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I

(Acts whose publication is obligatory)

**REGULATION (EC) No 1080/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 5 July 2006
on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the first paragraph of Article 162 and the second subparagraph of Article 299(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

(1) Article 160 of the Treaty provides that the European Regional Development Fund (ERDF) is intended to help to redress the main regional imbalances in the Community. The ERDF therefore contributes to reducing the gap between the levels of development of the various regions and the extent to which the least favoured regions, including rural and urban areas, declining industrial regions, areas with a geographical or natural handicap, such as islands, mountainous areas, sparsely populated areas and border regions, are lagging behind.

(2) The provisions common to the Structural Funds and the Cohesion Fund are set out in Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund ⁽⁴⁾. Specific provisions concerning the type of activities which may be financed by the ERDF under the objectives defined in that Regulation should be laid down.

(3) The ERDF should provide assistance within the framework of an overall strategy for cohesion policy which ensures greater concentration of assistance on the priorities of the Community.

(4) Regulation (EC) No 1083/2006 provides that rules on eligibility of expenditure are to be established at national level, with certain exceptions for which it is necessary to lay down specific provisions. Specific provisions should therefore be laid down for the exceptions related to the ERDF.

(5) Within the framework of an integrated urban development operation, it is considered necessary to support limited actions to renovate housing in areas experiencing or threatened by physical deterioration and social exclusion in the Member States that acceded to the European Union on or after 1 May 2004.

(6) It is necessary to establish that the contribution from the ERDF to housing expenditure should concern the provision of good quality accommodation for lower income groups, including recently privatised housing stock, as well as accommodation for vulnerable social groups.

(7) Efficient and effective implementation of actions supported by the ERDF depends on good governance and partnership among all the relevant territorial and socio-economic partners, and in particular regional and local authorities, as well as any other appropriate body during the various stages of implementation of the operational programmes co-financed by the ERDF.

(8) The Member States and the Commission should ensure that there is no discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the various stages of implementation of the operational programmes co-financed by the ERDF.

⁽¹⁾ OJ C 255, 14.10.2005, p. 91.

⁽²⁾ OJ C 231, 20.9.2005, p. 19.

⁽³⁾ Opinion of the European Parliament of 6 July 2005 (not yet published in the Official Journal), Council Common Position of 12 June 2006 (not yet published in the Official Journal) and Position of the European Parliament of 4 July 2006 (not yet published in the Official Journal).

⁽⁴⁾ See page 25 of this Official Journal.

- (9) Building on the experience and strengths of the URBAN Community initiative provided for in Article 20(1)(b) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds ⁽¹⁾, sustainable urban development should be reinforced by fully integrating measures in that field into the operational programmes co-financed by the ERDF, paying particular attention to local development and employment initiatives and their potential for innovation.
- (10) Particular attention should be paid to ensuring complementarity and consistency with other Community policies, and in particular with the Seventh Framework Programme for research, technological development and demonstration activities and the Competitiveness and Innovation Framework Programme. Furthermore, there should be synergy between support granted from the ERDF, on the one hand, and that granted from the European Social Fund pursuant to Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund ⁽²⁾, the Cohesion Fund pursuant to Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund ⁽³⁾, the European Agricultural Fund for Rural Development pursuant to Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) ⁽⁴⁾ and a European Fisheries Fund, on the other hand.
- (11) It is necessary to ensure that actions supported by the ERDF in favour of small and medium-sized enterprises take into account and support the implementation of the European Charter for Small Enterprises adopted at the Santa Maria da Feira European Council of 19 and 20 June 2000.
- (12) Specific attention should be paid to the outermost regions, namely by extending, on an exceptional basis, the scope of the ERDF to the financing of operating aid linked to the offsetting of the additional costs resulting from their specific economic and social situation, which is compounded by their remoteness, insularity, small size, difficult topography and climate and their economic dependence on a few products, the permanence and combination of which severely restrain their development. Such specific measures require the use of Article 299(2) of the Treaty as a legal basis.
- (13) The ERDF should address the problems of accessibility to and remoteness from large markets confronting areas with an extremely low population density, as referred to in Protocol No 6 on special provisions for Objective 6 in the framework of the Structural Funds in Finland and Sweden to the 1994 Act of Accession. The ERDF should also address the specific difficulties encountered by certain islands, mountainous areas, border regions and sparsely populated areas whose geographical situation slows down their development with a view to supporting their sustainable development.
- (14) It is necessary to lay down specific provisions concerning the programming, management, monitoring and control of operational programmes under the European territorial cooperation objective.
- (15) It is necessary to support effective cross-border, transnational and interregional cooperation with the Community's neighbouring countries where this is necessary to ensure that the regions of the Member States which border third countries can be effectively assisted in their development. Accordingly, it is appropriate to authorise on an exceptional basis the financing of assistance from the ERDF for projects located on the territory of third countries where they are for the benefit of the regions of the Community.
- (16) In the interest of clarity, Regulation (EC) No 1783/1999 of the European Parliament and the Council of 12 July 1999 on the European Regional Development Fund ⁽⁵⁾ should therefore be repealed,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1. This Regulation establishes the tasks of the European Regional Development Fund (ERDF), the scope of its assistance with regard to the Convergence, Regional competitiveness and employment and European territorial cooperation objectives as defined in Article 3(2) of Regulation (EC) No 1083/2006, and the rules on eligibility for assistance.

2. The ERDF is governed by Regulation (EC) No 1083/2006 and by this Regulation.

Article 2

Purpose

Pursuant to Article 160 of the Treaty and Regulation (EC) No 1083/2006, the ERDF shall contribute to the financing of assistance which aims to reinforce economic and social cohesion by redressing the main regional imbalances through support for the development and structural adjustment of regional economies, including the conversion of declining industrial regions and regions lagging behind, and support for cross-border, transnational and interregional cooperation.

⁽¹⁾ OJ L 161, 26.6.1999, p. 1. Regulation as last amended by Regulation (EC) No 173/2005 (OJ L 29, 2.2.2005, p. 3).

⁽²⁾ See page 12 of this Official Journal.

⁽³⁾ See page 79 of this Official Journal.

⁽⁴⁾ OJ L 277, 21.10.2005, p. 1.

⁽⁵⁾ OJ L 213, 13.8.1999, p. 1.

In so doing, the ERDF shall give effect to the priorities of the Community, and in particular the need to strengthen competitiveness and innovation, create and safeguard sustainable jobs, and ensure sustainable development.

Article 3

Scope of assistance

1. The ERDF shall focus its assistance on thematic priorities. The type and range of actions to be financed within each priority shall reflect the different nature of the Convergence, Regional competitiveness and employment and European territorial cooperation objectives in accordance with Articles 4, 5 and 6.

2. The ERDF shall contribute towards the financing of:

- (a) productive investment which contributes to creating and safeguarding sustainable jobs, primarily through direct aid to investment primarily in small and medium-sized enterprises (SMEs);
- (b) investment in infrastructure;
- (c) development of endogenous potential by measures which support regional and local development. These measures include support for and services to enterprises, in particular SMEs, creation and development of financing instruments such as venture capital, loan and guarantee funds, local development funds, interest subsidies, networking, cooperation and exchange of experience between regions, towns, and relevant social, economic and environmental actors;
- (d) technical assistance as referred to in Articles 45 and 46 of Regulation (EC) No 1083/2006.

The range of investments and measures listed above under points (a) to (d) shall be available to implement the thematic priorities in accordance with Articles 4, 5 and 6.

Article 4

Convergence

Under the Convergence objective, the ERDF shall focus its assistance on supporting sustainable integrated regional and local economic development and employment by mobilising and strengthening endogenous capacity through operational programmes aimed at the modernisation and diversification of economic structures and at the creation and safeguarding of sustainable jobs. This shall be achieved primarily through the following priorities, the precise policy mix depending on the specificities of each Member State:

- 1. research and technological development (R&TD), innovation and entrepreneurship, including strengthening research and technological development capacities, and their integration into the European Research Area, including infrastructures; aid to R&TD, notably in SMEs, and to technology transfer; improvement of links between

SMEs, tertiary education institutions, research institutions and research and technology centres; development of business networks; public-private partnerships and clusters; support for the provision of business and technology services to groups of SMEs; and fostering of entrepreneurship and innovation funding for SMEs through financial engineering instruments;

- 2. information society, including development of electronic communications infrastructure, local content, services and applications, improvement of secure access to and development of on-line public services; aid and services to SMEs to adopt and effectively use information and communication technologies (ICTs) or to exploit new ideas;
- 3. local development initiatives and aid for structures providing neighbourhood services to create new jobs, where such actions are outside the scope of Regulation (EC) No 1081/2006;
- 4. environment, including investments connected with water supply and water and waste management; waste-water treatment and air quality; prevention, control and fight against desertification; integrated pollution prevention and control; aid to mitigate the effects of climate change; rehabilitation of the physical environment, including contaminated sites and land and brownfield redevelopment; promotion of biodiversity and nature protection, including investments in NATURA 2000 sites; aid to SMEs to promote sustainable production patterns through the introduction of cost-effective environmental management systems and the adoption and use of pollution-prevention technologies;
- 5. prevention of risks, including development and implementation of plans to prevent and cope with natural and technological risks;
- 6. tourism, including promotion of natural assets as potential for the development of sustainable tourism; protection and enhancement of natural heritage in support of socio-economic development; aid to improve the supply of tourism services through new higher added-value services and to encourage new, more sustainable patterns of tourism;
- 7. investments in culture, including protection, promotion and preservation of cultural heritage; development of cultural infrastructure in support of socio-economic development, sustainable tourism and improved regional attractiveness; and aid to improve the supply of cultural services through new higher added-value services;
- 8. transport investments, including improvement of trans-European networks and links to the TEN-T network; integrated strategies for clean transport which contribute to improving the access to and quality of passenger and goods services, to achieving a more balanced modal split, to promoting intermodal systems and to reducing environmental impacts;

9. energy investments, including in improvements to trans-European networks which contribute to improving security of supply, the integration of environmental considerations, the improvement of energy efficiency and the development of renewable energies;
10. education investments, including in vocational training, which contribute to increasing attractiveness and quality of life;
11. investments in health and social infrastructure which contribute to regional and local development and increasing the quality of life.

Article 5

Regional competitiveness and employment

Under the Regional competitiveness and employment objective, the ERDF shall focus its assistance in the context of sustainable development strategies, while promoting employment, primarily on the following three priorities:

1. innovation and the knowledge economy, including through the creation and strengthening of efficient regional innovation economies, systemic relations between the private and public sectors, universities and technology centres which take into account local needs, and in particular:
 - (a) enhancing regional R&TD and innovation capacities directly linked to regional economic development objectives by supporting industry or technology-specific competence centres, promoting industrial R&TD, SMEs and technology transfer, developing technology forecasting and international benchmarking of policies to promote innovation and supporting inter-firm collaboration and joint R&TD and innovation policies;
 - (b) stimulating innovation and entrepreneurship in all sectors of the regional and local economy by supporting the introduction of new or improved products, processes and services onto the market by SMEs, supporting business networks and clusters, improving access to finance by SMEs, promoting cooperation networks between enterprises and appropriate tertiary education and research institutions, facilitating SMEs' access to business support services and supporting the integration of cleaner and innovative technologies in SMEs;
 - (c) promoting entrepreneurship, in particular by facilitating the economic exploitation of new ideas and fostering the creation of new firms by appropriate tertiary education and research institutions and existing firms;
2. environment and risk prevention, and in particular:
 - (d) creating financial engineering instruments and incubation facilities that are conducive to the research and technological development capacity of SMEs and to encouraging entrepreneurship and the formation of new businesses, especially knowledge-intensive SMEs;
 - (a) stimulating investment for the rehabilitation of the physical environment, including contaminated, desertified and brownfield sites and land;
 - (b) promoting the development of infrastructure linked to biodiversity and investments in NATURA 2000 sites, where this contributes to sustainable economic development and/or diversification of rural areas;
 - (c) stimulating energy efficiency and renewable energy production and the development of efficient energy management systems;
 - (d) promoting clean and sustainable public transport, particularly in urban areas;
 - (e) developing plans and measures to prevent and cope with natural risks (e.g. desertification, droughts, fires and floods) and technological risks;
 - (f) protection and enhancement of the natural and cultural heritage in support of socio-economic development and the promotion of natural and cultural assets as potential for the development of sustainable tourism;
3. access to transport and telecommunication services of general economic interest, and in particular:
 - (a) strengthening secondary transport networks by improving links to TEN-T networks, regional railway hubs, airports and ports or multimodal platforms, providing radial links to main railway lines and promoting regional and local inland waterways and short-sea shipping;
 - (b) promoting access to, take up, and efficient use of ICTs by SMEs by supporting access to networks, the establishment of public Internet access points, equipment, and the development of services and applications, including, in particular, the development of action plans for very small and craft enterprises.

In addition, for operational programmes supported by the ERDF in the regions eligible for the specific and transitional financing referred to in Article 8(2) of Regulation (EC) No 1083/2006, the Member States and the Commission may decide to extend support to the priorities referred to in Article 4 of this Regulation.

Article 6

European territorial cooperation

Under the European territorial cooperation objective, the ERDF shall focus its assistance on the following priorities:

1. the development of cross-border economic, social and environmental activities through joint strategies for sustainable territorial development, and primarily:

- (a) by encouraging entrepreneurship, in particular the development of SMEs, tourism, culture, and cross-border trade;
- (b) by encouraging and improving the joint protection and management of natural and cultural resources, as well as the prevention of natural and technological risks;
- (c) by supporting links between urban and rural areas;
- (d) by reducing isolation through improved access to transport, information and communication networks and services, and cross-border water, waste and energy systems and facilities;
- (e) by developing collaboration, capacity and joint use of infrastructures, in particular in sectors such as health, culture, tourism and education.

In addition, the ERDF may contribute to promoting legal and administrative cooperation, the integration of cross-border labour markets, local employment initiatives, gender equality and equal opportunities, training and social inclusion, and sharing of human resources and facilities for R&TD.

As regards the PEACE Programme between Northern Ireland and the border counties of Ireland as envisaged under paragraph 22 of Annex II to Regulation (EC) No 1083/2006, the ERDF shall in addition to the abovementioned actions contribute to promote social and economic stability in the regions concerned, notably by actions to promote cohesion between communities;

2. the establishment and development of transnational cooperation, including bilateral cooperation between maritime regions not covered under point 1, through the financing of networks and of actions conducive to integrated territorial development, concentrating primarily on the following priority areas:

- (a) innovation: the creation and development of scientific and technological networks, and the enhancement of regional R&TD and innovation capacities, where these make a direct contribution to the balanced economic development of transnational areas. Actions may include: the establishment of networks between appropriate tertiary education and research institutions and

SMEs; links to improve access to scientific knowledge and technology transfer between R&TD facilities and international centres of RTD excellence; twinning of technology transfer institutions; and development of joint financial engineering instruments directed at supporting R&TD in SMEs;

- (b) environment: water management, energy efficiency, risk prevention and environmental protection activities with a clear transnational dimension. Actions may include: protection and management of river basins, coastal zones, marine resources, water services and wetlands; fire, drought and flood prevention; the promotion of maritime security and protection against natural and technological risks; and protection and enhancement of the natural heritage in support of socio-economic development and sustainable tourism;
- (c) accessibility: activities to improve access to and quality of transport and telecommunications services where these have a clear transnational dimension. Actions may include: investments in cross-border sections of trans-European networks; improved local and regional access to national and transnational networks; enhanced interoperability of national and regional systems; and promotion of advanced information and communication technologies;
- (d) sustainable urban development: strengthening poly-centric development at transnational, national and regional level, with a clear transnational impact. Actions may include: the creation and improvement of urban networks and urban-rural links; strategies to tackle common urban-rural issues; preservation and promotion of the cultural heritage, and the strategic integration of development zones on a transnational basis.

Assistance to bilateral cooperation between maritime regions may be extended to the priorities referred to in point 1;

3. reinforcement of the effectiveness of regional policy by promoting:

- (a) interregional cooperation focusing on innovation and the knowledge economy and environment and risk prevention in the sense of Article 5(1) and (2);
- (b) exchanges of experience concerning the identification, transfer and dissemination of best practice including on sustainable urban development as referred to in Article 8; and
- (c) actions involving studies, data collection, and the observation and analysis of development trends in the Community.

Article 7

Eligibility of expenditure

1. The following expenditure shall not be eligible for a contribution from the ERDF:

- (a) interest on debt;
- (b) the purchase of land for an amount exceeding 10 % of the total eligible expenditure for the operation concerned. In exceptional and duly justified cases, a higher percentage may be permitted by the managing authority for operations concerning environmental conservation;
- (c) decommissioning of nuclear power stations;
- (d) recoverable value added tax.

2. Expenditure on housing shall be eligible only for those Member States that acceded to the European Union on or after 1 May 2004 and in the following circumstances:

- (a) expenditure shall be programmed within the framework of an integrated urban development operation or priority axis for areas experiencing or threatened by physical deterioration and social exclusion;
- (b) the allocation to housing expenditure shall be either a maximum of 3 % of the ERDF allocation to the operational programmes concerned or 2 % of the total ERDF allocation;
- (c) expenditure shall be limited to:
 - multi-family housing, or
 - buildings owned by public authorities or non-profit operators for use as housing designated for low-income households or people with special needs.

The Commission shall adopt the list of criteria needed for determining the areas referred to under point (a) and the list of eligible interventions in accordance with the procedure referred to in Article 103(3) of Regulation (EC) No 1083/2006.

3. The eligibility rules set out in Article 11 of Regulation (EC) No 1081/2006 shall apply to actions co-financed by the ERDF falling within the scope of Article 3 of that Regulation.

CHAPTER II

SPECIFIC PROVISIONS ON THE TREATMENT OF PARTICULAR TERRITORIAL FEATURES

Article 8

Sustainable urban development

In addition to the activities listed in Articles 4 and 5 of this Regulation, in the case of action involving sustainable urban

development as referred to in Article 37(4)(a) of Regulation (EC) No 1083/2006, the ERDF may, where appropriate, support the development of participative, integrated and sustainable strategies to tackle the high concentration of economic, environmental and social problems affecting urban areas.

These strategies shall promote sustainable urban development through activities such as: strengthening economic growth, the rehabilitation of the physical environment, brownfield redevelopment, the preservation and development of natural and cultural heritage, the promotion of entrepreneurship, local employment and community development, and the provision of services to the population taking account of changing demographic structures.

By way of derogation from Article 34(2) of Regulation (EC) No 1083/2006, and where these activities are implemented through a specific operational programme or priority axis within an operational programme, the ERDF funding of measures under the Regional competitiveness and employment objective falling within the scope of Regulation (EC) No 1081/2006 may be raised to 15 % of the programme or priority axis concerned.

Article 9

Coordination with the EAFRD and the EFF

Where an operational programme supported by the ERDF targets operations also eligible under another Community support instrument, including Axis 3 of the EAFRD and the sustainable development of coastal fishing areas under the EFF, Member States shall set out in each operational programme the demarcation criteria for the operations supported by the ERDF and those supported by the other Community support instruments.

Article 10

Areas with geographical and natural handicaps

Regional programmes co-financed by the ERDF covering areas facing geographical and natural handicaps as referred to in point (f) of Article 52 of Regulation (EC) No 1083/2006 shall pay particular attention to addressing the specific difficulties of those areas.

Without prejudice to Articles 4 and 5, the ERDF may in particular contribute towards the financing of investments aimed at improving accessibility, promoting and developing economic activities related to cultural and natural heritage, promoting the sustainable use of natural resources, and encouraging sustainable tourism.

Article 11

Outermost regions

1. The specific additional allocation referred to in paragraph 20 of Annex II to Regulation (EC) No 1083/2006 shall be used to offset the additional costs, linked to the handicaps defined in Article 299(2) of the Treaty, incurred in the outermost regions in supporting:

- (a) the priorities referred to in Articles 4 and/or 5 as appropriate;
- (b) freight transport services and start up aid for transport services;
- (c) operations linked to storage constraints, the excessive size and maintenance of production tools, and lack of human capital in the local market.

2. Within the scope of Article 3, the specific additional allocation may finance investment costs. In addition, the specific additional allocation shall be used to a minimum of 50 % to help finance operating aid and expenditure covering public service obligations and contracts in the outermost regions.

3. The amount to which the rate of co-financing applies shall be proportional to the additional costs as mentioned in paragraph 1 incurred by the beneficiary in the case of operating aid and expenditure covering public service obligations and contracts only, and may cover the total eligible costs in the case of expenditure for investment.

4. Financing under this Article may not be used to support:

- (a) operations involving products falling within Annex I to the Treaty;
- (b) aids to transport of persons authorised under Article 87(2)(a) of the Treaty;
- (c) tax exemptions and exemption of social charges.

CHAPTER III

SPECIFIC PROVISIONS ON THE EUROPEAN TERRITORIAL COOPERATION OBJECTIVE

SECTION 1

Operational programmes

Article 12

Content

Each operational programme under the European territorial cooperation objective shall contain the following information:

- 1. an analysis of the situation of the cooperation area in terms of strengths and weaknesses and the strategy chosen in response;

2. a list of the eligible areas within the programme area including, as regards programmes for cross-border cooperation, the flexibility areas as referred to in Article 21(1);

3. a justification of the priorities chosen having regard to the Community strategic guidelines on cohesion, the national strategic reference framework where the Member State has chosen to include actions financed under the European territorial cooperation objective within it, and the results of the *ex ante* evaluation referred to in Article 48(2) of Regulation (EC) No 1083/2006;

4. information on the priority axes and their specific targets. Those targets shall be quantified using a limited number of indicators for output and results, taking into account the principle of proportionality. The indicators shall make it possible to measure the progress in relation to the baseline situation and the achievement of the targets of the priority axis;

5. for information purposes only, an indicative breakdown by category of the programmed use of the contribution from the ERDF to the operational programme in accordance with the implementing rules adopted by the Commission in accordance with the procedure referred to in Article 103(3) of Regulation (EC) No 1083/2006;

6. a single financing plan, with no breakdown by Member State, comprising two tables:

(a) a table breaking down for each year, in accordance with Articles 52, 53 and 54 of Regulation (EC) No 1083/2006, the amount of the total financial appropriation envisaged for the contribution from the ERDF. The total ERDF contribution provided for annually shall be compatible with the applicable financial framework;

(b) a table specifying, for the whole programming period, for the operational programme and for each priority axis, the amount of the total financial appropriation of the Community contribution and the national counterparts, and the rate of the ERDF contribution. Where, in accordance with Article 53 of Regulation (EC) No 1083/2006, the national counterpart is made up of public and private expenditure, the table shall give the indicative breakdown between the public and the private component. Where, in accordance with that Article, the national counterpart is made up of public expenditure, the table shall indicate the amount of the national public contribution;

7. information on complementarity with measures financed by the EAFRD and those financed by the EFF, where relevant;

8. the implementing provisions for the operational programme, including:

(a) designation by the Member States of all the authorities referred to in Article 14;

(b) a description of the monitoring and evaluation systems;

- (c) 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;
 - (d) a definition of the procedures for the mobilisation and circulation of financial flows in order to ensure their transparency;
 - (e) the elements aimed at ensuring the publicity and the information of the operational programme as referred to in Article 69 of Regulation (EC) No 1083/2006;
 - (f) a description of the procedures agreed between the Commission and Member States for the exchange of computerised data to meet the payment, monitoring and evaluation requirements laid down by Regulation (EC) No 1083/2006;
9. an indicative list of major projects within the meaning of Article 39 of Regulation (EC) No 1083/2006 expected to be submitted during the programming period for Commission approval.

SECTION 2

Eligibility

Article 13

Rules on eligibility of expenditure

The relevant national rules agreed by the participating Member States in an operational programme under the European territorial cooperation objective shall apply to determine the eligibility of expenditure except where Community rules are laid down.

The Commission shall lay down, in accordance with Article 56(4) of Regulation (EC) No 1083/2006 and without prejudice to Article 7 of this Regulation, common rules on the eligibility of expenditure in accordance with the procedure referred to in Article 103(3) of Regulation (EC) No 1083/2006.

