmes**

1 The Commission shall draw up regional and horizontal programmes, in full coherence and coordination with national programmes, on the basis of the relevant multi-annual indicative planning documents and in consultation with the relevant stakeholders.

2 The regional and horizontal programmes shall be designed to promote regional cooperation and to strengthen multi-country exchanges in the beneficiary countries, and to support initiatives encouraging beneficiary countries to cooperate in areas of common interest.

3 The regional programme shall cover beneficiary countries in the Western Balkans. The programme shall in particular target reconciliation, reconstruction and political cooperation in the Region, with a view to supporting the implementation of the Stability Pact for South East Europe.

4 Horizontal programmes shall cover some or all beneficiary countries in areas of common interest where assistance can be implemented more effectively and economically through such programmes than through national programmes.

5 Under the regional and horizontal programmes, assistance may be granted in areas such as project preparation facility, support to civil society, customs, support for small and medium-scale enterprises, municipal finance facilities and municipal infrastructure, statistics, nuclear safety, information and communication.

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## CHAPTER III

### Implementation

#### Section 1

#### **Framework for implementation and principles**

##### Article 73

#### **General principles**

- 1 Assistance under this component shall be granted through centralised, decentralised or joint management, in accordance with Articles 53 of Regulation (EC, Euratom) No 1605/2002.
- 2 The objective shall be decentralised management where national programmes are concerned.
- 3 Regional and horizontal programmes shall be implemented by the Commission on a centralised basis or by joint management with international organisations as defined by Article 43d of Regulation (EC, Euratom) No 1605/2002.

##### Article 74

#### **Structure and authorities in the event of centralised and joint management**

In the event of centralised or joint management, the national IPA coordinator shall be the sole contact person of the Commission, in accordance with Article 32.

##### Article 75

#### **Structure and authorities in the event of decentralised management**

- 1 Where, in the event of decentralised management, in accordance with Article 22(2)(b), the national IPA coordinator exercises his responsibility for the programming of this component at national level, he shall carry out the following tasks:
  - a organise the preparation of the project proposals as referred to in Article 69,
  - b elaborate and present to the Commission the project fiches referred to in Article 69,
  - c monitor the technical execution of the national programmes.

- 2 In accordance with Article 31, the operating structure shall consist of one or more implementing agencies, which shall be established within the national administration of the beneficiary country or under its direct control.

The national authorising officer shall, after consulting the national IPA coordinator, designate programme authorising officers to head the implementing agencies.

The programme authorising officers shall be officials within the state administration of the beneficiary country. They shall be responsible for the activities carried out by the implementing agencies in accordance with Article 28.

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3 Programme authorising officers shall designate officials within the national administration as senior programme officers. Under the overall responsibility of the programme authorising officer concerned, senior programme officers shall carry out the following tasks:

- a be responsible for the technical aspect of the operations within line ministries,
- b assist the programme authorising officers in the good and timely preparation and implementation of operations at technical level,
- c be in charge of the coordination within each priority axis set down in the beneficiary country's project proposal.

### *Article 76*

#### **Accreditation of the operating structure and conferral of management powers**

1 Where Community funds have been managed by existing national bodies in the beneficiary countries under Regulation (EEC) No 3906/89 or Regulation (EC) No 2500/2001 prior to the date of entry into force of this Regulation, those bodies (hereinafter referred to as the 'existing national bodies') shall manage funds under the transition assistance and institution building component, until the Commission adopts a Decision on conferral of management powers.

2 In no case the existing national bodies can manage funds under the transition assistance and institution building component without a conferral of management powers under this Regulation for more than one year from the entry into force of this Regulation.

3 The Commission shall decide whether to confer management powers on the existing national bodies in particular having regard to the list of deviations submitted in accordance with paragraph 4 and the decision taken by the national authorising officer in accordance with paragraph 5.

4 The national authorising officer shall carry out an assessment of the operating structure, which include the existing national bodies, with regard to the requirements referred to in Article 11. In particular, he shall establish a list of any requirements under this Regulation, as set out in Article 11, which the operating structure does not comply with, based on an opinion of an external auditor functionally independent from all actors in the management and control system.

The list of deviations shall be sent to the Commission at the latest four months after the entry into force of this Regulation.

5 Where the non-compliance referred to in paragraph 4 is deemed to be compatible with the efficient and effective functioning of the operating structures, the national authorising officer may decide to accredit the bodies concerned under this Regulation.

At the latest five months after the entry into force of this Regulation, he shall send to the Commission a decision relating to the accreditation of the bodies concerned. This decision shall include a roadmap, with time bound objectives, laying down the steps to be taken to remedy the non-compliance as set out in the list referred to in paragraph 4. The roadmap shall be agreed with the Commission.

6 Where the non-compliance referred to in paragraph 4 is not deemed to be compatible with the efficient and effective functioning of an operating structure, the national authorising officer shall proceed to establish an accreditation for the operating structure concerned, in accordance with the provisions of Article 13.

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7 In the event the Commission decides to confer management powers on the existing national bodies under this Regulation, the Commission Decision may lay down further conditions on the national authorities. In the event of further conditions, the Commission shall set a time limit for compliance by the national authorities for the conferral of management powers to remain effective. The Commission Decision shall also lay down the list of *ex ante* controls as referred to in Articles 14(3).

8 Irrespective of the national authorising officer's decision, the Commission may decide to maintain, suspend, or withdraw the conferral of management powers on any of the bodies concerned at any time.

9 At all stages, the national authorising officer shall ensure that all the information required by the Commission is provided by the beneficiary country.

#### *Article 77*

### **Implementation principles in the event of twinning projects**

1 Twinning projects shall be set up in the form of a grant, whereby the selected Member State administrations agree to provide the requested public sector expertise against the reimbursement of the expenses thus incurred.

The grant may in particular provide for the long term secondment of an official assigned to provide full time counsel to the administration of the beneficiary country as resident twinning advisor.

The twinning grant shall be established in accordance with relevant provisions of Part One, Title VI on grants of Regulation (EC, Euratom) No 1605/2002 and Commission Regulation (EC, Euratom) No 2342/2002.

2 A twinning manual including notably a system of fixed rates and prices for the reimbursement of the provided public sector expertise by the selected Member State administrations shall be established by the Commission and updated regularly.

#### *Article 78*

### **Implementation principles in the event of participation in Community programmes and agencies**

In the case of participation in Community programmes and agencies, implementation shall consist in the payment, to the programme or agency budget, of the part of the financial contribution of the beneficiary country which is financed under IPA. The payment shall be made by the national fund in the case of decentralised management and by the Commission in the case of centralised management.



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## Section 2

### **Financial management**

#### Article 79

#### **Payments under decentralised management**

1 By way of derogation from Article 40(6), when the ceiling of 95 % is reached, the national authorising officer shall only submit a new certified statement of expenditure and information about the amounts recovered when he requests the payment of the final balance.

2 Pre-financing shall in principle represent 50 % of the Community contribution to the programme concerned. It may be paid in yearly instalments. The rate of 50 % may be raised if the national authorising officer demonstrates that the resulting amount will not cover the pre-financing of the contracts and grants signed at national level.

3 The amount to be pre-financed shall be calculated as the sum of the estimate of the amount to be contracted by year, and the actual amount for which contractual obligations have been entered into in the previous years. With the exception of that concerning participation in Community programmes and agencies, pre-financing shall only be paid once the first call for tender or call for proposals is launched.

4 The payments for the participation in Community programmes and agencies may amount to 100 % of the Community contribution relating to this participation.

#### Article 80

#### **Retention of documents**

By way of derogation from Article 48, written records of the entire procurement, grant award and contracting procedure under this component shall be retained by the operating structure for a period of at least seven years from the payment of the balance of the contract.

#### Article 81

#### **Property of interest**

By way of derogation from Article 36, interest generated by the financing by the Community of a programme shall be declared to the Commission whenever a payment application is submitted to the Commission.

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### Section 3

#### **Evaluation and monitoring**

##### *Article 82*

#### **Evaluation**

1 All programmes under the transition assistance and institution building component shall be subject to interim and/or *ex post* evaluation, in accordance with Article 21 of Commission Regulation (EC, Euratom) No 2342/2002.

2 Prior to the conferral of management powers on the beneficiary country, both interim and *ex post* evaluations shall be carried out. These shall be performed by the Commission.

After the conferral of management powers, the responsibility for carrying out interim evaluations shall lie with the beneficiary country, without prejudice to the Commission's rights to perform any *ad hoc* interim evaluations of the programmes it deems necessary.

*Ex post* evaluation shall remain a prerogative of the Commission even after the conferral of management powers to the beneficiary country.

3 In line with Article 22 of the IPA Regulation, the executive summaries relating to interim evaluation and the *ex post* evaluation reports shall be sent to the IPA Committee for discussion.

##### *Article 83*

#### **Monitoring**

1 In the event of decentralised management, in accordance with Article 59, the national IPA coordinator shall establish a sectoral monitoring committee for the transition assistance and institution building component, hereinafter referred to as the 'TAIB committee'.

2 The TAIB committee shall meet at least twice a year, at the initiative of the beneficiary country or the Commission. It shall draw up its rules of procedure, in compliance with a sectoral monitoring committee mandate set out by the Commission, and within the institutional, legal and financial framework of the beneficiary country concerned. It shall adopt these rules of procedure in agreement with the national IPA coordinator, the national authorising officer and the IPA monitoring committee.

3 The TAIB committee shall be chaired by the national IPA coordinator. Its members shall include the national authorising officer, the programme authorising officers and, where appropriate, other representatives of the operating structure, representatives of the Commission, as well as, where appropriate, representatives of international financial institutions and civil society, designated by the beneficiary country in agreement with the Commission.

4 In accordance with Article 59(2), the TAIB committee shall satisfy itself as to the effectiveness and quality of the programmes and operations concerned by, in particular:

- a reviewing implementation status reports detailing financial and operational progress of the programmes;
- b reviewing the achievement of objectives and results of the programmes;
- c reviewing procurement plans as well as relevant evaluation recommendations;

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- d discussing problematic issues and operations;
- e proposing corrective actions as appropriate;
- f reviewing the cases of fraud and irregularities and present the measures taken to recover the funds and to avoid the recurrence of similar cases;
- g reviewing the annual audit work plan prepared by the audit authority and the findings and recommendations of the audits carried out.

5 The TAIB committee shall monitor all ongoing programmes under this component. In the case of, inter alia, investment operations, transfer of assets or privatisations, the beneficiary country shall monitor the programmes until their closure and shall notify the TAIB committee of any changes to the results of these programmes that significantly affect their impact, sustainability and ownership.

6 The TAIB committee may be assisted by sectoral monitoring sub-committees, set up by the beneficiary country to monitor programmes and operations of this component, grouped by monitoring sectors. Sub-committees shall report to the TAIB committee. They shall draw up and adopt their internal rules of procedure, in compliance with a mandate to be set out by the Commission.

#### *Article 84*

### **Sectoral annual and final reports on implementation**

1 In the event of decentralised management, the operating structure shall send the Commission, the national IPA coordinator and the national authorising officer a sectoral annual report by 30 June each year.

2 A sectoral final report shall be submitted to the Commission, the national IPA coordinator and the national authorising officer at the latest 6 months after the closure of the programme. The sectoral final report shall cover the whole period of implementation and include the last sectoral annual report.

3 The sectoral reports shall be examined by the TAIB committee prior to their transmission to the Commission, the national IPA coordinator and the national authorising officer.

4 The sectoral reports shall include the following information:

- a quantitative and qualitative elements about the progress made in implementing the programme, priority axes or operations, in relation to specific, verifiable targets;
- b detailed information about the financial implementation of the programme;
- c information on the steps taken by the operating structure or the TAIB committee to ensure the quality and effectiveness of implementation, in particular:
  - (i) the monitoring and evaluation measures, including data collection arrangements;
  - (ii) a summary of any significant problems encountered in implementing the programme and any subsequent measures taken;
  - (iii) the use made of technical assistance;
- d information on the activities to provide information on and publicise the programme, in accordance with Article 62.

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## TITLE II

### CROSS-BORDER COOPERATION COMPONENT

#### CHAPTER I

##### Object of assistance and eligibility

###### *Article 85*

##### **Additional definitions for the cross-border cooperation component**

For the purpose of this Title, in addition to the definitions provided in Article 2, 'participating countries' shall mean Member States and/or beneficiary countries which participate in a cross-border programme under this component.

###### *Article 86*

##### **Areas and forms of assistance**

- 1 The cross-border cooperation component shall provide assistance to the following:
  - a cross-border cooperation between one or more Member States and one or more beneficiary countries;
  - b cross-border cooperation between two or more beneficiary countries.
- 2 The Community assistance under paragraph 1 shall be aimed at strengthening cross-border cooperation through joint local and regional initiatives, combining both external aid and economic and social cohesion objectives. In particular, the cooperation shall pursue one or more of the following broad objectives:
  - a promoting sustainable economic and social development in the border areas;
  - b working together to address common challenges in fields such as environment, natural and cultural heritage, public health and the prevention of and fight against organised crime;
  - c ensuring efficient and secure borders;
  - d promoting joint small scale actions involving local actors from the border regions.
- 3 The objectives referred to in paragraph 2 may in particular be pursued by:
  - a encouraging entrepreneurship, in particular, the development of small and medium-sized enterprises, tourism, culture, and cross-border trade;
  - b encouraging and improving the joint protection and management of natural and cultural resources as well as the prevention of natural and technological risks;
  - c supporting links between urban and rural areas;
  - d reducing isolation through improved access to transport, information and communication networks and services, and cross-border water, waste and energy systems and facilities;
  - e developing collaboration, capacity and joint use of infrastructures, in particular in sectors such as health, culture, tourism and education;
  - f promoting legal and administrative cooperation;

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- g ensuring efficient border management, facilitating legal trade and passage while securing borders against smuggling, trafficking, organised crime, communicable diseases and illegal migration, including transit migration;
- h encouraging cross-border contact at regional and local level, enhancing exchanges and deepening economic, social, cultural and educational cooperation between local communities;
- i promoting the integration of cross-border labour markets, local employment initiatives, gender equality and equal opportunities, training and social inclusion;
- j promoting the sharing of human resources and facilities for research and technology development.

4 The cross-border cooperation component may also support, where appropriate, the participation of eligible regions of the beneficiary countries in transnational and interregional programmes under the European territorial cooperation objective of the Structural Funds and in multilateral sea basin programmes under Regulation (EC) No 1638/2006 of the European Parliament and of the Council<sup>(1)</sup>. The rules governing the participation of beneficiary countries in the above programmes shall be established in the relevant financing agreements.

#### *Article 87*

### **Partnership**

The provisions of Article 11(1) and (2) of Council Regulation (EC) No 1083/2006<sup>(2)</sup> shall apply *mutatis mutandis* to Member States and to beneficiary countries in the context of the cross-border cooperation referred to in Article 86(1).

