



Maciej Perkowski Krzysztof Mnich Marek Mossakowski

European Project Management LAW

Edited by Maciej Perkowski



European
Project Management
Law

Maciej Perkowski ♦ Krzysztof Mních
Marek Mossakowski

European
Project Management
Law

Edited by Maciej Perkowski



Temida2

Białystok 2007

Reviewers:

Robert Ciborowski

Anastazja Gajda

BIBLIOTEKA UNIwersYTECKA
im. Jerzego Giedroycia w Białymstoku



FUW0257055

Editor-in-Chief: Jerzy Banasiuk

Cover design: Sylwester Olszewski

Translation: Gerzegorz Krzysztof Assbury

Publisher: Temida 2

Copyright © 2007 by Temida 2, Poland. All rights reserved. Printed in Poland. This publication is protected by Copyright and permission should be obtained from the publisher prior to any reproduction, sortage in a retrieval system, or transmission in any form or by any means, electronic, mechanical, photocopying, recording, or likewise.

300679+d

ISBN: 987-83-89620-34-7

Temida 2

Mickiewicza 1

15-213 Białystok, POLAND

Voice: (+48) 085 7457168 • Fax: (+48) 085 7406089

E-mail: temida2@uwb.edu.pl

Website: www.temida2.pl

Druk: Podlaska Spółdzielnia Produkcijno-Handlowo-Usługowa
Białystok, ul. 27 Lipca 40/3, tel./fax (085) 675-48-02;
<http://www.podlaska.com.pl>

31328/07

Table of Contents

Introduction..... 8

Part I

GENERAL

- 1. What is a European Project? 12
- 2. European Project Management as an issue..... 20
- 3. Law and management – mutual relations 28

Part II

ESSENTIAL

- 4. Legal framework of European Project Management..... 36
- 5. Institutional framework of European Project Management 51
- 6. Objective aspect of European Project Management Law 62

Part III

PRACTICAL

- 7. European documents..... 80
 - The Treaty on European Union (consolidated version) 80
 - The Treaty Establishing the European Community (consolidated version) 82
 - 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.....	87	Act of 29 January 2004 – Public Procurement Law (Journal of Laws of 2006 No 164, item 1163).....	247
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.....	167	Poland National Strategic Reference Framework 2007-2013 <i>In Support of Growth and Jobs</i> National Cohesion Strategy	251
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.....	184	9. Local documents (exemplified by the Podlaskie Voivodship documents)	254
Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund and repealing Regulation (EC) No 1164/94.....	193	Podlaskie Voivodship Development Strategy until 2020, Marshal Office of the Podlaskie Voivodship	254
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).....	196	Podlaskie Voivodship Sejm Resolution No XXXVII/483/06 of 10 April 2006 repealing Resolution No XXVIII/327/05 of 30 May 2005 on defining objectives and priorities of knowledge-based society development strategies in the Podlaskie Voivodship until 2013	256
Council Regulation (EC, EURATOM) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (Official Journal of the European Union L 248 of 16 September 2002, p. 1) repealed by Council Regulation (EC, EURATOM) No 1995/2006 of 13 December 2006.....	205	Bibliography	258
Guidelines on National Regional Aid for 2007-2013, (2006/c 54/08) (text with EEA relevance).....	207	1. Documents	258
8. National documents (exemplified by Polish documents).....	234	2. Literature	260
Act of 6 December 2006 on the principles of pursuing a policy of development (Journal of Laws No 227, item 1658)....	234	3. Electronic sources.....	263
Act of 30 June 2005 on Public Finance (Journal of Laws No 249, item 2104).....	239		
Act of 17 December 2004 on liability for violating discipline of public finance (Journal of Laws of 2005 No 14, item 114).....	245		

INTRODUCTION

It has been written and said a lot about European funds in Poland. More said than written, but still the literature on this topic is quite extensive. Due to that it is even more surprising, that the legal aspect of these funds has been neglected. Although there are some general reports about it, included in economical or political analysis, but the level of European Project Management is still in a state of apparent anomia. Such situation causes discomfort – not only for lawyers, but also for all entities fairly engaged in execution of European funds. This problem caused an idea to create a book that will affirm this state of affairs in a positive manner.