Where Article 7 provides for different rules of eligibility of expenditure in different Member States participating in an operational programme under the European territorial cooperation objective, the most extensive eligibility rules shall apply throughout the programme area.

SECTION 3

Management, monitoring and control

Article 14

Designation of authorities

1. Member States participating in an operational programme shall appoint a single managing authority, a single certifying authority and a single audit authority, the latter being situated in the Member State of the managing authority. The certifying authority shall receive the payments made by the Commission

and, as a general rule, shall make the payments to the lead beneficiary.

The managing authority, after consultation with the Member States represented in the programme area, shall set up a joint technical secretariat. The latter shall assist the managing authority and the monitoring committee, and, where appropriate, the audit authority, in carrying out their respective duties.

2. The audit authority for the operational programme shall be assisted by a group of auditors comprising a representative of each Member State participating in the operational programme and carrying out the duties provided for in Article 62 of Regulation (EC) No 1083/2006. The group of auditors shall be set up at the latest within three months of the decision approving the operational programme. It shall draw up its own rules of procedure. It shall be chaired by the audit authority for the operational programme.

The participating Member States may decide by unanimity that the audit authority is authorised to carry out directly the duties provided for in Article 62 of Regulation (EC) No 1083/2006 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 16(1).

3. Each Member State participating in the operational programme shall appoint representatives to sit on the monitoring committee referred to in Article 63 of Regulation (EC) No 1083/2006.

Article 15

Function of the managing authority

1. The managing authority shall perform the duties provided for in Article 60 of Regulation (EC) No 1083/2006, with the exception of those concerning the regularity of operations and expenditure in relation to national and Community rules, as set out under point (b) of that Article. In this connection, it shall satisfy itself that the expenditure of each beneficiary participating in an operation has been validated by the controller referred to in Article 16(1) of this Regulation.

2. The managing authority shall lay down the implementing arrangements for each operation, where appropriate in agreement with the lead beneficiary.

Article 16

Control system

1. In order to validate the expenditure, each Member State 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 rules and its national rules.

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

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

2. Each Member State shall ensure that the expenditure can be validated by the controllers within a period of three months.

Article 17

Financial management

1. The ERDF contribution shall be paid into a single account with no national sub-accounts.

2. Without prejudice to the Member States' 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 beneficiaries shall repay the lead beneficiary any amounts unduly paid in accordance with the agreement existing between them.

3. If the lead beneficiary does not succeed in securing repayment from a beneficiary, the Member State on whose territory the beneficiary concerned is located shall reimburse the certifying authority for the amount unduly paid to that beneficiary.

Article 18

European grouping of territorial cooperation

Member States participating in an operational programme under the European territorial cooperation objective may make use of the European grouping of territorial cooperation under Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) ⁽¹⁾ with a view to making that grouping responsible for managing the operational programme by conferring on it the responsibilities of the managing authority and of the joint technical secretariat. In this context, each Member State shall continue to assume financial responsibility.

SECTION 4

Operations

Article 19

Selection of operations

1. Operations selected for operational programmes aimed at developing cross-border activities as referred to in Article 6(1)

⁽¹⁾ See page 19 of this Official Journal.

and at establishing and developing transnational cooperation as referred to in Article 6(2) shall include beneficiaries from at least two countries, of which at least one shall be a Member State, which shall cooperate in at least two of the following ways for each operation: joint development, joint implementation, joint staffing and joint financing.

The selected operations fulfilling the abovementioned conditions may be implemented in a single country provided that they have been presented by entities belonging to at least two countries.

The abovementioned conditions shall not apply to those actions under the PEACE Programme referred to in the third subparagraph of Article 6(1).

2. Operations selected for operational programmes involving interregional cooperation, as referred to in Article 6(3)(a), shall include beneficiaries, at regional or local level, from at least:

- (a) three Member States, or
- (b) three countries, of which at least two must be Member States, where a beneficiary from a third country is involved.

Operations selected for operational programmes as referred to in Article 6(3)(b) shall, whenever possible according to the type of the operation, apply the conditions set out in the first subparagraph of this paragraph.

The beneficiaries shall cooperate in the following ways for each operation: joint development, joint implementation, joint staffing and joint financing.

3. In addition to the tasks referred to in Article 65 of Regulation (EC) No 1083/2006, the monitoring committee or a steering committee reporting to it shall be responsible for selecting operations.

Article 20

Responsibilities of the lead beneficiary and the other beneficiaries

1. For each operation, a lead beneficiary shall be appointed by the beneficiaries among themselves. The lead beneficiary shall assume the following responsibilities:

- (a) it shall lay down the arrangements for its relations with the 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 ensure that the expenditure presented by the beneficiaries participating in the operation has been incurred for the purpose of implementing the operation and corresponds to the activities agreed between those beneficiaries;
- (d) it shall verify that the expenditure presented by the beneficiaries participating in the operation has been validated by the controllers;
- (e) it shall be responsible for transferring the ERDF contribution to the beneficiaries participating in the operation.

2. Each beneficiary participating in the operation shall:

- (a) assume responsibility in the event of any irregularity in the expenditure which it has declared;
- (b) inform the Member State in which it is located about its participation in an operation in the case that this Member State as such is not participating in the operational programme concerned.

Article 21

Special conditions governing the location of operations

1. In the context of cross-border cooperation and in duly justified cases, the ERDF may finance expenditure incurred in implementing operations or parts of operations up to a limit of 20 % of the amount of its contribution to the operational programme concerned in NUTS level 3 areas adjacent to the eligible areas for the programme referred to in Article 7(1) of Regulation (EC) No 1083/2006 or surrounded by such adjacent areas. In exceptional cases as agreed between the Commission and Member States, this flexibility may be extended to the NUTS level 2 areas in which the areas referred to in Article 7(1) of Regulation (EC) No 1083/2006 are located.

At project level, expenditure incurred by partners located outside the programme area as defined in the first subparagraph may be eligible, if the project would have difficulty in achieving its objectives without that partner's participation.

2. In the context of transnational cooperation and in duly justified cases, the ERDF may finance expenditure incurred by partners located outside the area participating in operations up to a limit of 20 % of the amount of its contribution to the operational programme concerned, where such expenditure is for the benefit of the regions in the cooperation objective area.

3. In the context of cross-border, transnational and inter-regional cooperation, the ERDF may finance expenditure incurred in implementing operations or parts of operations on the terri-

tory of countries outside the European Community up to a limit of 10 % of the amount of its contribution to the operational programme concerned, where they are for the benefit of the regions of the Community.

4. Member States shall ensure the legality and regularity of these expenditures. The managing authority shall confirm the selection of operations outside the eligible areas as referred to under paragraphs 1, 2 and 3.

CHAPTER IV

FINAL PROVISIONS

Article 22

Transitional provisions

1. This Regulation shall not affect either the continuation or modification, including the total or partial cancellation, of assistance approved by the Commission on the basis of Regulation (EC) No 1783/1999 or any other legislation applying to that assistance on 31 December 2006, which shall consequently apply thereafter to that assistance or the projects concerned until their closure.

2. Applications made under Regulation (EC) No 1783/1999 shall remain valid.

Article 23

Repeal

1. Without prejudice to the provisions laid down in Article 22 of this Regulation, Regulation (EC) No 1783/1999 is hereby repealed with effect from 1 January 2007.

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

Article 24

Review clause

The European Parliament and the Council shall review this Regulation by 31 December 2013 in accordance with the procedure laid down in Article 162 of the Treaty.

Article 25

Entry into force

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

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

Done at Strasbourg, 5 July 2006.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

P. LEHTOMÄKI

REGULATION (EC) No 1081/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 5 July 2006****on the European Social Fund and repealing Regulation (EC) No 1784/1999**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 148 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund ⁽⁴⁾ establishes the framework for action by the Structural Funds and the Cohesion Fund and lays down, in particular, the objectives, principles and rules concerning partnership, programming, evaluation and management. It is therefore necessary to define the mission of the European Social Fund (ESF) in relation to the tasks prescribed under Article 146 of the Treaty and in the context of the work by Member States and the Community towards developing a coordinated strategy for employment under Article 125 of the Treaty.
- (2) Specific provisions concerning the type of activities which may be financed by the ESF under the objectives set out in Regulation (EC) No 1083/2006 should be laid down.
- (3) The ESF should strengthen economic and social cohesion by improving employment opportunities within the framework of the tasks entrusted to the ESF by Article 146 of the Treaty and of the tasks entrusted to the Structural Funds by Article 159 of the Treaty, in accordance with the provisions of Regulation (EC) No 1083/2006.
- (4) This is all the more important in the light of the challenges arising from the enlargement of the Union and the phenomenon of economic globalisation. In this connection, the importance of the European social model and its modernisation should be acknowledged.

- (5) In accordance with Articles 99 and 128 of the Treaty, and with a view to refocusing the Lisbon strategy on growth and jobs, the Council has adopted an integrated package comprising Broad Economic Policy Guidelines and Employment Guidelines, the latter setting out employment objectives, priorities and targets. In this regard, the Brussels European Council of 22 and 23 March 2005 called for the mobilisation of all appropriate national and Community resources, including cohesion policy.
- (6) New lessons have been learnt from the Community initiative EQUAL, especially in respect of the combination of local, regional, national and European action. These lessons should be integrated into ESF support. Particular attention should be paid to the participation of target groups, the integration of migrants, including those seeking asylum, the identification of policy issues and their subsequent mainstreaming, innovation and experimentation techniques, methodologies for transnational cooperation, outreach to groups marginalised in relation to the labour market, the impact of social issues on the internal market, and access to and management of projects taken on by non-governmental organisations.
- (7) The ESF should support the policies of Member States which are closely in line with the guidelines and recommendations under the European Employment Strategy and the relevant objectives of the Community in relation to social inclusion, non-discrimination, the promotion of equality, and education and training, in order to better contribute to the implementation of the objectives and targets agreed at the Lisbon European Council of 23 and 24 March 2000 and at the Göteborg European Council of 15 and 16 June 2001.
- (8) The ESF should also act to tackle the relevant dimensions and consequences of demographic changes in the active population of the Community, in particular through life-long vocational training.
- (9) With a view to better anticipating and managing change and increasing economic growth, employment opportunities for both women and men, and quality and productivity at work under the Regional competitiveness and employment and Convergence objectives, assistance from the ESF should focus, in particular, on improving the adaptability of workers and enterprises, enhancing human capital and access to employment and participation in the labour market, reinforcing the social inclusion of disadvantaged people, combating discrimination, encouraging economically inactive persons to enter the labour market and promoting partnerships for reform.

⁽¹⁾ OJ C 234, 22.9.2005, p. 27.

⁽²⁾ OJ C 164, 5.7.2005, p. 48.

⁽³⁾ Opinion of the European Parliament of 6 July 2005 (not yet published in the Official Journal), Council Common Position of 12 June 2006 (not yet published in the Official Journal) and Position of the European Parliament of 4 July 2006 (not yet published in the Official Journal).

⁽⁴⁾ See p. 25 of this Official Journal.

- (10) In addition to these priorities, in the least developed regions and Member States, under the Convergence objective and with a view to increasing economic growth, employment opportunities for both women and men, and quality and productivity at work, it is necessary to expand and improve investment in human capital and to improve institutional, administrative and judicial capacity, in particular to prepare and implement reforms and enforce the *acquis*.
- (11) Within the range of these priorities, the selection of ESF interventions should be flexible in order to address the specific challenges in each Member State, and the types of priority action financed by the ESF should allow for a margin of flexibility to respond to these challenges.
- (12) The promotion of innovative transnational and interregional activities is an important dimension which should be integrated in the scope of the ESF. In order to foster cooperation, Member States should programme transnational and interregional actions using a horizontal approach or through a dedicated priority axis.
- (13) It is necessary to ensure that the action of the ESF is consistent with the policies provided for under the European Employment Strategy and to concentrate ESF support on the implementation of the guidelines and recommendations under that strategy.
- (14) Efficient and effective implementation of actions supported by the ESF depends on good governance and partnership between all relevant territorial and socio-economic actors, and in particular the social partners and other stakeholders, including those at national, regional and local level. The social partners have a central role in the broad partnership for change, and their commitment to strengthening economic and social cohesion by improving employment and job opportunities is essential. In this context, where employers and workers collectively contribute to financially supporting ESF actions, this financial contribution, although private expenditure, would be included for the purposes of calculating ESF co-financing.
- (15) The ESF should support actions in line with the guidelines and relevant recommendations under the European Employment Strategy. However, changes to the guidelines and recommendations would require the revision of an operational programme only where a Member State, or the Commission in agreement with a Member State, considered that the operational programme should take account of significant socioeconomic changes or take greater or different account of major changes in Community, national or regional priorities, or in the light of evaluations or following implementation difficulties.
- (16) The Member States and the Commission are to ensure that the implementation of the priorities financed by the ESF under the Convergence and Regional competitiveness and employment objectives contribute to the promotion of equality and the elimination of inequalities between women and men. A gender mainstreaming approach should be combined with specific action to increase the sustainable participation and progress of women in employment.
- (17) The ESF should also support technical assistance, with a particular focus on encouraging mutual learning through exchanges of experience and dissemination of good practice and on highlighting the contribution of the ESF to the policy objectives and priorities of the Community in relation to employment and social inclusion.
- (18) Regulation (EC) No 1083/2006 provides that rules on eligibility of expenditure are to be established at national level, with certain exceptions for which it is necessary to lay down specific provisions. Specific provisions should therefore be laid down for the exceptions related to the ESF.
- (19) In the interest of clarity, Regulation (EC) No 1784/1999 of the European Parliament and of the Council of 12 July 1999 on the European Social Fund ⁽¹⁾ should therefore be repealed,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

1. This Regulation establishes the tasks of the European Social Fund (ESF), the scope of its assistance, specific provisions and the types of expenditure eligible for assistance.
2. The ESF is governed by Regulation (EC) No 1083/2006 and by this Regulation.

Article 2

Tasks

1. The ESF shall contribute to the priorities of the Community as regards strengthening economic and social cohesion by improving employment and job opportunities, encouraging a high level of employment and more and better jobs. It shall do so by supporting Member States' policies aiming to achieve full employment and quality and productivity at work, promote social inclusion, including the access of disadvantaged people to employment, and reduce national, regional and local employment disparities.

⁽¹⁾ OJ L 213, 13.8.1999, p. 5.

In particular, the ESF shall support actions in line with measures taken by Member States on the basis of the guidelines adopted under the European Employment Strategy, as incorporated into the Integrated Guidelines for Growth and Jobs, and the accompanying recommendations.

2. In carrying out the tasks referred to in paragraph 1, the ESF shall support the priorities of the Community as regards the need to reinforce social cohesion, strengthen productivity and competitiveness, and promote economic growth and sustainable development. In so doing, the ESF shall take into account the relevant priorities and objectives of the Community in the fields of education and training, increasing the participation of economically inactive people in the labour market, combating social exclusion — especially that of disadvantaged groups such as people with disabilities — and promoting equality between women and men and non-discrimination.

Article 3

Scope of assistance

1. Within the framework of the Convergence and Regional competitiveness and employment objectives, the ESF shall support actions in Member States under the priorities listed below:

- (a) increasing adaptability of workers, enterprises and entrepreneurs with a view to improving the anticipation and positive management of economic change, in particular by promoting:
 - (i) lifelong learning and increased investment in human resources by enterprises, especially SMEs, and workers, through the development and implementation of systems and strategies, including apprenticeships, which ensure improved access to training by, in particular, low-skilled and older workers, the development of qualifications and competences, the dissemination of information and communication technologies, e-learning, eco-friendly technologies and management skills, and the promotion of entrepreneurship and innovation and business start-ups;
 - (ii) the design and dissemination of innovative and more productive forms of work organisation, including better health and safety at work, the identification of future occupational and skills requirements, and the development of specific employment, training and support services, including outplacement, for workers in the context of company and sector restructuring;
- (b) enhancing access to employment and the sustainable inclusion in the labour market of job seekers and inactive people, preventing unemployment, in particular long-term and youth unemployment, encouraging active ageing and longer working lives, and increasing participation in the labour market, in particular by promoting:
 - (i) the modernisation and strengthening of labour market institutions, in particular employment services and other relevant initiatives in the context of the strategies of the European Union and the Member States for full employment;
 - (ii) the implementation of active and preventive measures ensuring the early identification of needs with individual action plans and personalised support, such as tailored training, job search, outplacement and mobility, self-employment and business creation, including cooperative enterprises, incentives to encourage participation in the labour market, flexible measures to keep older workers in employment longer, and measures to reconcile work and private life, such as facilitating access to childcare and care for dependent persons;
 - (iii) mainstreaming and specific action to improve access to employment, increase the sustainable participation and progress of women in employment and reduce gender-based segregation in the labour market, including by addressing the root causes, direct and indirect, of gender pay gaps;
 - (iv) specific action to increase the participation of migrants in employment and thereby strengthen their social integration and to facilitate geographic and occupational mobility of workers and integration of cross-border labour markets, including through guidance, language training and validation of competences and acquired skills;
- (c) reinforcing the social inclusion of disadvantaged people with a view to their sustainable integration in employment and combating all forms of discrimination in the labour market, in particular by promoting:
 - (i) pathways to integration and re-entry into employment for disadvantaged people, such as people experiencing social exclusion, early school leavers, minorities, people with disabilities and people providing care for dependent persons, through employability measures, including in the field of the social economy, access to vocational education and training, and accompanying actions and relevant support, community and care services that improve employment opportunities;
 - (ii) acceptance of diversity in the workplace and the combating of discrimination in accessing and progressing in the labour market, including through awareness-raising, the involvement of local communities and enterprises and the promotion of local employment initiatives;

(d) enhancing human capital, in particular by promoting:

(i) the design and introduction of reforms in education and training systems in order to develop employability, the improvement of the labour market relevance of initial and vocational education and training and the continual updating of the skills of training personnel with a view to innovation and a knowledge-based economy;

(ii) networking activities between higher education institutions, research and technological centres and enterprises;

(e) promoting partnerships, pacts and initiatives through networking of relevant stakeholders, such as the social partners and non-governmental organisations, at the transnational, national, regional and local levels in order to mobilise for reforms in the field of employment and labour market inclusiveness.

2. Within the framework of the Convergence objective, the ESF shall support actions in Member States under the priorities listed below:

(a) expanding and improving investment in human capital, in particular by promoting:

(i) the implementation of reforms in education and training systems, especially with a view to raising people's responsiveness to the needs of a knowledge-based society and lifelong learning;

(ii) increased participation in education and training throughout the life-cycle, including through actions aiming to achieve a reduction in early school leaving and in gender-based segregation of subjects and increased access to and quality of initial, vocational and tertiary education and training;

(iii) the development of human potential in research and innovation, notably through post-graduate studies and the training of researchers;

(b) strengthening institutional capacity and the efficiency of public administrations and public services at national, regional and local level and, where relevant, of the social partners and non-governmental organisations, with a view to reforms, better regulation and good governance especially in the economic, employment, education, social, environmental and judicial fields, in particular by promoting:

(i) mechanisms to improve good policy and programme design, monitoring and evaluation, including through studies, statistics and expert advice, support for interde-

partmental coordination and dialogue between relevant public and private bodies;

(ii) capacity building in the delivery of policies and programmes in the relevant fields, including with regard to the enforcement of legislation, especially through continuous managerial and staff training and specific support to key services, inspectorates and socio-economic actors including social and environmental partners, relevant non-governmental organisations and representative professional organisations.

3. Within the priorities referred to in paragraphs 1 and 2, Member States may concentrate on those which are the most appropriate to address their specific challenges.

4. The ESF may support actions set out in Article 3(2) of this Regulation throughout the territory of the Member States eligible for support or transitional support under the Cohesion Fund, as determined respectively in Articles 5(2) and 8(3) of Regulation (EC) No 1083/2006.

5. In implementing the objectives and priorities referred to in paragraphs 1 and 2, the ESF shall support the promotion and mainstreaming of innovative activities in the Member States.

6. The ESF shall also support transnational and interregional actions in particular through the sharing of information, experiences, results and good practices, and through developing complementary approaches and coordinated or joint action.

7. By way of derogation from Article 34(2) of Regulation (EC) No 1083/2006, the funding of measures under the social inclusion priority referred to in paragraph 1(c)(i) of this Article and within the scope of Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund ⁽¹⁾ may be raised to 15 % of the priority axis concerned.

Article 4

Consistency and concentration of support

1. The Member States shall ensure that the actions supported by the ESF are consistent with and contribute to actions undertaken in pursuance of the European Employment Strategy. In particular, they shall ensure that the strategy set out in the national strategic reference framework and the actions set out in the operational programmes promote the objectives, priorities and targets of the strategy in each Member State within the framework of the national reform programmes and national action plans for social inclusion.

⁽¹⁾ See p. 1 of this Official Journal.

The Member States shall also concentrate support, where the ESF can contribute to policies, on the implementation of the relevant employment recommendations made under Article 128(4) of the Treaty and of the relevant employment-related objectives of the Community in the fields of social inclusion, education, and training. Member States shall do so in a stable programming environment.

2. Within operational programmes, resources shall be directed towards the most important needs and focus on those policy areas where ESF support can have a significant effect in attaining the objectives of the programme. To maximise the efficiency of ESF support, operational programmes shall, where appropriate, take particular account of the regions and localities facing the most serious problems, such as deprived urban and outermost regions, declining rural and fisheries-dependent areas, and areas particularly adversely affected by business relocations.

3. Where appropriate, a concise section on the contribution of the ESF to promoting the relevant labour market aspects of social inclusion shall be included in Member States' national reports under the open method of coordination on social protection and social inclusion.

4. The indicators included in the operational programmes co-financed by the ESF shall be strategic in nature and limited in number and shall reflect those used in the implementation of the European Employment Strategy and in the context of the relevant Community objectives in the fields of social inclusion and education and training.

5. Evaluations undertaken in relation to ESF action shall also assess the contribution of the actions supported by the ESF to the implementation of the European Employment Strategy and to the Community objectives in the fields of social inclusion, non-discrimination and equality between women and men, and education and training in the Member State concerned.

Article 5

Good governance and partnership

1. The ESF shall promote good governance and partnership. Its support shall be designed and implemented at the appropriate territorial level taking into account the national, regional and local level according to the institutional arrangements specific to each Member State.

2. The Member States shall ensure the involvement of the social partners and adequate consultation and participation of other stakeholders, at the appropriate territorial level, in the preparation, implementation and monitoring of ESF support.

3. The managing authority of each operational programme shall encourage adequate participation of the social partners in actions funded under Article 3.

Under the Convergence objective, an appropriate amount of ESF resources shall be allocated to capacity-building, which shall include training, networking measures, strengthening the social dialogue and activities jointly undertaken by the social partners, in particular as regards adaptability of workers and enterprises referred to in Article 3(1)(a).

4. The managing authority of each operational programme shall encourage adequate participation and access by non-governmental organisations to the funded activities, notably in the domains of social inclusion, gender equality and equal opportunities.

Article 6

Gender equality and equal opportunities

The Member States shall ensure that operational programmes include a description of how gender equality and equal opportunities are promoted in the preparation, implementation, monitoring and evaluation of operational programmes. Member States shall promote a balanced participation of women and men in the management and implementation of operational programmes at local, regional and national level, as appropriate.

Article 7

Innovation

In the framework of each operational programme, particular attention shall be paid to the promotion and mainstreaming of innovative activities. The managing authority shall choose the themes for the funding of innovation in the context of partnership and shall define the appropriate implementation arrangements. It shall inform the monitoring committee referred to in Article 63 of Regulation (EC) No 1083/2006 of the themes chosen.

Article 8

Transnational and interregional actions

1. Where Member States support actions in favour of transnational and/or interregional actions as set out in Article 3(6) of this Regulation as a specific priority axis within an operational programme, the contribution from the ESF may be increased by 10 % at the priority axis level. This increased contribution shall not be included in the calculation of the ceilings set out in Article 53 of Regulation (EC) No 1083/2006.

2. Member States shall, with the assistance of the Commission where appropriate, ensure that the ESF does not support specific operations being concurrently supported through other Community transnational programmes, in particular in the field of education and training.