#### *Article 88*

### **Territorial eligibility**

1 For the purposes of cross-border cooperation as referred to in Article 86(1)(a), the eligible areas for financing shall be as follows:

- a NUTS level 3 regions or, in the absence of NUTS classification, equivalent areas along land borders between the Community and the beneficiary countries;
- b NUTS level 3 regions or, in the absence of NUTS classification, equivalent areas along maritime borders between the Community and the beneficiary countries separated, as a general rule, by a maximum of 150 kilometres, taking into account potential adjustments needed to ensure the coherence and continuity of the cooperation action.

Immediately following the entry into force of this Regulation, the Commission shall adopt the list of the eligible regions in the Community and in the beneficiary countries. This list shall be valid from 1 January 2007 to 31 December 2013.

2 For the purposes of cross-border cooperation as referred to in Article 86(1)(b), the eligible areas for financing shall be as follows:

- a NUTS level 3 regions or, in the absence of NUTS classification, equivalent areas along land borders between beneficiary countries;
- b NUTS level 3 regions or, in the absence of NUTS classification, equivalent areas along maritime borders between beneficiary countries separated, as a general rule, by a maximum of 150 kilometres, taking into account potential adjustments needed to ensure the coherence and continuity of the cooperation action.

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The list of eligible regions shall be included in the relevant cross-border programmes referred to in Article 94.

3 For the purposes of participation in the programmes referred to in Article 86(4), the eligible regions of the beneficiary countries shall be established in the relevant programming document, as appropriate.

### *Article 89*

#### **Eligibility of expenditure**

1 Expenditure under this component shall be eligible if it has actually been paid between 1 January 2007 and 31 December of the third year following the last budgetary commitment, for operations or part of operations implemented within Member States, and incurred after the signature of the financing agreement for operations or part of operations implemented within beneficiary countries.

2 In addition to the rules set out in Article 34(3), the following expenditure shall not be eligible:

- a interest on debt;
- b the purchase of land for an amount exceeding 10 % of the eligible expenditure of the operation concerned.

3 By way of derogation from Article 34(3), the following expenditure shall be eligible:

- a value added taxes, if the following conditions are fulfilled:
  - (i) they are not recoverable by any means;
  - (ii) it is established that they are borne by the final beneficiary; and
  - (iii) they are clearly identified in the project proposal.
- b charges for transnational financial transactions;
- c where the implementation of an operation requires a separate account or accounts to be opened, the bank charges for opening and administering the accounts;
- d legal consultancy fees, notarial fees, costs of technical or financial experts, and accountancy or audit costs, if they are directly linked to the co-financed operation and are necessary for its preparation or implementation;
- e the cost of guarantees provided by a bank or other financial institutions, to the extent that the guarantees are required by national or Community legislation;
- f overheads, provided they are based on real costs attributable to the implementation of the operation concerned. Flat-rates based on average costs may not exceed 25 % of those direct costs of an operation that can affect the level of overheads. The calculation shall be properly documented and periodically reviewed.

4 In addition to the technical assistance for the cross-border programme referred to in Article 94, the following expenditure paid by public authorities in the preparation or implementation of an operation shall be eligible:

- a the costs of professional services provided by a public authority other than the final beneficiary in the preparation or implementation of an operation;
- b the costs of the provision of services relating to the preparation and implementation of an operation provided by a public authority that is itself the final beneficiary and which is executing an operation for its own account without recourse to other outside

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service providers if they are additional costs and relate either to expenditure actually and directly paid for the co-financed operation.

The public authority concerned shall either invoice the costs referred to in point (a) of this paragraph to the final beneficiary or certify those costs on the basis of documents of equivalent probative value which permit the identification of real costs paid by that authority for that operation.

The costs referred to in point (b) of this paragraph must be certified by means of documents which permit the identification of real costs paid by the public authority concerned for that operation.

5 Without prejudice to the provisions of paragraphs 1 to 4, further rules on eligibility of expenditure may be laid down by the participating countries in the cross-border programme.

#### *Article 90*

#### **Aid intensities and rate of Community contribution**

1 For the purposes of this component, the eligible expenditure as referred to in Article 38(1) shall be based either on the public expenditure or on the total expenditure, as agreed by the participating countries and laid down in the cross-border programme.

2 The Community contribution for cross-border programmes at the level of priority axis shall not exceed the ceiling of 85 % of the eligible expenditure.

3 The Community contribution for each priority axis shall not be less than 20 % of the eligible expenditure.

4 No operation shall benefit from a higher co-financing rate than the one relating to the priority axis concerned.

5 During the period of eligibility referred to in paragraph 1 of Article 89, in addition to the provisions of Article 34(4):

- a an operation may receive Community assistance under only one cross-border programme at a time;
- b an operation shall not receive assistance to a value greater than the total allocated public expenditure.

6 For State aid to enterprises in the meaning of Article 87 of the Treaty, public aid granted under cross-border programmes shall observe the ceilings on State aid.

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## CHAPTER II

### **Programming**

#### *Section 1*

#### **Programmes**

##### *Article 91*

#### **Preparation and approval of cross-border programmes**

1 Assistance to the cross-border cooperation referred to in Article 86(1) shall in principle be granted within the framework of multi-annual programmes for cross-border cooperation, hereinafter referred to as the ‘cross-border programmes’.

2 Cross-border programmes shall be drawn up for each border or group of borders by an appropriate grouping at NUTS level 3 regions or, in the absence of NUTS classification, equivalent areas.

3 Each cross-border programme shall be jointly drawn up by the participating countries, in cooperation with the partners referred to in Article 11 of Regulation (EC) No 1083/2006.

4 The participating countries shall jointly submit a proposal for a cross-border programme to the Commission, containing all the elements referred to in Article 94.

5 The Commission shall appraise the proposed cross-border programme to determine whether it contains all the elements referred to in Article 94 and whether it contributes to the goals and priorities of the relevant multi-annual indicative planning document(s) referred to in Article 5.

Where the Commission considers that a cross-border programme does not contain all the elements referred to in Article 94 or is not in line with the goals and priorities of the multi-annual indicative planning document(s), it may invite the participating countries to provide all necessary additional information and, where appropriate, to revise the proposed programme accordingly.

6 The Commission shall adopt the cross-border programme by decision.

##### *Article 92*

#### **Financing agreements**

1 For cross-border programmes concerning the cooperation referred to in Article 86(1) (a), multi-annual financing agreements shall be concluded between the Commission and each of the beneficiary countries participating in the programme, on the basis of the decision referred to in Article 91(6).

Where the cross-border programme is implemented under the transitional arrangements referred to in Article 99, annual financing agreements shall be concluded between the Commission and each of the beneficiary countries participating in the programme. Each such financing agreement shall cover the Community contribution for the beneficiary



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country and the year concerned, as specified in the financing plan referred to in Article 99(2).

2 For cross-border programmes concerning the cooperation referred to in Article 86(1) (b), annual financing agreements shall be concluded between the Commission and each of the beneficiary countries participating in the programme on the basis of the decision referred to in Article 91(6). Each such financing agreement shall cover the Community contribution for the beneficiary country and the year concerned, as specified in the financing plan referred to in Article 94(2), second subparagraph.

### *Article 93*

#### **Revision of cross-border programmes**

1 At the initiative of the participating countries or that of the Commission in agreement with the participating countries, cross-border programmes may be re-examined and, if necessary, the remainder of the programme revised, in one or more of the following cases:

- a in order to update the financing plan, according to the revision of the multi-annual indicative financial framework referred to in Article 5 of the IPA Regulation;
- b following significant socio-economic changes;
- c in order to take greater or different account of major changes in Community, national or regional priorities;
- d in the light of the evaluation referred to in Article 109 or Article 141;
- e following implementation difficulties;
- f following the termination of transitional arrangements referred to in Article 100 or any other modification of the implementing provisions, including the transition in the beneficiary countries from centralised to decentralised management.

2 The Commission shall adopt the revised cross-border programme by decision and a new financing agreement(s) as mentioned in Article 92 shall be concluded accordingly. Where relevant, the provisions of Article 9(3) of the IPA Regulation shall apply.

### *Article 94*

#### **Content of cross-border programmes**

- 1 Each cross-border programme shall contain the following information:
- a a list of the eligible areas covered by the programme in accordance with Article 88, including the flexibility areas as referred to in Article 97;
  - b an analysis of the situation of the eligible cooperation areas in terms of strengths and weaknesses and the medium term needs and objective deriving from that analysis;
  - c a description of the cooperation strategy and the priorities and measures chosen for assistance, having regard to the relevant multi-annual indicative planning document(s) of the beneficiary country(ies) and other relevant national and regional strategic documents, as well as the results from the *ex ante* evaluation referred to in Article 109 or in Article 141;
  - d information on the priority axes, the related measures 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 effectiveness of the targets implementing the priorities;

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- e the rules on eligibility of expenditure referred to in Article 89;
- f a specific technical assistance priority axis covering the preparatory, management, monitoring, evaluation, information and control activities related to the implementation of the programme, together with activities to reinforce the administrative capacity for implementing the programme, up to a maximum of 10 % of the Community contribution allocated to the programme. In exceptional cases, as agreed by the Commission and the participating countries, an amount above 10 % of the Community contribution for the programme may be allocated to this priority;
- g information on complementarity with measures financed by other IPA components or other Community instruments, where relevant;
- h the implementing provisions for the cross-border programme, including:
  - (i) designation by the participating countries of the structures and authorities stipulated in Article 102 and, where applicable, Article 139;
  - (ii) a description of the monitoring and evaluation systems;
  - (iii) as applicable, 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) as applicable, a definition of the procedures for the mobilisation and circulation of financial flows in order to ensure their transparency;
  - (v) the elements aimed at ensuring the publicity and the information of the cross-border programme as referred to in Article 62;
  - (vi) as applicable, a description of the procedures agreed between the Commission and the participating countries for the exchange of computerised data.

2 Furthermore, the cross-border programmes concerning cooperation referred to under Article 86(1)(a), shall contain a single financing plan based on the multi-annual indicative financial framework with no breakdown by participating countries, comprising a table specifying for each year covered by the multi-annual indicative financial framework and for each priority axis, the amount of the Community contribution and its rate, as well as the amount financed by the national counterparts.

The cross-border programmes concerning cooperation referred to under Article 86(1)(b) shall contain a financing plan based on the multi-annual indicative financial framework comprising a table for each participating country specifying for each year covered by the multi-annual indicative financial framework and for each priority axis, the amount of the Community contribution and its rate, as well as, where appropriate, the amount financed by the national counterparts.

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## Section 2

### Operations

#### Article 95

#### **Selection of operations**

1 Cross-border programmes shall finance joint operations which have been jointly selected by the participating countries through a single call for proposals covering the whole eligible area.

Participating countries may also identify joint operations outside calls for proposals. In that event, the joint operation shall be specifically mentioned in the cross-border programme or, if it is coherent with the priority or measures of the cross-border programme, shall be identified any time after the adoption of the programme in a decision taken by the joint monitoring committee referred to in Article 110 or in Article 142.

2 Operations selected for cross-border programmes shall include final beneficiaries from at least two participating countries which shall cooperate in at least one of the following ways for each operation: joint development, joint implementation, joint staffing and joint financing.

3 For cross-border programmes concerning cooperation referred to under Article 86(1)(a), operations selected shall include beneficiaries for at least one of the participating Member States and one of the participating beneficiary countries.

4 The selected operations fulfilling the above-mentioned conditions may be implemented in a single country provided that they deliver a clear cross-border benefit.

5 Each programme shall establish eligibility rules for the selection of operations which prevent a duplication of efforts among different cross-border programmes, being under the IPA or other Community instruments.

#### Article 96

#### **Responsibilities of the lead beneficiary and the other beneficiaries**

1 For cross-border programmes concerning the cooperation referred to under Article 86(1)(a), the final beneficiaries of an operation shall appoint a lead beneficiary among themselves prior to the submission of the proposal for the operation. The lead beneficiary shall assume the following responsibilities:

- a it shall lay down the arrangements for its relations with the final beneficiaries participating in the operation in an agreement comprising, *inter alia*, provisions guaranteeing the sound financial management of the funds allocated to the operation, including the arrangements for recovering amounts unduly paid;
- b it shall be responsible for ensuring the implementation of the entire operation;
- c it shall be responsible for transferring the Community contribution to the final beneficiaries participating in the operation;
- d it shall ensure that the expenditure presented by the final beneficiaries participating in the operation has been paid for the purpose of implementing the operation and

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corresponds to the activities agreed between the final beneficiaries participating in the operation;

- e it shall verify that the expenditure presented by the final beneficiaries participating in the operation has been validated by the controllers referred to in Article 108.

2 For cross-border programmes concerning cooperation referred to under Article 86(1) (a) implemented under the transitional arrangements laid down in Article 99:

- a the final beneficiaries of an operation in the participating Member States shall appoint a lead beneficiary among themselves prior to the submission of the proposal for the operation. The lead beneficiary shall assume the responsibilities under points (a) to (e) of paragraph 1 for the part of the operation taking place in the Member States;
- b the final beneficiaries of an operation in each participating beneficiary country shall appoint a lead beneficiary among themselves prior to the submission of the proposal for the operation. The lead beneficiary shall assume the responsibilities listed under points (a) to (d) of paragraph 1 for the part of the operation taking place in the respective country.

The lead beneficiaries of the participating Member States and beneficiary countries shall ensure a close coordination of the implementation of the operation.

3 For cross-border programmes concerning cooperation referred to under Article 86(1) (b), the final beneficiaries of an operation in each participating beneficiary country shall appoint a lead beneficiary among themselves prior to the submission of the proposal for an operation. The lead beneficiary shall assume the responsibilities listed under points (a) to (d) of paragraph 1 for the part of the operation taking place in the respective country.

The lead beneficiaries of the participating beneficiary countries shall ensure a close coordination of the implementation of the operation.

4 Each final beneficiary participating in the operation is responsible for irregularities in the expenditure which it has declared.

#### *Article 97*

### **Special conditions governing the location of operations**

1 In duly justified cases, Community funding may finance expenditure incurred in implementing operations or parts of operations up to a limit of 20 % of the amount of the Community contribution to the cross-border programme in NUTS level 3 regions or, in the absence of NUTS classification, equivalent areas, adjacent to the eligible areas for that programme. In exceptional cases as agreed between the Commission and the participating countries, this flexibility may be extended to the NUTS level 2 regions or, in the absence of NUTS classification, equivalent areas in which the eligible areas are located.

At project level, in exceptional cases, expenditure incurred by partners located outside the programme area as defined in the first sub-paragraph may be eligible, if the project could only achieve its objectives with that partner's participation.