The goal of present study is to offer a new approach to existing Polish acts on widely understood problems of European funds. We want to create a European Project Management Law as an autonomous legal subsystem.

By treating the issue of widely understood usage of European Funds as a socially important part of public interests – we set a thesis that European Project Management should be an objective by itself and a paradigm of efficacy should be modified by means of legitimacy. In other words – in case of European Project Management, in our opinion – law decides. Economic liberty has to – in this case – fit into legal and institutional frameworks. We are of course aware of complexity of our thesis, however in times of intermingle of public and private sphere, in times of commercialisation of public sector and publicly guaranteed transparency of private sector, in times of globalisation – we can use its merits even more effectively!

Topics covered by this book also have some classic characteristics – an everlasting conflict between conservative and reformative approach will probably appear as well... Formalists against supporters of material truth, detailists against strategists, imitators against creators...

All these are everlasting and still alive... Despite that, we hope that attractiveness of an essential issue will minimise said classic conflict, because there are more people interested in improvement of absorption of financial resources derived from EU than ever. Taking into consideration obligations connected to organisation of EURO 2012, convergence criteria of EU and cross-border exchange of experiences of many Polish emigrants – it seems, that we may talk about a historical opportunity! Additionally, a possible change in approach, highly needed in this case, is indispensable in many sectors. Health care, education, environmental protection have already made themselves noticeable... It's not worth to wait for other sectors! That is why all who are sceptic about the concept of European Project Management Law should ask themselves, before presenting their negative opinion, what do we risk?, what can be harmed by this concept? And how can we improve it? Exactly – we will be grateful for any constructive criticism, and a possible discussion concerning our approach is clearly our secondary objective.

This book was planned as a peculiar “trilogy”. In Part I – General, we explained key theoretical issues of title matters. Our attempt was to define, what is a European project and to present European Project Management as an experimental issue and to set mutual relations between law and management.

In Part II – Essential, we were able to identify legal and institutional frameworks of European Project Management and add a description of more important objective aspects.

Part III – Practical, contains a selection of appropriate European, national (exemplified, of course, by Polish documents) and local (due to subjective reasons – personal experience – exemplified by the Podlaskie Voivodship documents) documents. We have anticipated major disproportions between those groups of documents, determined by their systematic meaning and availability. European documents – being universal and most important in hierarchy, but at the same time still quite “unpopular” among practitioners constitute the most extensive part, and local documents compose the most modest section. At the same time we would like to explain that a whole set and full versions of doc-

uments to which we just referred in our book can be found in electronic version on a CD-ROM attached to this book.

Literature on this matter is not too extensive, which cannot be said about books concerning classic management or analysed branches of law. In these cases we can even say that there is an “oversupply” of literature... It won't be to bold to say that this book is the first one – at least on national market – concerning not only issue of European Project Management Law but probably also issues of legal aspects of European Funds in general.

Methodology of this book is not too variegated – analysis and description are dominant. Both language and style used here can sometimes surpass classic legal discussion, but this was our intention oriented on arousing of readers interest and, perhaps, coercion of active response... We wish you beneficial lecture!

Maciej Perkowski

PART I
GENERAL

WHAT IS A EUROPEAN PROJECT?

An ideal definition is to explain difficult matters in simple words. The problem is that defining itself is not a simple task... It is most difficult to define obvious terms. On one hand *clara non sunt interpretanda*, on the other – civilisational progress, complexity of the world and commonness of information about it causes someone who creates a definition to easily find many meanings of the same term.

In common understanding, the word “project” means a proposition of a product or service, building documentation (technical specification) etc. In recent period, meaning of the word “project” became extended and is now understood as a complex undertaking concerning many fields and implemented with an objective to achieve an established goal within particular timeframe and with a fixed budget.¹

In European integration processes the second of the above definitions is of greater significance. In a manual signed by the Polish Ministry of Regional Development, project is defined as an organised and set in time (with a defined start and finish) course of actions aimed to achieve a specific and measurable objective, addressed to a particular group of receivers and demanding engagement of significant but limited material, human and financial resources.²

Theoreticians take it further and explain that a project is a complex, unique and temporary undertaking realised to achieve a specified objective in an established period of time. In their opinion, word “undertaking” has a similar meaning, and in praxeological sense means

a complex, multisubjective action, realised in accordance with a prior plan.