Article 9

Technical assistance

The Commission shall promote, in particular, exchanges of experience, awareness-raising activities, seminars, networking and peer reviews serving to identify and disseminate good practice and encourage mutual learning and transnational and inter-regional cooperation with the aim of enhancing the policy dimension and contribution of the ESF to the Community objectives in relation to employment and social inclusion.

Article 10

Reports

The annual and final implementation reports referred to in Article 67 of Regulation (EC) No 1083/2006 shall contain, where appropriate, a synthesis of the implementation of:

- (a) gender mainstreaming as well as of any gender-specific action;
- (b) action to increase participation of migrants in employment and thereby strengthen their social integration;
- (c) action to strengthen integration in employment and thereby improve the social inclusion of minorities;
- (d) action to strengthen integration in employment and social inclusion of other disadvantaged groups, including people with disabilities;
- (e) innovative activities, including a presentation of the themes and their results, dissemination and mainstreaming;
- (f) transnational and/or interregional actions.

Article 11

Eligibility of expenditure

1. The ESF shall provide support towards eligible expenditure which, notwithstanding Article 53(1)(b) of Regulation (EC) No 1083/2006 may include any financial resources collectively contributed by employers and workers. The assistance shall take the form of non-reimbursable individual or global grants, reimbursable grants, loan interest rebates, micro-credits, guarantee funds and the purchase of goods and services in compliance with public procurement rules.

2. The following expenditure shall not be eligible for a contribution from the ESF:

- (a) recoverable value added tax;
- (b) interest on debt;
- (c) purchase of furniture, equipment, vehicles, infrastructure, real estate and land.

3. The following costs shall be expenditure eligible for a contribution from the ESF as defined in paragraph 1 provided that they are incurred in accordance with national rules, including accountancy rules, and under the specific conditions provided for below:

- (a) the allowances or salaries disbursed by a third party for the benefit of the participants in an operation and certified to the beneficiary;
- (b) in the case of grants, indirect costs declared on a flat-rate basis, up to 20 % of the direct costs of an operation;
- (c) the depreciation costs of depreciable assets listed under paragraph 2(c), allocated exclusively for the duration of an operation, to the extent that public grants have not contributed towards the acquisition of those assets.

4. The eligibility rules set out in Article 7 of Regulation (EC) No 1080/2006 shall apply to actions co-financed by the ESF which fall within the scope of Article 3 of that Regulation.

Article 12

Transitional provisions

1. This Regulation shall not affect either the continuation or modification, including the total or partial cancellation, of assistance approved by the Commission on the basis of Regulation (EC) No 1784/1999 or any other legislation applying to that assistance on 31 December 2006, which shall consequently apply thereafter to that assistance or the projects concerned until their closure.

2. Applications made under Regulation (EC) No 1784/1999 shall remain valid.

Article 13

Repeal

1. Without prejudice to the provisions laid down in Article 12 of this Regulation, Regulation (EC) No 1784/1999 is hereby repealed with effect from 1 January 2007.

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

Article 15

Article 14

Review clause

The European Parliament and the Council shall review this Regulation by 31 December 2013 in accordance with the procedure laid down in Article 148 of the Treaty.

Entry in force

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

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

Done at Strasbourg, 5 July 2006.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

P. LEHTOMÄKI

REGULATION (EC) No 1082/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 5 July 2006
on a European grouping of territorial cooperation (EGTC)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the third subparagraph of Article 159 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) The third subparagraph of Article 159 of the Treaty provides for specific actions to be decided upon outside the Funds which are the subject of the first subparagraph of that Article, in order to achieve the objective of social and economic cohesion envisaged by the Treaty. The harmonious development of the entire Community territory and greater economic, social and territorial cohesion imply the strengthening of territorial cooperation. To this end it is appropriate to adopt the measures necessary to improve the implementation conditions for actions of territorial cooperation.
- (2) Measures are necessary to reduce the significant difficulties encountered by Member States and, in particular, by regional and local authorities in implementing and managing actions of territorial cooperation within the framework of differing national laws and procedures.
- (3) Taking into account notably the increase in the number of land and maritime borders in the Community following its enlargement, it is necessary to facilitate the reinforcement of territorial cooperation in the Community.
- (4) The existing instruments, such as the European economic interest grouping, have proven ill-adapted to organising structured cooperation under the INTERREG initiative during the 2000-2006 programming period.

- (5) The Council of Europe *acquis* provides different opportunities and frameworks within which regional and local authorities can cooperate across borders. This instrument is not intended to circumvent those frameworks or provide a set of specific common rules which would uniformly govern all such arrangements throughout the Community.
- (6) Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund ⁽⁴⁾ increases the means in support of European territorial cooperation.
- (7) It is likewise necessary to facilitate and follow up the implementation of territorial cooperation actions without a financial contribution from the Community.
- (8) In order to overcome the obstacles hindering territorial cooperation, it is necessary to institute a cooperation instrument at Community level for the creation of cooperative groupings in Community territory, invested with legal personality, called 'European groupings of territorial cooperation' (EGTC). Recourse to an EGTC should be optional.
- (9) It is appropriate for an EGTC to be given the capacity to act on behalf of its members, and notably the regional and local authorities of which it is composed.
- (10) The tasks and competencies of an EGTC are to be set out in a convention.
- (11) An EGTC should be able to act, either for the purpose of implementing territorial cooperation programmes or projects co-financed by the Community, notably under the Structural Funds in conformity with Regulation (EC) No 1083/2006 and Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund ⁽⁵⁾, or for the purpose of carrying out actions of territorial cooperation which are at the sole initiative of the Member States and their regional and local authorities with or without a financial contribution from the Community.
- (12) It should be specified that the financial responsibility of regional and local authorities, as well as that of Member States, with regard to the management of both Community funds and national funds, is not affected by the formation of an EGTC.

⁽¹⁾ OJ C 255, 14.10.2005, p. 76.

⁽²⁾ OJ C 71, 22.3.2005, p. 46.

⁽³⁾ Opinion of the European Parliament of 6 July 2005 (not yet published in the Official Journal), Council Common Position of 12 June 2006 (not yet published in the Official Journal) and Position of the European Parliament of 4 July 2006 (not yet published in the Official Journal).

⁽⁴⁾ See page 25 of this Official Journal.

⁽⁵⁾ See page 1 of this Official Journal.

- (13) It should be specified that the powers exercised by regional and local authorities as public authorities, notably police and regulatory powers, cannot be the subject of a convention.
- (14) It is necessary for an EGTC to establish its statutes and equip itself with its own organs, as well as rules for its budget and for the exercise of its financial responsibility.
- (15) The conditions for territorial cooperation should be created in accordance with the subsidiarity principle enshrined in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve its objectives, recourse to an EGTC being optional, in accordance with the constitutional system of each Member State.
- (16) The third subparagraph of Article 159 of the Treaty does not allow the inclusion of entities from third countries in legislation based on that provision. The adoption of a Community measure allowing the creation of an EGTC should not, however, exclude the possibility of entities from third countries participating in an EGTC formed in accordance with this Regulation where the legislation of a third country or agreements between Member States and third countries so allow,

HAVE ADOPTED THIS REGULATION:

Article 1

Nature of an EGTC

1. A European grouping of territorial cooperation, hereinafter referred to as 'EGTC', may be established on Community territory under the conditions and subject to the arrangements provided for by this Regulation.
2. The objective of an EGTC shall be to facilitate and promote cross-border, transnational and/or interregional cooperation, hereinafter referred to as 'territorial cooperation', between its members as set out in Article 3(1), with the exclusive aim of strengthening economic and social cohesion.
3. An EGTC shall have legal personality.
4. An EGTC shall have in each Member State the most extensive legal capacity accorded to legal persons under that Member State's national law. It may, in particular, acquire or dispose of movable and immovable property and employ staff and may be a party to legal proceedings.

Article 2

Applicable law

1. An EGTC shall be governed by the following:

- (a) this Regulation;
- (b) where expressly authorised by this Regulation, the provisions of the convention and the statutes referred to in Articles 8 and 9;
- (c) in the case of matters not, or only partly, regulated by this Regulation, the laws of the Member State where the EGTC has its registered office.

Where it is necessary under Community or international private law to establish the choice of law which governs an EGTC's acts, an EGTC shall be treated as an entity of the Member State where it has its registered office.

2. Where a Member State comprises several territorial entities which have their own rules of applicable law, the reference to the law applicable under paragraph 1(c) shall include the law of those entities, taking into account the constitutional structure of the Member State concerned.

Article 3

Composition of an EGTC

1. An EGTC shall be made up of members, within the limits of their competences under national law, belonging to one or more of the following categories:

- (a) Member States;
- (b) regional authorities;
- (c) local authorities;
- (d) bodies governed by public law within the meaning of the second subparagraph of Article 1(9) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ⁽¹⁾.

Associations consisting of bodies belonging to one or more of these categories may also be members.

2. An EGTC shall be made up of members located on the territory of at least two Member States.

Article 4

Establishment of an EGTC

1. The decision to establish an EGTC shall be taken at the initiative of its prospective members.
2. Each prospective member shall:
 - (a) notify the Member State under whose law it has been formed of its intention to participate in an EGTC; and
 - (b) send that Member State a copy of the proposed convention and statutes referred to in Articles 8 and 9.

⁽¹⁾ OJ L 134, 30.4.2004, p. 114. Directive as last amended by Commission Regulation (EC) No 2083/2005 (OJ L 333, 20.12.2005, p. 28).

3. Following notification under paragraph 2 by a prospective member, the Member State concerned shall, taking into account its constitutional structure, approve the prospective member's participation in the EGTC, unless it considers that such participation is not in conformity with this Regulation or national law, including the prospective member's powers and duties, or that such participation is not justified for reasons of public interest or of public policy of that Member State. In such a case, the Member State shall give a statement of its reasons for withholding approval.

The Member State shall, as a general rule, reach its decision within a deadline of three months from the date of receipt of an admissible application in accordance with paragraph 2.

In deciding on the prospective member's participation in the EGTC, Member States may apply the national rules.

4. Member States shall designate the competent authorities to receive the notifications and documents as set out in paragraph 2.

5. The members shall agree on the convention referred to in Article 8 and the statutes referred to in Article 9 ensuring consistency with the approval of the Member States in accordance with paragraph 3 of this Article.

6. Any amendment to the convention and any substantial amendment to the statutes shall be approved by the Member States according to the procedure set out in this Article. Substantial amendments to the statutes shall be those entailing, directly or indirectly, an amendment to the convention.

Article 5

Acquisition of legal personality and publication in the Official Journal

1. The statutes referred to in Article 9 and any subsequent amendments thereto shall be registered and/or published in accordance with the applicable national law in the Member State where the EGTC concerned has its registered office. The EGTC shall acquire legal personality on the day of registration or publication, whichever occurs first. The members shall inform the Member States concerned and the Committee of the Regions of the convention and the registration and/or publication of the statutes.

2. The EGTC shall ensure that, within 10 working days from registration and/or publication of the statutes, a request is sent to the Office for Official Publications of the European Communities for publication of a notice in the *Official Journal of the European Union* announcing the establishment of the EGTC, with details of its name, objectives, members and registered office.

Article 6

Control of management of public funds

1. Control of an EGTC's management of public funds shall be organised by the competent authorities of the Member State where the EGTC has its registered office. The Member State where the EGTC has its registered office shall designate the competent authority for this task before giving its approval to participation in the EGTC under Article 4.

2. Where required under the national legislation of the other Member States concerned, the authorities of the Member State where an EGTC has its registered office shall make arrangements for the appropriate authorities in the other Member States concerned to carry out controls on their territory for those acts of the EGTC which are performed in those Member States and to exchange all appropriate information.

3. All controls shall be carried out according to internationally accepted audit standards.

4. Notwithstanding paragraphs 1, 2 and 3, where the tasks of an EGTC mentioned under the first or second subparagraph of Article 7(3) include actions which are co-financed by the Community, the relevant legislation concerning the control of funds provided by the Community shall apply.

5. The Member State where an EGTC has its registered office shall inform the other Member States concerned of any difficulties encountered during the controls.

Article 7

Tasks

1. An EGTC shall carry out the tasks given to it by its members in accordance with this Regulation. Its tasks shall be defined by the convention agreed by its members, in conformity with Articles 4 and 8.

2. An EGTC shall act within the confines of the tasks given to it, which shall be limited to the facilitation and promotion of territorial cooperation to strengthen economic and social cohesion and be determined by its members on the basis that they all fall within the competence of every member under its national law.

3. Specifically, the tasks of an EGTC shall be limited primarily to the implementation of territorial cooperation programmes or projects co-financed by the Community through the European Regional Development Fund, the European Social Fund and/or the Cohesion Fund.

An EGTC may carry out other specific actions of territorial cooperation between its members in pursuit of the objective referred to in Article 1(2), with or without a financial contribution from the Community.

Member States may limit the tasks that EGTCs may carry out without a Community financial contribution. However, those tasks shall include at least the cooperation actions listed under Article 6 of Regulation (EC) No 1080/2006.

4. The tasks given to an EGTC by its members shall not concern the exercise of powers conferred by public law or of duties whose object is to safeguard the general interests of the State or of other public authorities, such as police and regulatory powers, justice and foreign policy.

5. The members of an EGTC may decide by unanimity to empower one of the members to execute its tasks.

Article 8

Convention

1. An EGTC shall be governed by a convention concluded unanimously by its members in accordance with Article 4.

2. The convention shall specify:

- (a) the name of the EGTC and its registered office, which shall be located in a Member State under whose laws at least one of the members is formed;
- (b) the extent of the territory in which the EGTC may execute its tasks;
- (c) the specific objective and tasks of the EGTC, its duration and the conditions governing its dissolution;
- (d) the list of the EGTC's members;
- (e) the law applicable to the interpretation and enforcement of the convention, which shall be the law of the Member State where the EGTC has its registered office;
- (f) the appropriate arrangements for mutual recognition, including for the purposes of financial control; and
- (g) the procedures for amending the convention, which shall comply with the obligations set out in Articles 4 and 5.

Article 9

Statutes

1. The statutes of an EGTC shall be adopted on the basis of the convention by its members acting unanimously.

2. The statutes of an EGTC shall contain, as a minimum, all the provisions of the convention together with the following:

- (a) the operating provisions of the EGTC's organs and their competencies, as well as the number of representatives of the members in the relevant organs;
- (b) the decision-making procedures of the EGTC;
- (c) the working language or languages;

(d) the arrangements for its functioning, notably concerning personnel management, recruitment procedures and the nature of personnel contracts;

(e) the arrangements for the members' financial contributions and the applicable accounting and budgetary rules, including on financial issues, of each of the members of the EGTC with respect to it;

(f) the arrangements for members' liability in accordance with Article 12(2);

(g) the authorities responsible for the designation of independent external auditors; and

(h) the procedures for amending the statutes, which shall comply with the obligations set out in Articles 4 and 5.

Article 10

Organisation of an EGTC

1. An EGTC shall have at least the following organs:

- (a) an assembly, which is made up of representatives of its members;
- (b) a director, who represents the EGTC and acts on its behalf.

2. The statutes may provide for additional organs with clearly defined powers.

3. An EGTC shall be liable for the acts of its organs as regards third parties, even where such acts do not fall within the tasks of the EGTC.

Article 11

Budget

1. An EGTC shall establish an annual budget which shall be adopted by the assembly, containing, in particular, a component on running costs and, if necessary, an operational component.

2. The preparation of its accounts including, where required, the accompanying annual report, and the auditing and publication of those accounts, shall be governed as provided for by Article 2(1)(c).

Article 12

Liquidation, insolvency, cessation of payments and liability

1. As regards liquidation, insolvency, cessation of payments and similar procedures, an EGTC shall be governed by the laws of the Member State where it has its registered office, unless otherwise provided in paragraphs 2 and 3.

2. An EGTC shall be liable for its debts whatever their nature.

Article 14

To the extent that the assets of an EGTC are insufficient to meet its liabilities, its members shall be liable for the EGTC's debts whatever their nature, each member's share being fixed in proportion to its contribution, unless the national law under which a member is formed excludes or limits the liability of that member. The arrangements for contributions shall be fixed in the statutes.

If the liability of at least one member of an EGTC is limited as a result of the national law under which it is formed, the other members may also limit their liability in the statutes.

The members may provide in the statutes that they will be liable, after they have ceased to be members of an EGTC, for obligations arising out of activities of the EGTC during their membership.

The name of an EGTC whose members have limited liability shall include the word 'limited'.

Publication of the convention, statutes and accounts of an EGTC whose members have limited liability shall be at least equal to that required for other kinds of legal entity whose members have limited liability, formed under the laws of the Member State where that EGTC has its registered office.

A Member State may prohibit the registration on its territory of an EGTC whose members have limited liability.

3. Without prejudice to the financial responsibility of Member States in relation to any funding from the Structural and/or Cohesion Funds provided to an EGTC, no financial liability shall arise for Member States on account of this Regulation in relation to an EGTC of which they are not a member.

Article 13

Public interest

Where an EGTC carries out any activity in contravention of a Member State's provisions on public policy, public security, public health or public morality, or in contravention of the public interest of a Member State, a competent body of that Member State may prohibit that activity on its territory or require those members which have been formed under its law to withdraw from the EGTC unless the EGTC ceases the activity in question.

Such prohibitions shall not constitute a means of arbitrary or disguised restriction on territorial cooperation between the EGTC's members. Review of the competent body's decision by a judicial authority shall be possible.

Dissolution

1. Notwithstanding the provisions on dissolution contained in the convention, on an application by any competent authority with a legitimate interest, the competent court or authority of the Member State where an EGTC has its registered office shall order the EGTC to be wound up if it finds that the EGTC no longer complies with the requirements laid down in Articles 1(2) or 7 or, in particular, that the EGTC is acting outside the confines of the tasks laid down in Article 7. The competent court or authority shall inform all the Member States under whose law the members have been formed of any application to dissolve an EGTC.

2. The competent court or authority may allow the EGTC time to rectify the situation. If the EGTC fails to do so within the time allowed, the competent court or authority shall order it to be wound up.

Article 15

Jurisdiction

1. Third parties who consider themselves wronged by the acts or omissions of an EGTC shall be entitled to pursue their claims by judicial process.

2. Except where otherwise provided for in this Regulation, Community legislation on jurisdiction shall apply to disputes involving an EGTC. In any case which is not provided for in such Community legislation, the competent courts for the resolution of disputes shall be the courts of the Member State where the EGTC has its registered office.

The competent courts for the resolution of disputes under Article 4(3) or (6) or under Article 13 shall be the courts of the Member State whose decision is challenged.

3. Nothing in this Regulation shall deprive citizens from exercising their national constitutional rights of appeal against public bodies which are members of an EGTC in respect of:

- (a) administrative decisions in respect of activities which are being carried out by the EGTC;
- (b) access to services in their own language; and
- (c) access to information.

In these cases the competent courts shall be those of the Member State under whose constitution the rights of appeal arise.

*Article 16***Final provisions**

1. Member States shall make such provisions as are appropriate to ensure the effective application of this Regulation.

Where required under the terms of that Member State's national law, a Member State may establish a comprehensive list of the tasks which the members of an EGTC within the meaning of Article 3(1) formed under its laws already have, as far as territorial cooperation within that Member State is concerned.

The Member State shall inform the Commission and the other Member States accordingly of any provisions adopted under this Article.

2. Member States may provide for the payment of fees in connection with the registration of the convention and statutes. Those fees may not, however, exceed the administrative cost thereof.

*Article 17***Report and review clause**

By 1 August 2011, the Commission shall forward to the European Parliament and the Council a report on the application of this Regulation and proposals for amendments, where appropriate.

*Article 18***Entry into force**

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

It shall apply by 1 August 2007, with the exception of Article 16, which shall apply from 1 August 2006.

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

Done at Strasbourg, 5 July 2006.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

P. LEHTOMÄKI

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

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the assent of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Having regard to the opinion of the Court of Auditors ⁽⁴⁾,

Whereas:

- (1) Article 158 of the Treaty provides that, in order to strengthen its economic and social cohesion, the Community is to aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas. Article 159 of the Treaty requires this action to be supported by the Structural Funds, the European Investment Bank (EIB) and the other existing Financial Instruments.
- (2) Cohesion policy should contribute to increasing growth, competitiveness and employment by incorporating the Community's priorities for sustainable development as defined at the Lisbon European Council of 23 and 24 March 2000 and at the Göteborg European Council of 15 and 16 June 2001.
- (3) Economic, social and territorial disparities at both regional and national level have increased in the enlarged European Union. Actions for convergence, competitiveness and employment should therefore be increased throughout the Community.
- (4) The increase in the number of the Community's land and sea borders and the extension of its territory mean that the value added of cross-border, transnational and interregional cooperation in the Community should be increased.
- (5) The Cohesion Fund should be integrated into the programming of structural assistance in the interest of greater coherence in the intervention of the various Funds.

(6) The role of the instruments providing aid for rural development, namely the European Agricultural Fund for Rural Development pursuant to Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EARDF) ⁽⁵⁾, and for the fisheries sector, namely a European Fisheries Fund (EFF), should be specified. Those instruments should be integrated into the instruments under the common agricultural policy and the common fisheries policy and coordinated with those under the cohesion policy.

(7) The Funds providing assistance under the cohesion policy are therefore limited to the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund. The rules applicable to each Fund are to be specified in implementing regulations adopted under Articles 148, 161 and 162 of the Treaty.

(8) Under Article 55 of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds ⁽⁶⁾, the Council is to review that Regulation on the basis of a proposal from the Commission by 31 December 2006 at the latest. In order to implement the reform of the Funds proposed by this Regulation, Regulation (EC) No 1260/99 should be repealed.

(9) To increase the value added of Community cohesion policy, the work of the Structural Funds and of the Cohesion Fund should be concentrated and simplified and the objectives set out in Regulation (EC) No 1260/1999 redefined accordingly as seeking the convergence of the Member States and the regions, regional competitiveness and employment and European territorial cooperation.

(10) Within those three objectives, both economic and social characteristics and territorial characteristics should be taken into account in an appropriate fashion.

(11) The outermost regions should benefit from specific measures and additional funding to offset the handicaps resulting from the factors referred to in Article 299(2) of the Treaty.

⁽¹⁾ Assent of 4 July 2006 (not yet published in the Official Journal).

⁽²⁾ OJ C 255, 14.10.2005, p. 79.

⁽³⁾ OJ C 231, 20.9.2005, p. 1.

⁽⁴⁾ OJ C 121, 20.5.2005, p. 14.

⁽⁵⁾ OJ L 277, 21.10.2005, p. 1.

⁽⁶⁾ OJ L 161, 26.6.1999, p. 1. Regulation as last amended by Regulation (EC) No 173/2005 (OJ L 29, 2.2.2005, p. 3).