2 The participating countries of each programme shall ensure the legality and regularity of these expenditures.

The selection of operations outside the eligible area as referred to under paragraph 1 shall be confirmed:

- a by the managing authority referred to in Article 102 for programmes or part of programmes implemented in shared management with Member States;

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- b by the operating structures referred to in Article 28 for programmes or part of programmes implemented in beneficiary countries under decentralised management;
- c by the Commission for programmes or part of programmes implemented in beneficiary countries under centralised management.

## CHAPTER III

### Implementation

#### Section 1

#### *General provisions*

#### *Article 98*

#### **Implementing modalities**

1 For cross-border cooperation referred to under Article 86(1)(a), the programmes shall in principle be implemented through shared management with Member States by the authorities referred to in Article 102 bearing responsibility for the implementation of the cross-border programme in the participating Member States and beneficiary countries.

To this end, the Member States and beneficiary countries participating in a cross-border programme must be able to implement the whole of the programme in the entire eligible territory according to the provisions referred to in Section 2 of this Chapter.

Prior to the adoption of the cross-border programme in accordance with Article 91(6), the Commission may request from the participating countries any information it deems necessary to ascertain the capacity of the authorities referred to in Article 102 to comply with the obligations set under Section 2 of this Chapter.

Where Member States and beneficiary countries participating in a cross-border programme are not yet ready to implement the entire programme according to these modalities, the transitional arrangements laid down in Article 99 shall apply.

2 For cross-border cooperation referred to under Article 86(1)(b), the programmes shall be implemented under centralised or decentralised management in accordance with Article 53 of Regulation (EC, Euratom) No 1605/2002, with respectively the Commission or the national authorising officer and the operating structures in each participating country bearing responsibility for the implementation of the programme in the respective country.

In this context, the cross-border programmes shall be implemented according to the provisions referred to in Section 3 of this Chapter.

For cross-border cooperation referred to under Article 86(1)(b), for all beneficiary countries the objective shall be decentralised management.

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## Article 99

### Transitional arrangements

1 For cross-border cooperation referred to under Article 86(1)(a) where the participating countries are not yet ready to implement the entire cross-border programme in shared management with Member States according to the provisions laid down in Section 2 of this Chapter, the programme shall be implemented according to the transitional arrangements laid down in this Article.

2 The financing plan included in the cross-border programme referred to in the first subparagraph of Article 94(2) shall contain:

- a a table covering all participating Member States, and
- b a table for each of the participating beneficiary countries.

3 The part of the cross-border programme concerning the participating Member States shall be implemented according to the provisions referred to in Section 2 of this Chapter.

The part of the cross-border programme concerning the participating beneficiary countries shall be implemented according to the provisions referred to in Section 3 of this Chapter, with the exception of Article 142. The provisions concerning the joint monitoring committee of Article 110 shall apply.

4 The implementing provisions contained in the cross-border programme as referred to in Article 94(1)(h) shall differentiate between the modalities applying to participating Member States and those applying to participating beneficiary countries.

5 Following the selection of joint operations in accordance with the provisions of Article 95, the managing authority shall issue a grant to the lead beneficiary of the participating Member States.

In the event of decentralised management, the operating structures in the participating beneficiary countries shall issue grants to the lead beneficiaries of their respective countries.

In the event of centralised management, the Commission shall issue a grant to the lead beneficiary in each participating beneficiary country.

## Article 100

### Termination of transitional arrangements

1 When the participating countries are ready to switch to implementation through shared management in accordance with paragraph 1 of Article 98, they shall submit to the Commission a revised cross-border programme which shall include a single financing plan based on the multi-annual indicative financial framework for the following three years, together with a revised description of the management and control systems accompanied by a revised report and opinion in accordance with Article 117.

The Commission shall re-examine the cross-border programme and appraise the documents submitted in accordance with Article 117. It shall decide whether to adopt a new decision amending the programme so that it may be implemented under the arrangements referred to in Article 98(1).

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2 The budgetary commitments for the part of the programme concerning the participating beneficiary countries which were taken during the transitional arrangements shall continue to be implemented according to the provisions referred to in Article 99.

## *Section 2*

### ***Cross-border programmes between beneficiary countries and Member States***

#### *Sub-section 1*

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

##### *Article 101*

#### **General principles**

The management and control systems of cross-border programmes set up by participating countries 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 cross-border 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 102*

#### **Designation of authorities**

1 The countries participating in a cross-border programme shall appoint a single managing authority, a single certifying authority and a single audit authority, all to be located in one of the Member States participating in the cross-border programme. The certifying authority shall receive the payments made by the Commission and, as a general rule, shall make the payments to the lead beneficiary, in accordance with the provisions laid down in Article 104.

The managing authority, after consultation with the countries participating in the programme, shall set up a joint technical secretariat. The joint technical secretariat shall assist the managing authority and the joint monitoring committee referred to in

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Article 110 and, where appropriate, the audit authority and the certifying authority, in carrying out their respective duties.

The joint technical secretariat may have antennae established in other participating countries.

2 The audit authority for the cross-border programme shall be assisted by a group of auditors comprising a representative of each country participating in the cross-border programme carrying out the duties provided for in Article 105. The group of auditors shall be set up within three months of the decision approving the cross-border programme at the latest. It shall draw up its own rules of procedure. It shall be chaired by the audit authority for the cross-border programme.

The participating countries may decide by unanimity that the audit authority is authorised to carry out directly the duties provide for in Article 105 in the whole of the territory covered by the programme without the need for a group of auditors as defined in the first subparagraph.

The auditors shall be independent of the control system referred to in Article 108.

3 Each country participating in the cross-border programme shall appoint representatives to sit on the joint monitoring committee referred to in Article 110.

4 Where one or more of the tasks of a managing authority or certifying authority are performed by an intermediate body, the relevant arrangements shall be formally recorded in writing.

The provisions of this Regulation concerning the managing authority, the audit authority and the certifying authority shall apply to that intermediate body.

### *Article 103*

#### **Functions of the managing authority**

1 The managing authority shall be responsible for managing and implementing the cross-border 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 cross-border programme and that they comply with applicable Community and national rules for the whole of their implementation period;
- b ensuring that there is a system for recording and storing in computerised form accounting records of each operation under the cross-border programme and that the data on implementation necessary for financial management, monitoring, verifications, audits and evaluation are collected;
- c verifying the regularity of expenditure. To this end, it shall satisfy itself that the expenditure of each final beneficiary participating in an operation has been validated by the controller referred in Article 108;
- d ensuring that the operations are implemented according to the public procurement provisions referred to in Article 121;
- e ensuring that final 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;



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- f ensuring that the evaluations of cross-border programmes are carried out in accordance with Article 109;
  - g 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 134;
  - h 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;
  - i guiding the work of the joint monitoring committee and providing it with the documents required to permit the quality of the implementation of the cross-border programme to be monitored in the light of its specific goals;
  - j drawing up and, after approval by the joint monitoring committee, submitting to the Commission the annual and final reports on implementation referred to in Article 112;
  - k ensuring compliance with the information and publicity requirements laid down in Article 62.
- 2 The managing authority shall lay down the implementing arrangements for each operation, where appropriate in agreement with the lead beneficiary.

#### *Article 104*

#### **Functions of the certifying authority**

The certifying authority of a cross-border 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. The managing authorities and the audit authorities shall have access to this information. At the written request of the Commission, the certifying authority shall provide the Commission with this information, within ten working days of receipt of the request or any other agreed period for the purpose of carrying out documentary and on the spot checks;

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- (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 cross-border programme by deducting them from the next statement of expenditure;
- (g) sending the Commission, by 28 February each year, a statement, identifying the following for each priority axis of the cross-border programme:
  - (i) the amounts withdrawn from statements of expenditure submitted during the preceding year following cancellation of all or part of the public contribution for an operation;
  - (ii) the amounts recovered which have been deducted from these statements of expenditure;
  - (iii) a statement of amounts to be recovered as at 31 December of the preceding year classified by the year in which recovery orders were issued.

#### *Article 105*

#### **Functions of the audit authority**

- 1 The audit authority of a cross-border programme shall be functionally independent of the managing authority and the certifying authority and 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 cross-border programme;
  - b ensuring that audits are carried out on operations on the basis of an appropriate sample to verify expenditure declared;
  - c by 31 December each year from the year following the adoption of the cross-border programme to the fourth year following the last budgetary commitment:
    - (i) submitting to the Commission an annual control report setting out the findings of the audits carried out during the previous twelve month period ending on 30 June of the year concerned 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 of the year following the adoption of the programme, shall cover the period from 1 January of the year of adoption to 30 June of the year following the adoption of the programme. The information concerning the audits carried out after 1 July of the fourth year following the last budgetary commitment shall be included in the final control report supporting the closure declaration referred to in point (d) of this paragraph. This report shall be based on the systems audits and audits of operations carried out under points (a) and (b) of this paragraph;
    - (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.

When a common system applies to several IPA cross-border programmes, the information referred to in point (i) may be grouped in a single report, and the opinion

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- and declaration issued under point (ii) may cover all the cross-border programmes concerned;
- d submitting to the Commission at the latest by 31 December of the fifth year following the last budgetary commitment 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. This closure declaration shall be based on all the audit work carried out by or under the responsibility of the audit authority.
- 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 points (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 If weaknesses in management or control systems or the level of irregular expenditure detected do not allow the provision of an unqualified opinion for the annual opinion referred to in paragraph 1 point (c) or in the closure declaration referred to in paragraph 1 point (d), the audit authority shall give the reasons and estimate the scale of the problem and its financial impact.

#### *Article 106*

#### **Audit trail**

For the purposes of the audits referred to in Article 105(1)(b), an audit trail shall be considered adequate where, for the cross-border programme concerned, it complies with the following criteria:

- (a) it permits the aggregate amounts certified to the Commission to be reconciled with the detailed accounting records and supporting documents held by the certifying authority, managing authority, intermediate bodies and lead beneficiaries as regards operations co-financed under the cross-border programme;
- (b) it permits verification of payment of the public contribution to the lead beneficiary and each final beneficiary;
- (c) it permits verification of application of the selection criteria established by the joint monitoring committee for the cross-border programme;
- (d) it contains, in respect of each operation, the technical specifications and financing plan, documents concerning the grant approval, documents relating to public procurement procedures, progress reports and reports on verifications and audits carried out.

#### *Article 107*

#### **Audits of operations**

- 1 The audits referred to in Article 105(1)(b) shall be carried out each twelve-month period from 1 July of the year following the adoption of the cross-border programme on a sample of operations selected by a method established or approved by the audit authority in agreement with the Commission.

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The audits shall be carried out on the spot on the basis of documentation and records held by the final beneficiary.

The participating countries shall ensure the appropriate repartition of those audits over the implementation period.

- 2 The audits shall verify that the following conditions are fulfilled:
- a the operation meets the selection criteria for the cross-border programme and has been implemented in accordance with the approval decision and fulfils any applicable conditions concerning its functionality and use or the objectives to be attained;
  - b the expenditure declared corresponds to the accounting records and supporting documents held by the final beneficiary;
  - c the expenditure declared by the final beneficiary is in compliance with Community and national rules;
  - d the public contribution has been paid to the final beneficiary in accordance with Article 40(9).

3 Where problems detected appear to be systemic in nature and therefore entail a risk for other operations under the cross-border programme, the audit authority shall ensure that further examination is carried out, including additional audits where necessary, to establish the scale of such problems. The necessary preventive and corrective action shall be taken by the relevant authorities.

4 No less than 5 % of the total expenditure declared by lead beneficiaries and certified to the Commission in the final statement of expenditure shall be audited in accordance with paragraph 2 before the closure of a cross-border programme.

#### *Article 108*

#### **Control system**

1 In order to validate the expenditure, each participating country shall set up a control system making it possible to verify the delivery of the products and services co-financed, the soundness of the expenditure declared for operations or parts of operations implemented on its territory, and the compliance of such expenditure and of related operations, or parts of those operations, with Community, when relevant, and its national rules.

For this purpose each participating country shall designate the controllers responsible for verifying the legality and regularity of the expenditure declared by each final beneficiary participating in the operation. Participating countries may decide to designate a single controller for the whole programme area.

Where the verification of the delivery of the products and services co-financed can be carried out only in respect of the entire operation, such verification shall be performed by the controller of the participating country where the lead beneficiary is located or by the managing authority.

2 Each participating country shall ensure that the expenditure can be validated by the controllers within a period of three months from the date of its submission by the lead beneficiary to the controllers.

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## *Sub-section 2*

### **Evaluation and monitoring**

#### *Article 109*

#### **Evaluation**

1 Evaluation shall aim to improve the quality, effectiveness and consistency of the assistance from the Community funds and the strategy and implementation of cross-border programmes while taking account of the objective of sustainable development and of the relevant Community legislation concerning environmental impact and strategic environmental assessment.

2 Participating countries shall jointly carry out an *ex ante* evaluation covering each cross-border programme.

*Ex ante* evaluations shall aim to optimise the allocation of budgetary resources under cross-border programmes and improve programming quality. They shall identify and appraise the disparities, gaps and potential for development, the goal to be achieved, the results expected, the quantified targets, the coherence with the relevant multi-annual indicative planning documents(s), the Community value-added, the lessons drawn from the previous programming and the quality of the procedures for implementation, monitoring, evaluation and financial management.

The *ex ante* evaluation shall be annexed to the cross-border programme.

3 During the programming period, participating countries shall carry out evaluations linked to the monitoring of the cross-border programme in particular where that monitoring reveals a significant departure from the goals initially set or where proposals are made for the revision of cross-border programme. The results shall be sent to the joint monitoring committee for the cross-border programme and to the Commission.

Where the results are conducive to a revision of the remainder of the programme as referred to in Article 93, they shall be discussed within the IPA Committee at the time of the submission of the revised cross-border programme.

4 Evaluations shall be carried out by experts or bodies, internal or external, functionally independent of the certifying and audit authorities referred to in Article 102. The results shall be published according to the applicable rules on access to documents.

5 Evaluation shall be financed from the budget for technical assistance referred to in Article 94(1)(f).

#### *Article 110*

#### **Joint monitoring committee**

1 The participating countries shall set up a joint monitoring committee for each cross-border programme within three months from the date of the notification to the participating countries of the decision approving the cross-border programme.

The joint monitoring committees shall meet at least twice a year, at the initiative of the participating countries or of the Commission.

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In the event of a cross-border programme implemented according to the transitional arrangements referred to in Article 99, for the beneficiary countries where the assistance is implemented on a decentralised basis, the joint monitoring committee fulfils the role of the sectoral monitoring committee referred to in Article 59.

2 Each joint monitoring committee shall draw up its rules of procedure within the institutional, legal and financial framework of the participating countries and in compliance with a joint monitoring committee mandate set out by the Commission, in order to exercise its missions in accordance with the present Regulation. It shall adopt them in agreement with the managing authority and, in the case of a programme implemented according to the transitional arrangements referred to in Article 99, in agreement with the national IPA coordinator(s) of the participating beneficiary country(ies).