Project – as definition continues – is also an undertaking distinguished by *inter alia* following characteristics:

1. Objective-oriented – all tasks taken up during project implementation are aimed to achieve results specified by ordering party.
2. Uniqueness (inimitability) in concept and/or implementation of an undertaking. Product or service provided as a result of project implementation have not been provided before.
3. Complexity – undertaking is of complex and multiobjective character, both in preparation and implementation.
4. Time-bound – all tasks are realised in a finite time with both start and finish distinguished, usually with a limited access to resources.³

The European Commission suggests a surprisingly simple formula. According to its definition, in methodology of project management, projects are sets of actions taken up in order to achieve clearly set objectives in a determined period of time and using a designated budget.⁴ According to this definition projects should be also characterised by:

- unambiguously specified target groups and final beneficiaries,
- specified solutions in areas of coordination, project management and finances,
- project monitoring and evaluation system,
- suitable economical and financial grounds, unambiguously suggesting that profits from the project exceed costs of its implementation.

In the most recent manual compiled by a team of specialists from the Warsaw School of Economics, more detailed definitions of projects describe them as undertakings, meaning organised sequence of human

1 H. Roszkowski, A. P. Wiatrak, *Zarządzanie projektem – istota, procedury i ich zastosowanie przy korzystaniu ze środków Unii Europejskiej*, Wydawnictwo SGGW, Warszawa 2006, pg. 9.

2 *Podręcznik zarządzania projektami miękkimi*, edited by M. Banikowska, B. Grucza, M. Majewski, M. Małek, Ministerstwo Rozwoju Regionalnego – Departament Zarządzania Europejskim Funduszem Społecznym, Warszawa 2006, pg. 8.

3 H. Roszkowski, A. P. Wiatrak, *Zarządzanie projektem... op. cit.*, pg. 9.

4 *Aid Delivery Methods. Volume 1: Project Cycle Management Guidelines*, European Commission, EuropeAid Cooperations Office, Brussels 2004, pg. 8.

actions aimed to achieve an established result; so projects – as concluded by authors of the said manual:

- are inimitable,
- are highly complex,
- are time bound, with a set implementation date, extended in time, with a specified start and finish,
- require involvement of significant but limited material, human and financial resources and are realised by a team of highly qualified contractors of various specialisations,
- are bound to cause a high technical, organisational and economical risk,
- due to that require specific knowledge to be prepared and implemented.⁵

Projects can be implemented separately or in groups. Groups of projects constitute programmes or project portfolios.⁶

Programmes are groups of associated projects realised in a coordinated way in order to achieve a common predominant objective, which is impossible to achieve by each project separately. In activities of the European Union programmes play a significant role; European projects are usually a part of larger undertakings – European Programmes. Such programmes are a predominant category for projects; usually within the framework of programmes numerous projects are being implemented.⁷ We should also remember about financial side of programmes, which budget is usually based on resources from objectively appropriate EU funds.

On the other hand project portfolios are groups of projects implemented and managed by a single institution (organisation), and can be either related or unrelated with each other. Project portfolios come into

5 *Zarządzanie projektem europejskim*, edited by M. Trocki, B. Grucza, Polskie Wydawnictwo Ekonomiczne, Warszawa 2007, pg. 12; there is a noticeable similarity to previously quoted explanation by H. Roszkowski and A.P. Wiatrak – see reference 3.

6 M. Trocki, B. Grucza, K. Ogonek, *Zarządzanie projektami*, PWE, Warszawa, 2003 and *Zarządzanie projektem europejskim... op. cit.*, pg. 15.