- (12) The problems of accessibility and remoteness from large markets confronting areas with an extremely low population density, as referred to in Protocol 6 on special provisions for Objective 6 in the framework of the Structural Funds in Finland and Sweden to the 1994 Act of Accession, require appropriate financial treatment to offset the effects of these handicaps.
- (13) In view of the importance of sustainable urban development and the contribution of towns and cities, particularly medium-sized ones, to regional development, greater account should be taken of them by developing their role in programming to promote urban regeneration.
- (14) The Funds should take special and complementary action over and above that of the EAFRD and of the EFF to promote the economic diversification of rural areas and of areas dependent on fisheries.
- (15) Action for areas with a natural handicap, i.e. certain islands, mountainous areas and areas with a low population density, as well as for certain border areas of the Community following enlargement, should be strengthened to cope with their particular development difficulties.
- (16) Objective criteria for designating eligible regions and areas should be fixed. To this end, the identification of the priority regions and areas at Community level should be based on the common system of classification of the regions established by Regulation (EC) No 1059/2003 of the European Parliament and the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) ⁽¹⁾.
- (17) A Convergence objective is to cover the Member States and regions whose development is lagging behind. The regions targeted by the Convergence objective are those whose per capita gross domestic product (GDP) measured in purchasing power parities is less than 75 % of the Community average. The regions suffering from the statistical effect linked to the reduction in the Community average following the enlargement of the European Union are to benefit from that reason from substantial transitional aid in order to complete their convergence process. This aid is to end in 2013 and is not to be followed by a further transitional period. The Member States targeted by the Convergence objective whose per capita gross national income (GNI) is less than 90 % of the Community average are to benefit under the Cohesion Fund.
- (18) A Regional competitiveness and employment objective is to cover the territory of the Community outside the Convergence objective. The regions eligible are those under Objective 1 in the 2000 to 2006 programming period which no longer satisfy the regional eligibility criteria of the Convergence objective and which therefore benefit from a transitional aid, as well as all the other regions of the Community.
- (19) A European territorial cooperation objective is to cover regions having land or sea frontiers, the areas for transnational cooperation being defined with regard to actions promoting integrated territorial development and support for interregional cooperation and exchange of experience.
- (20) The improvement and simplification of cooperation along the external borders of the Community entail the use of the instruments of the Community's external assistance, in particular a European Neighbourhood and Partnership Instrument and the Instrument for Pre-Accession Assistance established by Council Regulation (EC) No 1085/2006 ⁽²⁾.
- (21) The contribution from the ERDF to such cooperation along the external borders of the Community assists in redressing the main regional imbalances in the Community and thus in strengthening its economic and social cohesion.
- (22) The activities of the Funds and the operations which they help to finance should be consistent with the other Community policies and comply with Community legislation.
- (23) Action by the Community should be complementary to that carried out by Member States or seek to contribute to it. The partnership should be strengthened through arrangements for the participation of various types of partner, in particular regional and local authorities, with full regard to the institutional arrangements of the Member States.
- (24) Multiannual programming should be directed towards achieving the Funds' objectives by ensuring the availability of the necessary financial resources and the consistency and continuity of joint action by the Community and the Member States.
- (25) Since the Convergence, Regional competitiveness and employment, and European territorial cooperation objectives cannot be sufficiently achieved by the Member States by reason of the extent of the disparities and the limit on the financial resources of the Member States and regions eligible under the Convergence objective and can therefore be better achieved at Community level through the multiannual guarantee of Community finance which allows cohesion policy to be concentrated on the Community's priorities, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

⁽¹⁾ OJ L 154, 21.6.2003, p. 1. Regulation as amended by Regulation (EC) No 1888/2005 (OJ L 309, 25.11.2005, p. 1).

⁽²⁾ See page 82 of this Official Journal.

- (26) It is appropriate to set measurable targets for Member States of the European Union as constituted before 1 May 2004 to aim to achieve through expenditure under the Convergence and Regional competitiveness and employment objectives with a view to promoting competitiveness and creating jobs. It is necessary to identify appropriate ways to measure and report the attainment of those targets.
- (27) It is appropriate to strengthen the subsidiarity and proportionality of the intervention of the Structural Funds and of the Cohesion Fund.
- (28) Under Article 274 of the Treaty, in the context of shared management, the conditions allowing the Commission to exercise its responsibilities for implementation of the general budget of the European Union should be specified and the responsibilities of cooperation by the Member States clarified. Applying these conditions should enable the Commission to satisfy itself that Member States are using the Funds in a legal and regular manner and in accordance with the principle of sound financial management within the meaning of the Financial Regulation.
- (29) In order to ensure a genuine economic impact, contributions from the Structural Funds should not replace public expenditure by Member States under the terms of this Regulation. Verification, through partnership, of the principle of additionality should concentrate on the regions under the Convergence objective because of the extent of the financial resources allocated to them and may result in a financial correction if additionality is not observed.
- (30) In the context of its effort in favour of economic and social cohesion, the Community, at all stages of implementation of the Funds, has as its goals to eliminate inequalities and to promote equality between men and women as enshrined in Articles 2 and 3 of the Treaty, as well as combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.
- (31) The Commission should establish the indicative annual breakdown of available commitment appropriations using an objective and transparent method, taking into account the Commission's proposal, the conclusions of the European Council of 15 and 16 December 2005 and the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management⁽¹⁾ with a view to achieving a significant concentration on the regions whose development is lagging behind, including those receiving transitional support because of the statistical effect.
- (32) Financial concentration on the Convergence objective should be increased because of the greater disparities within the enlarged European Union, the effort in favour of the Regional competitiveness and employment objective to improve competitiveness and employment in the rest of the Community should be maintained and the resources for European territorial cooperation objective should be increased in view of its particular value added.
- (33) The annual appropriations allocated to a Member State under the Funds should be limited to a ceiling fixed with regard to its capacity for absorption.
- (34) Three per cent of the Structural Funds appropriations allocated to Member States under the Convergence and Regional competitiveness and employment objectives may be placed in a national reserve for rewarding performance.
- (35) The appropriations available under the Funds should be indexed on a flat-rate basis for use in programming.
- (36) To increase the strategic content and promote the transparency of cohesion policy through integration with the Community's priorities, the Council should adopt strategic guidelines on a proposal from the Commission. The Council should examine the implementation of those guidelines by Member States on the basis of strategic reporting by the Commission.
- (37) On the basis of the strategic guidelines adopted by the Council, it is appropriate that each Member State prepare, in dialogue with the Commission, a national reference document on its development strategy, which should constitute the framework for preparing operational programmes. On the basis of the national strategy, the Commission should take note of the national strategic reference framework and take a decision on certain of its elements.
- (38) The programming and management of the Structural Funds should be simplified having regard to their specific features by providing for operational programmes to be financed by either the ERDF or the ESF, with each being able to finance in a complementary and limited fashion actions which fall under the scope of the other Fund.
- (39) With a view to improving complementarities and simplifying execution, the assistance of the Cohesion Fund and the ERDF should be jointly programmed in the case of operational programmes on transport and the environment and should have a national geographical coverage.
- (40) Programming should ensure coordination of the Funds between themselves and with the other existing financial instruments, the EIB and the European Investment Fund (EIF). Such coordination should also cover the preparation of complex financial schemes and public-private partnerships.

⁽¹⁾ OJ C 139, 14.6.2006, p. 1.

- (41) It is appropriate to ensure that improved access to finance and innovative financial engineering are available primarily to micro, small and medium-sized enterprises and for investing in public-private partnerships and other projects included in an integrated plan for sustainable urban development. Member States may decide to set up a holding fund through the award of public contracts pursuant to public procurement law, including any derogation in national law compatible with Community law. In other cases, where Member States are satisfied that public procurement law is not applicable, the definition of tasks of the EIF and the EIB justifies that Member States award them a grant that is a direct financial contribution from operational programmes by way of donation. Under the same conditions, national law may provide for the possibility of awarding a grant to other financial institutions without a call for proposal.
- (42) When appraising major productive investment projects, the Commission should have all necessary information to consider whether the financial contribution from the Funds does not result in a substantial loss of jobs in existing locations within the European Union, in order to ensure that Community funding does not support relocation within the European Union
- (43) The programming period is to last for a single period of seven years in order to maintain the simplification of the management system defined in Regulation (EC) No 1260/1999.
- (44) Member States and managing authorities may organise within the operational programmes co-financed by the ERDF the arrangements for interregional cooperation and may take account of the special features of areas with natural handicaps.
- (45) In order to address the need for simplification and decentralisation, programming and financial management should be carried out at the level of the operational programmes and priority axes alone; the Community support framework and the programme complement provided for in Regulation (EC) No 1260/1999 should be discontinued.
- (46) Within the operational programmes co-financed by the ERDF under the Convergence and the Regional competitiveness and employment objectives, Member States, regions and managing authorities may organise sub-delegation to urban authorities in respect of priorities concerning the regeneration of towns and cities.
- (47) The additional allocation to offset the additional costs faced by the outermost regions should be integrated into the operational programmes financed by the ERDF in those regions.
- (48) There should be separate arrangements for implementation of the European territorial cooperation objective financed by the ERDF.
- (49) The Commission should be able to approve major projects included in operational programmes, if necessary in consultation with the EIB, in order to evaluate their purpose and impact, as well as the arrangements for the planned use of Community resources.
- (50) It is useful to specify the types of action which the Funds should support as technical assistance.
- (51) There is a need to ensure that sufficient resources are devoted to assist Member States in project preparation and appraisal. The EIB has a role to play in providing such assistance and could be awarded a grant by the Commission to this end.
- (52) Similarly it is appropriate to provide that the EIF could be awarded a grant from the Commission to undertake an evaluation of the needs of innovative financial engineering instruments available for micro, small and medium-sized enterprises.
- (53) For the same reasons as mentioned above, the EIB and the EIF could be awarded a grant by the Commission to undertake technical assistance actions in the area of sustainable urban development or to support restructuring measures for sustainable economic activity in regions significantly affected by economic crisis.
- (54) The effectiveness of assistance from the Funds also depends on the incorporation of a reliable evaluation into programming and monitoring. The responsibilities of Member States and the Commission in this regard should be specified.
- (55) Within their national envelope under the Convergence and Regional competitiveness and employment objectives, Member States may provide for a small reserve to respond swiftly to unexpected sectoral or local shocks resulting from socio-economic restructuring or the effects of trade agreements.
- (56) It is appropriate to define what expenditure in a Member State can be assimilated to public expenditure for the purpose of calculating the total national public contribution to an operational programme; to this end it is appropriate to refer to the contribution of the 'bodies governed by public law' as defined in the Community public procurement directives since such bodies comprise several types of public or private body established for the specific purpose of meeting needs in the general interest not having an industrial or commercial character and which are controlled by the State, or regional and local authorities.

- (57) It is necessary to determine the elements for modulating the contribution from the Funds to operational programmes, in particular, to increase the multiplier effect of Community resources. It is also appropriate to establish the maximum ceilings which contributions from the Funds cannot exceed on the basis of the type of Fund and objective.
- (58) It is also necessary to define the notion of a revenue-generating project and to identify the community principles and rules for calculating the contribution from the Funds; for some investments it is objectively not possible to estimate the revenue in advance and it is therefore necessary to define the methodology for ensuring that this revenue is excluded from public funding.
- (59) The starting and closing dates for the eligibility of expenditure should be defined so as to provide a uniform and equitable rule applying to the implementation of the Funds across the Community. In order to facilitate the execution of operational programmes, it is appropriate to establish that the starting date for the eligibility of expenditure may be prior to 1 January 2007 if the Member State concerned submits an operational programme before that date.
- (60) In accordance with the principle of subsidiarity and subject to exceptions provided for in Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund ⁽¹⁾, Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund ⁽²⁾ and Council Regulation (EC) No 1084/2006 of 11 July 2006 on the Cohesion Fund ⁽³⁾, there should be national rules on the eligibility of expenditure.
- (61) To ensure the effectiveness, fairness and sustainable impact of the intervention of the Funds, there should be provisions guaranteeing that investments in businesses are long-lasting and preventing the Funds from being used to introduce undue advantage. It is necessary to ensure that investments which benefit from assistance under the Funds can be written off over a sufficiently long period.
- (62) Member States should adopt adequate measures to guarantee the proper functioning of their management and control systems. To this end, it is necessary to establish the general principles and the necessary functions which the control systems of all operational programmes are to fulfil on the basis of the body of Community law in force for the programming period 2000 to 2006.
- (63) It is therefore necessary to designate a single managing authority for each operational programme and to clarify its responsibilities as well as the functions of the audit authority. It is also necessary to guarantee uniform quality standards for the certification of expenditures and of payment requests before they are sent to the Commission. It is necessary to clarify the nature and quality of the information on which these requests are based and, to this end, to establish the functions of the certifying authority.
- (64) Monitoring of operational programmes is necessary to ensure the quality of their implementation. To this end, monitoring committees should be set up and their responsibilities defined, together with the information to be transmitted to the Commission and the framework for examining that information. In order to improve the exchange of information on the implementation of operational programmes, the principle of exchange of data by electronic means should be established.
- (65) In accordance with the principles of subsidiarity and proportionality, Member States should have the primary responsibility for the implementation and control of the interventions.
- (66) The obligations on the Member States as regards management and control systems, the certification of expenditure, and the prevention, detection and correction of irregularities and infringements of Community law should be specified to guarantee the efficient and correct implementation of operational programmes. In particular, concerning management and control, it is necessary to establish the procedures by which Member States give the assurance that the systems are in place and function satisfactorily.
- (67) Without prejudice to the Commission's powers as regards financial control, cooperation between the Member States and the Commission in this field should be increased and criteria should be established which allow the Commission to determine, in the context of its strategy of control of national systems, the level of assurance it can obtain from national audit bodies.
- (68) The extent and intensity of Community controls should be proportionate to the extent of the Community's contribution. Where a Member State is the main provider of the financing for a programme, it is appropriate that there should be an option for that Member State to organise certain elements of the control arrangements according to national rules. In these same circumstances, it is necessary to establish that the Commission differentiates the means by which Member States should fulfil the functions of certification of expenditures and of verification of the management and control system and to establish the conditions under which the Commission is entitled to limit its own audit and rely on the assurances provided by national bodies.
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- ⁽¹⁾ See page 1 of this Official Journal.
⁽²⁾ See page 12 of this Official Journal.
⁽³⁾ See page 79 of this Official Journal.

- (69) The payment on account at the start of operational programmes ensures a regular cash flow which facilitate payments to beneficiaries in the implementation of the operational programme. Therefore, provisions should be made for payments on account for the Structural Funds of 5 % (for Member States of the European Union as constituted before 1 May 2004) and of 7 % (for Member States that acceded to the European Union on or after 1 May 2004), and for the Cohesion Fund of 7,5 % (for Member States of the European Union as constituted before 1 May 2004) and of 10,5 % (for Member States that acceded to the European Union on or after 1 May 2004), to help speed up implementation of operational programmes.
- (70) In addition to the suspension of payments where a serious deficiency is detected in the management and control systems, there should be measures allowing the authorising officer by delegation to interrupt payments where there is evidence to suggest a significant deficiency in the sound operation of these systems.
- (71) The rules on automatic decommitment will speed up the implementation of programmes. To this end, it is appropriate to define the arrangements for their application and the parts of the budgetary commitment which may be excluded from them, notably when delays in implementation result from circumstances which are independent of the party concerned, abnormal or unforeseeable and whose consequences cannot be avoided despite the diligence shown.
- (72) The procedures for closure should be simplified by offering the possibility to those Member States which so wish, in accordance with the schedule which they select, to partially close an operational programme in respect of completed operations; the appropriate framework for doing so should be provided.
- (73) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹⁾. The Commission is to adopt the measures implementing this Regulation for ensuring the transparency and clarifying the provisions applicable to the management of operational programmes as regards the categorisation of expenditure, financial engineering, management and control, electronic exchange of data and publicity after obtaining the opinion of the Coordination Committee of the Funds acting as a management committee. It is appropriate that the Commission publishes the list of eligible areas for the European territorial cooperation objective in application of the criteria set out in this Regulation, the indicative guidelines on the cost-benefit analysis necessary for the preparation and submission of major projects and for revenue generating projects, the indicative guidelines on evaluation and the list of actions eligible under technical assistance at the initiative of the Commission after consultation of the Coordination Committee of the Funds acting as a consultative committee,

HAS ADOPTED THIS REGULATION:

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

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TITLE I

OBJECTIVES AND GENERAL RULES ON ASSISTANCE

CHAPTER I

Scope and definitions

Article 1

Subject matter

This Regulation lays down the general rules governing the European Regional Development Fund (ERDF), the European Social Fund (ESF) (hereinafter referred to as the Structural Funds) and the Cohesion Fund, without prejudice of the specific provisions laid down in Regulations (EC) No 1080/2006, (EC) No 1081/2006 and (EC) No 1084/2006.

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

This Regulation defines the context for cohesion policy, including the method for establishing the Community strategic guidelines on cohesion, the national strategic reference framework and the process for examination at Community level.

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

Article 2

Definitions

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

- (1) 'operational programme': document submitted by a Member State and adopted by the Commission setting out a development strategy with a coherent set of priorities to be carried out with the aid of a Fund, or, in the case of the Convergence objective, with the aid of the Cohesion Fund and the ERDF;
- (2) 'priority axis': one of the priorities of the strategy in an operational programme comprising a group of operations which are related and have specific measurable goals;
- (3) 'operation': a project or group of projects selected by the managing authority of the operational programme concerned or under its responsibility according to criteria laid down by the monitoring committee and implemented by one or more beneficiaries allowing achievement of the goals of the priority axis to which it relates;

(4) 'beneficiary': an operator, body or firm, whether public or private, responsible for initiating or initiating and implementing operations. In the context of aid schemes under Article 87 of the Treaty, beneficiaries are public or private firms carrying out an individual project and receiving public aid;

(5) 'public expenditure': any public contribution to the financing of operations whose origin is the budget of the State, of regional and local authorities, of the European Communities related to the Structural Funds and the Cohesion Fund and any similar expenditure. Any contribution to the financing of operations whose origin is the budget of public law bodies or associations of one or more regional or local authorities or public law bodies acting in accordance with Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ⁽¹⁾ shall be regarded as similar expenditure;

(6) 'intermediate body': any public or private body or service which acts under the responsibility of a managing or certifying authority, or which carries out duties on behalf of such an authority vis-à-vis beneficiaries implementing operations;

(7) 'irregularity': any infringement of a provision of Community law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the European Union by charging an unjustified item of expenditure to the general budget.

CHAPTER II

Objectives and missions

Article 3

Objectives

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

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

⁽¹⁾ OJ L 134, 30.04.2004, p. 114.

2. To that end, the ERDF, the ESF, the Cohesion Fund, the EIB and the other existing Community financial instruments shall each contribute in an appropriate way towards achieving the following three objectives:

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

3. Under the three objectives referred to in paragraph 2, assistance from the Funds shall, according to their nature, take into account specific economic and social features, on the one hand, and specific territorial features, on the other. The assistance shall, in an appropriate manner, support sustainable urban development particularly as part of regional development and the renewal of rural areas and of areas dependent on fisheries through economic diversification. The assistance shall also support areas affected by geographical or natural handicaps which aggravate the problems of development, particularly in the outermost regions as referred to in Article 299(2) of the Treaty as well as the northern areas with very low population density, certain islands and island Member States, and mountainous areas.

Article 4

Instruments and missions

1. The Funds shall contribute, each in accordance with the specific provisions governing it, towards achieving the three objectives referred to in Article 3(2) as follows:

- (a) the Convergence objective: the ERDF, the ESF and the Cohesion Fund;
- (b) the Regional competitiveness and employment objective: the ERDF and the ESF; and
- (c) the European territorial cooperation objective: the ERDF.

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

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

3. The Funds shall contribute towards the financing of technical assistance on the initiative of the Member States and the Commission.

CHAPTER III

Geographical eligibility

Article 5

Convergence

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

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

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

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

*Article 6***Regional competitiveness and employment**

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

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

*Article 7***European Territorial Cooperation**

1. For the purpose of cross-border cooperation, the NUTS level 3 regions of the Community along all internal and certain external land borders and all NUTS level 3 regions of the Community along maritime borders separated, as a general rule, by a maximum of 150 kilometres shall be eligible for financing taking into account potential adjustments needed to ensure the coherence and continuity of the cooperation action.

Immediately following the entry into force of this Regulation, the Commission shall adopt, in accordance with the procedure referred to in Article 103(2), the list of the eligible regions. This list shall be valid from 1 January 2007 to 31 December 2013.

2. For the purpose of transnational cooperation, the Commission, in accordance with the procedure referred to in Article 103(2), shall adopt the list of the eligible transnational areas broken down by programme. This list shall be valid from 1 January 2007 to 31 December 2013.

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

*Article 8***Transitional support**

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

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

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

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

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

CHAPTER IV***Principles of assistance****Article 9***Complementarity, consistency, coordination and compliance**

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

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

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

⁽¹⁾ OJ L 205, 6.8.2005, p. 21.

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

Each Member State concerned shall contribute to these targets.

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

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

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

Article 10

Programming

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

Article 11

Partnership

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

- (a) the competent regional, local, urban and other public authorities;
- (b) the economic and social partners;
- (c) any other appropriate body representing civil society, environmental partners, non-governmental organisations, and bodies responsible for promoting equality between men and women.

Each Member State shall designate the most representative partners at national, regional and local level and in the economic, social, environmental or other spheres (hereinafter referred to as partners), in accordance with national rules and practices, taking account of the need to promote equality between men and women and sustainable development through the integration of environmental protection and improvement requirements.

2. The partnership shall be conducted in full compliance with the respective institutional, legal and financial powers of each partner category as defined in paragraph 1.

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

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

Article 12

Territorial level of implementation

Implementation of operational programmes referred to in Article 32 shall be the responsibility of Member States at the appropriate territorial level, in accordance with the institutional system specific to each Member State. That responsibility shall be exercised in accordance with this Regulation.

Article 13

Proportional intervention

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

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

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

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

Article 14

Shared management

1. The budget of the European Union allocated to the Funds shall be implemented within the framework of shared management between the Member States and the Commission, in accordance with Article 53(1)(b) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾, with the exception of the technical assistance referred to in Article 45 of this Regulation.

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

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

2. The Commission shall exercise its responsibility for implementing the general budget of the European Union in the following ways:

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

Article 15

Additionality

1. Contributions from the Structural Funds shall not replace public or equivalent structural expenditure by a Member State.

2. For regions covered by the Convergence objective, the Commission and the Member State shall determine the level of public or equivalent structural expenditure which the Member State shall maintain in all the regions concerned during the programming period.

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

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

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

4. The Commission shall, in cooperation with each Member State, verify additionality mid-term in 2011 for the Convergence objective. As part of this mid-term verification, the Commission, in consultation with the Member State, may decide to modify the required level of structural expenditure if the economic situation in the Member State concerned has significantly changed from the one existing at the moment of the determination of the level of public or equivalent structural expenditure referred to in paragraph 2. The decision of the

Commission referred to in Article 28(3) shall be amended to reflect this adjustment.

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

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

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

Article 16

Equality between men and women and non-discrimination

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

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

Article 17

Sustainable development

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

CHAPTER V

Financial framework

Article 18

Global resources

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

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

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

2. The Commission shall make indicative annual breakdowns by Member States in accordance with the criteria and methodology set out in Annex II without prejudice to the provisions referred to in Articles 23 and 24.

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

Article 19

Resources for the Convergence objective

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

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

Article 20

Resources for the Regional competitiveness and employment objective

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

- (a) 78,86 % (i.e. a total of EUR 38 742 477 688) for the financing referred to in Article 6, using eligible population, regional prosperity, unemployment rate, employment rate and population density as the criteria for calculating the indicative breakdowns by Member State; and

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

Article 21

Resources for the European territorial cooperation objective

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

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

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

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

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

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

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

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

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

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

Article 22

Non transferability of resources

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

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

Article 23

Resources for the performance reserve

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

Article 24

Resources for technical assistance

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

TITLE II

STRATEGIC APPROACH TO COHESION

CHAPTER I

Community strategic guidelines on cohesion

Article 25

Content

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

For each of the objectives of the Funds, those guidelines shall in particular give effect to the priorities of the Community with a view to promoting the harmonious, balanced and sustainable development of the Community referred to in Article 3(1).

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

Article 26

Adoption and review

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

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

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

CHAPTER II

National strategic reference framework

Article 27

Content

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

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

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

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

- (a) an analysis of development disparities, weaknesses and potential, taking into account trends in the European and world economy;
- (b) the strategy chosen on the basis of that analysis, including the thematic and territorial priorities. Where appropriate these priorities shall include actions relating to sustainable urban development, the diversification of rural economies and areas dependent on fisheries;
- (c) the list of operational programmes for the Convergence and Regional competitiveness and employment objectives;
- (d) a description of how the expenditure for the Convergence and Regional competitiveness and employment objectives will contribute to the European Union priorities of promoting competitiveness and creating jobs, including meeting the objectives of the Integrated Guidelines for Growth and Jobs (2005 to 2008) as laid down in Article 9(3).
- (e) the indicative annual allocation from each Fund by programme;
- (f) for regions of the Convergence objective only:
 - (i) the action envisaged for reinforcing the Member State's administrative efficiency;
 - (ii) the amount of the total annual appropriation provided for under the EAFRD and the EFF;

(ii) the information required for *ex ante* verification of compliance with the additionality principle referred to in Article 15;

(g) for Member States eligible for the Cohesion Fund under Articles 5(2) and 8(3), information on the mechanisms for ensuring coordination between operational programmes themselves and between these and the EAFRD, the EFF and, where appropriate, the interventions of the EIB and of other existing financial instruments.