3 The joint monitoring committee shall be chaired by a representative of one of the participating countries or the managing authority.

In deciding its composition in accordance with Article 102(3), the participating countries shall take due account of the provisions of Article 87.

4 The Commission shall participate in the work of the joint monitoring committee in an advisory capacity. A representative of the European Investment Bank and the European Investment Fund may participate in an advisory capacity for those cross-border programmes to which the European Investment Bank or the European Investment Fund makes a contribution.

5 The joint monitoring committee shall satisfy itself as to the effectiveness and quality of the implementation of the cross-border programme, in accordance with the following provisions:

- a it shall consider and approve the criteria for selecting the operations financed by the cross-border 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 cross-border programme on the basis of documents submitted by the managing authority and, in the case of a programmes implemented according to the transitional arrangements referred to in Article 99, by the operating structures in the participating beneficiary countries;
- c it shall examine the results of implementation, particularly achievement of the targets set for each priority axis and the evaluations referred to in Article 57(4) and Article 109;
- d it shall consider and approve the annual and final reports on implementation referred to in Article 112 and, in the case of a programme implemented according to the transitional arrangements referred to in Article 99, it shall examine the reports referred to in Article 144;
- e it shall be informed of the annual control report, referred to in Article 105(1)(c) and, as applicable in the case of a programme implemented according to the transitional arrangements referred to in Article 99, of the annual audit activity report(s) referred to in Article 29(2)(b) first indent, and of any relevant comments the Commission may make after examining those reports;
- f it shall be responsible for selecting operations but may delegate this function to a steering committee reporting to it;
- g it may propose any revision or examination of the cross-border programme likely to make possible the attainment of the objectives referred to in Article 86(2) or to improve its management, including its financial management;
- h it shall consider and approve any proposal to amend the content of the cross-border programme.

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### *Article 111*

#### **Arrangements for monitoring**

- 1 The managing authority and the joint monitoring committee shall ensure the quality of the implementation of the cross-border programme.
- 2 The managing authority and the joint monitoring committee shall carry out monitoring by reference to financial indicators, as well as the indicators referred to in Article 94(1)(d).
- 3 Data exchange between the Commission and the authorities referred to in Article 102 for the purpose of monitoring shall be carried out electronically.

### *Article 112*

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

- 1 By 30 June each year at the latest, the managing authority shall submit to the Commission an annual report on the implementation of the cross-border programme approved by the joint monitoring committee. The first annual report shall be submitted in the second year following the adoption of the programme.

The managing authority shall submit a final report on the implementation of the cross border programme by 31 December of the fourth year following the last budgetary commitment at the latest.

- 2 The reports referred to in paragraph 1 shall include the following information:
  - a the progress made in implementing the cross-border programme and priorities 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 94(1)(d) at the level of the priority axis;
  - b the financial implementation of the cross-border programme, detailing for each priority axis:
    - (i) the expenditure paid out by the beneficiary included in application for payments 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 111(2); and
    - (iii) the expenditure paid out by the body responsible for making payments to the beneficiaries;
  - c the steps taken by the managing authority or the joint 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 cross-border programme and any measures taken, including the response to comments made under Article 113 where appropriate;
    - (iii) the use made of technical assistance;

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- d the measures taken to provide information on and publicise the cross-border programme;
- e information about significant problems relating to the compliance with Community rules which have been encountered in the implementation of the cross-border programme and the measures taken to deal with them;
- f the use made of assistance which, following financial corrections as referred to in Article 138, has been made available to the managing authority or to another public authority during the period of implementation of the cross-border programme;
- g in case of programmes implemented under the transitional arrangements referred to in Article 99, the progress made towards the implementation under shared management in the whole territory of the cross-border programme.

Where appropriate, the information referred to in points (a) to (g) of this paragraph may be provided in summary form.

Information referred to in points (c) and (f) need not be included if there has been no significant modification since the previous report.

3 The Commission shall inform the participating countries of its opinion on the content of an annual report on implementation submitted by the managing authority within three months from the date of receipt. For the final report on a cross-border programme, the time limit shall be a maximum of five months from the date of receipt of the report. If the Commission does not respond within the time limit laid down, the report shall be deemed to be accepted.

### *Article 113*

#### **Annual examination of programmes**

1 Every year, when the annual report on implementation referred to in Article 112 is submitted, the Commission and the managing authority shall examine the progress made in implementing the cross-border 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 105(1)(c)(i), may also be examined.

2 Following the examination referred to in paragraph 1, the Commission may make comments to the participating countries and the managing authority, which shall inform the joint monitoring committee thereof. The participating countries shall inform the Commission of the action taken in response to those comments.

### *Sub-section 3*

#### ***Responsibility of participating countries and of the Commission***

### *Article 114*

#### **Management and control**

1 Participating countries shall be responsible for the management and control of cross-border programmes in particular through the following measures:

- a ensuring that management and control systems for cross-border programmes are set up in accordance with Articles 101 and 105 and function effectively;



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- 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 Without prejudice to the participating countries' responsibility for detecting and correcting irregularities and for recovering amounts unduly paid, the certifying authority shall ensure that any amount paid as a result of an irregularity is recovered from the lead beneficiary. The final beneficiaries shall repay the lead beneficiary the amounts unduly paid in accordance with the agreement existing between them. If the lead beneficiary does not succeed in securing repayment from a final beneficiary, the participating country on whose territory the relevant final beneficiary is located shall reimburse the certifying authority the amount unduly paid to that final beneficiary.

### *Article 115*

#### **Description of management and control systems**

1 Before the payment of the pre-financing referred to in Article 128, the Member State on whose territory the managing authority is located shall submit to the Commission a description of the management and control systems, covering in particular the organisation and procedures of:

- a the managing and certifying authorities and intermediate bodies referred to in Article 102;
- b the audit authority and any other bodies carrying out audits under its responsibility as referred to in Article 102.

2 As regards the managing authority, the certifying authority and each intermediate body, the Member State referred to in paragraph 1 shall provide the Commission with the following information:

- a the description of the tasks entrusted to them;
- b the organisation chart of the body, the allocation of tasks between or within their departments, and the indicative number of posts allocated;
- c the procedures for selecting and approving operations;
- d the procedures by which beneficiaries' applications for reimbursement are received, verified and validated, and the procedures by which payments to beneficiaries are authorised, executed and entered in the accounts;
- e the procedures by which statements of expenditure are drawn up, certified and submitted to the Commission;
- f reference to the written procedures established for the purposes of points (c), (d) and (e);
- g eligibility rules laid down by participating countries and applicable to the cross-border programme;
- h the system for keeping the detailed accounting records of operations under the cross-border programme.

3 As regards the audit authority and other bodies, the Member State referred to in paragraph 1 shall provide to the Commission the following information:

- a the description of their respective tasks and their interrelationship;
- b the organisation chart of the audit authority and of each of the bodies involved in carrying out audits concerning the cross-border programme, describing how their

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- independence is ensured, the indicative number of posts attributed and the qualifications of the staff;
- c the procedures for monitoring the implementation of recommendations and corrective measures resulting from audit reports;
  - d the procedure, where appropriate, for the supervision of the work of bodies involved in carrying out audits concerning the cross-border programme by the audit authority;
  - e the procedures for the preparation of the annual control report and the closure declarations.

### *Article 116*

#### **Assessment of management and control systems**

1 The description referred to in Article 115 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 101 and 105. If the opinion contains reservations, the report shall indicate the seriousness of the shortcomings. The participating country concerned 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.

2 The report and the opinion referred to in paragraph 1 are established 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.

3 Where the management and control system concerned is essentially the same as that in place for assistance approved under Regulation (EC) No 1083/2006, account may be taken of the results of audits carried out by national and Community auditors in relation to that system for the purposes of establishing the report and opinion referred to in paragraph 1.

4 The report referred to in paragraph 1 shall be deemed to be accepted, and the pre-financing 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 above 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.

### *Article 117*

#### **Requirements at change over from transitional arrangements**

1 In the case of a cross-border programme implemented according to the transitional arrangements referred to in Article 99, when the participating countries are ready to switch to implementing modalities referred to in Article 98(1), they shall submit to the Commission a revised description of the management and control systems, accompanied by a revised report and opinion in accordance with Article 116(1).

2 Where the opinion contains reservations, the decision from the Commission modifying the programme may only be taken if the Commission has received confirmation that

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corrective measures concerning key elements of the systems have been implemented and the corresponding reservation withdrawn.

### *Article 118*

#### **Conclusion and communication of arrangements between participating countries**

In addition to the information listed in Article 115(2) and (3), the description of the management and control system shall include the arrangements agreed between participating countries to allow the managing authority, the certifying authority and the audit authority to exercise their duties arising from this Regulation and to ensure compliance by the participating countries with their obligations as regards the recovery of undue payments as set out in Article 114(2).

Those arrangements, together with the provisions concerning the rules and procedures for public procurements as referred to in Article 121, shall be included in a written agreement concluded between the participating countries and annexed to the description of the management and control systems referred to in Article 115.

### *Article 119*

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

1 The Commission shall satisfy itself, in accordance with the procedure laid down in Article 116, that the participating countries have set up management and control systems that comply with Articles 101 and 105 and, on the basis of the annual control reports and the annual opinion of the audit authority as referred to in Article 105(1)(c) and its own audits, that the systems function effectively during the period of implementation of the cross-border programmes.

2 Without prejudice to audits carried out by participating countries, 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 cross-border programmes, with a minimum of ten working days' notice, except in urgent cases. Officials or authorised representatives of the participating countries may take part in such audits.

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 Community funds.

Those powers of audit shall not affect the application of national provisions which reserve certain acts for agents specifically designated by national legislation.

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

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## *Article 120*

### **Cooperation with the audit authorities**

The Commission and the audit authorities of cross-border programmes shall cooperate 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.

The Commission and the audit authorities 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 105 and to exchange views on other issues relating to the improvement of the management and control of the cross-border programmes.

## *Article 121*

### **Procurement**

1 For the award of service, supply and work contracts, the procurement procedures shall follow the provisions of Chapter 3 of Part 2, Title IV of Regulation (EC, Euratom) No 1605/2002 and Chapter 3 of Part 2, Title III of Regulation (EC, Euratom) No 2342/2002, as well as Commission Decision C (2006) 117 of 24 January 2006 on the rules and procedures applicable to service, supply and work contracts financed by the general budget of the European Communities for the purposes of cooperation with third countries.

Those provisions shall apply in the whole area of the cross-border programme, both on the Member States' and on the beneficiary countries' territory.

2 The provisions under paragraph 1 shall be included in the written agreement concluded between the participating countries as referred to in Article 118.

3 In the case of cross-border programmes implemented under transitional arrangements referred to in Article 99, paragraph 1 shall not apply to the part of programme implemented in the Member States' territory unless otherwise decided by the participating Member States.

## *Sub-section 4*

### ***Financial management***

## *Article 122*

### **Common rules for payments**

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

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 participating countries.

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3 At the latest by 30 April each year, the certifying authority shall send the Commission a provisional forecast of its likely payment applications 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 participating countries shall be made by electronic means. In cases of *force majeure*, and in particular of malfunction of the common computerised system or a lack of a lasting connection, the certifying authority may forward the statement of expenditure and the payment application in hard copy.

#### *Article 123*

### **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 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 greater than the public contribution and the maximum amount of assistance from the Community funds for each priority axis as laid down in the decision of the Commission approving the cross-border programme.

#### *Article 124*

### **Statement of expenditure**

1 All statements of expenditure shall include, for each priority axis, the total amount of eligible expenditure, in accordance with Article 89 paid by final beneficiaries in implementing the operations and the corresponding public expenditure paid or due to be paid to the final beneficiaries according to the conditions governing the public expenditure. Expenditure paid by final beneficiaries shall be justified by receipted invoices or accounting documents of equivalent probative value.

2 Where the contribution from the Community funds is calculated in reference to Article 90(2), any information on expenditure other than public expenditure does not affect the amount due as calculated on the basis of the payment request.

#### *Article 125*

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

The provisions laid down in Article 40(5) apply *mutatis mutandis*.

#### *Article 126*

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

The provisions laid down in Article 40(9) apply *mutatis mutandis*.

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## Article 127

### Use of the euro

1 Amounts set out in the submitted cross-border programmes of the participating countries, certified statements of expenditure, payment application and expenditure mentioned in the annual and final report on implementation shall be denominated in euro.

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

3 Lead beneficiaries for projects involving final beneficiaries in participating countries which have not adopted the euro as their currency on the date of the payment application shall convert into euro the amounts of expenditure incurred in national currency.

That amount shall be converted into euro using the monthly accounting exchange rate of the Commission in the month during which the payment application is submitted to the managing authority by the lead beneficiary. This rate shall be published electronically by the Commission each month.

4 When the euro becomes the currency of a participating country, 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.

## Article 128

### Pre-financing

1 Following the Commission decision approving the cross-border programme, and upon acceptance of the report referred to in Article 116, a single pre-financing amount shall be paid by the Commission to the body designated by the participating countries.

The pre-financing amount shall amount to 25 % of the first three budgetary commitments to the programme.

The pre-financing amount may be paid in two instalments, where necessary with regard to the availability of budgetary commitment.

2 The total amount paid as pre-financing shall be reimbursed to the Commission by the body designated by the participating countries if no payment application under the cross-border programme is sent within twenty-four months of the date on which the Commission pays the first instalment of the pre-financing amount.

## Article 129

### Interest

The provisions laid down in Article 36 apply *mutatis mutandis*.

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## *Article 130*

### **Clearance**

The amount paid as pre-financing shall be totally cleared from the Commission accounts when the cross-border programme is closed in accordance with Article 133.

## *Article 131*

### **Acceptability of applications for interim payments**

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

- a the Commission must have been sent a payment application and a statement of expenditure in accordance with Article 124;
- b no more than the maximum amount of assistance from the Community funds as laid down in the decision of the Commission approving the cross-border 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 112;
- d the absence of a 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 payment application in question.

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

## *Article 132*

### **Date of presentation of applications for interim payment and payment delays**

1 The certifying authority shall send requests for interim payments for each cross-border programme 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 payment application shall be submitted is 31 October.

2 Subject to available funding, and the absence of a suspension of payments in accordance with Article 136, the Commission shall make the interim payment no later than two months after the date on which a payment application meeting the above conditions referred to in Article 131 is registered with the Commission.

## *Article 133*

### **Conditions for the payment of the final balance**

1 The Commission shall pay the final balance provided that:

- a the certifying authority has sent a payment application comprising the following documents by 31 March of the fifth year following the last budgetary commitment:

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- (i) an application for payment of the final balance and a statement of expenditure in accordance with Article 124;
  - (ii) the final implementation report for the cross-border programme, including the information set out in Article 112;
  - (iii) a closure declaration referred to in Article 105(1)(d); 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 payment application in question.