7 *Podręcznik zarządzania projektami... op. cit.*, pg. 8 and *Zarządzanie projektem europejskim... op. cit.*, pg. 15.

prominence when numerous project are being implemented by a single institution.⁸

Policy is an even more profound term. In Poland, policy usually has a pejorative meaning, understood as an entirety of actions concerning struggle for public power and its exertion. The European Union defines policy as a set of strategic – i.e. general and long-term – rules, objectives and directives concerning specific areas of activity. Policy comprehended in this way is a functional strategy.⁹

EU Cohesion Policy is realised by projects financed both by the Structural Funds (the European Regional Development Fund and the European Social Fund), and by the Cohesion Fund and the European Investment Bank. Cash-flows from the Structural Funds and the Cohesion Fund reach project promoter by specialised authorities specific for respective countries. The role of the European Commission in disposal of said funds is significantly smaller than in areas of other EU policies, e.g. the Research and Development Policy (R&D).¹⁰

The most important legal acts regulating the functioning of the Structural Funds are: so called General Regulation and regulations concerning particular funds.¹¹ These provisions, in larger or smaller way also apply to projects supported by EU funds.¹² It is noticeable, concerning sometimes absurd situations when anomia of national law (sometimes just colourable anomia) or unclear formulation of regulations by national legislator seem to annul objectives of Cohesion Policy... while intended to implement it...¹³

Distribution of EU funds is conducted according to the principles of: concentration, partnership, complementarity, programming and additionality. Above rules correspond with the requirements concerning projects supported by said funds.

8 *Zarządzanie projektem europejskim... op. cit.*, pg. 15.

9 H. H. Hinterhuber, *Strategische Unternehmensführung. II Strategisches Handel*, Walter de Gruyter, Berlin/New York 1986, pg. 3-14 and *Zarządzanie projektem europejskim... op. cit.*, pg. 16.

10 *Zarządzanie projektem europejskim... op. cit.*, pg. 27.

11 More on this topic in Chapter 4 Part II herein.

12 *Zarządzanie projektem europejskim... op. cit.*, pg. 27.

13 See: discussion in Chapter III herein.

Principle of concentration means that resources from EU funds are mainly available for those regions of the European Union which are in most need. Due to that projects localised in those areas can count on the highest level of financial support available for a particular category of operations (so called "maximal aid intensity").

Principle of partnership is understood in two ways: as a partnership based on cooperation of European Commission and appropriate national, regional and local authorities in planning of usage and distribution of financial resources and as a partnership in consultation of propositions of changes in form of supported programmes between local and national government and social partners, in order to support the highest possible efficacy of its implementation. Partnership on the level of projects concerns stage of planning and implementation, as well as monitoring and control of expenditures. Its goal is to create a lasting relationship based on cooperation due to mutual consultations between subjects realising different tasks within the framework of the same or similar undertakings. It increases the sense of identity with undertakings took up by society.¹⁴

Principle of complementarity means a necessity of conformity of national programmes and implemented projects covered by them with essential branches of EC policy, e.g. Environment Protection.

Principle of additionality means that EU resources are just a supplement to undertakings financed by the national budget. Referring this rule to projects means that subject applying for co-financing, in order to realise any particular undertaking, has to have an own contribution, most often in a form of own financial resources, which will, in a specified percentage, co-finance the EU project.¹⁵

Principle of programming means that financial resources are distributed to programmes specified after multilateral consultations con-

14 About partnership (not only public-private) see: *Partnerstwo publiczno – prywatne. Zagadnienia teorii i praktyki*, edited by M. Perkowski, wyd. Temida2, Białystok 2007.

15 In practice, the project promoter (potential aid beneficiary) usually has to show financial ability to cover most of the costs concerning implementation of a project when he applies for co-financing. It is due to the fact that most of the projects are co-financed by Structural Funds as a reimbursement not a donation or budget grant. This means that co-financing is granted after a project is finished or after particular stages of it are closed or calculated.

cerning programmes within which prospective beneficiaries apply for co-financing. From the perspective of project promoters this rule means a necessity of prior acquiring of rules and requirements concerning participation in a particular programme. It is noteworthy that apart from that it is also necessary to be familiar with documents defining rules of functioning of specific funds.¹⁶

European projects are understood here as projects implemented within frameworks of EU policy and with support of EU. This is not geographical feature, because this term does not concern commercial projects implemented in Europe without the support of the European Union. It is not also a subjective feature, because it concentrates not only on projects implemented in countries of the European Union, but also outside of it, such as pre-accession projects which are realised in countries aspiring to join the Community.¹⁷ We also cannot forget about resources of the EEA Financial Mechanism and the Norwegian Financial Mechanism, donors of which originate from non-EU countries. It seems rational to apply the functional approach...