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

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

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

Article 28

Preparation and adoption

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

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

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

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

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

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

CHAPTER III

Strategic follow-up

Article 29

Strategic reporting by the Member States

1. For the first time in 2007, each Member State shall include in the annual implementation report on its national reform programme a concise section on the contribution of the operational programmes co-financed by the Funds towards the implementation of the national reform programme.

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

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

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

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

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

Article 30

Strategic reporting by the Commission and debate on cohesion policy

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

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

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

Article 31

Cohesion report

1. The report of the Commission referred to in Article 159 of the Treaty shall include in particular:

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

2. The report shall also contain, if necessary:

- (a) any proposals on Community measures and policies which should be adopted in order to strengthen economic and social cohesion;
- (b) any proposed adjustments to the Community strategic guidelines on cohesion needed to reflect changes in Community policy.

TITLE III

PROGRAMMING

CHAPTER I

General provisions on the structural funds and the cohesion fund*Article 32***Preparation and approval of operational programmes**

1. The activities of the Funds in the Member States shall take the form of operational programmes within the national strategic reference framework. Each operational programme shall cover a period between 1 January 2007 and 31 December 2013. An operational programme shall cover only one of the three objectives referred to in Article 3, save as otherwise agreed between the Commission and the Member State.

2. Each operational programme shall be drawn up by the Member State or any authority designated by the Member State, in cooperation with the partners referred to in Article 11.

3. The Member State shall submit a proposal for an operational programme to the Commission containing all the components referred to in Article 37 as soon as possible but no later than five months following the adoption of the Community strategic guidelines on cohesion, as referred to in Article 26.

4. The Commission shall appraise the proposed operational programme to determine whether it contributes to the goals and priorities of the national strategic reference framework and the Community strategic guidelines on cohesion. Where the Commission, within two months following the receipt of the operational programme, considers that an operational programme does not contribute to the achievement of the objectives of the national strategic reference framework and the Community strategic guidelines on cohesion, it may invite the Member State to provide all necessary additional information and, where appropriate, to revise the proposed programme accordingly.

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

*Article 33***Revision of operational programmes**

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

(a) following significant socio-economic changes;

(b) in order to take greater or different account of major changes in Community, national or regional priorities;

(c) in the light of the evaluation referred to in Article 48(3); or

(d) following implementation difficulties.

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

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

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

*Article 34***Specific character of the Funds**

1. Operational programmes shall receive financing from only one Fund, save as otherwise provided in paragraph 3.

2. Without prejudice to the derogations laid down in the specific regulations of the Funds, the ERDF and the ESF may finance, in a complementary manner and subject to a limit of 10 % of Community funding for each priority axis of an operational programme, actions falling within the scope of assistance from the other Fund, provided that they are necessary for the satisfactory implementation of the operation and are directly linked to it.

3. In the Member States receiving support from the Cohesion Fund, the ERDF and the Cohesion Fund shall jointly provide assistance for operational programmes on transport infrastructure and the environment, including for major projects.

*Article 35***Geographical scope**

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

Operational programmes submitted under the Convergence objective with a contribution from the Cohesion Fund shall be drawn up at national level.

2. Operational programmes submitted under the Regional competitiveness and employment objective shall be drawn up at NUTS level 1 or NUTS level 2, in accordance with the institutional system specific to the Member State, for regions benefiting from financing by the ERDF, save as otherwise agreed between the Commission and the Member State. They shall be drawn up by the Member State at the appropriate level if they are financed by the ESF.

3. Operational programmes submitted under the European territorial cooperation objective for cross-border cooperation shall be drawn up, as a general rule, for each border or group of borders by an appropriate grouping at NUTS level 3, including enclaves. Operational programmes submitted under the European territorial cooperation objective for transnational cooperation shall be drawn up at the level of each transnational cooperation area. Interregional cooperation and exchange of experience programmes shall relate to the whole territory of the Community.

Article 36

Participation by the European Investment Bank and the European Investment Fund

1. The EIB and the EIF may participate, in accordance with the modalities laid down in their statutes, in the programming of assistance from the Funds.

2. The EIB and the EIF may, at the request of Member States, participate in the preparation of national strategic reference frameworks and operational programmes, as well as in activities relating to the preparation of projects, in particular major projects, the arrangement of finance, and public-private partnerships. The Member State, in agreement with the EIB and the EIF, may concentrate the loans granted on one or more priorities of an operational programme, in particular in the spheres of innovation and the knowledge economy, human capital, the environment and basic infrastructure projects.

3. The Commission may consult the EIB and the EIF before adoption of the decision referred to in Article 28(3) and of the operational programmes. That consultation shall relate in particular to operational programmes containing an indicative list of major projects or programmes which, by the nature of their priorities, are suitable for mobilising loans or other types of market-based financing.

4. The Commission may, if it considers it appropriate for the appraisal of major projects, request the EIB to examine the technical quality and economic and financial viability of the projects concerned, in particular as regards the financial engineering instruments to be implemented or developed.

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

CHAPTER II

Programming content

Section 1

Operational programmes

Article 37

Operational programmes for the Convergence and Regional competitiveness and employment objectives

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

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

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

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

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

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

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

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

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

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

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

Article 38

Operational programmes for the European territorial cooperation objective

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

Section 2

Major projects

Article 39

Content

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

Article 40

Information submitted to the Commission

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

- (a) information on the body to be responsible for implementation;
- (b) information on the nature of the investment and a description of it, its financial volume and location;
- (c) the results of the feasibility studies;

- (d) a timetable for implementing the project and, where the implementation period for the operation concerned is expected to be longer than the programming period, the phases for which Community co-financing is requested during the 2007 to 2013 programming period;
- (e) a cost-benefit analysis, including a risk assessment and the foreseeable impact on the sector concerned and on the socio-economic situation of the Member State and/or the region and, when possible and where appropriate, of other regions of the Community;
- (f) an analysis of the environmental impact;
- (g) a justification for the public contribution;
- (h) the financing plan showing the total planned financial resources and the planned contribution from the Funds, the EIB, the EIF and all other sources of Community financing, including the indicative annual plan of the financial contribution from the ERDF or the Cohesion Fund for the major project.

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

Article 41

Decision of the Commission

1. The Commission shall appraise the major project, if necessary consulting outside experts, including the EIB, in the light of the factors referred to in Article 40, its consistency with the priorities of the operational programme, its contribution to achieving the goals of those priorities and its consistency with other Community policies.
2. The Commission shall adopt a decision as soon as possible but no later than three months after the submission by the Member State or the managing authority of a major project, provided that the submission is in accordance with Article 40. That decision shall define the physical object, the amount to which the co-financing rate for the priority axis applies, and the annual plan of financial contribution from the ERDF or the Cohesion Fund.
3. Where the Commission refuses to make a financial contribution from the Funds to a major project, it shall notify the Member State of its reasons within the period and the related conditions laid down in paragraph 2.

Section 3

Global grants

Article 42

General provisions

1. The Member State or the managing authority may entrust the management and implementation of a part of an opera-

tional programme to one or more intermediate bodies, designated by the Member State or the managing authority, including local authorities, regional development bodies or non-governmental organisations, in accordance with the provisions of an agreement concluded between the Member State or the managing authority and that body.

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

2. The intermediate body responsible for managing the global grant shall provide guarantees of its solvency and competence in the domain concerned as well as in administrative and financial management. It shall as a general rule be established or represented in the region or regions covered by the operational programme at the moment of its designation.

Article 43

Implementing rules

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

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

Section 4

Financial engineering

Article 44

Financial engineering instruments

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

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

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

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

Section 5

Technical assistance

Article 45

Technical assistance at the initiative of the Commission

1. At the initiative of and/or on behalf of the Commission, subject to a ceiling of 0,25 % of their respective annual allocation, the Funds may finance the preparatory, monitoring, administrative and technical support, evaluation, audit and inspection measures necessary for implementing this Regulation.

Those actions shall include, in particular:

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

(f) the installation, operation and interconnection of computerised systems for management, monitoring, inspection and evaluation;

(g) improvements in evaluation methods and the exchange of information on practices in this field.

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

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

Article 46

Technical assistance of the Member States

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

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

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

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

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

TITLE IV

EFFECTIVENESS

CHAPTER I

Evaluation

Article 47

General provisions

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

2. Evaluations may be of a strategic nature in order to examine the evolution of a programme or group of programmes in relation to Community and national priorities, or of an operational nature in order to support the monitoring of an operational programme. Evaluations shall be carried out before, during and after the programming period.

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

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

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

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

Article 48

Responsibility of Member States

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

They may also draw up, where appropriate, under the Convergence objective, in accordance with the principle of proportionality set out in Article 13, an evaluation plan presenting the indicative evaluation activities which the Member State intends to carry out in the different phases of the implementation.

2. Member States shall carry out an *ex ante* evaluation for each operational programme separately under the Convergence objective. In duly justified cases, taking into account the proportionality principle as set out in Article 13 and as agreed between the Commission and the Member State, Member States may carry out a single *ex ante* evaluation covering more than one operational programme.

For the Regional competitiveness and employment objective, Member States shall carry out either an *ex ante* evaluation covering all the operational programmes or an evaluation for each Fund or an evaluation for each priority or an evaluation for each operational programme.

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

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

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

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

Article 49

Responsibility of the Commission

1. The Commission may carry out strategic evaluations.

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

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

Ex post evaluation shall cover all the operational programmes under each objective and examine the extent to which resources were used, the effectiveness and efficiency of Fund programming and the socio-economic impact.

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

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

Ex post evaluation shall be completed by 31 December 2015.

CHAPTER II

Reserves

Article 50

National performance reserve

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

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

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

Article 51

National contingency reserve

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

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

TITLE V

FINANCIAL CONTRIBUTION FROM THE FUNDS

CHAPTER I

Contribution from the funds

Article 52

Modulation of the contribution rates

The contribution from the Funds may be modulated in the light of the following:

- (a) the gravity of the specific problems, in particular of an economic, social or territorial nature;
- (b) the importance of each priority axis for the Community's priorities as set out in the Community strategic guidelines on cohesion, as well as for national and regional priorities;
- (c) protection and improvement of the environment, principally through the application of the precautionary principle, the principle of preventive action, and the polluter-pays principle;
- (d) the rate of mobilisation of private financing, in particular under public-private partnerships, in the fields concerned;
- (e) the inclusion of interregional cooperation as referred to in Article 37(6)(b) under the Convergence and Regional competitiveness and employment objectives;
- (f) under the Regional competitiveness and employment objective, the coverage of areas with a geographical or natural handicap defined as follows:
 - (i) island Member States eligible under the Cohesion Fund, and other islands except those on which the capital of a Member State is situated or which have a fixed link to the mainland;
 - (ii) mountainous areas as defined by the national legislation of the Member State;
 - (iii) sparsely (less than 50 inhabitants per square kilometre) and very sparsely (less than 8 inhabitants per square kilometre) populated areas;
 - (iv) the areas which were external borders of the Community on 30 April 2004 and which ceased to be so on the day after that date.

Article 53

Contribution from the Funds

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

- (a) either the total eligible expenditure including public and private expenditure;
- (b) or the public eligible expenditure.

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

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

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

5. For operational programmes co-financed jointly:

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

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

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

Article 54

Other provisions

1. The contribution from the Funds for each priority axis shall not be less than 20 % of the eligible public expenditure.
2. Technical assistance measures implemented at the initiative of or on behalf of the Commission may be financed at the rate of 100 %.
3. During the period of eligibility referred to in Article 56(1):
 - (a) a priority axis may receive assistance from only one Fund and one objective at a time;
 - (b) an operation may receive assistance from a Fund under only one operational programme at a time;
 - (c) an operation shall not receive an assistance from a Fund higher than the total public expenditure allocated.

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

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

CHAPTER II

Revenue-generating projects

Article 55

Revenue-generating projects

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

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

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

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

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

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

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

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

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

CHAPTER III

Eligibility of expenditure

Article 56

Eligibility of expenditure

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

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

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

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

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

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

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

CHAPTER IV

Durability of operations

Article 57

Durability of operations

1. The Member State or managing authority shall ensure that an operation retains the contribution from the Funds only if that operation does not, within five years from the completion of the operation or three years from the completion of the operation in Member States which have exercised the option of reducing that time limit for the maintenance of an investment or jobs created by SMEs, undergo a substantial modification:

- (a) affecting its nature or its implementation conditions or giving to a firm or a public body an undue advantage; and
- (b) resulting either from a change in the nature of ownership of an item of infrastructure or the cessation of a productive activity.

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

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

4. The Member States and the Commission shall ensure that undertakings which are or have been subject to a procedure of recovery in accordance with paragraph 3 following the transfer of a productive activity within a Member State or to another Member State do not benefit from a contribution from the Funds.

TITLE VI

MANAGEMENT, MONITORING AND CONTROLS

CHAPTER I

Management and control systems

Article 58

General principles of the management and control systems

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

- (a) the definition of the functions of the bodies concerned in management and control and the allocation of functions within each body;

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

Article 59

Designation of authorities

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

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

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

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

Without prejudice to this Regulation, the Member State shall lay down the mutual relations between the authorities referred to in paragraph 1, which shall carry out their tasks in full accordance with the institutional, legal and financial systems of the Member State concerned.

4. Subject to Article 58(b), some or all of the authorities referred to in paragraph 1 may be part of the same body.

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

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

Article 60

Functions of the managing authority

The managing authority shall be responsible for managing and implementing the operational programme in accordance with the principle of sound financial management and in particular for:

- (a) ensuring that operations are selected for funding in accordance with the criteria applicable to the operational programme and that they comply with applicable Community and national rules for the whole of their implementation period;
- (b) verifying that the co-financed products and services are delivered and that the expenditure declared by the beneficiaries for operations has actually been incurred and complies with Community and national rules; verifications on-the-spot of individual operations may be carried out on a sample basis in accordance with the detailed rules to be adopted by the Commission in accordance with the procedure referred to in Article 103(3);
- (c) ensuring that there is a system for recording and storing in computerised form accounting records for each operation under the operational programme and that the data on implementation necessary for financial management, monitoring, verifications, audits and evaluation are collected;
- (d) ensuring that beneficiaries and other bodies involved in the implementation of operations maintain either a separate accounting system or an adequate accounting code for all transactions relating to the operation without prejudice to national accounting rules;
- (e) ensuring that the evaluations of operational programmes referred to in Article 48(3) are carried out in accordance with Article 47;
- (f) setting up procedures to ensure that all documents regarding expenditure and audits required to ensure an adequate audit trail are held in accordance with the requirements of Article 90;

- (g) ensuring that the certifying authority receives all necessary information on the procedures and verifications carried out in relation to expenditure for the purpose of certification;
 - (h) guiding the work of the monitoring committee and providing it with the documents required to permit the quality of the implementation of the operational programme to be monitored in the light of its specific goals;
 - (i) drawing up and, after approval by the monitoring committee, submitting to the Commission the annual and final reports on implementation;
 - (j) ensuring compliance with the information and publicity requirements laid down in Article 69;
 - (k) providing the Commission with information to allow it to appraise major projects.
- (a) ensuring that audits are carried out to verify the effective functioning of the management and control system of the operational programme;
 - (b) ensuring that audits are carried out on operations on the basis of an appropriate sample to verify expenditure declared;
 - (c) presenting to the Commission within nine months of the approval of the operational programme an audit strategy covering the bodies which will perform the audits referred to under points (a) and (b), the method to be used, the sampling method for audits on operations and the indicative planning of audits to ensure that the main bodies are audited and that audits are spread evenly throughout the programming period.

Article 61

Functions of the certifying authority

The certifying authority of an operational programme shall be responsible in particular for:

- (a) drawing up and submitting to the Commission certified statements of expenditure and applications for payment;
- (b) certifying that:
 - (i) the statement of expenditure is accurate, results from reliable accounting systems and is based on verifiable supporting documents;
 - (ii) the expenditure declared complies with applicable Community and national rules and has been incurred in respect of operations selected for funding in accordance with the criteria applicable to the programme and complying with Community and national rules;
- (c) ensuring for the purposes of certification that it has received adequate information from the managing authority on the procedures and verifications carried out in relation to expenditure included in statements of expenditure;
- (d) taking account for certification purposes of the results of all audits carried out by or under the responsibility of the audit authority;
- (e) maintaining accounting records in computerised form of expenditure declared to the Commission;
- (f) keeping an account of amounts recoverable and of amounts withdrawn following cancellation of all or part of the contribution for an operation. Amounts recovered shall be repaid to the general budget of the European Union prior to the closure of the operational programme by deducting them from the next statement of expenditure.

Article 62

Functions of the audit authority

1. The audit authority of an operational programme shall be responsible in particular for:

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

When a common system applies to several operational programmes, the information referred to in point (i) may be grouped in a single report, and the opinion and declaration issued under points (ii) and (iii) may cover all the operational programmes concerned;

- (e) submitting to the Commission at the latest by 31 March 2017 a closure declaration assessing the validity of the application for payment of the final balance and the legality and regularity of the underlying transactions covered by the final statement of expenditure, which shall be supported by a final control report.

2. The audit authority shall ensure that the audit work takes account of internationally accepted audit standards.

3. Where the audits and controls referred to in paragraph 1(a) and (b) are carried out by a body other than the audit authority, the audit authority shall ensure that such bodies have the necessary functional independence.

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

CHAPTER II

Monitoring

Article 63

Monitoring committee

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

2. Each monitoring committee shall draw up its rules of procedure within the institutional, legal and financial framework of the Member State concerned and adopt them in agreement with the managing authority in order to exercise its missions in accordance with this Regulation.

Article 64

Composition

1. The monitoring committee shall be chaired by a representative of the Member State or the managing authority.

Its composition shall be decided by the Member State in agreement with the managing authority.

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

Article 65

Tasks

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

(a) it shall consider and approve the criteria for selecting the operations financed within six months of the approval of

the operational programme and approve any revision of those criteria in accordance with programming needs;

(b) it shall periodically review progress made towards achieving the specific targets of the operational programme on the basis of documents submitted by the managing authority;

(c) it shall examine the results of implementation, particularly the achievement of the targets set for each priority axis and the evaluations referred to in Article 48(3);

(d) it shall consider and approve the annual and final reports on implementation referred to in Article 67;

(e) it shall be informed of the annual control report, or of the part of the report referring to the operational programme concerned, and of any relevant comments the Commission may make after examining that report or relating to that part of the report;

(f) it may propose to the managing authority any revision or examination of the operational programme likely to make possible the attainment of the Funds' objectives referred to in Article 3 or to improve its management, including its financial management;

(g) it shall consider and approve any proposal to amend the content of the Commission decision on the contribution from the Funds.

Article 66

Arrangements for monitoring

1. The managing authority and the monitoring committee shall ensure the quality of the implementation of the operational programme.

2. The managing authority and the monitoring committee shall carry out monitoring by reference to financial indicators and the indicators referred to in Article 37(1)(c) specified in the operational programme.

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

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

Article 67

Annual report and final report on implementation

1. For the first time in 2008 and by 30 June each year, the managing authority shall send the Commission an annual report and by 31 March 2017 a final report on the implementation of the operational programme.

2. The reports referred to in paragraph 1 shall include the following information in order to obtain a clear view of the implementation of the operational programme:

(a) the progress made in implementing the operational programme and priority axes in relation to their specific, verifiable targets, with a quantification, wherever and whenever they lend themselves to quantification, using the indicators referred to in Article 37(1)(c) at the level of the priority axis;

(b) the financial implementation of the operational programme, detailing for each priority axis:

(i) the expenditure paid out by the beneficiaries included in applications for payment sent to the managing authority and the corresponding public contribution;

(ii) the total payments received from the Commission and quantification of the financial indicators referred to in Article 66(2); and

(iii) the expenditure paid out by the body responsible for making payments to the beneficiaries,

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

(c) for information purposes only, the indicative breakdown of the allocation of Funds by categories, in accordance with the implementation rules adopted by the Commission in accordance with the procedure referred to in Article 103(3);

(d) the steps taken by the managing authority or the monitoring committee to ensure the quality and effectiveness of implementation, in particular:

(i) monitoring and evaluation measures, including data collection arrangements;

(ii) a summary of any significant problems encountered in implementing the operational programme and any measures taken, including the response to comments made under Article 68(2) where appropriate;

(iii) the use made of technical assistance;

(e) the measures taken to provide information on and publicise the operational programme;

(f) information about significant problems relating to compliance with Community law which have been encountered in the implementation of the operational programme and the measures taken to deal with them;

(g) where appropriate, the progress and financing of major projects;

(h) the use made of assistance released following cancellation as referred to in Article 98(2) to the managing authority or

to another public authority during the period of implementation of the operational programme;

(i) cases where a substantial modification has been detected under Article 57.

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

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

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

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

Article 68

Annual examination of programmes

1. Every year, when the annual report on implementation referred to in Article 67 is submitted, the Commission and the managing authority shall examine the progress made in implementing the operational programme, the principal results achieved over the previous year, the financial implementation and other factors with a view to improving implementation.

Any aspects of the operation of the management and control system raised in the last annual control report, referred to in Article 62(1)(d)(i), may also be examined.

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

3. When the *ex post* evaluations of assistance granted over the 2000 to 2006 programming period, where appropriate, are available, the overall results may be examined in the next annual examination.

CHAPTER III

Article 71

Information and publicity

Article 69

Information and publicity

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

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

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

CHAPTER IV

Responsibilities of Member States and of the Commission

Section 1

Responsibilities of Member States

Article 70

Management and control

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

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

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

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

Setting up of management and control systems

1. Before the submission of the first interim application for payment or at the latest within twelve months of the approval of each operational programme, the Member States shall submit to the Commission a description of the systems, covering in particular the organisation and procedures of:

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

2. The description referred to in paragraph 1 shall be accompanied by a report setting out the results of an assessment of the systems set up and giving an opinion on their compliance with Articles 58 to 62. If the opinion contains reservations, the report shall indicate the seriousness of the shortcomings and, where the shortcomings do not concern the whole programme, the priority axis or axes concerned. The Member State shall inform the Commission of the corrective measures to be taken and the timetable for their implementation and subsequently provide confirmation of the implementation of the measures and the withdrawal of the corresponding reservations.

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

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

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

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

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

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

Section 2

Responsibilities of the Commission

Article 72

Responsibilities of the Commission

1. The Commission shall satisfy itself in accordance with the procedure laid down in Article 71 that the Member States have set up management and control systems that comply with Articles 58 to 62 and, on the basis of the annual control reports and annual opinion of the audit authority and its own audits, that the systems function effectively during the periods of implementation of operational programmes.

2. Without prejudice to audits carried out by Member States, Commission officials or authorised Commission representatives may carry out on-the-spot audits to verify the effective functioning of the management and control systems, which may include audits on operations included in operational programmes, with a minimum of 10 working days' notice, except in urgent cases. Officials or authorised representatives of the Member State may take part in such audits. The implementing rules of this Regulation concerning the use of data collected during audits shall be adopted by the Commission in accordance with the procedure referred to in Article 103(3).

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

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

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

Article 73

Cooperation with the audit authorities of the Member States

1. The Commission shall cooperate with the audit authorities of operational programmes to coordinate their respective audit plans and audit methods and shall immediately exchange

the results of audits carried out on management and control systems in order to make the best possible use of resources and to avoid unjustified duplication of work.

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

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

2. In determining its own audit strategy, the Commission shall identify those operational programmes for which the opinion on the compliance of systems under Article 71(2) is without reservations, or where reservations have been withdrawn following corrective measures, where the audit strategy of the audit authority is satisfactory and where reasonable assurance has been obtained that the management and control systems function effectively on the basis of the results of audits by the Commission and the Member State.