2 Failure to send any of the documents referred to in paragraph 1 to the Commission shall automatically result in the de-commitment of the final balance, in accordance with Article 137.

3 The Commission shall inform the participating countries of its opinion on the content of the closure declaration 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 a deadline of five months.

4 Subject to available funding, the Commission shall pay the final balance within forty-five days from the later of the following dates:

- a the date on which it accepts the final report in accordance with Article 112; and
- b the date on which it accepts the closure declaration.

5 Without prejudice to paragraph 6, the balance of the budgetary commitment shall be de-committed twelve months following the payment of the final balance. The cross-border programme is considered closed as soon as one of the following events occurs:

- 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 participating countries in respect of the cross-border programme;
- c the de-commitment of the final balance of the budgetary commitment.

The Commission shall inform the participating countries about the date of the closure of the cross-border 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 cross-border programme can be amended within nine months of the date on which it is paid or, where there is a negative balance to be reimbursed by the participating countries, 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 cross-border programme as set out in paragraph 5.

#### *Article 134*

#### **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 cross-border programme concerned are kept available for the Commission and the Court of Auditors for a period of three years following the closure of a cross-border programme as defined in Article 133(5).



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

2 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.

3 The managing authority shall keep a record of the bodies holding the original supporting documents relating to expenditure and checks, comprising:

- a documents relating to specific expenditure incurred and declared payments made under the assistance and required for a sufficient audit trail including documents constituting proof of the actual delivery of products or services co-financed;
- b reports and documents relating to checks carried out by the bodies referred to in Article 102.

4 The managing authority shall ensure that the documents referred to in paragraph 1 are made available for inspection by, and extracts or copies thereof are supplied to, persons and bodies entitled thereto, including at least authorised staff of the managing authority, certifying authority, intermediate bodies and audit authority and authorised officials of the Community and their authorised representatives.

5 The following at least shall be considered as commonly accepted data carriers as referred to in paragraph 2:

- a photocopies of original documents;
- b microfiches of original documents;
- c electronic versions of original documents;
- d documents existing in electronic version only.

6 The procedure for certification of conformity of documents held on commonly accepted data carriers with the original document shall be laid down by the national authorities and shall ensure that the versions held comply with national legal requirements and can be relied on for audit purposes.

7 Where documents exist in electronic version only, the computer systems used must meet accepted security standards that ensure that the documents held comply with national legal requirements and can be relied on for audit purposes.

#### *Article 135*

### **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 participating countries 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 participating countries.

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### Article 136

#### **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 participating countries of their obligations under Article 114.

2 The Commission may decide to suspend all or part of interim payments after having given the participating countries the opportunity to present their observations within a period of two months.

3 The Commission shall end suspension of all or part of interim payments when the participating countries have taken the necessary measures to enable the suspension to be lifted. Where the required measures have not been taken by the participating countries, the Commission may adopt the decision to cancel all or part of the Community contribution to the cross-border programme, in accordance with Article 138.

### Article 137

#### **Automatic de-commitment**

Automatic and final de-commitment of any portion of the budgetary commitment for a cross-border programme shall follow the rules laid down in paragraph 3 of Article 166 of Regulation (EC, Euratom) No 1605/2002.

### Article 138

#### **Financial corrections and irregularities**

1 For the purpose of financial corrections, the relevant provisions contained in Articles 98, 99, 100, 101 and 102 of Regulation (EC) No 1083/2006 shall apply *mutatis mutandis*.

2 For the purposes of irregularities, the relevant provisions contained in Articles 27 to 34 of Commission Regulation (EC) No 1828/2006<sup>(3)</sup> setting out the rules for the implementation of Regulation (EC) No 1083/2006 and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council shall apply *mutatis mutandis*.

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### Section 3

#### **Cross-border programmes among beneficiary countries**

##### *Sub-section 1*

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

##### *Article 139*

#### **Structures and authorities**

1 For each cross-border programme, each participating beneficiary country shall establish an operating structure for the part of the programme relating to the country concerned.

2 The duties of the operating structures shall include the preparation of the cross-border programmes in accordance with Article 91.

3 The operating structures of the participating beneficiary countries shall cooperate closely in the programming and implementation of the relevant cross-border programme.

4 For each cross-border programme among beneficiary countries, the relevant operating structures shall set up a joint technical secretariat to assist the operating structures and the joint monitoring committee referred to in Article 142 in carrying out their respective duties.

The joint technical secretariat may have antennae established in each participating countries.

5 In the event of decentralised management, the functions and responsibilities of the operating structures shall be, *mutatis mutandis*, those listed in Article 28. In addition, the following provisions shall apply:

- a The operating structures in each participating beneficiary country shall include one implementing agency which shall be established within the national administration or under its direct control.
- b The national authorising officer in each participating beneficiary country shall, after consulting the national IPA coordinator, designate a programme authorising officer to head the implementing agency.

The programme authorising officers shall be officials of the State administration of the beneficiary countries. He shall be responsible for the activities carried out by the implementing agency.

- c The implementing agencies shall be responsible for the tendering and contracting, payments accounting and financial reporting aspects of the procurement of services, supplies, works and grants for the part the cross-border programme concerning the respective country.

Where relevant, the provisions laid down in Article 76 shall apply *mutatis mutandis*.

6 In the event of centralised management, functions and responsibilities of the operating structures shall be defined in the relevant cross-border programmes, to the exclusion of tendering, contracting and payments, which are the responsibility of the Commission.

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## Article 140

### Role of the Commission in the selection of operations

- 1 In the event of centralised management, the Commission shall:
  - a approve the criteria for selecting the operations financed by the cross-border programme;
  - b endorse the calls for proposals and their application packs (Guidelines for applicants) prior to publication;
  - c where relevant, endorse the composition of a steering committee entrusted with the selection of operations;
  - d formally confirm the operations selected by the joint monitoring committee referred to in Article 142. In all cases, the Commission shall retain the right of final approval of an operation selected for financing.
- 2 In the event of decentralised management, the Commissions' right to exercise *ex ante* control of the selection of operations shall be defined in the Commission decision on conferral of management in accordance with Article 14(3).

## Sub-section 2

### Evaluation and monitoring

## Article 141

### Evaluation

Article 109 shall apply *mutatis mutandis*. However, in the event of centralised management, the evaluations referred to in Article 109(3) shall be carried out under the responsibility of the Commission. In that event, the provisions referred to in Article 109(4) and Article 109(5) do not apply.

In the case of cross-border programmes among beneficiary countries, the need to carry out the *ex ante* evaluation referred to in Article 109(2) shall be decided by the Commission in agreement with the participating beneficiary countries, taking into consideration the Community funds allocated to the programme and in accordance with the proportionality principle. The *ex ante* evaluation may be carried out with the support of the Commission.

In the event of decentralised management, the Commission may perform any *ad hoc* interim evaluations of the cross-border programmes it deems necessary.

## Article 142

### Joint monitoring committee

- 1 In the case of cross-border programmes among themselves, the participating beneficiary countries shall set up a joint monitoring committee for each cross-border programme. This joint monitoring committee fulfils the role of the sectoral monitoring committee referred to in Article 59. By way of derogation from Article 59(1), the joint

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monitoring committee shall be set up within three months after the entry into force of the first financing agreement relating to the programme.

The joint monitoring committees shall meet at least twice a year, at the initiative of the participating countries or of the Commission.

2 Each joint monitoring committee shall draw up its rules of procedures in compliance with a joint monitoring committee mandate set out by the Commission and within the institutional, legal and financing framework of the participating countries concerned, in order to exercise its mission in accordance with the present Regulation. It shall adopt these rules of procedures.

3 The joint monitoring committee shall be chaired by a representative of one of the participating countries.

Each participating country shall appoint its representatives, including representatives of the operating structure responsible for the programme, to sit on the joint monitoring committee. With regards to the composition of the joint monitoring committee, due account shall be taken of provisions of Article 87.

4 The Commission shall participate in the work of the joint monitoring committee in an advisory capacity.

5 The joint monitoring committee shall satisfy itself as to the effectiveness and quality of the implementation of the cross-border programme, in accordance with the following provisions:

- a it shall consider and approve the criteria for selecting the operations financed by the cross-border 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 cross-border programme on the basis of documents submitted by the operating structures of participating beneficiary countries;
- c it shall examine the results of implementation, particularly achievement of the targets set for each priority axis and the evaluations referred to in Article 57(4) and Article 141;
- d it shall examine the annual and final reports on implementation referred to in Article 144;
- e it shall be informed, as applicable of the annual audit activity report(s) referred to in Article 29(2)(b) first indent, and of any relevant comments the Commission may make after examining that report;
- f it shall be responsible for selecting operations, but may delegate this function to a steering committee;
- g it may propose any revision or examination of the cross-border programme likely to make possible the attainment of the objectives referred to in Article 86(2) or to improve its management, including its financial management;
- h it shall consider and approve any proposal to amend the content of the cross-border programme.

#### *Article 143*

#### **Shared tasks of the operating structures and the joint monitoring committee**

The operating structures of the participating beneficiary countries and the joint monitoring committee shall ensure the quality of the implementation of the cross-border

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programme. They shall carry out monitoring by reference to the indicators referred to in Article 94(1)(d) and, in the event of decentralised management, the financial indicators specified in the cross-border programme.

#### *Article 144*

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

1 The operating structures of the beneficiary countries participating in a cross-border programme shall send the Commission and the respective national IPA coordinators an annual report and a final report on the implementation of the cross-border programme after examination by the joint monitoring committee.

In the case of decentralised management, the reports shall also be sent to the respective national authorising officers.

The annual report shall be submitted by 30 June each year and for the first time in the second year following the adoption of the cross-border programme.

The final report shall be submitted at the latest 6 months after the closure of the cross-border programme.

- 2 The reports referred to in paragraph 1 shall include the following information:
- a the progress made in implementing the cross-border programme and priorities 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 94(1)(d) at the level of the priority axis;
  - b detailed information about the financial implementation of the cross-border programme;
  - c the steps taken by the operating structures and/or the joint 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 cross-border programme and any measures taken;
    - (iii) the use made of technical assistance;
  - d the measures taken to provide information on and publicise the cross-border programme.

Where appropriate, the information referred to in points (a) to (d) of this paragraph may be provided in summary form.

The information referred to in point (b) shall be included in the reports only in the case of decentralised management.

Information referred to in point (c) need not be included if there has been no significant modification since the previous report.

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### *Sub-section 3*

## **Financial management**

### *Article 145*

#### **Grants**

Following the selection of joint operations in accordance with Article 95, the operating structures in the event of decentralised management and the Commission in the event of centralised management, shall issue a grant to the lead beneficiary of the participating beneficiary country concerned.

### *Article 146*

#### **Applicable rules**

In the event of decentralised management, the provisions of Articles 79 paragraphs (1), (2) and (3), and 80 shall apply.

## TITLE III

### **REGIONAL DEVELOPMENT AND HUMAN RESOURCES DEVELOPMENT COMPONENTS**

#### CHAPTER I

#### **Object of assistance and eligibility**

##### *Section 1*

#### **Regional development component**

##### *Article 147*

#### **Areas and forms of assistance**

1 The regional development component may support operations under the following priorities:

- a transport infrastructure, in particular interconnection and interoperability between national networks, and between national and trans-European networks;
- b environment measures related to waste management, water supply, urban waste water and air quality; rehabilitation of contaminated sites and land; areas related to sustainable development which present environmental benefits, namely energy efficiency and renewable energy;
- c operations which enhance regional competitiveness and a productive environment, and encourage creation and safeguarding of sustainable employment, involving in particular:

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- (i) provision of business and technology services for enterprises, particularly in the fields of management, market research and development and networking;
- (ii) access and use of information and communication technologies;
- (iii) promotion of technological development, research and innovation including through cooperation with tertiary education and research institutions and research and technology centres;
- (iv) development of business networks and clusters;
- (v) creation and development of financing instruments which facilitate access to revolving financing through venture capital, loan and guarantee funds;
- (vi) provision of local infrastructure and services which contribute to facilitate establishment, development and expansion of new and existing business;
- (vii) education and training infrastructures, where necessary for regional development and in close coordination with the human resources development component.

2 Under this component, technical assistance may be granted for preliminary studies and technical support related to eligible activities, including those necessary for their implementation.

Technical assistance may also finance preparatory, management, monitoring, evaluation, information and control activities and activities to reinforce the administrative capacity for implementing the assistance under the IPA Regulation provided through this component.

#### *Article 148*

#### **Eligibility of expenditure**

1 Expenditure under this component shall be eligible if it has actually been paid after the signature of the financing agreement following the adoption of the relevant programme. In the case of major projects as referred to in Article 157, expenditure shall not be eligible before the Commission Decision approving the major project has been adopted, as referred to in Article 157(3).

2 In addition to rules set out in Article 34(3), the following expenditure shall not be eligible:

- a maintenance and rental costs;
- b depreciation costs for the infrastructures.

#### *Article 149*

#### **Aid intensities and rate of Community contribution**

1 For the purposes of this component, the eligible expenditure as referred to in Article 38(1) shall be based on the public expenditure.



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2 The Community contribution shall not exceed the ceiling of 75 % of the eligible expenditure at the level at the priority axis. In exceptional and duly justified cases, with regard to the scope of the priority axis, this ceiling may reach 85 %.

3 No operation shall benefit from a higher co-financing rate than the one relating to the priority axis concerned.

#### *Article 150*

### **Revenue-generating projects**

1 For the purposes of this component, a revenue-generating project means any operation proposed for pre-accession assistance involving an investment in infrastructure, the use of which is subject to charges borne directly by users and which generates revenues, or any operation involving the sale or rent of land or buildings.

2 Public expenditure for revenue-generating projects, used for calculating the Community contribution in accordance with Article 149, shall be equal to the discounted value of the investment cost of the proposed project less the discounted value of the net revenue, calculated by deducting the operating costs from the global revenues from the investment over the appropriate reference period, depending on the project's financial features.

3 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.

4 In the calculation, the operating structure 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 and of the application of the polluter-pays principle, and, if appropriate, of considerations of affordability, in particular in the environment sector.

#### *Section 2*

### ***Human resources development component***

#### *Article 151*

### **Areas and forms of assistance**

1 The human resources development component shall contribute to strengthening economic and social cohesion as well as to the priorities of the European Employment Strategy in the field of employment, education and training and social inclusion.