This is also an opinion of the European Commission, according to which European projects are sets of actions took up in order to achieve clearly set objectives in a determined period of time and using a designated budget.¹⁸ In EC nomenclature project is defined as a course of actions with specified goals and aimed to achieve a set objective in a determined time-framework, and a programme is a number of projects with a shared, central objective. In entirety documents and all references to the project have an equivalent meaning for the programme.¹⁹

Simplifying, European projects can be defined as projects financed and co-financed by the European Union and/or implemented in accordance with EU methodology.

It is necessary to explain the purpose of treating European projects as a separate group:

16 *Zarządzanie projektem europejskim... op. cit.*, pg. 28.

17 *Ibidem*, pg. 14.

18 *Aid Delivery Methods. Volume1: Project Cycle Management... op. cit.*, pg. 8.

19 B. Ziółkowski, *Zarządzanie Cyklem Projektu*, Urząd Komitetu Integracji Europejskiej, Warszawa 2003, pg. 3.

I First of all, said projects, despite their great variety, are subject to the same European rules and regulations, which are often highly formalised.

II Second of all, European projects are implemented in great numbers and involve major resources.

III Third of all, European projects are characterised by involving into implementation large groups of participants, for which this is often their first contact with management in general and project management in particular.

IV Fourth of all, European projects participants originate from various environments, differ in education and work experience and represent subjects with various organisational culture.²⁰

One of basic classifications which is usually used for entirety of projects financed from EU funds, is a distinction between investment projects (infrastructural) and training and advisory projects. The former are commonly called “hard projects”, and the latter “soft projects”.²¹

There are many other forms of undertakings financed by the European Union. Among them we can distinguish *inter alia*: research projects, integrated projects, Network of Excellence projects, implementation projects, demonstrational projects, projects solely connected with so called “support actions”, CRAFT (cooperative research project) type projects – based on cooperation of small and medium enterprises from academic field or collective research projects. Such forms of implementation of undertakings are common in research programmes, mostly in the 6th Framework Programme of the European Community, but are also in competence of IEE – Intelligent Energy for Europe, e-Content programme or Culture 2000 programme. Different types of projects are those within a framework of EU programmes concerning education, training and occupational training. Characteristic types of projects existing within a framework of such programmes are: thematic projects, study visits projects, projects concerning exchange and ed-

20 Zarządzanie projektem europejskim... op. cit., pg. 14.

21 *Ibidem*, pg. 38.

ucation of students and teachers, internship projects, pilot projects (of thematic nature), research and analysis projects, cooperation network projects and many more. There is also a quite wide range of possibilities of project financing within a range of: promotion of national companies and organisations, support of internationalisation of companies (e.g. in export), employment promotion, research and development (particularly implemented in connection with science and industry), recapitalisation of funds (e.g. credit, guarantee and loan securities) and other.²²

By promoting functional approach we claim that the significant distinguishing characteristic of European projects, or more precisely – projects financed by the European funds – is a specific management of such projects.

22 Zarządzanie projektem europejskim... op. cit., pg. 39.

EUROPEAN PROJECT MANAGEMENT AS AN ISSUE

European Project Management has been for a few years now (period of pre-accession resources and the Structural Funds after accession of Poland to EU) an inseparable element of economic and social development in Poland. Effective use of gained resources depends mostly on good planning and effective implementation of European projects – in other words, it depends on effective project management.

Everyone implements projects. Doesn't matter whether we consider it to be a small uncomplicated task or large complex set of operations, project means every work aimed to realise an objective in a limited period of time and with a limited budget. When we define a way in which people work, we are managing a project. It can be assumed that when we plan and take a business trip, we are managing a project. When we introduce a new product to the market we are managing a market launch project. Within the framework of projects products, events, processes and organisations are created and modified. When making amendments, projects become instruments of action. It can be moving of an office to a different location, organisation of an event, integration of two organisations, start of a new training programme, preparation of a budget, creation of a new product, modifying or designing a new webpage, implementation of a new process etc.