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

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

Section 3

Proportionality in the control of operational programmes

Article 74

Proportional control arrangements

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

- (a) the audit authority is not required to present to the Commission an audit strategy under Article 62(1)(c);

- (b) where the opinion on the compliance of systems under Article 71(2) is without reservations, or where reservations have been withdrawn following corrective measures, the Commission may conclude that it can rely principally on the opinion referred to in Article 62(1)(d)(ii) with regard to the effective functioning of the systems and that it will carry out its own on-the-spot audits only if there is evidence to suggest shortcomings in the system affecting expenditure certified to the Commission in a year for which an opinion under Article 62(1)(d)(ii) has been provided which contains no reservation in respect of such shortcomings.

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

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

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

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

Article 71 shall apply *mutatis mutandis*.

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

TITLE VII

FINANCIAL MANAGEMENT

CHAPTER I

Financial management

Section 1

Budget commitments

Article 75

Budget commitments

1. The Community budget commitments in respect of operational programmes (hereinafter budget commitments) shall be effected annually for each Fund and objective during

the period between 1 January 2007 and 31 December 2013. The first budget commitment shall be made before the adoption by the Commission of the decision approving the operational programme. Each subsequent commitment shall be made, as a general rule, by 30 April each year by the Commission on the basis of the decision to grant a contribution from the Funds referred to in Article 32.

2. Where no payment has been made, the Member State may request, by 30 September of the year *n* at the latest, the transfer of any commitments in respect of operational programmes related to the national contingency reserve referred to in Article 51 to other operational programmes. The Member State shall specify in its request the operational programmes benefiting from that transfer.

Section 2

Common rules for payments

Article 76

Common rules for payments

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

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

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

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

Article 77

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

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

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

Article 78

Statement of expenditure

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

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

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

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

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

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

5. Where the contribution from the Funds is calculated with reference to public expenditure as provided for in Article 53(1),

any information on expenditure other than public expenditure shall not affect the amount due as calculated on the basis of the payment request.

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

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

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

The co-financing rate shall be applied to the eligible expenditure paid by the beneficiary.

The corresponding statement of expenditure shall be corrected accordingly.

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

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

Article 79

Accumulation of pre-financing and of interim payments

1. The cumulative total of pre-financing and interim payments made shall not exceed 95 % of the contribution from the Funds to the operational programme.

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

*Article 80***Wholeness of payment to beneficiaries**

Member States shall satisfy themselves that the bodies responsible for making the payments ensure that the beneficiaries receive the total amount of the public contribution as quickly as possible and in full. No amount shall be deducted or withheld and no specific charge or other charge with equivalent effect shall be levied that would reduce these amounts for the beneficiaries.

*Article 81***Use of the euro**

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

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

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

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

*Section 3***Pre-financing***Article 82***Payment**

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

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

(a) for Member States of the European Union as constituted before 1 May 2004, in 2007 2 % of the contribution from the Structural Funds to the operational programme, and

in 2008 3 % of the contribution from the Structural Funds to the operational programme;

(b) for Member States that acceded to the European Union on or after 1 May 2004, in 2007 2 % of the contribution from the Structural Funds to the operational programme, in 2008 3 % of the contribution from the Structural Funds to the operational programme, and in 2009 2 % of the contribution from the Structural Funds to the operational programme;

(c) if the operational programme falls under the European territorial cooperation objective and at least one of the participants is a Member State that acceded to the European Union on or after 1 May 2004, in 2007 2 % of the contribution from the ERDF to the operational programme, in 2008 3 % of the contribution from the ERDF to the operational programme, and in 2009 2 % of the contribution from the ERDF to the operational programme;

(d) for Member States of the European Union as constituted before 1 May 2004, in 2007 2 % of the contribution from the Cohesion Fund to the operational programme, in 2008 3 % of the contribution from the Cohesion Fund to the operational programme, and in 2009 2,5 % of the contribution from the Cohesion Fund to the operational programme;

(e) for Member States that acceded to the European Union on or after 1 May 2004, in 2007 2,5 % of the contribution from the Cohesion Fund to the operational programme, in 2008 4 % of the contribution from the Cohesion Fund to the operational programme, and in 2009 4 % of the contribution from the Cohesion Fund to the operational programme.

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

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

*Article 83***Interest**

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

*Article 84***Clearance**

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

Section 4

Interim payments*Article 85***Interim payments**

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

*Article 86***Acceptability of applications for payment**

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

- (a) the Commission must have been sent a application for payment and a statement of expenditure in accordance with Article 78;
- (b) no more than the maximum amount of assistance from the Funds as laid down in the decision of the Commission approving the operational programme has been paid by the Commission during the whole period for each priority axis;
- (c) the managing authority must have sent the Commission the most recent annual implementation report in accordance with Article 67(1) and (3);
- (d) there is no reasoned opinion by the Commission in respect of an infringement under Article 226 of the Treaty as regards the operation(s) for which the expenditure is declared in the application for payment in question.

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

*Article 87***Date of presentation of applications for payment and payment delays**

1. The certifying authority shall satisfy itself that requests for interim payments for each operational programme are grouped together and sent to the Commission, as far as possible, on three separate occasions a year. For a payment to be made by the Commission in the current year, the latest date on which a application for payment shall be submitted is 31 October.

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

Section 5

Programme closure and payment of final balance*Article 88***Partial closure**

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

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

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

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

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

*Article 89***Conditions for the payment of the final balance**

1. The Commission shall pay the final balance provided that:

- (a) the Member State has sent an application for payment comprising the following documents by 31 March 2017:
 - (i) an application for payment of the final balance and a statement of expenditure in accordance with Article 78;
 - (ii) the final implementation report for the operational programme, including the information set out in Article 67;
 - (iii) a closure declaration referred to in Article 62(1)(e); and
- (b) there is no reasoned opinion by the Commission in respect of an infringement under Article 226 of the Treaty as regards the operation(s) for which the expenditure is declared in the application for payment in question.

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

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

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

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

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

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

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

6. Notwithstanding the results of any audits performed by the Commission or the European Court of Auditors, the final balance paid by the Commission for the operational programme may be amended within nine months of the date on which it is paid or, where there is a negative balance to be reimbursed by the Member State, within nine months of the date on which the debit note is issued. Such amendment of the balance shall not affect the date of the closure of the operational programme as set out in paragraph 5.

Article 90

Availability of documents

1. Without prejudice to the rules governing State aid under Article 87 of the Treaty, the managing authority shall ensure that all the supporting documents regarding expenditure and audits on the operational programme concerned are kept available for the Commission and the Court of Auditors for:

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

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

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

3. The documents shall be kept either in the form of the originals or in versions certified to be in conformity with the originals on commonly accepted data carriers.

Section 6

Interruption of the payment deadline and suspension of payments

Article 91

Interruption of the payment deadline

1. The payment deadline may be interrupted by the authorising officer by delegation within the meaning of Regulation (EC, Euratom) No 1605/2002 for a maximum period of six months if:

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

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

Article 92

Suspension of payments

1. All or part of the interim payments at the level of priority axes or programmes may be suspended by the Commission where:

- (a) there is a serious deficiency in the management and control system of the programme which affects the reliability of the procedure for certification of payments and for which corrective measures have not been taken; or
- (b) expenditure in a certified statement of expenditure is linked to a serious irregularity which has not been corrected; or
- (c) there is a serious breach by a Member State of its obligations under Article 70(1) and (2).

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

3. The Commission shall end suspension of all or part of interim payments where the Member State has taken the necessary measures to enable the suspension to be lifted. Where the required measures are not taken by the Member State, the Commission may adopt the decision to cancel all or part of the Community contribution to the operational programme in accordance with Article 99.

Section 7

Automatic decommitment

Article 93

Principles

1. The Commission shall automatically decommit any part of a budget commitment in an operational programme that has not been used for payment of the pre-financing or interim payments or for which an application for payment has not been sent in conformity with Article 86 by 31 December of the second year following the year of budget commitment under the programme, with the exception mentioned in paragraph 2.

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

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

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

4. If this Regulation enters into force after 1 January 2007, the period after which the first automatic decommitment as referred to in paragraph 1 may be made shall be extended, for the first commitment, by the number of months between 1 January 2007 and the date of the first budget commitment.

Article 94

Period for interruption for major projects and aid schemes

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

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

Article 95

Period of interruption for legal proceedings and administrative appeals

The amount potentially concerned by automatic decommitment shall be reduced by the amounts that the certifying

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

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

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

Article 96

Exceptions to the automatic decommitment

The following shall be disregarded in calculating the automatic decommitment:

- (a) that part of the budget commitment for which a application for payment has been made but whose reimbursement has been interrupted or suspended by the Commission on 31 December of the second or third year following the year of the budget commitment pursuant to Article 93 and in accordance with Articles 91 and 92. When the problem resulting in the interruption or suspension has been resolved, the automatic decommitment rule shall be applied to that part of the budget commitment which is concerned;
- (b) that part of the budget commitment for which a application for payment has been made but whose reimbursement has been capped in particular due to a lack of budget resources;
- (c) that part of the budget commitment for which it has not been possible to make an acceptable application for payment for reasons of *force majeure* seriously affecting implementation of the operational programme. The national authorities claiming *force majeure* shall demonstrate its direct consequences on the implementation of all or part of the operational programme.

Article 97

Procedure

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

2. The Member State shall have two months from the date of receipt of that information to agree to the amount or submit its observations. The Commission shall carry out the automatic decommitment not later than nine months after the deadline referred to in Article 93.

3. The Fund's contribution to the operational programme shall be reduced, for the year concerned, by the amount automatically decommitted. The Member State shall produce within two months of the date of decommitment a revised financing plan reflecting the reduced amount of assistance over one or several priority axes of the operational programme. Failing this, the Commission shall reduce the amounts allocated to each priority axis proportionately.

CHAPTER II

Financial corrections

Section 1

Financial correction by Member States

Article 98

Financial corrections by Member States

1. The Member States shall in the first instance bear the responsibility for investigating irregularities, acting upon evidence of any major change affecting the nature or the conditions for the implementation or control of operations or operational programmes and making the financial corrections required.

2. The Member State shall make the financial corrections required in connection with the individual or systemic irregularities detected in operations or operational programmes. The corrections made by a Member State shall consist of cancelling all or part of the public contribution to the operational programme. The Member State shall take into account the nature and gravity of the irregularities and the financial loss to the Funds.

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

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

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

Section 2

Financial corrections by the Commission

Article 99

Criteria for the corrections

1. The Commission may make financial corrections by cancelling all or part of the Community contribution to an operational programme where, after carrying out the necessary examination, it concludes that:

- (a) there is a serious deficiency in the management and control system of the programme which has put at risk the Community contribution already paid to the programme;
- (b) expenditure contained in a certified statement of expenditure is irregular and has not been corrected by the Member State prior to the opening of the correction procedure under this paragraph;
- (c) a Member State has not complied with its obligations under Article 98 prior to the opening of the correction procedure under this paragraph.

2. The Commission shall base its financial corrections on individual cases of irregularity identified, taking account of the systemic nature of the irregularity to determine whether a flat-rate or extrapolated correction should be applied.

3. The Commission shall, when deciding the amount of a correction, take account of the nature and gravity of the irregularity and the extent and financial implications of the deficiencies found in the operational programme concerned.

4. Where the Commission bases its position on facts established by auditors other than those of its own services, it shall draw its own conclusions regarding the financial consequences after examining the measures taken by the Member State concerned under Article 98(2), the reports supplied under Article 70(1)(b), and any replies from the Member State.

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

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

Article 100

Procedure

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

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

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

3. Where the Member State does not accept the provisional conclusions of the Commission, the Member State shall be invited to a hearing by the Commission, in which both sides in cooperation based on the partnership shall make efforts to reach an agreement concerning the observations and the conclusions to be drawn from them.

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

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

Article 101

Obligations of Member States

A financial correction by the Commission shall not prejudice the Member State's obligation to pursue recoveries under Article 98(2) of this Regulation and to recover State aid under Article 87 of the Treaty and under Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty ⁽¹⁾.

Article 102

Repayment

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

due date shall be the last day of the second month following the issuing of the order.

2. Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate of such interest shall be one-and-a-half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls.

TITLE VIII

COMMITTEES

CHAPTER I

Coordination committee of the funds

Article 103

Committee procedure

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

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

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

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

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

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

CHAPTER II

Committee under Article 147 of the treaty

Article 104

Committee under Article 147 of the Treaty

1. The Commission shall be assisted by a committee set up under Article 147 of the Treaty (hereinafter referred to as the Committee). The Committee shall be composed of one government representative, one representative of the workers' organisations and one representative of the employers' organisations from each Member State. The Member of the Commission responsible for chairing the Committee may delegate that responsibility to a senior Commission official.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession. Editorial note: the title of Regulation (EC) No 659/1999 has been adjusted to take account of the renumbering of the Articles of the Treaty establishing the European Community, in accordance of Article 12 of the Treaty of Amsterdam; the original reference was to Article 93 of the Treaty.

2. Each Member State shall nominate a representative and an alternate for each representative of each category referred to in paragraph 1. In the absence of one member, the alternate shall be automatically entitled to take part in the proceedings.

3. The members and alternates shall be appointed by the Council, acting on a proposal from the Commission, for a period of three years. They may be reappointed. The Council shall, as regards the composition of the Committee, endeavour to ensure fair representation of the different categories concerned. For the items on the agenda affecting it, the EIB and the EIF may appoint a non-voting representative.

4. The Committee shall:

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

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

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

TITLE IX

FINAL PROVISIONS

Article 105

Transitional provisions

1. This Regulation shall not affect the continuation or modification, including the total or partial cancellation, of assistance co-financed by the Structural Funds or of a project co-financed by the Cohesion Fund approved by the Commission on the basis of Regulations (EEC) No 2052/88 ⁽¹⁾, (EEC) No 4253/88 ⁽²⁾, (EC) No 1164/94 ⁽³⁾ and (EC) No 1260/1999 or any other legislation which applies to that assistance on 31 December 2006, which shall consequently apply thereafter to that assistance or the projects concerned until their closure.

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

⁽¹⁾ Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ L 185, 15.7.1988, p. 9). Regulation repealed by Regulation (EC) No 1260/1999.

⁽²⁾ Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ L 374, 31.12.1988, p. 1). Regulation repealed by Regulation (EC) No 1260/1999.

⁽³⁾ Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund (OJ L 130, 25.5.1994, p. 1). Regulation as last amended by the 2003 Act of Accession.

before the entry into force of this Regulation and having financial repercussions during the period covered by those operational programmes.

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

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

Article 106

Review clause

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

Article 107

Repeal

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

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

Article 108

Entry into force

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

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

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

Done at Brussels, 11 July 2006.

For the Council
The President
E. HEINÄLUOMA

ANNEX I

Annual breakdown of commitment appropriations for 2007 to 2013
(referred to in Article 18)

(EUR, 2004 prices)

2007	2008	2009	2010	2011	2012	2013
42 863 000 000	43 318 000 000	43 862 000 000	43 860 000 000	44 073 000 000	44 723 000 000	45 342 000 000

ANNEX II

Financial framework

Criteria and methodology referred to in Article 18

Allocation method for the regions eligible under the Convergence objective referred to in Article 5(1)

1. Each Member State's allocation is the sum of the allocations for its individual eligible regions, which are calculated on the basis of relative regional and national prosperity and the unemployment rate according to the following steps:
 - (a) determination of an absolute amount (in euro) obtained by multiplying the population of the region concerned by the difference between that region's GDP per capita, measured in purchasing power parities, and the EU-25 average GDP per capita;
 - (b) application of a percentage to the above absolute amount in order to determine that region's financial envelope; this percentage is graduated to reflect the relative prosperity, as compared to the EU-25 average, of the Member State in which the eligible region is situated, i.e.:
 - for regions in Member States whose level of GNI per capita is below 82 % of the Community average: 4,25 %
 - for regions in Member States whose level of GNI per capita is between 82 % and 99 % of the Community average: 3,36 %
 - for regions in Member States whose level of GNI per capita is over 99 % of the Community average: 2,67 %;
 - (c) to the amount obtained under step (b) is added, if applicable, an amount resulting from the allocation of a premium of EUR 700 per unemployed person, applied to the number of persons unemployed in that region exceeding the number that would be unemployed if the average unemployment rate of all the EU convergence regions applied.

Allocation method for the Member States eligible for the Cohesion Fund under Article 5(2)

2. The total theoretical financial envelope for the Cohesion Fund is obtained by multiplying an average per capita aid intensity of EUR 44,70 by the eligible population. Each eligible Member State's *a priori* allocation of the theoretical financial envelope corresponds to a percentage based on its population, surface area and national prosperity and obtained by applying the following steps:
 - (a) calculation of the arithmetical average of that Member State's population and surface area shares of the total population and surface area of all the eligible Member States; if, however, a Member State's share of total population exceeds its share of total surface area by a factor of five or more, reflecting an extremely high population density, only the share of total population will be used for this step;
 - (b) adjustment of the percentage figures so obtained by a coefficient representing one third of the percentage by which that Member State's GNI per capita, measured in purchasing power parities, exceeds or falls below the average GNI per capita of all the eligible Member States (average expressed as 100 %).
3. In order to reflect the significant needs in terms of transport and environment infrastructure of the Member States that acceded to the Union on or after 1 May 2004, the share of the Cohesion Fund will be set at one third of their total financial allocation (Structural Funds plus Cohesion Fund) on average over the period. For the other Member States, their financial envelope will result directly from the allocation method described in paragraph 2.

Allocation method for the Member States and regions eligible under the Regional competitiveness and employment objective referred to in Article 6

4. The share of each Member State concerned is the sum of the shares of its eligible regions, which are determined on the basis of the following criteria, weighted as indicated: total population (weighting 0,5), number of unemployed people in NUTS level 3 regions with an unemployment rate above the group average (weighting 0,2), number of jobs needed to reach an employment rate of 70 % (weighting 0,15), number of employed people with a low educational level (weighting 0,10), and low population density (weighting 0,05). The shares are then adjusted according to relative regional prosperity (for each region, increase or decrease of its total share by + 5 %/-5 % according to whether its GDP per capita is below or above the average GDP per capita for the group). The share of each Member State will not however be less than three-quarters of its share in 2006 of combined funding under Objectives 2 and 3.

Allocation method for the European territorial cooperation objective referred to in Article 7

5. The allocation of resources among the beneficiary Member States (including the contribution from the ERDF to the European Neighbourhood and Partnership Instrument and the Instrument for Pre-Accession Assistance referred to in Article 21(2)) is determined as follows:
- (a) for the cross-border component as referred to in Article 7(1), on the basis of the population of the NUTS level 3 regions in terrestrial and maritime border areas, as a share of the total population of all the eligible regions;
 - (b) for the transnational component as referred to in Article 7(2), on the basis of the total population of the Member State, as a share of the total population of all the Member States concerned.

Allocation method for the Member States and regions eligible for the transitional support referred to in Article 8

6. The allocations under the transitional support referred to in Article 8 will result from the application of the following parameters:
- (a) for the regions defined in Article 8(1), 80 % of their individual 2006 per capita aid intensity level in 2007 and a linear reduction thereafter to reach the national average per capita aid intensity level for the Regional competitiveness and employment objective in 2013. To the allocation thus obtained is added, if applicable, an amount resulting from the allocation of a premium of EUR 600 per unemployed person, applied to the number of persons unemployed in that region exceeding the number that would be unemployed if the average unemployment rate of all the EU convergence regions applied.
 - (b) for the regions defined in Article 8(2), 75 % of their individual 2006 per capita aid intensity level in 2007 and a linear reduction thereafter to reach the national average per capita aid intensity level for the Regional competitiveness and employment objective by 2011. To the allocation thus obtained is added, if applicable, an amount resulting from the allocation of a premium of EUR 600 per unemployed person, applied to the number of persons unemployed in that region exceeding the number that would be unemployed if the average unemployment rate of all the EU convergence regions applied;
 - (c) for the Member States defined in Article 8(3), the allocation will be degressive over seven years, with the amount in 2007 being EUR 1,2 billion, in 2008 EUR 850 million, in 2009 EUR 500 million, in 2010 EUR 250 million, in 2011 EUR 200 million, in 2012 EUR 150 million and in 2013 EUR 100 million.

Maximum level of transfers from funds supporting cohesion

7. In order to contribute to the objectives of adequately concentrating cohesion funding on the least developed regions and Member States and reducing disparities in average per capita aid intensities resulting from capping, the maximum level of transfer from the Funds to each individual Member State pursuant to this Regulation will be as follows:
- for Member States whose average 2001 to 2003 GNI per capita (PPS) is under 40 % of the EU-25 average: 3,7893 % of their GDP
 - for Member States whose average 2001 to 2003 GNI per capita (PPS) is equal to or above 40 % and below 50 % of the EU-25 average: 3,7135 % of their GDP
 - for Member States whose average 2001 to 2003 GNI per capita (PPS) is equal to or above 50 % and below 55 % of the EU-25 average: 3,6188 % of their GDP
 - for Member States whose average 2001 to 2003 GNI per capita (PPS) is equal to or above 55 % and below 60 % of the EU-25 average: 3,5240 % of their GDP
 - for Member States whose average 2001 to 2003 GNI per capita (PPS) is equal to or above 60 % and below 65 % of the EU-25 average: 3,4293 % of their GDP
 - for Member States whose average 2001 to 2003 GNI per capita (PPS) is equal to or above 65 % and below 70 % of the EU-25 average: 3,3346 % of their GDP
 - for Member States whose average 2001 to 2003 GNI per capita (PPS) is equal to or above 70 % and below 75 % of the EU-25 average: 3,2398 % of their GDP
 - thereafter, the maximum level of transfer is reduced by 0,09 percentage points of GDP for each increment of 5 percentage points of average 2001 to 2003 per capita GNI (PPS) as compared to the EU-25 average.

8. The ceilings referred to in paragraph 7 above include the contributions from the ERDF to the financing of the cross-border strand of the European Neighbourhood and Partnership Instrument and of the Instrument for Pre-Accession Assistance, and from the part of the EAFRD originating from the Guidance Section of the European Agricultural Guidance and Guarantee Fund, and from the EFF.
9. Calculations of GDP by the Commission will be based on the statistics published in April 2005. Individual national growth rates of GDP for 2007 to 2013, as projected by the Commission in April 2005, will be applied for each Member State separately.
10. If it is established in 2010 that any Member State's cumulated GDP for the years 2007 to 2009 has diverged by more than $\pm 5\%$ from the cumulated GDP estimated in accordance with paragraph 9 above, including as a consequence of exchange rate changes, the amounts allocated for that period to that Member State pursuant to paragraph 7 will be adjusted accordingly. The total net effect, whether positive or negative, of these adjustments may not exceed EUR 3 billion. In any event, if the net effect is positive, total additional resources will be limited to the level of under-spending against the ceilings for category 1B set out for the years 2007 to 2010 in the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management. Final adjustments will be spread in equal proportions over the years 2011 to 2013.
11. In order to reflect the value of the Polish zloty in the reference period, the result of the application of the maximum level of transfer as defined in paragraph 7 for Poland will be multiplied by a coefficient 1,04 for the period up to the review referred to in paragraph 10 (2007 to 2009).