2 In particular, the scope of this component shall cover assistance to persons and focus on the following priorities, the precise mix and concentration of which shall depend on the economic and social specificities of each beneficiary country:

- a increase adaptability of workers, enterprises and entrepreneurs, with a view to improving the anticipation and positive management of economic change, in particular by promoting:
  - (i) life long learning and increased investment in human resources by enterprises and workers;

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- (ii) design and dissemination of innovative and more productive forms of work organisation;
- b enhance access to employment and sustainable inclusion in the labour market of job seekers and inactive people, prevent unemployment, in particular long term and youth unemployment, encourage active aging and prolong working lives, increase participation in the labour market notably by promoting:
  - (i) creation, modernisation and strengthening of labour market institutions;
  - (ii) implementation of active and preventive measures ensuring early identification of needs;
  - (iii) improvement of access to employment and increase of sustainable participation and progress of women in employment;
  - (iv) increase in migrants' participation in employment, thereby strengthening their social integration;
  - (v) facilitation of geographic and occupational mobility of workers and integration of cross-border labour markets;
- c reinforce social inclusion and integration of people at a disadvantage, with a view to their sustainable integration in employment, and combat all forms of discrimination in the labour market, in particular by promoting:
  - (i) pathways to integration and re-entry into employment for disadvantaged people;
  - (ii) acceptance of diversity in the workplace and non discrimination;
- d promote partnerships, pacts and initiatives through networking of relevant stakeholders, such as social partners and non-governmental organisations, at national, regional, local level, in order to mobilise for reforms in the field of employment and labour market inclusiveness;
- e expand and enhance investment in human capital, in particular by promoting:
  - (i) the design, introduction and implementation of reforms in education and training systems, in order to develop employability and labour market relevance;
  - (ii) increased participation in education and training throughout the life-cycle;
  - (iii) the development of human potential in research and innovation;
  - (iv) networking activities between higher education institutions, research and technological centres and enterprises;
- f strengthen institutional capacity and the efficiency of public administrations and public services at national, regional and local level and, where relevant, the social partners and non-governmental organisations with a view to reforms and good governance in the employment, education and training, as well as social fields.

3 At the initiative of the beneficiary country, technical assistance may be granted under this component to support the preparatory, management, monitoring, administrative support, information, evaluation and control activities of the programme, and preparatory activities with a view to the future management of European Structural Funds.

4 Assistance shall focus on those policies and activities which have the potential to act as catalyst for policy change and which enhance good governance and partnership.

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## Article 152

### Eligibility of expenditure

1 The following expenditure may be eligible for operations falling under the scope of Article 151:

- a depreciation costs under the following cumulative conditions:
  - (i) no national or Community grants have contributed to the purchase of the related investment;
  - (ii) depreciation costs are calculated with the relevant applicable national accountancy rules;
  - (iii) costs relate exclusively to the period of co-financing of the operation concerned;
- b in the case of grants, the indirect costs declared on a flat rate basis up to 20 % of the direct costs of an operation, provided they are incurred in accordance with national rules, including accountancy rules;
- c purchase of furniture, equipment, adaptation and modernisation of existing infrastructures, provided that:
  - (i) the amount concerned for the related operations is subject to a limit of 15 % of the funding under the IPA Regulation for each priority axis of the programme(s) under this component;
  - (ii) investments are necessary for the satisfactory implementation of the programme(s) under this component and contribute to increasing the impact of assistance;
  - (iii) assessment, carried out under the responsibility of the operating structure, has demonstrated that purchase is preferable to other solutions in terms of the best value for money.

2 By way of derogation from Article 34(3), the following expenditure may also be eligible:

- a taxes, including value added taxes, if they are not recoverable by any means and it is established that they are borne by the final beneficiary.
- b operating costs, including rental costs, exclusively related to the period of co-financing of the operation,
- c rent or leasing, provided that it is exclusively related to the period of co-financing of the operation, and that it is preferable to other solutions in terms of the best value for money.

## Article 153

### Aid intensities and rate of Community contribution

1 For the purposes of this component, the eligible expenditure as referred to in Article 38(1) shall be based either on the public expenditure or on the total expenditure, the choice applying to the entirety of the programme concerned.

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2 The Community contribution shall not exceed the ceiling of 85 % of the eligible expenditure at the level of the priority axis.

3 No operation shall benefit from a higher co-financing rate than the one relating to the priority axis concerned.

## CHAPTER II

### Programming

#### Article 154

#### Strategic coherence framework

1 Beneficiary countries shall establish, based on the multi-annual indicative planning document, a strategic coherence framework to be discussed with the Commission. The strategic coherence framework shall constitute a reference document for the programming of the regional development component and the human resources development component.

2 The strategic coherence framework shall include:

- a a brief analysis, highlighting the strengths, weaknesses, opportunities and threats in the eligible sectors and thematic priorities, under the regional development and human resources development components, where the beneficiary country intends to concentrate its assistance;
- b a description of the objectives pursued under the regional development and human resources development components, in accordance with the relevant national and Community priorities, as set up in the first multi-annual indicative planning document;
- c a list of programmes, with a brief description of the main priority axes under each programme;
- d an indicative breakdown of the financial allocations between the underlying programmes, covering a three years period, in accordance with the multi-annual indicative financial framework and the multi-annual indicative planning document, and the indicative budgetary balance between the underlying programmes for the following years, within each component.

3 In addition, the strategic coherence framework shall contain, where relevant, provisions about :

- a coordination with other national programmes supported by international financial institutions, or other relevant external assistance;
- b coordination with other IPA components, in particular the rural development component.

4 The strategic coherence framework shall be a prerequisite for the approval of the programmes under the regional development and human resources development components. It shall be submitted to the Commission prior to, or, at the latest, together with the submission for approval of the first programme under those components.

5 The strategic coherence framework shall be drafted by the strategic coordinator, under the overall responsibility of the national IPA coordinator.

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## Article 155

### Operational programmes

1 Assistance shall be implemented through multi-annual operational programmes. These operational programmes shall be drafted by the operating structures. They shall be established in close consultation with the Commission and the relevant stakeholders, and approved through a Commission Decision, in accordance with Article 8(1).

2 Operational programmes shall contain:

- a an assessment of medium term needs and objectives, highlighting the strengths, weaknesses, opportunities and threats in the relevant sectors, themes and regions;
- b an overview of the consultation of the relevant socio-economic partners and, where relevant, civil society representatives;
- c a description of the chosen strategic priorities, having regard to the strategic coherence framework and the sectoral, thematic and/or geographical mechanisms of concentration of assistance, as well as the results from the *ex ante* evaluation referred to in Article 57(4) and 166;
- d information on the priority axis, the related measures and their specific targets. Such targets shall be quantified, when appropriate, using a limited number of result indicators. These indicators shall make it possible to determine the progress for implementing the selected measures, including the effectiveness of the targets attached to the priority axis and measures;
- e when some measures are intended to be implemented through aid schemes for enterprises, related modalities shall be described;
- f a description of the technical assistance operations, which shall be undertaken under a specific priority axis. Community support for this priority axis can be up to a ceiling of 6 % of the Community contribution allocated to the operational programme. In exceptional cases and when duly justified with regard to the scope of the programme, this ceiling may reach 10 %;
- g an identification, for each measure, of the intended final beneficiaries, the expected selection modalities and possible related specific selection criteria;
- h a financial table specifying, for each year covered by the applicable multi-annual indicative financial frameworks, for each priority axis and, in an indicative way, for each related measure:
  - (i) the total amount of the Community contribution;
  - (ii) the national contribution, where applicable identifying other external contributions. Where the Community contribution, under the human resources development component, is calculated with reference to the total expenditure, the table shall give the indicative breakdown of the national contribution between its public and private components;
  - (iii) the resulting rate of Community contribution;
- i the proposed evaluation and monitoring indicators and modalities, including indicative evaluation activities and timing;
- j for the regional development component, an indicative list of major projects, accompanied with their technical and financial features, including the expected financing sources, as well as indicative timetables for their implementation;

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- k a description of the relevant structures and authorities for the management and control of the operational programme, in accordance with Articles 21 to 26, 28, 29 and 31.

### *Article 156*

#### **Revision of operational programmes**

1 At the initiative of the beneficiary country or the Commission, operational programmes may be re-examined and, where appropriate, the remainder of the programme revised. This review may in particular take place in the following cases:

- a following significant socio-economic changes;
- b in order to take greater or different account of major changes in Community or national priorities;
- c following the annual revision of the multi-annual indicative planning document;
- d in the light of the evaluations referred to in Article 166(2);
- e following implementation difficulties.

2 The Commission Decision on a request for the revision of any operational programme shall be adopted as soon as possible after its formal submission by the strategic coordinator in coordination with the national IPA coordinator.

3 Where the revision of an operational programme, as referred to in paragraph 1, extends the eligible scope under this programme, any additional expenditure related thereto shall be eligible from the date of the adoption of the Commission Decision.

### *Article 157*

#### **Major projects under the regional development component**

1 As part of an operational programme, assistance under the regional development component may finance major projects.

2 A major project comprises a series of works, activities or services and is intended, in itself, to accomplish a definite and indivisible task of a precise economic or technical nature, which has clearly identified goals and whose total cost exceeds € 10 million.

3 Major projects shall be submitted to the Commission for approval by the relevant operating structure. The Decision approving the project shall define the physical object and the eligible expenditure to which the co-financing rate for the priority axis applies. It shall be followed by a bilateral agreement with the beneficiary country, laying down those elements.

4 When submitting a major project to the Commission, the operating structure shall provide the following information:

- a information on the body to be responsible for implementation;
- b information on the nature of the investment and a description of its financial volume and location;
- c results of feasibility studies;
- d a timetable for the implementation of the project before the closure of the related operational programme;
- e an assessment of the overall socio-economic balance of the operation, based on a cost-benefit analysis and including a risk assessment, and an assessment of the expected impact on the sector concerned, on the socio-economic situation of the beneficiary

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- country and, where the operation involves the transfer of activities from a region in a Member State, the socio-economic impact on that region;
- f an analysis of the environmental impact;
  - g the financing plan, showing the total financial contributions expected and the planned contribution under the IPA Regulation, as well as other Community and other external funding. The financing plan shall substantiate the required IPA grant contribution through a financial viability analysis.

## CHAPTER III

### Implementation

#### *Section 1*

#### **General rules**

#### *Article 158*

#### **Selection of operations**

1 All operations which are not major projects and which are implemented by final beneficiaries other than national public bodies shall be selected through calls for proposals. The selection criteria shall be drawn up by the operating structure and shall be published with the call for proposals.

2 The operating structure shall set up a selection committee for each call for proposals, which shall analyse and select proposals, and recommend results to the operating structure.

The operating structure shall decide whether to approve the results of the selection procedure and state the reasons for its decision.

The composition of the selection committee and its functioning modalities are defined in the relevant financing agreement.

#### *Article 159*

#### **Financial engineering instruments**

1 As part of an operational programme, the Community contribution may finance expenditure related to an operation comprising contributions to support financial engineering instruments for enterprises, such as venture capital funds, guarantee funds and loan funds. Preference shall be given to small and medium-sized enterprises.

2 Detailed implementing rules shall be set out in the financing agreement following the adoption of an operational programme providing for Community contribution to financial engineering instruments.

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## Section 2

### **Financial management**

#### Article 160

##### **Payments**

1 Notwithstanding Article 40(5), the combined total of pre-financing and interim payments shall not exceed 90 % of the Community contribution, as set out in the financial table of the operational programmes.

2 All exchanges concerning financial transactions between the Commission and the authorities and bodies referred to in Article 21 shall be made by electronic means, as provided for in the financing agreement.

3 In addition to the provisions of Article 42, payments for the pre-financing payments for the pre-financing shall amount to 30 % of the Community contribution for the first three years of the programme concerned, and shall be made once the conditions laid down in Article 42(1) are met. Where necessary, with regard to the availability of budgetary commitment, the pre-financing may be made in two instalments.

#### Article 161

##### **Acceptability of applications for payment**

1 In the case of a payment application for an interim payment, in addition to the provisions laid down in Article 43(1), the provisions of this paragraph shall apply under the regional development and the human resources development components.

A payment application cannot be accepted if payments have been suspended in accordance with Article 163. The payment application shall certify that all requirements laid down in Article 43(1) and in this paragraph are fulfilled.

The certified statement of expenditure referred to in Article 43(1) shall be drawn up by priority axis and measures. The national authorising officer shall certify that the statement of expenditure is accurate, results from reliable accounting systems and is based on verifiable documents. The national authorising officer shall send this document to the Commission together with:

- a a certificate of expenditure, certifying that 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 relevant applicable Community and national rules;
- b the computerised listing of operations by measure and the corresponding expenditure, including contribution under the IPA Regulation, national public and, when applicable, private contributions;
- c the details of amounts recoverable following cancellation of all or part of the Community contribution for an operation;
- d the volume of Community funds in the component-specific euro account at the date of the last debit to which this statement refers and the interest earned.

2 In the case of a payment application for the payment of the final balance, in addition to the provisions laid down in Article 45(1), the provisions of this paragraph shall apply under the regional development and the human resources development components.



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For a payment application to be acceptable, the Community contribution, by priority axis, shall be consistent with the financial table of the operational programme.

The certified statement of expenditure referred to in Article 45(1) shall be drawn up by the national authorising officer and sent to the Commission in accordance with the requirements of paragraph 1 of this Article.

The Commission shall inform the beneficiary country of its conclusions on the content of the audit authority opinion referred to in Article 45(1)(c). This opinion shall be deemed accepted in the absence of observations by the Commission within five months from the date of its receipt.

### *Article 162*

#### **Deadlines for payments**

1 The national fund shall ensure that requests for interim payments for each operational programme are sent to the Commission three times a year. For a payment to be made by the Commission in a given year, the application for payment shall be submitted by 31 October that year.

2 Subject to available funding, the Commission shall make the interim payment no later than two months after the date on which an application for payment meeting the conditions referred to in Articles 43(1) and 161(1) is registered with the Commission.

3 Subject to available funding, the Commission shall make the payment of the final balance once the following conditions are fulfilled:

- a the Commission has accepted the sectoral final report on implementation in accordance with the provisions of Article 169(4) and (5);
- b the Commission has accepted the opinion issued by the audit authority as referred to in Article 45(1)(c) and the related activity report set out in Article 29(2)(b) first indent.

4 The payment deadline may be interrupted by the authorising officer by delegation of the Commission, with the meaning of Regulation (EC, Euratom) No 1605/2002, for a maximum 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; or
- b the authorising officer by delegation in the Commission 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; or
- c clarifications are needed regarding the information contained in the statement of expenditure.

The national IPA coordinator and the national authorising officer 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 beneficiary country.

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### *Article 163*

#### **Suspension of payments**

The provisions laid down in Article 46 shall apply to all or part of the interim payments at the level of priority axes or programmes.

### *Article 164*

#### **Closure of a programme**

1 The operational programme shall be closed according to the provisions of Article 47(1), the payment of the final balance being determined by the Commission on the basis of the documents referred to in Article 45(1) and Article 161(2).

The Commission shall inform the beneficiary country about the date of the closure of the operational programme.