Nowadays more and more people discover that their ability to meet expectations – by achieving satisfying results on time and in accordance with a budget – depends directly on their skills in project management. Each organisation is looking for that “extra something”, to better satisfy the needs of their clients and owners – whether they are

shareholders or government authorities. Better project management allows them to get this imperceptible “extra something”.²³

So what is management? According to Ricky W. Griffin management is a course of actions (including planning and decision making, organisation, leadership, i.e. people administration and control) directed on resources of an organisation (human, financial, material, informational) and used to achieve objectives of that organisation in an efficient and effective way. Efficient means using resources in a reasonable way and without misspending; effective means leading to success.²⁴ On the other hand R. Habermellner defines management as a process of decision making and implementation.²⁵ Peter Drucker, known as the greatest thinker in a field of management of our times, discusses management in a more complex way. According to him management is mainly based on a very few essential principles. To be specific:

1. Management is about human beings. Its task is to make people capable of joint performance, to make their strengths effective and their weaknesses irrelevant. This is what organisation is all about, and it is the reason that management is the critical, determining factor. These days, practically all of us work for a managed institution, large or small, business or non-business. We depend on management for our livelihoods. And our ability to contribute to society also depends as much on the management of the organisation for which we work as it does on our own skills, dedication, and effort.

2. Because management deals with the integration of people in a common venture, it is deeply embedded in culture. What managers do in West Germany, in the United Kingdom, in the United States, in Japan, or in Brazil is exactly the same. How they do it may be quite different. Thus one of the basic challenges managers in a developing country face is to find and identify those parts of their own tradition, history, and culture that can be used as management building blocks.

23 G. Pitagorsky, *Prawidłowe zarządzanie projektami: kluczowe zasady udanych projektów*, www.microsoft.com/poland/office/office2003/project/manage/default.aspx, pg. 3

24 R. W. Griffin, *Podstawy zarządzania organizacjami*, Wydawnictwo Naukowe PWN, Warszawa 1998, pg. 36.

25 R. Habermellner, *Projectmanagement, Handwörterbuch der Organisation*, Verlag C. E. Poeschel, Stuttgart 1992, pg. 2090.

The difference between Japan's economic success and India's relative backwardness is largely explained by the fact that Japanese managers were able to plant imported management concepts in their own cultural soil and make them grow.

3. Every enterprise requires commitment to common goals and shared values. Without such commitment there is no enterprise; there is only a mob. Enterprise must have simple, clear, and unifying objectives. Mission of organisation has to be clear enough and big enough to provide common vision. Goals that embody it have to be clear, public, and constantly reaffirmed. Management's first job is to think through, set, and exemplify those objectives, values, and goals.

4. Management must also enable an enterprise and each of its members to grow and develop as needs and opportunities change. Every enterprise is a learning and teaching institution. Training and development must be built into it on all levels – training and development that never stop.

5. Every enterprise is composed of people with different skills and knowledge doing many different kinds of work. It must be built on communication and on individual responsibility. All members need to think through what they aim to accomplish – and make sure that their associates know and understand that aim. All have to think through what they owe to others – and make sure that others understand. All have to think through what they in turn need from others – and make sure that others know what is expected of them.

6. Neither the quantity of output nor the “bottom line” is by itself an adequate measure of performance of management and enterprise. Market standing, innovation, productivity, development of people, quality, financial results – all are crucial to an organisation's performance and to its survival. Non-profit institutions also need measurements in a number of areas specific to their mission. Just as a human being needs a diversity of measures to assess his or her health and performance, an organisation needs a diversity of measures to assess its health and performance. Performance has to be built into enterprise and its management; it has to be measured – or at least judged – and it has to be continually improved.

7. Finally, the single most important thing to remember about any enterprise is that results exist only on the outside. The result of a business is a satisfied customer. The result of a hospital is a healed patient. The result of a school is a student who has learned something and puts it to work ten years later. Inside an enterprise, there are only costs. Managers who understand these principles and function in their light will be achieving, accomplished managers.²⁶

Now we have definitions of project and management. Let's now take a look at how theoreticians and practitioners define project management.