Additional provisions

12. When in a given Member State the phasing-out regions defined in Article 8(1)) represent at least one third of the total population of the regions fully eligible for Objective 1 assistance in 2006, the rates of assistance will be 80 % of their individual 2006 per capita aid intensity level in 2007, 75 % in 2008, 70 % in 2009, 65 % in 2010, 60 % in 2011, 55 % in 2012 and 50 % in 2013.
13. As far as the transitional arrangements under paragraphs 6(a) and (b) are concerned, the starting point in 2007 for those regions which were not eligible for Objective 1 status in the 2000 to 2006 period, or whose eligibility started in 2004, will be 90 % of their theoretical 2006 per capita aid intensity level calculated on the basis of the 1999 Berlin allocation method with their regional GDP per capita level being assimilated to 75 % of the EU 15 average.
14. Notwithstanding paragraph 7, the Polish NUTS level 2 regions of Lubelskie, Podkarpackie, Warmińsko-Mazurskie, Podlaskie and Świętokrzyskie, whose GDP per capita levels (PPS) are the five lowest in the EU-25, will benefit from funding from the ERDF over and above the funding to which they are otherwise eligible. This additional funding will amount to EUR 107 per inhabitant over the period 2007 to 2013 under the Convergence objective. Any upward adjustment of the amounts allocated to Poland pursuant to paragraph 10 will be net of this additional funding.
15. Notwithstanding paragraph 7, the NUTS level 2 region of Közép-Magyarország will be allocated an additional envelope of EUR 140 million over the period 2007 to 2013. For this region the same regulatory provisions would apply as for the regions referred to in Article 8(1).
16. Notwithstanding paragraph 7, the NUTS level 2 region of Prague will be allocated an additional envelope of EUR 200 million over the period 2007 to 2013 under the Regional competitiveness and employment objective.
17. Cyprus will benefit in 2007 to 2013 from the transitional arrangements applicable to the regions defined in paragraph 6(b), its starting point in 2007 being established in accordance with paragraph 13.
18. The NUTS level 2 regions of Itä-Suomi and Madeira, while keeping the status of phasing-in regions, will benefit from the transitional financial arrangements laid down in paragraph 6(a).
19. The NUTS level 2 region of the Canaries will benefit from an additional envelope of EUR 100 million over the period 2007 to 2013 under the transitional support referred to in Article 8(2).
20. The outermost regions identified in Article 299 of the Treaty and the NUTS level 2 regions fulfilling the criteria laid down in Article 2 of Protocol No 6 to the Treaty of Accession of Austria, Finland and Sweden will, in view of their specific constraints, benefit from additional funding from the ERDF. This funding will amount to EUR 35 per inhabitant per year and will be in addition to any funding for which these regions are otherwise eligible.
21. As far as allocations under the cross-border strand of the European territorial cooperation objective referred to in Article 7(1) are concerned, aid intensity for regions along the former external terrestrial borders between the EU-15 and the EU-12 and between the EU-25 and the EU '+2' will be 50 % higher than for the other regions concerned.

22. In recognition of the special effort for the peace process in Northern Ireland, a total of EUR 200 million will be allocated for the PEACE Programme for the period 2007 to 2013. The PEACE programme will be implemented as a cross-border programme within the meaning of Article 3(2)(c) and, in order to promote social and economic stability in the regions concerned, will include, notably, actions to promote cohesion between communities. The eligible area will be the whole of Northern Ireland and the border counties of Ireland. This programme will be implemented under the European territorial cooperation objective in full compliance with additionality of structural fund interventions.
 23. The Swedish regions falling under the Regional competitiveness and employment objective will be allocated an additional ERDF envelope of EUR 150 million.
 24. Notwithstanding paragraph 7, Estonia, Latvia and Lithuania, which represent single NUTS II regions, will each be allocated additional funding of EUR 35 per inhabitant over the period 2007 to 2013.
 25. The Austrian regions falling under the Regional competitiveness and employment objective and situated on the former external borders of the European Union will be allocated an additional ERDF envelope of EUR 150 million. Bavaria will similarly be allocated an additional envelope of EUR 75 million under the Regional competitiveness and employment objective.
 26. Spain will benefit from an additional allocation of EUR 2,0 billion under the ERDF to enhance research, development and innovation by and for the benefit of enterprises as set out in Articles 4(1) and 5(1) of Regulation (EC) No 1080/2006. The indicative split will be 70 % for the regions eligible under the Convergence objective referred to in Article 5, 5 % for the regions eligible for the transitional support referred to in Article 8(1), 10 % for the regions eligible under the Regional competitiveness and employment objective referred to in Article 6 and 15 % for the regions eligible for the transitional support referred to in Article 8(2).
 27. Ceuta and Melilla will be allocated an additional ERDF envelope of EUR 50 million over the period 2007 to 2013 under the transitional support referred to in Article 8(1).
 28. Italy will be allocated an additional envelope of EUR 1,4 billion under the Structural Funds as follows: EUR 828 million for the regions eligible under the Convergence objective referred to in Article 5(1), EUR 111 million for the region eligible for the transitional support referred to in Article 8(1), EUR 251 million for the region eligible for the transitional support referred to in Article 8(2) and EUR 210 million for the regions eligible under the Regional competitiveness and employment objective referred to in Article 6.
 29. France will receive an additional allocation of EUR 100 million over the period 2007 to 13 under the Regional competitiveness and employment objective in recognition of the particular circumstances of Corsica (EUR 30 million) and French Hainaut (EUR 70 million).
 30. An additional allocation of EUR 167 million will be allocated to the eastern Länder of Germany which are eligible for support under the Convergence objective referred to in Article 5(1). An additional allocation of EUR 58 million will be allocated to the eastern Länder of Germany eligible for the transitional support referred to in Article 8(1).
 31. Notwithstanding paragraph 7, an additional ERDF envelope of EUR 300 million is allocated to the European territorial cooperation objective as follows: EUR 200 million to transnational cooperation within the meaning of Article 7(2) and EUR 100 million to interregional cooperation within the meaning of Article 7(3).
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ANNEX III

Ceilings applicable to co-financing rates
(referred to in Article 53)

Criteria	Member States	ERDF and ESF Percentage of eligible expenditure	Cohesion Fund Percentage of eligible expenditure
(1) Member States whose average GDP per capita for the period 2001 to 2003 was below 85 % of the EU-25 average during the same period.	Czech Republic, Estonia, Greece, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Portugal, Slovenia, Slovakia	85 % for the Convergence and Regional competitiveness and employment objectives	85 %
(2) Member States other than those under (1) eligible for the transitional regime of the Cohesion Fund on 1 January 2007.	Spain	80 % for the Convergence and phasing-in regions under the Regional competitiveness and employment objective 50 % for the Regional competitiveness and employment objective outside phasing-in regions	85 %
(3) Member States other than those referred to under (1) and (2).	Belgium, Denmark, Federal Republic of Germany, France, Ireland, Italy, Luxemburg, the Netherlands, Austria, Finland, Sweden and United Kingdom.	75 % for the Convergence objective	—
(4) Member States other than those referred to under (1) and (2).	Belgium, Denmark, Federal Republic of Germany, France, Ireland, Italy, Luxemburg, the Netherlands, Austria, Finland, Sweden and United Kingdom.	50 % for the Regional competitiveness and employment objective	—
(5) Outermost regions referred to in Article 299(2) of the Treaty benefiting from the additional allocation for these regions provided for in paragraph 20 of Annex II	Spain, France and Portugal	50 %	—
(6) Outermost regions referred to in Article 299(2) of the Treaty	Spain, France and Portugal	85 % under the Convergence and Regional competitiveness and employment objectives	—

ANNEX IV

Categories of expenditure
(referred to in Article 9(3))

	Objectives: Convergence and Regional competitiveness and employment
	Objective: Convergence and regions referred to in Article 8(2) without prejudice to the decision taken in accordance with last subparagraph of Article 5(3) of Regulation (EC) No 1080/2006.
Code	Priority themes
	Research and technological development (R&TD), innovation and entrepreneurship
01	R&TD activities in research centres
02	R&TD infrastructure (including physical plant, instrumentation and high-speed computer networks linking research centres) and centres of competence in a specific technology
03	Technology transfer and improvement of cooperation networks between small and medium-sized businesses (SMEs), between these and other businesses and universities, post-secondary education establishments of all kinds, regional authorities, research centres and scientific and technological poles (scientific and technological parks, technopoles, etc.)
04	Assistance to R&TD, particularly in SMEs (including access to R&TD services in research centres)
05	Advanced support services for firms and groups of firms
06	Assistance to SMEs for the promotion of environmentally-friendly products and production processes (introduction of effective environment managing system, adoption and use of pollution prevention technologies, integration of clean technologies into firm production)
07	Investment in firms directly linked to research and innovation (innovative technologies, establishment of new firms by universities, existing R&TD centres and firms, etc.)
08	Other investment in firms
09	Other measures to stimulate research and innovation and entrepreneurship in SMEs
	Information society
10	Telephone infrastructures (including broadband networks)
11	Information and communication technologies (access, security, interoperability, risk-prevention, research, innovation, e-content, etc.)
12	Information and communication technologies (TEN-ICT)
13	Services and applications for the citizen (e-health, e-government, e-learning, e-inclusion, etc.)
14	Services and applications for SMEs (e-commerce, education and training, networking, etc.)
15	Other measures for improving access to and efficient use of ICT by SMEs

	Transport
16	Railways
17	Railways (TEN-T)
20	Motorways
21	Motorways (TEN-T)
26	Multimodal transport
27	Multimodal transport (TEN-T)
28	Intelligent transport systems
29	Airports
30	Ports
32	Inland waterways (TEN-T)
	Energy
34	Electricity (TEN-E)
36	Natural gas (TEN-E)
38	Petroleum products (TEN-E)
39	Renewable energy: wind
40	Renewable energy: solar
41	Renewable energy: biomass
42	Renewable energy: hydroelectric, geothermal and other
43	Energy efficiency, co-generation, energy management
	Environmental protection and risk prevention
52	Promotion of clean urban transport
	Increasing the adaptability of workers and firms, enterprises and entrepreneurs
62	Development of life-long learning systems and strategies in firms; training and services for employees to step up their adaptability to change; promoting entrepreneurship and innovation
63	Design and dissemination of innovative and more productive ways of organising work
64	Development of specific services for employment, training and support in connection with restructuring of sectors and firms, and development of systems for anticipating economic changes and future requirements in terms of jobs and skills
	Improving access to employment and sustainability
65	Modernisation and strengthening of labour market institutions
66	Implementing active and preventive measures on the labour market
67	Measures encouraging active ageing and prolonging working lives
68	Support for self-employment and business start-up
69	Measures to improve access to employment and increase sustainable participation and progress of women in employment to reduce gender-based segregation in the labour market and to reconcile work and private life, such as facilitating access to childcare and care for dependent persons
70	Specific action to increase participation of migrants in employment and thereby strengthen their social integration

	Improving the social inclusion of less-favoured persons
71	Pathways to integration and re-entry into employment for disadvantaged people; combating discrimination in accessing and progressing in the labour market and promoting acceptance of diversity at the workplace
	Improving human capital
72	Design, introduction and implementation of reforms in education and training systems in order to develop employability, improving the labour market relevance of initial and vocational education and training, updating skills of training personnel with a view to innovation and a knowledge based economy.
73	Measures to increase participation in education and training throughout the life-cycle, including through action to achieve a reduction in early school leaving, gender-based segregation of subjects and increased access to and quality of initial vocational and tertiary education and training
74	Developing human potential in the field of research and innovation, in particular through post-graduate studies and training of researchers, and networking activities between universities, research centres and businesses

COUNCIL REGULATION (EC) No 1084/2006
of 11 July 2006
establishing a Cohesion Fund and repealing Regulation (EC) No 1164/94

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 161(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the assent of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Whereas:

(1) Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund ⁽⁴⁾ establishes a new framework for the action of the Structural Funds and the Cohesion Fund. It sets out, in particular, the objectives, the principles and the rules concerning partnership, programming, evaluation and management. It is therefore necessary to specify the mission of the Cohesion Fund in relation to the new framework for its action and in relation to the purpose assigned to it in the Treaty and to repeal, in the interests of clarity, Council Regulation (EC) No 1164/94 of 16 May 1994 establishing the Cohesion Fund ⁽⁵⁾.

(2) Trans-European transport network projects financed by the Cohesion Fund are to comply with the guidelines for trans-European transport networks adopted by the Council and the European Parliament. In order to concentrate efforts, priority should be given to projects of common interest as defined in Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network ⁽⁶⁾.

(3) The Community may, through the Cohesion Fund, contribute to action in pursuit of the Community's environmental objectives specified in Articles 6 and 174 of the Treaty.

(4) Regulation (EC) No 1083/2006 provides that rules on eligibility of expenditure are to be established at national level, with certain exceptions for which it is necessary to lay down specific provisions. Specific provisions should therefore be laid down for the exceptions related to the Cohesion Fund.

(5) Conditionality provisions in the granting of financial assistance should continue to apply in conjunction with the fulfilment of the conditions of economic convergence as set out in Article 99 of the Treaty and the need for sound government finances. In this respect, Member States having adopted the euro are to implement stability programmes and Member States not having adopted the euro convergence programmes, as defined in Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies ⁽⁷⁾, leading to the avoidance of excessive government deficits referred to in Article 104 of the Treaty. Conditionality provisions should not, however, apply to commitments already made at the time of suspension,

HAS ADOPTED THIS REGULATION:

Article 1

Establishment and purpose of the Cohesion Fund

1. A Cohesion Fund (hereinafter referred to as 'the Fund') is hereby established for the purpose of strengthening the economic and social cohesion of the Community in the interests of promoting sustainable development.

2. The Fund shall be governed by Regulation (EC) No 1083/2006 and by this Regulation.

Article 2

Scope of assistance

1. Assistance from the Fund shall be given to actions in the following areas, ensuring an appropriate balance, and according to the investment and infrastructure needs specific to each Member State receiving assistance:

⁽¹⁾ Assent of 4 July 2006 (not yet published in the Official Journal).

⁽²⁾ OJ C 255, 14.10.2005, p. 88.

⁽³⁾ OJ C 231, 20.9.2005, p. 35.

⁽⁴⁾ See p. 25 of this Official Journal.

⁽⁵⁾ OJ L 130, 25.5.1994, p. 1. Regulation as last amended by the 2003 Accession Act.

⁽⁶⁾ OJ L 228, 9.9.1996, p. 1. Decision as last amended by Decision No 884/2004/EC (OJ L 167, 30.4.2004, p. 1).

⁽⁷⁾ OJ L 209, 2.8.1997, p. 1. Regulation as last amended by Regulation (EC) No 1055/2005 (OJ L 174, 7.7.2005, p. 1).

- (a) trans-European transport networks, in particular priority projects of common interest as identified by Decision No 1692/96/EC;
- (b) the environment within the priorities assigned to the Community environmental protection policy under the policy and action programme on the environment. In this context, the Fund may also intervene in areas related to sustainable development which clearly present environmental benefits, namely energy efficiency and renewable energy and, in the transport sector outside the trans-European networks, rail, river and sea transport, intermodal transport systems and their interoperability, management of road, sea and air traffic, clean urban transport and public transport.

2. The appropriate balance of assistance shall be agreed in partnership between Member States and the Commission.

Article 3

Eligibility of expenditure

The following expenditure shall not be eligible for a contribution from the Fund:

- (a) interest on debt;
- (b) the purchase of land for an amount exceeding 10 % of the total eligible expenditure for the operation concerned;
- (c) housing;
- (d) decommissioning of nuclear power stations; and
- (e) recoverable value added tax.

Article 4

Conditions applying to access to Fund assistance

1. Assistance from the Fund shall be conditional on the following rules:

- (a) if the Council has decided in accordance with Article 104(6) of the Treaty that excessive government deficit exists in a beneficiary Member State, and
- (b) has established in accordance with Article 104(8) of the Treaty that the Member State concerned has not taken effective action in response to a Council recommendation made under Article 104(7) of the Treaty,

it may decide to suspend either the totality or part of the commitments from the Fund for the Member State concerned with effect from 1 January of the year following the decision to suspend.

2. If the Council establishes that the Member State concerned has taken the necessary corrective action, it shall decide, without delay, to lift the suspension of the commitments concerned. At the same time, the Council shall decide,

on a proposal from the Commission, to re-budget the suspended commitment in accordance with the procedure set out in the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management ⁽¹⁾.

3. The Council shall take the decisions referred to in paragraphs 1 and 2 by qualified majority on a proposal from the Commission.

Article 5

Transitional provisions

1. This Regulation shall not affect either the continuation or the modification, including the total or partial cancellation, of project or other forms of assistance approved by the Commission on the basis of Regulation (EC) No 1164/94, which shall consequently apply thereafter to that assistance or the projects concerned until their closure.

2. Applications for major projects within the meaning of Articles 39, 40 and 41 of Regulation (EC) No 1083/2006 made to the Commission under Regulation (EC) No 1164/94 shall remain valid provided that such applications are supplemented, where necessary, so as to comply with the requirements of this Regulation and the abovementioned Articles of Regulation (EC) No 1083/2006 within not more than two months as of 1 January 2007.

Article 6

Repeal

1. Without prejudice to the provisions of Article 105(1) of Regulation (EC) No 1083/2006 and Article 5 of this Regulation, Regulation (EC) No 1164/94 is hereby repealed with effect from 1 January 2007.

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

Article 7

Review

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

Article 8

Entry into force

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

⁽¹⁾ OJ C 139, 14.6.2006, p. 1.

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

Done at Brussels, 11 July 2006.

For the Council

The President

E. HEINÄLUOMA

COUNCIL REGULATION (EC) No 1085/2006
of 17 July 2006
establishing an Instrument for Pre-Accession Assistance (IPA)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Whereas:

- (1) In order to improve the efficiency of the Community's External Aid, a new framework for programming and delivery of assistance has been envisaged. The present instrument constitutes one of the general instruments directly supporting European External Aid policies.
- (2) Article 49 of the Treaty on European Union states that any European State which respects the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law may apply to become a member of the Union.
- (3) The Republic of Turkey's application for membership to the European Union was accepted by the European Council in Helsinki in 1999. Pre-accession assistance has been made available to the Republic of Turkey since 2002. The Brussels European Council on 16 and 17 December 2004 recommended that accession negotiations should be opened with Turkey.
- (4) At its meeting at Santa Maria da Feira on 20 June 2000, the European Council stressed that the countries of the Western Balkans were potential candidates for membership of the European Union.
- (5) At its meeting in Thessaloniki, on 19 and 20 June 2003, the European Council recalled the conclusions of its meetings in Copenhagen in December 2002 and Brussels in March 2003 and reiterated its determination to fully and effectively support the European perspective of the Western Balkan countries, indicating that they would become an integral part of the European Union, once they met the established criteria.
- (6) The Thessaloniki European Council 2003 also indicated that the Stabilisation and Association Process would constitute the overall framework for the European course of the Western Balkan countries all the way to their future accession.
- (7) In its resolution on the Thessaloniki European Council Conclusions, the European Parliament recognised that each of the Western Balkan countries was moving towards accession, but at the same time insisted that each country should be judged on its own merits.
- (8) All the Western Balkan countries can therefore be considered as potential candidate countries; however, a clear distinction should be made between candidate countries and potential candidate countries.
- (9) On 17 and 18 June 2004 the Brussels European Council recommended that accession negotiations should be opened with Croatia.
- (10) On 15 and 16 December 2005 the Brussels European Council decided to grant candidate country status to the former Yugoslav Republic of Macedonia.
- (11) Further, on 16 and 17 December 2004, the Brussels European Council recommended that parallel to accession negotiations, the European Union should engage an intensive political and cultural dialogue with every candidate country.
- (12) In the interests of coherence and consistency of Community assistance, assistance for candidate countries as well as for potential candidate countries should be granted in the context of a coherent framework, taking advantage of the lessons learned from earlier pre-accession instruments as well as Council Regulation (EC) No 2666/2000 of 5 December 2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia ⁽³⁾. The assistance should also be consistent with the development policy of the Community in accordance with Article 181a of the EC Treaty.
- (13) Assistance for candidate countries as well as for potential candidate countries should continue to support them in their efforts to strengthen democratic institutions and the rule of law, reform public administration, carry out economic reforms, respect human as well as minority rights, promote gender equality, support the development of civil society and advance regional cooperation as well as reconciliation and reconstruction, and contribute to sustainable development and poverty reduction in these countries, and it should therefore be targeted at supporting a wide range of institution-building measures.

⁽¹⁾ Opinion delivered on 6 July 2006 (not yet published in the Official Journal).

⁽²⁾ OJ C 231, 20.9.2005, p. 67.

⁽³⁾ OJ L 306, 7.12.2000, p. 1. Regulation as last amended by Regulation (EC) No 2112/2005 (OJ L 344, 27.12.2005, p. 23).

- (14) Assistance for candidate countries should additionally focus on the adoption and implementation of the full *acquis communautaire*, and in particular prepare candidate countries for the implementation of the Community's agricultural and cohesion policy.
- (15) Assistance for potential candidate countries may include some alignment with the *acquis communautaire*, as well as support for investment projects, aiming in particular at building management capacity in the areas of regional, human resources and rural development.
- (16) Assistance should be provided on the basis of a comprehensive multi-annual strategy that reflects the priorities of the Stabilisation and Association Process, as well as the strategic priorities of the pre-accession process.
- (17) In order to assist with the financial part of this strategy, and without prejudice to the prerogatives of the Budgetary Authority, the Commission should present its intentions for the financial allocations to be proposed for the three forthcoming years by means of a multi-annual indicative financial framework, as an integral part of its annual enlargement package.
- (18) The Transition Assistance and Institution Building, and Cross-Border Cooperation Components should be accessible to all beneficiary countries, in order to assist them in the process of transition and approximation to the EU, as well as to encourage regional cooperation between them.
- (19) The Regional Development Component, the Human Resources Development Component, and the Rural Development Component should be accessible only to candidate countries accredited to manage funds in a decentralised manner, in order to help them prepare for the time after accession, in particular for the implementation of the Community's cohesion and rural development policies.
- (20) Potential candidate countries and candidate countries that have not been accredited to manage funds in a decentralised manner should however be eligible, under the Transition Assistance and Institution Building Component, for measures and actions of a similar nature to those which will be available under the Regional Development Component, the Human Resources Development Component and the Rural Development Component.
- (21) Assistance should be managed in accordance with the rules for External Aid contained in Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾, making use of the structures that have proved their worth in the pre-accession process, such as decentralised management, twinning and TALEX (Technical Assistance Information Exchange Instrument), but should also allow for innovative approaches such as the implementation through Member States via shared management in case of cross-border programmes on the external borders of the European Union. The transfer of knowledge and expertise regarding the implementation of the *acquis communautaire*, from Member States with relevant experience to the beneficiaries of this Regulation, should be particularly beneficial in this context.
- (22) The actions necessary for the implementation of this Regulation are management measures relating to the implementation of programmes with substantial budgetary implications. They should therefore be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾, by submitting the multi-annual indicative planning documents to a Management Committee.
- (23) The annual or multi-annual programmes on a horizontal and per country basis for the implementation of assistance under the Transition Assistance and Institution Building Component and the Cross-Border Cooperation Component should also be submitted to a Management Committee in accordance with Decision 1999/468/EC.
- (24) The multi-annual programmes for the implementation of the Regional Development Component, the Human Resources Development Component, and the Rural Development Component should also be submitted to a Management Committee, in accordance with Decision 1999/468/EC. Since these actions will be closely aligned to Structural Fund and Rural Development practices, they should make use as far as possible of the existing Committees which are in place for Structural Funds and Rural Development.
- (25) Where the Commission implements this Regulation through centralised management, it should take the utmost care to protect the financial interests of the Community, in particular by applying the rules and standards of the *acquis communautaire* in that respect, and where the Commission implements this Regulation through other forms of management, the financial interests of the Community should be safeguarded through the conclusion of appropriate agreements containing sufficient guarantees in that respect.
- (26) Rules determining the eligibility of participation in tenders and grant contracts, as well as rules concerning the origin of supplies should be laid down in accordance with recent developments within the European Union concerning the untying of aid, but should leave the flexibility to react to new developments in this field.