2 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 beneficiary country, within nine months of the date on which the recovery order is issued. Such amendment of the balance shall not affect the date of the closure of the operational programme as set out in paragraph 1.

### *Article 165*

#### **Re-use of Community contribution**

The beneficiary country shall inform the Commission of how it proposes to re-use the funds cancelled in accordance with Article 54 and, where appropriate, to amend the financial plan for assistance, in accordance with the provisions of Article 156.

### *Section 3*

#### ***Evaluation and monitoring***

### *Article 166*

#### **Evaluation**

1 Beneficiary countries shall carry out an *ex ante* evaluation for each operational programme separately. However, in duly justified cases, and in agreement with the Commission, beneficiary countries may carry out a single *ex ante* evaluation covering more than one operational programme.

*Ex ante* evaluations shall be carried out under the responsibility of the operating structure.

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*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 and the quality of the procedures for implementation, monitoring, evaluation and financial management.

The *ex ante* evaluation shall be annexed to the operational programme(s) it relates to.

2 During the programming period, beneficiary countries shall carry out evaluations linked to the monitoring of operational programmes, in particular where this 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 156. The results shall be sent to the sectoral monitoring committee for the operational programme and to the Commission.

3 Evaluations shall be carried out by experts or bodies, internal or external, functionally independent of the authorities referred to in Article 21. The results shall be published according to the applicable rules on access to documents.

#### *Article 167*

#### **Sectoral monitoring committee**

1 In accordance with Article 59, the operating structure shall establish a sectoral monitoring committee for each programme. A single sectoral monitoring committee may be set up for several programmes within the same component. This committee shall meet at least twice a year, at the initiative of the beneficiary country or the Commission.

2 Each sectoral monitoring committee shall draw up its rules of procedure in compliance with a sectoral monitoring committee mandate set out by the Commission, and within the institutional, legal and financial framework of the beneficiary country concerned. It shall adopt these rules of procedure in agreement with the operating structure and the IPA monitoring committee, in order to exercise its missions in accordance with this Regulation.

3 The sectoral monitoring committee shall be co-chaired by the head of the operating structure and the Commission. Its composition shall be decided by the operating structure, in agreement with the Commission.

The sectoral monitoring committee shall include the Commission, the national IPA coordinator, the strategic coordinator for the regional development and the human resources development components, the operating structure of the programme. Where appropriate, it shall also include representatives from the civil society and socio-economic partners. A representative of the European Investment Bank may participate in an advisory capacity for those operational programmes to which the European Investment Bank makes a contribution.

4 The sectoral monitoring committee shall:

- a consider and approve the general criteria for selecting the operations, in accordance, where relevant, with Article 155(2)(g) within six months of the entry into force of the financing agreement on the programme and approve any revision of those criteria in accordance with programming needs;
- b review at each meeting progress made towards achieving the specific targets of the operational programme on the basis of documents submitted by the operating structure;

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- c examine at each meeting the results of implementation, particularly the achievement of the targets set for each priority axis and measures and interim evaluations referred to in Article 57(5); it shall carry out this monitoring by reference to the indicators referred to in Article 155(2)(d);
  - d examine the sectoral annual and final reports on implementation referred to in Article 169;
  - e be informed of the annual activity report referred to in the first indent of Article 29(2) (b), 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 examine any proposal to amend the financing agreement of the programme.
- 5 The sectoral monitoring committee may also propose to the operating structure any revision or examination of the programme likely to make possible the attainment of the programmes' objectives referred to in Article 155(2)(a) or to improve its management, including its financial management.

#### *Article 168*

#### **Arrangements for monitoring**

Data exchange between the Commission and the beneficiary countries for the purpose of monitoring shall be carried out electronically, as provided for in the financing agreements.

#### *Article 169*

#### **Sectoral annual and final reports on implementation**

1 By 30 June each year and for the first time by 30 June 2008, the operating structure shall submit a sectoral annual report to the Commission and the national IPA coordinator.

A sectoral final report shall be submitted to the Commission and the national IPA coordinator at the latest six months after the final date of eligibility of expenditure. The sectoral final report shall refer to the whole period of implementation and include the last sectoral annual report.

The sectoral reports shall be established in relation to the programmes concerned.

2 Sectoral reports shall be examined by the sectoral monitoring committee prior to their transmission to the Commission and the national IPA coordinator.

3 Sectoral reports shall include the following:

- a the quantitative and qualitative progress made in implementing the operational programme, priority axes, measures and, where relevant, operations or group of operations, in relation to their specific, verifiable targets, with a quantification, when possible, using the indicators referred to in Article 155(2)(d) at the appropriate level. Where relevant under the human resources development component, the statistics shall be broken down by sex;
- b the financial implementation of the operational programme, detailing for each priority axis and measure:

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- (i) the total expenditure paid out by the final beneficiaries and included in payment applications sent to the Commission by the national fund;
  - (ii) the total expenditure actually committed and paid out by the national fund with the corresponding public or public and private contribution; this shall be accompanied by computerised forms listing the operations, so that they can be followed through from budgetary commitment by the beneficiary country to final payments;
  - (iii) the total payments received from the Commission.
- Where appropriate, financial implementation may be presented through the major areas of intervention, referred to in Article 5(3)(f), and the regions where assistance is concentrated;
- c for information purposes, the indicative breakdown of the allocation under the IPA Regulation, for the regional development component, by categories, in accordance with the detailed list included in the financing agreement;
  - d the steps taken by the operating structure or the sectoral monitoring committee to ensure the quality and effectiveness of implementation, in particular:
    - (i) the monitoring and evaluation measures, including data collection arrangements;
    - (ii) a summary of any significant problems encountered in implementing the operational programme and any subsequent measures taken;
    - (iii) the use made of technical assistance;
  - e the activities to provide information on and publicise the programme, in accordance with Article 62;
  - f where appropriate for the regional development component, the progress and financing of major projects;
  - g where appropriate under the human resources development component, a synthesis of the implementation of:
    - (i) gender mainstreaming as well as of any gender-specific action;
    - (ii) action to increase participation of migrants in employment and thereby strengthen their social integration;
    - (iii) action to strengthen integration in employment and thereby improve the social inclusion of minorities;
    - (iv) action to strengthen integration in employment and social inclusion of other disadvantaged groups, including people with disabilities.

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

4 The sectoral reports shall be considered admissible if they contain all the appropriate information listed in paragraph 3. The national IPA coordinator and the operating structure shall be informed by the Commission of the admissibility of the sectoral annual report within 10 working days from the date of its receipt.

5 The national IPA coordinator and the operating structure shall also be informed of the Commission's opinion on the content of an admissible sectoral annual report within two months from the date of receipt. For the sectoral final report on an operational programme, this

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information shall be provided within a maximum of five months from the date of receipt of the admissible report.

## TITLE IV

### RURAL DEVELOPMENT COMPONENT

#### CHAPTER I

##### Object of assistance and eligibility

###### *Section 1*

###### **Object of assistance**

###### *Article 170*

##### **Additional definitions for the rural development component**

For the purposes of this Title, in addition to the definitions laid down in Article 2, the following definitions shall apply:

1. 'Community standards': the standards laid down by the Community in the fields of environmental protection, public health, animal and plant health, animal welfare and occupational safety;
2. 'Mountain areas': the areas referred to in the first subparagraph of Article 50(2) of Council Regulation (EC) No 1698/2005<sup>(4)</sup>;
3. 'Young farmer': a farmer under 40 years of age at the time when the decision to grant support is taken, possessing adequate occupational skills and competence.

###### *Article 171*

##### **Areas and forms of assistance**

1 Assistance under this component shall contribute to achieving the following objectives:

- a improving market efficiency and implementation of Community standards;
- b preparatory actions for implementation of the agri-environmental measures and local rural development strategies;
- c development of the rural economy.

2 Assistance covering the objective set out in point (a) of paragraph 1, hereinafter referred to as 'priority axis 1', shall be granted through the following measures:

- a investments in agricultural holdings to restructure and to upgrade to Community standards;
- b support for the setting-up of producer groups;

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- c investments in the processing and marketing of agriculture and fishery products to restructure those activities and to upgrade them to Community standards.
- 3 Assistance covering the objective set out in point (b) of paragraph 1, hereinafter referred to as ‘priority axis 2’, shall be granted through the following measures:
- a actions to improve the environment and the countryside;
  - b preparation and implementation of local rural development strategies.
- 4 Assistance covering the objective set out in point (c) of paragraph 1, hereinafter referred to as ‘priority axis 3’, shall be granted through the following measures:
- a improvement and development of rural infrastructure;
  - b diversification and development of rural economic activities;
  - c improvement of training.

## *Section 2*

### ***General requirements on eligibility and aid intensities***

#### *Article 172*

#### **Eligibility of expenditure**

1 In addition to the costs mentioned in Article 34(2), the costs referred to in paragraph 3(c) shall be considered eligible under this component.

The technical assistance measures eligible under Article 34(2) are those referred to in Article 182.

2 In addition to the provisions of Article 34(3), the following expenditure shall not be eligible under this component:

- a the purchase of agricultural production rights, animals, annual plants and their planting;
- b any maintenance, depreciation and rental costs;
- c any cost incurred by public administration in managing and implementing assistance.

3 Notwithstanding the provisions of Article 34(3), in the case of investment:

- a eligible expenditure shall be limited to the construction or improvement of immovable property;
- b the purchase or lease-purchase of new machinery and equipment, including computer software up to the market value of the asset shall be considered as eligible; other costs connected with the leasing contract, such as lessor's margin, interest refinancing costs, overheads and insurance charges, shall not be eligible;
- c general costs linked to expenditure referred to in points (a) and (b), such as architects', engineers' and other consultation fees, feasibility studies, the acquisition of patent rights and licences shall be eligible up to a ceiling of 12 % of the costs referred to in points (a) and (b).

Detailed provisions for the implementation of this paragraph shall be set out in sectoral agreements as defined in Article 7 or financing agreements as defined in Article 8.

4 Investment projects shall remain eligible for Community financing provided they do not, within five years from the final payment by the operating structure, undergo a substantial modification.

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### *Article 173*

#### **Aid intensities and rate of Community contribution**

1 For the purposes of this component, the eligible expenditure as referred to in Article 38(1) shall be calculated on the basis of the public expenditure as defined in Article 2.

2 Public expenditure shall in principle not exceed a ceiling of 50 % of the total eligible cost of the investment. However, that ceiling shall be raised up to:

- a 55 % for investments in agricultural holdings made by young farmers;
- b 60 % for investments in agricultural holdings in mountain areas;
- c 65 % for investments in agricultural holdings in mountain areas made by young farmers;
- d 75 % for investments referred to in paragraph 4(d) and for investments in agricultural holdings to implement the Council Directive 91/676/EEC<sup>(5)</sup>, subject to the existence of a national strategy for its implementation;
- e 100 % for investments in infrastructure not of a nature to generate substantial net revenue;
- f 100 % for measures referred to under in Article 182.

3 In determining the rate of public expenditure for the purposes of paragraph 2, account shall not be taken of national aid to facilitate access to loans granted without any Community contribution provided under the IPA Regulation.

4 The Community contribution shall in principle not exceed a ceiling of 75 % of the eligible expenditure. However, that ceiling shall be raised up to:

- a 80 % for the measures covered by priority axis 2 referred to in Article 171(3);
- b 80 % in the case of activities covered by Article 182, where those activities are not taken at the initiative of the Commission;
- c 100 % in the case of activities covered by Article 182, where those activities are taken at the initiative of the Commission;
- d 85 % in the case of investment projects carried out in regions where the Commission determines that exceptional natural disasters have occurred.

### *Section 3*

#### ***Eligibility and specific requirements for assistance under Priority Axis 1***

### *Article 174*

#### **Investments in agricultural holdings**

1 Assistance referred to in Article 171(2)(a) shall be granted for tangible or intangible investments in agricultural holdings to upgrade them to Community standards and to improve their overall performance.

2 Assistance under this measure may be granted to agricultural holdings:

- a for which a prospect of economic viability at the end of the realisation of the investment can be demonstrated;



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- b which comply with national minimum standards regarding environmental protection, public health, animal and plant health, animal welfare and occupational safety at the time when the decision to grant support is taken.

3 By derogation from point (b) of paragraph 2, where national minimum standards based on Community standards have been newly introduced at the time the application is received, assistance may be granted regardless of non-compliance with those standard on the condition that the holding shall meet the new standards by the end of the realisation of the investment.

Furthermore, the Commission may, on the basis of duly substantiated request from the beneficiary country, allow derogation from point (b) of paragraph 2 in respect of non-compliance with national minimum standards based on Community standards introduced in the national law up to one year prior to date of submission of the application.

4 Assistance shall be granted on the condition that the investments comply with the relevant Community standards at the end of their realisation.

5 Beneficiary countries shall set limits for the total investment eligible for assistance. They shall lay down appropriate standards regarding farmers' occupational skill and competence which the farmers shall be required to comply with in order to be eligible for assistance.

#### *Article 175*

### **Support for the setting-up of producer groups**

1 Assistance referred to in Article 171(2)(b) may be granted to facilitate the setting-up and administrative operation of producer groups, for the purposes of:

- a adapting the production and output of the members of producer groups to market requirements;
- b jointly placing goods on the market, including preparation for sale, centralisation of sale, and supply to bulk buyers;
- c establishing common rules on production information, with particular regard to harvesting and availability.

2 Assistance under this measure shall not be granted to producer groups which have been officially recognised by the relevant national authority of the beneficiary country before 1 January 2007 and/or before the approval of the programme referred to in Article 184.

Professional and/or inter-professional organisations representing one or more sectors do not qualify as producer groups.

3 Assistance shall be granted as a flat-rate aid in annual instalments for the first five years following the date on which the producer group was recognised. It shall be calculated on the basis of the group's annual marketed production and shall fulfil the following requirements:

- a amount for the first, second, third, fourth and fifth years to 5 %, 5 %, 4 %, 3 % and 2 % respectively of the value of marketed production up to 1 million euros,
- b amount for the first, second, third, fourth and fifth years, to 2,5 %, 2,5 %, 2,0 %, 1,5 % and 1,5 % respectively of the values of marketed production exceeding 1 million euros,
- c be subject to a ceiling for each producer organisation of:
  - EUR 100 000 for the first year
  - EUR 100 000 for the second year
  - EUR 80 000 for the third year

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- EUR 60 000 for the fourth year
- EUR 50 000 for the fifth year.

### Article 176

#### **Investments in processing and marketing of agriculture and fishery products**

1 Assistance referred to in Article 171(2)(c) shall be granted for tangible and intangible investments in processing and marketing of agricultural and fishery products, covered by Annex I to the Treaty. Such assistance shall be aimed at assisting enterprises in upgrading to Community standards and to improve their overall performance. Investments must contribute to improving the situation of the basic agricultural production sector in question.

Investments at retail level shall be excluded from support.