Theoretic definition of project management is the following: “use of knowledge, skills, instruments and solutions on project processes in order to fulfil or surpass requirements of stakeholders towards the project”.²⁷ R. Duncan represents a quite similar opinion, that project management is a use of knowledge, skills, instruments and techniques for purposes of the project in order to fulfil or surpass the needs and expectations of various groups of interest connected to the project.²⁸ On the other hand, experts from the Harvard Business Essentials define project management as distribution, control and use of resources aimed to achieve a particular objective in a specified period of time.²⁹ We can agree with a more broad interpretation of project management, presented by G. Pitagorsky. According to his definition, project management is an application of a wide range of skills in order to conduct a proper initialisation, planning, implementation, control and termination of the project. Basic skills are: range defining (which means description and establishment of project objectives and requirements), scheduling and estimation. Following aspects are an addition to the above: risk and uncertainty management, quality control, communi-

26 P. F. Drucker, *Myśli przewodnie Druckera*, Wydawnictwo MT Biznes, Warszawa 2002, pg. 26-28.

27 Discussion with Stanisław Sroka – director of the board of Project Management Polska Association, www.4pm.pl/artykul/project_management_profesjonalizm_w_zarzadzaniu-45-411.html z dnia 08.07.2007.

28 R. W. Duncan, *A guide to the project management body of knowledge*, PMI Standards Committee, PMI Publishing Division, Upper Darby, PA 1996, pg. 18.

29 *Zarządzanie projektami małymi i dużymi. Podstawowe umiejętności pracy zgodnej z budżetem i terminarzem* (translated by: N. Oparska), Wydawnictwo MT Biznes, Warszawa 2006, pg. 9.

cation, management of personal time and cooperation with others, including merchandise and service providers and any other person engaged in a project.³⁰

We can distinguish various types of project management. M. Pawlak marks out functional management, institutional management, instrumental management and personal management.³¹ In a functional approach to the issue of project management we consider what should be done (what are the functions). To the forefront we can bring the following partial aspects:

1. Preparation work in a sense of project planning,
2. Project directing and implementation control,
3. Establishing and presenting ideas and results (informing, documenting and communicating concerning project implementation). In an institutional sense, in project management we mainly concentrate on organisational structures of project management and their localisation in the organisational structure of a company, and also on personal aspects. It concentrates in particular on the following:

1. Selection of an appropriate organisational model,
2. Organisational merging of a project group into the management structure of a company,
3. Appointment of deciding instances.

Project management also has a very important instrumental (tool) aspect, which means specifying a method of work implementation. Particularly this means planning and control techniques, problem solving techniques, system designing, formulation of objectives, evaluation techniques and decision-making. Last of the said aspects of project management is project group administration. This means particularly appointment of an appropriate person to be a project manager, creating a team of people who implement the project, organisation of their cooperation, communication process, motivation, conflict management,

30 G. Pitagorsky, *Prawidłowe zarządzanie projektami... op. cit.*, pg. 4-5.

31 M. Pawlak, *Zarządzanie projektami*, Wydawnictwo PWN, Warszawa 2007, pg. 28.

dealing with resistance to change which is an inseparable characteristic of projects.³²

In general, projects have a non-standard character, which might cause a dose of uncertainty concerning project finalisation. However, it is not about project finalisation itself, but to realise it in accordance with a planned budget, objective and time schedule and according to directives specified in a project. That is why project managers, in order to simplify project implementation, divide it into phases, so it is easier and more efficient to control progress of project undertakings. R. Duncan calls such solution a „project life-cycle”.³³

There are many different ways to define project life-cycle. One of the most common definitions distinguishes four phases of project implementation: project conception, planning, implementation and termination.³⁴

No matter which approach to the project life-cycle we choose, we should remember that each project is a dynamic, and a constantly evolving process (Figure 1). One of methods, which illustrates the most important characteristics of a project life-cycle is based on six functions, to which we refer during project implementation: project selection, planning, implementation, control, evaluation and termination.³⁵

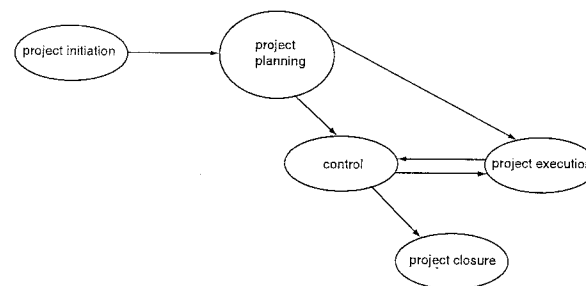


Figure 1. Correlations of particular processes in project life-cycle

32 *Ibidem*.