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

- (27) Where a beneficiary country violates the principles on which the European Union is founded, or makes insufficient progress with respect to the Copenhagen criteria and the priorities laid down in the European or Accession Partnership, the Council must, on the basis of a proposal from the Commission, be in a position to take the necessary measures. Full and immediate information to the European Parliament should be ensured.
- (28) Provision should be made to enable the Council to amend this Regulation by way of a simplified procedure with respect to the status of a beneficiary country as defined in this Regulation.
- (29) Countries which are beneficiaries under the other regional External Assistance Instruments should, on the basis of reciprocity, be able to participate in actions under this Regulation, where this offers an added value on account of the regional, cross-border, transnational or global nature of the action in question.
- (30) Since the objective of this Regulation, namely the progressive alignment of the beneficiary countries with the standards and policies of the European Union, including where appropriate the *acquis communautaire*, with a view to membership, cannot sufficiently be achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the EC Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve this objective.
- (31) Given that Article 181a of the EC Treaty stipulates that measures in the area of economic, financial and technical cooperation with third countries are to be complementary to those carried out by the Member States, the Commission and the Member States are committed to ensure coordination, coherence and complementarity of their assistance, in line with the established EU 2001 guidelines for strengthening operational coordination between the Community and the Member States in the field of external assistance, in particular through regular consultations and frequent exchanges of relevant information during the different phases of the assistance cycle.
- (32) A financial reference amount, within the meaning of point 38 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management⁽¹⁾, is included in this Regulation for the entire duration of the instrument, without thereby affecting the powers of the budgetary authority as they are defined by the EC Treaty.
- (33) The institution of the new system of Community pre-accession assistance makes it necessary to repeal Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to the Republic of Hungary and the Polish People's Republic⁽²⁾, Commission Regulation (EC) No 2760/98 of 18 December 1998 concerning the implementation of a programme for cross-border cooperation in the framework of the PHARE programme⁽³⁾, Council Regulation (EC) No 1266/1999 of 21 June 1999 on coordinating aid to the applicant countries in the framework of the pre-accession strategy⁽⁴⁾, Council Regulation (EC) No 1267/1999 of 21 June 1999 establishing an Instrument for Structural Policies for Pre-accession⁽⁵⁾, Council Regulation (EC) No 1268/1999 of 21 June 1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries of central and eastern Europe in the pre-accession period⁽⁶⁾, Council Regulation (EC) No 555/2000 of 13 March 2000 on the implementation of operations in the framework of the pre-accession strategy for the Republic of Cyprus and the Republic of Malta⁽⁷⁾, Council Regulation (EC) No 2500/2001 of 17 December 2001 concerning pre-accession financial assistance for Turkey⁽⁸⁾ and Council Regulation (EC) No 2112/2005 of 21 November 2005 on access to Community external assistance. Equally, this Regulation should replace Regulation (EC) No 2666/2000, which expires on 31 December 2006,

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Beneficiaries and overall objective

The Community shall assist the countries listed in Annexes I and II in their progressive alignment with the standards and policies of the European Union, including where appropriate the *acquis communautaire*, with a view to membership.

⁽¹⁾ OJ C 139, 14.6.2006, p. 1.

⁽²⁾ OJ L 375, 23.12.1989, p. 11. Regulation as last amended by Regulation (EC) No 2257/2004 (OJ L 389, 31.12.2004, p. 1).

⁽³⁾ OJ L 345, 19.12.1998, p. 49. Regulation as last amended by Regulation (EC) No 1045/2005 (OJ L 172, 5.7.2005, p. 78).

⁽⁴⁾ OJ L 161, 26.6.1999, p. 68.

⁽⁵⁾ OJ L 161, 26.6.1999, p. 73.

⁽⁶⁾ OJ L 161, 26.6.1999, p. 87. Regulation as last amended by Regulation (EC) No 2112/2005.

⁽⁷⁾ OJ L 68, 16.3.2000, p. 3. Regulation as last amended by Regulation (EC) No 769/2004 (OJ L 123, 27.4.2004, p. 1).

⁽⁸⁾ OJ L 342, 27.12.2001, p. 1. Regulation as last amended by Regulation (EC) No 2112/2005.

Article 2

Scope

1. Assistance shall, where appropriate, be used in the beneficiary countries listed in Annexes I and II to support the following areas:

- (a) strengthening of democratic institutions, as well as the rule of law, including its enforcement;
- (b) the promotion and the protection of human rights and fundamental freedoms and enhanced respect for minority rights, the promotion of gender equality and non-discrimination;
- (c) public administration reform, including the establishment of a system enabling decentralisation of assistance management to the beneficiary country in accordance with the rules laid down in Regulation (EC, Euratom) No 1605/2002;
- (d) economic reform;
- (e) the development of civil society;
- (f) social inclusion;
- (g) reconciliation, confidence-building measures and reconstruction;
- (h) regional and cross-border cooperation.

2. In the case of countries listed in Annex I, assistance shall also be used to support the following areas:

- (a) the adoption and implementation of the *acquis communautaire*;
- (b) support for the policy development as well as preparation for the implementation and management of the Community's common agricultural and cohesion policies.

3. In the case of countries listed in Annex II, assistance shall also be used to support the following areas:

- (a) progressive alignment with the *acquis communautaire*;
- (b) social, economic and territorial development including, *inter alia*, infrastructure and investment related activities, in particular in the areas of regional, human resources and rural development.

Article 3

Components

1. Assistance shall be programmed and implemented according to the following components:

- (a) Transition Assistance and Institution Building;
- (b) Cross-Border Cooperation;
- (c) Regional Development;
- (d) Human Resources Development;
- (e) Rural Development.

2. The Commission shall ensure coordination and coherence between assistance granted under the different components.

3. The Commission shall adopt rules for the implementation of this Regulation in accordance with the procedure laid down in Articles 4 and 7 of Decision 1999/468/EC. To that effect, the Commission shall be assisted by the IPA Committee referred to in Article 14(1).

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at two months.

Article 4

Political framework for assistance

Assistance under this Regulation shall be provided in accordance with the general policy framework for pre-accession, defined by the European and Accession Partnerships, and taking due account of the Reports and the Strategy Paper comprised in the annual Enlargement package of the Commission.

Article 5

Information on proposed indicative financial allocations

1. With a view to supporting the strategic planning as provided for in Article 6, the Commission shall present annually to the European Parliament and the Council its intentions for the financial allocations to be proposed for the three forthcoming years, in the form of a multi-annual indicative financial framework, taking into consideration the financial framework, as well as the European Partnerships, Accession Partnerships, Reports and Strategy Paper.

2. This multi-annual indicative financial framework shall present the Commission's intentions for the allocation of funds, broken down by component, country and multi-country action. It shall be elaborated on the basis of a set of objective and transparent criteria, including needs assessment, absorption capacity, respect of conditionalities and capacity of management. Due account shall also be taken of any exceptional assistance measures or interim response programmes adopted under a Regulation establishing the Stability Instrument.

3. The multi-annual indicative financial framework shall be included in the Commission's annual Enlargement package, while maintaining a three-year planning horizon.

Article 6

Planning of assistance

1. Assistance under this Regulation shall be provided on the basis of multi-annual indicative planning documents established by country in close consultation with the national authorities, so as to support national strategies and ensure the engagement and involvement of the country concerned. Civil society and other stakeholders shall be associated where appropriate. Other programmes of assistance will also be taken into account.

2. For countries listed in Annex I, assistance shall be based in particular on the Accession Partnerships. Assistance shall cover the priorities and overall strategy resulting from a regular analysis of the situation in each country and on which preparations for accession must concentrate. Assistance shall be planned in view of the criteria defined by the Copenhagen European Council of June 1993 and the progress made in the adoption and implementation of the *acquis communautaire*, as well as regional cooperation.

3. For countries listed in Annex II, assistance shall be based in particular on the European Partnerships. Assistance shall cover the priorities and overall strategy resulting from a regular analysis of the situation in each country and on which preparation for further integration into the European Union must concentrate. Assistance shall be planned in view of the criteria defined by the Copenhagen European Council of June 1993 and the progress made in implementing the stabilisation and association agreements, including regional cooperation.

4. Multi-annual indicative planning documents shall present indicative allocations for the main priorities within each component, taking into account the indicative breakdown per country and per component proposed in the multi-annual indicative financial framework. They shall also set out, as appropriate, any funding provided for multi-country programmes and horizontal initiatives.

5. Multi-annual indicative planning documents shall be established following a three-year perspective. They shall be reviewed annually.

6. The Commission shall adopt the multi-annual indicative planning documents and annual reviews thereof in accordance with the procedure referred to in Article 14(2)(a).

Article 7

Programming

1. Assistance under this Regulation shall be provided through multi-annual or annual programmes, established by country and by component, or, as appropriate, by group of countries or by theme in accordance with the priorities defined in the multi-annual indicative planning documents.

2. Programmes shall specify the objectives pursued, the fields of intervention, the expected results, the management procedures and total amount of financing planned. They shall contain a summary description of the type of operations to be financed, an indication of the amounts allocated for each type of operation and an indicative implementation timetable. Where relevant, they shall include the results of any lessons learned from previous assistance. Objectives shall be specific, relevant and measurable and have time-bound benchmarks.

3. The Commission shall adopt the multi-annual and annual programmes, and any reviews thereof, in accordance with the procedures provided for in Article 14(2).

TITLE II

RULES CONCERNING SPECIFIC COMPONENTS

Article 8

Transition Assistance and Institution Building Component

1. The Transition Assistance and Institution Building Component shall assist the countries listed in Annexes I and II in the attainment of the objectives set out in Article 2.

2. It may, *inter alia*, be used to finance capacity and institution building as well as investment in as far as the latter is not covered by Articles 9 to 12.

3. Assistance under this component may also support the participation of countries listed in Annexes I and II in Community programmes and agencies. In addition, assistance may be provided for regional and horizontal programmes.

Article 9

Cross-Border Cooperation Component

1. The Cross-Border Cooperation Component may support the countries listed in Annexes I and II in cross-border, and, where appropriate, transnational and interregional cooperation among themselves and between them and the Member States.

2. Such cooperation shall have the objective of promoting good neighbourly relations, fostering stability, security and prosperity in the mutual interest of all countries concerned, and of encouraging their harmonious, balanced and sustainable development.

3. In the event of cross-border cooperation with Member States, the rules governing the financial contributions of the European Regional Development Fund and this Regulation shall be the relevant provisions of Article 21 of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund ⁽¹⁾.

4. Cooperation will be coordinated with other Community instruments for cross-border, trans-national and interregional cooperation. In case of cross-border cooperation with Member States, this component shall cover the regions on both sides of the respective border or borders, either terrestrial or maritime.

⁽¹⁾ See page 25 of this Official Journal.

5. Within the objectives of this article, this component may *inter alia* be used to finance capacity and institution building as well as investment.

TITLE III

MANAGEMENT AND IMPLEMENTATION

Article 10

Regional Development Component

1. The Regional Development Component shall support countries listed in Annex I in policy development as well as preparation for the implementation and management of the Community's cohesion policy, in particular in their preparation for the European Regional Development Fund and the Cohesion Fund.

2. It may in particular contribute towards the financing of the type of actions provided for under Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund ⁽¹⁾ and Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund ⁽²⁾.

Article 11

Human Resources Development Component

1. The Human Resources Development Component shall support countries listed in Annex I in policy development as well as preparation for the implementation and management of the Community's cohesion policy, in particular in their preparation for the European Social Fund.

2. It may in particular contribute towards the financing of the type of actions provided for under Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund ⁽³⁾.

Article 12

Rural Development Component

1. The Rural Development Component shall support countries listed in Annex I in policy development as well as preparation for the implementation and management of the Community's common agricultural policy. It shall in particular contribute to the sustainable adaptation of the agricultural sector and rural areas and to the candidate countries' preparation for the implementation of the *acquis communautaire* concerning the Common Agricultural Policy and related policies.

2. It may in particular contribute towards the financing of the type of actions provided for under Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) ⁽⁴⁾.

⁽¹⁾ See page 1 of this Official Journal.

⁽²⁾ See page 79 of this Official Journal.

⁽³⁾ See page 12 of this Official Journal.

⁽⁴⁾ OJ L 277, 21.10.2005, p. 1.

Article 13

Management of assistance, reporting

1. The Commission shall be responsible for the implementation of this Regulation, acting in accordance with the procedures referred to in Article 14 and the implementing rules referred to in Article 3(3).

2. Actions under this Regulation shall be managed, monitored, evaluated and reported on in accordance with Regulation (EC, Euratom) No 1605/2002. Community financing can take in particular the form of financing agreements between the Commission and the beneficiary country, procurement contracts or grant agreements with national or international public sector bodies or natural or legal persons responsible for carrying out the action, or employment contracts. For cross-border programmes with Member States according to Article 9 of this Regulation, implementation tasks may be delegated to Member States, in which case they shall be implemented through shared management in accordance with the relevant provisions of Regulation (EC, Euratom) No 1605/2002. In case of shared management, the managing authority shall operate in accordance with the principles and rules laid down in Regulation (EC) No 1083/2006.

3. The Commission may also receive and manage funds from other donors, as assigned revenue in accordance with Article 18 of Regulation (EC, Euratom) No 1605/2002, in order to implement actions with these donors.

4. In duly justified cases, the Commission may, in accordance with Article 54 of Regulation (EC, Euratom) No 1605/2002, decide to entrust tasks of public authority, and in particular budget implementation tasks, to the bodies listed in Article 54(2) of that Regulation. The bodies defined in Article 54(2)(c) of that Regulation may be entrusted with tasks of public authority if they are of recognised international standing, comply with internationally recognised systems of management and control, and are supervised by a public authority.

5. Budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments.

6. Each year the Commission shall send to the European Parliament and the Council a report on the implementation of Community assistance under this Regulation. The report shall contain information on the actions financed during the year and on the findings of monitoring work, and shall give an assessment of the results achieved in the implementation of the assistance.

Article 14

Committees

1. An IPA Committee shall be established, composed of the representatives of the Member States and chaired by a representative of the Commission. It shall assist the Commission in particular in its task to ensure the coordination and coherence between assistance granted under the different components as required by Article 3(2).

The IPA Committee shall adopt its rules of procedure.

2. (a) The Commission shall adopt the multi-annual indicative planning documents and annual reviews thereof referred to in Article 6 of this Regulation, and the programmes concerning assistance to be provided under Articles 8 and 9 of this Regulation, in accordance with the procedure laid down in Articles 4 and 7 of Decision 1999/468/EC. To that effect, the Commission shall be assisted by the IPA Committee.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.

(b) The Commission shall adopt the programmes concerning assistance to be provided under Article 10 of this Regulation, in accordance with the procedure laid down in Articles 4 and 7 of Decision 1999/468/EC. To that effect, the Commission shall be assisted by the Coordination Committee of the Funds referred to in Article 103 of Regulation (EC) No 1083/2006.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.

(c) The Commission shall, after having consulted the Committee provided for in Article 147 of the EC Treaty, adopt the programmes concerning assistance to be provided under Article 11 of this Regulation, in accordance with the procedure laid down in Articles 4 and 7 of Decision 1999/468/EC. To that effect, the Commission shall be assisted by the Coordination Committee of the Funds referred to in Article 103 of Regulation (EC) No 1083/2006.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.

(d) The Commission shall adopt the programmes concerning assistance to be provided under Article 12 of this Regulation, in accordance with the procedure laid down in Articles 4 and 7 of Decision 1999/468/EC. To that effect, the Commission shall be assisted by the Rural Development Committee established by Article 90 of Regulation (EC) No 1698/2005.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.

3. Financing decisions not covered by a multi-annual or annual programme shall be adopted by the Commission, in accordance with the procedure provided for in paragraph 2(a) of this Article.

4. The Commission shall adopt the amendments to the multi-annual and annual programmes and the decisions referred to in paragraph 3 where they do not comprise substantial changes to the nature of the original programmes and actions and, as regards the financial element, where they do not exceed 20 % of the total amount allocated for the programme or action in question, subject to a limit of EUR 4 million. The Committee which gave an opinion on the original programme or action shall be informed of all amending decisions.

5. An observer from the European Investment Bank shall take part in the Committees' proceedings with regard to questions concerning the Bank.

Article 15

Types of assistance

1. Assistance under this Regulation may, *inter alia*, finance investments, procurement contracts, grants including interest rate subsidies, special loans, loan guarantees and financial assistance, budgetary support, and other specific forms of budgetary aid, and the contribution to the capital of international financial institutions or the regional development banks to the extent that the financial risk of the Community is limited to the amount of these funds. Budgetary support shall be exceptional, with precise objectives and related benchmarks, and be contingent on the administration of public finances of the beneficiary country being sufficiently transparent, reliable and efficient, and on well-defined sectoral or macroeconomic policies approved in principle by international financing institutions having been put in place. Disbursement of budgetary support shall be conditional on satisfactory progress towards achieving the objectives in terms of impact and results.

2. Assistance may be implemented through administrative cooperation measures involving public-sector experts dispatched from Member States. Such projects shall be implemented according to implementing rules laid down by the Commission.

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

4. Community financing shall in principle not be used for paying taxes, duties or charges in beneficiary countries listed in Annexes I and II.

*Article 16***Support measures**

Assistance may also be used to cover the costs of actions linked to preparation, follow-up, control, audit and evaluation directly necessary for the administration of the programme and the attainment of its objectives, in particular studies, meetings, information and publicity, expenses linked to informatics networks aiming at information exchange, as well as any other expenses for administrative and technical assistance of which the Commission can avail itself for the administration of the programme. It also covers the cost of the administrative support for the purposes of devolved programme management in the Commission delegations in third countries.

*Article 17***Implementation of assistance**

1. The Commission and the beneficiary countries shall conclude framework agreements on the implementation of the assistance.

2. Subsidiary agreements concerning implementation of assistance shall be concluded between the Commission and the beneficiary country or its implementing authorities as required.

*Article 18***Protection of the Community's financial interests**

1. Any agreements resulting from this Regulation shall contain provisions ensuring the protection of the Community's financial interest, in particular with respect to fraud, corruption and any other irregularities in accordance with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests ⁽¹⁾, Council Regulation (EC, Euratom) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities ⁽²⁾ and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) ⁽³⁾.

2. Agreements shall expressly provide for the Commission and the Court of Auditors to have the power of audit, on the basis of documents and on the spot, over all contractors and subcontractors who have received Community funds. They shall also expressly authorise the Commission to carry out on-the-spot checks and inspections as laid down in Regulation (EC, Euratom) No 2185/96.

⁽¹⁾ OJ L 312, 23.12.1995, p. 1.

⁽²⁾ OJ L 292, 15.11.1996, p. 2.

⁽³⁾ OJ L 136, 31.5.1999, p. 1.

3. All contracts resulting from the implementation of assistance shall ensure the rights of the Commission and the Court of Auditors as provided for in paragraph 2, both during and after the implementation of contracts.

*Article 19***Rules of participation and origin, eligibility for grants**

1. Participation in the award of procurement or grant contracts financed under this Regulation shall be open to all natural persons who are nationals of and legal persons who are established in a Member State, a country that is a beneficiary of this Regulation, a country that is a beneficiary of the European Neighbourhood and Partnership Instrument, or a Member State of the European Economic Area.

2. Participation in the award of procurement or grant contracts financed under this Regulation shall also be open to all natural persons who are nationals of and legal persons who are established in any country other than those referred to in paragraph 1, where reciprocal access to their external assistance has been established.

Reciprocal access to the Community's external assistance shall be established by means of a specific decision concerning a given country or a given regional group of countries. Such a decision shall be adopted by the Commission in accordance with the procedure laid down in Article 14(2)(a) and shall be in force for a minimum period of one year.

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

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

4. Experts proposed in the context of procedures for the award of contracts are not required to comply with the nationality condition of paragraphs 1 and 2.

5. All supplies and materials purchased under a contract financed under this Regulation must originate from the Community or a country eligible according to paragraphs 1 or 2. The term 'origin' for the purpose of this Regulation is defined in the relevant Community legislation on rules of origin for customs purposes.

6. The Commission may, in duly substantiated exceptional cases, authorise the participation of natural persons who are nationals of and legal persons who are established in other countries than those referred to in paragraphs 1 and 2, or the purchase of supplies and materials of different origin from that set out in paragraph 5. Derogations may be justified on the basis of the unavailability of products and services in the markets of the countries concerned, for reasons of extreme urgency, or if the eligibility rules would make the realisation of a project, a programme or an action impossible or exceedingly difficult.

7. In conformity with Article 114 of Regulation (EC, Euratom) No 1605/2002 natural persons may receive grants.

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

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

Article 20

Coherence, compatibility and coordination

1. Programmes and projects financed under this Regulation shall be consistent with EU policies. They shall comply with the agreements concluded by the Community and its Member States with the beneficiary countries and respect commitments under multilateral agreements to which they are parties.

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

3. The Commission and the Member States shall ensure coordination of their respective assistance programmes with the aim of increasing effectiveness and efficiency in the delivery

of assistance in line with the established guidelines for strengthening operational coordination in the field of external assistance, and for the harmonisation of policies and procedures. Coordination shall involve regular consultations and frequent exchanges of relevant information during the different phases of the assistance cycle, in particular at field level and shall constitute a key step in the programming processes of the Member States and the Community.

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

Article 21

Suspension of assistance

1. Respect for the principles of democracy, the rule of law and for human rights and minority rights and fundamental freedoms is an essential element for the application of this Regulation and the granting of assistance under it. Community assistance for Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia, including Kosovo, shall also be subject to the conditions defined by the Council in its Conclusions of 29 April 1997, in particular as regards the recipients' undertaking to carry out democratic, economic and institutional reforms.

2. Where a beneficiary country fails to respect these principles or the commitments contained in the relevant Partnership with the EU, or where progress toward fulfilment of the accession criteria is insufficient, the Council, acting by qualified majority on a proposal from the Commission, may take appropriate steps with regard to any assistance granted under this Regulation. The European Parliament shall be fully and immediately informed of any decisions taken in this context.

Article 22

Evaluation

The Commission shall regularly evaluate the results and efficiency of policies and programmes and the effectiveness of programming in order to ascertain whether the objectives have been met and enable it to formulate recommendations with a view to improving future operations. The Commission shall send relevant evaluation reports to the Committees referred to in Article 14 for discussion. These results shall feed back into programme design and resource allocation.

TITLE IV

TRANSITIONAL AND FINAL PROVISIONS*Article 23***Status of Beneficiary Country**

If a beneficiary country listed in Annex II is granted candidate status for accession to the EU, the Council, acting by qualified majority on the basis of a proposal from the Commission will transfer that country from Annex II to Annex I.

*Article 24***Cross-instrument provision**

In order to ensure consistency and efficiency of Community assistance, the Commission can decide, in accordance with the procedure referred to in Article 14(2)(a), that other third countries, territories and regions can benefit from actions under this Regulation, if the project or programme in question has a regional, cross-border, transnational or global character. In so doing, the Commission shall strive to avoid duplication with regard to other instruments of external financial assistance.

*Article 25***Transitional provisions**

1. Regulations (EEC) No 3906/89, (EC) No 2760/98, (EC) No 1266/1999, (EC) No 1267/1999, (EC) No 1268/1999, (EC) No 555/2000, (EC) No 2500/2001 and (EC) No 2112/2005 shall be repealed with effect from 1 January 2007.

These Regulations, as well as Regulation (EC) No 2666/2000, shall continue to apply for legal acts and commitments implementing the budget years preceding 2007, and for the implementation of Article 31 of the Act concerning the conditions

of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded ⁽¹⁾.

2. Should specific measures be necessary to facilitate the transition from the system established by Regulations (EEC) No 3906/89, (EC) No 2760/98, (EC) No 1266/1999, (EC) No 1267/1999, (EC) No 1268/1999, (EC) No 555/2000, (EC) No 2666/2000 or (EC) No 2500/2001 to the one established by this Regulation, such measures shall be adopted by the Commission in accordance with the procedures referred to in Article 14 of this Regulation.

*Article 26***Financial reference amount**

The financial reference amount for the implementation of this Regulation for the period from 2007 to 2013 shall be EUR 11 468 million. The annual appropriations shall be authorised by the budgetary authority within the limits of the financial framework.

*Article 27***Review**

The Commission shall submit to the European Parliament and the Council, by 31 December 2010, a report evaluating the implementation of this Regulation in the first three years, if appropriate with a legislative proposal introducing the necessary modifications to this Regulation.

*Article 28***Entry into force**

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

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

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

Done at Brussels, 17 July 2006.

For the Council

The President

E. TUOMIOJA

⁽¹⁾ OJ L 157, 21.6.2005, p. 203.

ANNEX I

- Croatia
- Turkey
- The former Yugoslav Republic of Macedonia.

ANNEX II

- Albania
 - Bosnia
 - Montenegro
 - Serbia, including Kosovo ⁽¹⁾
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⁽¹⁾ As defined in UNSCR 1244.