- 2 Assistance under this measure may be granted for investments in enterprises:
- a for which the prospect of economic viability at the end of the realisation of the investment can be demonstrated, and
  - b which comply with the national minimum standards regarding environmental protection, public health, animal and plant health, animal welfare and occupational safety at the time when the decision to grant support is taken.

3 By derogation from point (b) of paragraph 2, where national minimum standards based on Community standards have been newly introduced at the time the application is received, assistance may be granted regardless of non-compliance with those standard on the condition that the enterprise shall meet the new standards by the end of the realisation of the investment.

Furthermore, the Commission may, on the basis of a duly substantiated request from the beneficiary country, allow derogation from point (b) of paragraph 2 in respect of non-compliance with national minimum standards based on Community standards introduced in the national law up to one year prior to date of submission of the application.

4 Assistance maybe granted to investments in establishments which are part of enterprises:

- a which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million, giving priority to investments aiming to align the establishment with all the relevant Community standards; or
- b which employ fewer than 750 persons or have an annual turnover not exceeding EUR 200 million, where the purpose of the investments is to make the establishment comply with the relevant Community standards.

5 The Commission may, on the basis of a duly substantiated request from the beneficiary country, decide that assistance can also be granted to enterprises not covered by paragraph 4 for investments necessary to meet specific Community standards which involves especially costly investments. Such support may be granted only to enterprises identified in the national plan for upgrading to Community standards specifically intended to make the establishment compliant with the relevant Community standards in its entirety. In such cases assistance shall be granted at half of the aid rate available for the enterprises covered by paragraph 4.

6 Beneficiary countries shall set limits for total investment eligible for support under this measure.

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7 Assistance to investments in the enterprises referred to in point (a) of paragraph 4 shall be granted on the condition that such investments will comply with the relevant Community standards at the end of their realisation.

#### *Section 4*

### ***Eligibility and specific requirements under Priority Axis 2***

#### *Article 177*

#### **Preparation for implementation of actions relating to environment and the countryside**

1 In order to prepare the beneficiary countries for the implementation of actions referred to in Axis 2 of Council Regulation (EC) No 1698/2005, assistance referred to in Article 171(3) (a), shall be granted to pilot projects covered by Articles 39 and 40 of Council Regulation (EC) No 1698/2005.

2 Such actions shall aim at developing practical experience of the implementation of actions to improve the environment and the countryside, at both the administrative and farm levels.

#### *Article 178*

#### **Preparation and implementation of local rural development strategies**

1 Assistance as referred to in Article 171(3)(b) shall be granted in accordance with Article 61 of Council Regulation (EC) No 1698/2005.

2 Assistance shall support:

- a the implementation of cooperation projects in accordance with the priorities as referred to in Article 171(1) and within the meaning of Article 65 of Council Regulation (EC) No 1698/2005;
- b the running of the local private-public partnerships, also referred as 'local action groups', acquisition of skills, awareness raising activities and promotional events in a view to achieving the objectives as referred to in Article 171(1).

3 Detailed provisions for the implementation of this measure shall be agreed with the beneficiary country. They shall be consistent with the relevant rules applicable to the European Agricultural Fund for Rural Development as set out in Council Regulation (EC) No 1698/2005.

#### *Section 5*

### ***Eligibility and specific requirements under Priority Axis 3***

#### *Article 179*

#### **Improvement and development of rural infrastructure**

1 Assistance referred to in Article 171(4)(a), may be provided to investments aimed at improving and developing rural infrastructure by:

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- a addressing regional disparities and increasing the attractiveness of rural areas for private individuals and entrepreneurial activity;
  - b providing conditions for the development of the rural economies.
- 2 Priority shall be given to investments in water and energy supply, waste management, local access to information and communication technologies, local access to roads of particular importance for local economic development, and, fire protection infrastructures where justified by the risk of forest fires.
- 3 Where local rural development strategies as referred to in Article 171(3)(b) have been established, the investments supported under this Article must be in line with those strategies.

#### *Article 180*

### **Diversification and development of rural economic activities**

- 1 Assistance referred to in Article 171(4)(b), may be provided to investments aimed at diversification and development of rural economic activities by:
- a raising of the economic activity;
  - b creation of employment opportunities;
  - c diversification into non-agricultural activities.
- 2 Priority shall be given to investments for the creation and development of micro and small enterprises, crafts and rural tourism, with a view to promoting entrepreneurship and developing the economic fabric.
- 3 Where local rural development strategies as referred to in Article 171(3)(b) have been established, the investments supported under this Article must be in line with those strategies.

#### *Article 181*

### **Improvement of training**

- 1 Assistance may be granted to contribute to the improvement of the occupational skills and competence of persons engaged in the agricultural, food, and forestry sectors and other economic actors operating in the fields covered by this component.

Assistance shall not be granted to courses of instruction or training which form part of normal programmes or systems of education at secondary or higher levels.

- 2 Beneficiary countries shall elaborate a training strategy for the implementation of the operations envisaged under paragraph 1. The strategy shall include a critical assessment of the existing training structures, an analysis of the training needs and objectives. It shall also establish a set of criteria for the selection of training providers.

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## Section 6

### **Technical assistance**

#### Article 182

#### **Scope and implementation**

1 Assistance may be granted for activities related to the preparation, monitoring, evaluation, information and control activities which are necessary for the implementation of the programme. These activities shall include in particular:

- a meetings and other activities necessary to discharge the responsibilities of the sectoral monitoring committee for this component, such as studies contracted and realised via expert assistance;
- b information and publicity campaigns;
- c translation and interpretation at the request of the Commission, not including those required pursuant to the application of the framework, sectoral and financing agreements;
- d visits and seminars;
- e activities related to the preparation of measures in the programme to ensure their effectiveness, including those measures whose application is foreseen at a later stage;
- f the interim evaluation of the programme;
- g the establishment and operation of a national network to coordinate activities developed under Article 178 as well as of a future national rural development network consistent with Article 68 of Council Regulation (EC) No 1698/2005.

2 The sectoral monitoring committee for this component shall be consulted on the technical assistance activities. Each activity shall be approved by the chair of the sectoral monitoring committee before its implementation.

3 Each visit and seminar referred to in paragraph 1(d) not made at the initiative of the Commission shall require the submission of a written report to the sectoral monitoring committee for this component.

#### Article 183

#### **European Network for Rural Development**

Beneficiary countries and organisations established in the beneficiary countries and administrations of beneficiary countries active in the field of rural development shall have access to the European Network for Rural Development established by Article 67 of Council Regulation (CE) No 1698/2005. Relevant detailed provisions shall be agreed with beneficiary countries.

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## CHAPTER II

### Programming

#### Article 184

### Programmes

1 Measures under the rural development component shall be the subject of a programme to be drawn up at national level for agriculture and rural development (hereinafter referred to as 'the programme') covering the entire period of IPA implementation. The programme shall be prepared by the relevant authorities designated by the beneficiary country and shall be submitted to the Commission after consulting the appropriated interested parties.

2 Each programme shall include:

- a a quantified description of the current situation showing disparities, shortcomings and potential for development, the main results of previous operations undertaken with Community and other bilateral or multilateral assistance, the financial resources deployed and the evaluation of results available;
- b a description of the national rural development strategy proposed, based on an analysis of the current situation in the rural areas and on an in-depth analysis of the sectors concerned, involving independent expertise. A description of the existing training strategy referred to under Article 181(2) should be presented. The national rural development strategy shall also include quantified objectives, indicating for each of the priority axis set out under Article 171(1) the appropriated monitoring and evaluation indicators;
- c an explanation of how the overall strategic approach and sectoral strategies identified in the multi-annual indicative planning document of the beneficiary country are translated into specific actions within the rural development component;
- d an indicative overall financial table summarizing the national, Community and, where appropriate, the private financial resources provided for and corresponding to each rural development measure, as well as the EU co-financing rate by axis;
- e a description of the measures chosen from Article 171 including:
  - the definition of final beneficiaries,
  - the geographic scope,
  - the eligibility criteria,
  - the ranking criteria for selecting projects,
  - monitoring indicators,
  - quantified target indicators;
- f a description of the operating structure for the implementation of the programme, including monitoring and evaluation;
- g the names of the authorities and bodies responsible for carrying out the programme;
- h the results of consultations and provisions adopted for associating the relevant authorities and bodies as well as appropriate economic, social and environmental partners;
- i the results and recommendations of the *ex ante* evaluation of the programme, including the description of the follow-up undertaken by the beneficiary countries on recommendations.

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3 In their programme, beneficiary countries shall ensure that priority is given to measures to implement the Community standards and to improve market efficiency, and measures to create new employment opportunities in rural areas.

4 In their programme, beneficiary countries shall ensure compliance with the provisions of the multi-annual indicative planning document.

5 Unless otherwise agreed with the Commission, beneficiary countries shall submit their programme proposals no later than six months after the entry into force of this Regulation.

### *Article 185*

#### **Adoption and amendments of programmes**

1 The programmes under the rural development component shall be adopted by the Commission within six months of submission of the proposal of the programme, provided that all relevant information is available. In particular, the Commission shall appraise the proposed programme to determine whether it is consistent with this Regulation.

2 The programme may, if necessary, be amended to take due account of:

- a relevant new information and results relating to the implementation of the actions concerned, including the results of monitoring and evaluation, as well as the need to adjust the amounts of aid available,
- b the beneficiary country's progress towards accession as indicated in the main accession documents, including the multi-annual indicative planning document.

3 Any proposal for amendments shall be submitted to the Commission by the beneficiary country and shall be duly substantiated, and shall include the following information:

- a the reasons for the proposed amendment;
- b the expected effects of the amendment;
- c amended financial and measure tables, where the proposed amendments are of a financial nature.

4 Substantial changes with the meaning of Article 14(4) of the IPA Regulation include amendments which involve changes of financial breakdowns among priority axes as referred in Article 171(1) or the co-financing rate by axis or the inclusion of new measures.

5 The Commission may request beneficiary countries to present a proposal for amending the programme where relevant Community legislation has been amended.

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## CHAPTER III

### Implementation

#### Section 1

#### **Principles and financial management**

##### Article 186

#### **Implementing principles**

1 Implementation of this component shall be carried out by the beneficiary countries on the basis of decentralised management without *ex ante* controls as referred to in Article 18.

2 Further provisions may be set out in the sectoral and financing agreements, referred to in Articles 7 and 8.

The provisions shall be consistent with the relevant rules applicable to rural development programmes in the Member States.

##### Article 187

#### **Calculation of payments**

By way of derogation from Article 44, the Community contribution to the programmes under this component shall be calculated by applying the co-financing rate laid down for each priority axis in the financing decision to the eligible expenditure certified in each expenditure declaration, subject to the maximum Community contribution attached to each priority axis.

##### Article 188

#### **Pre-financing**

1 For the purposes of this component, pre-financing payments may amount to 30 % of the Community contribution for the first three years of the programme concerned. Subject to the availability of budgetary appropriations, pre-financing may be paid in two or more instalments.

2 In cases where the amounts paid for pre-financing referred to in paragraph 1 are not sufficient to ensure timely payment of claims from final beneficiaries, these amounts may be increased according to the provisions laid down in the sectoral or financing agreements during the period of implementation to cover such needs, provided that the cumulative amount of payments for pre-financing does not exceed 30 % of the Community contribution for the three most recent years as established in the financing decision adopting the multi-annual programmes.

3 The first instalment of pre-financing shall be paid by the Commission when the conditions laid down in Article 42(1) are fulfilled. Additional instalments may be paid following a request of the beneficiary country in accordance with the requirements provided for in paragraphs 1 and 2.



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## *Article 189*

### **Clearance of accounts**

Detailed provisions for the clearance of accounts shall be set out in the sectoral and financing agreements, respectively referred to in Articles 7 and 8. They shall be consistent with the relevant rules applicable to the European Agricultural Fund for Rural Development as set out in Council Regulation (EC) No 1290/2005<sup>(6)</sup> and the regulations laying down detailed rules for its application. They may in particular provide for consultation of the Committee on the Agricultural Funds.

## *Article 190*

### **Criteria for financial corrections**

By way of derogation from Article 51(2), the Commission shall apply, depending on the findings, either flat-rate corrections, or punctual corrections or corrections based on an extrapolation of the findings.

## *Section 2*

### ***Evaluation and monitoring***

## *Article 191*

### ***Ex ante, interim and ex post evaluations***

1 In accordance with Article 57, the programme shall be subject to *ex ante*, *ex post* and, where appropriate, interim evaluations carried out by independent evaluators under the responsibility of the beneficiary country.

2 The evaluations shall assess the implementation of the programme towards the achievement of objectives set out in Article 12 of the IPA Regulation.

3 Detailed modalities of these evaluations may be set out in the sectoral or financing agreements, respectively referred to in Articles 7 and 8. These modalities shall be consistent with the relevant rules applicable to rural development programmes in the Member States.

## *Article 192*

### **Sectoral monitoring committee**

1 In accordance with the provisions of Article 59, a sectoral monitoring committee shall be set up by the beneficiary country.

2 The sectoral monitoring committee shall be composed of representatives of relevant authorities and bodies, and appropriate economic, social and environmental partners. The sectoral monitoring committee shall draw up and approve its rules of procedure.

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3 The sectoral monitoring committee shall be chaired by a representative of the beneficiary country. The Commission shall participate in the work of the sectoral monitoring committee.

4 The progress, efficiency and effectiveness of the programme in relation to its objectives shall be measured by means of indicators relating to the baseline situation as well as to the financial execution, outputs, results and impact of the programmes.

#### *Article 193*

### **Sectoral annual reports**

1 Under this component, the sectoral annual reports referred to in Article 61(1) shall be submitted to the Commission and to the national IPA coordinator within six months of the end of each full calendar year of programme implementation.

- a Such reports shall contain information regarding the implementation progress, covering in particular, the attainment of set objectives, the problems encountered in managing the programme, and the measures taken, financial execution, as well as monitoring and evaluation activities carried out.
- b The sectoral annual reports shall be examined by the sectoral monitoring committee prior to their submission.

2 A sectoral final report shall, after examination by the sectoral monitoring committee, be submitted to the Commission and the national IPA coordinator, at the latest six months after the final date of eligibility of expenditure under the programme.

#### *Article 194*

### **Further provisions for monitoring and reporting**

Further provisions for monitoring and reporting may be set out in the sectoral and financing agreements referred to in Articles 7 and 8. They shall be consistent with the relevant rules applicable to the rural development programmes in the Member States.

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- (1) OJ L 310, 9.11.2006, p. 1.
- (2) OJ L 210, 31.7.2006, p. 25.
- (3) OJ L 371, 27.12.2006, p. 1.
- (4) OJ L 277, 21.10.2005, p. 1.
- (5) OJ L 375, 31.12.1991, p. 1.
- (6) OJ L 209, 11.8.2005, p. 1.

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