33 R. W. Duncan, *A guide to...*, op. cit., pg. 11.

34 J. Davidson Frame (translated by Paweł Dąbrowski), *Zarządzanie projektami w organizacjach*, Wydawnictwo WIG-PRESS, Warszawa 2001, Rpt. in: M. Dobrowolska, *Zarządzanie projektami w organizacji. Cykl życia projektu*, www.4pm.pl/artukul/zarządzanie_projektami_w_organizacji-45-206.html dated 15 July 2007.

35 *Ibidem*.

J. R. Adams and M. E. Caldenty³⁶ claim that most of the project management process models are based on the concept of project life-cycle, in which a project is divided into phases based on a type of took up undertakings and people essential to their implementation.

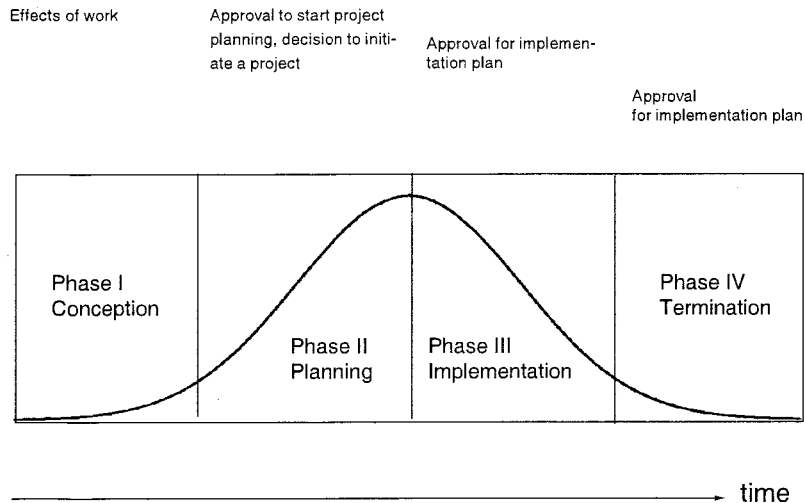


Figure 2, example of a project life-cycle model

Spectrum of work done in particular phases shown on Figure 2 can be characterised, in a simplified manner, as:

- Phase I – Conception. At management level higher in hierarchy than a project manager, an idea of project implementation comes into life which is then evaluated and compared to other, alternative projects and designated for further operations. These operations consist of, in general, assigning a project leader and specifying both effects of work in Phase One and preliminary data for Phase Two – Planning. In Phase One also a feasibility study is conducted.
- Phase II – Planning. This phase contains creating of a detailed implementation plan and assigning of a project managing team.

36 J. R. Adams, M. E. Caldenty, *A Project management model, Field guide of Project management*, D. I. Clelend (red.), Van Nostrand Reinhold, New York 1998, s. 49, Rpt. in: M. Pawlak, *Zarządzanie...*, op. cit., pg. 71.

Going to phase three and initiating physical actions concerning project implementation is only possible after a formal approval and acceptance of a plan.

- Phase III – Implementation. During this phase, specific sub-contractors, constructors, programmers, medical personnel and specialists from other fields essential for the project implementation may be engaged. Actual work on the project implementation is done during this particular phase.
- Phase IV – Termination. Transition to termination phase occurs when a product (system), which is created within framework of a project, is ready for testing or some other form of evaluation. The aim here is to confirm that a product is ready to be accepted by a person who is financing its implementation. Project may be also terminated when there is an agreement that its further implementation should be ceased.³⁷

Project management is complicated, requires time, money and work. It is based on common sense and flexible approach during implementation of project undertakings and increases probability of success. If it is good...

37 *Ibidem*.

LAW AND MANAGEMENT – MUTUAL RELATIONS

According to a popular saying – success has many fathers. Good – trouble-free - management will be praised by everyone... The problem is that in present reality, trouble-free management can be found mostly in theory... Furthermore, modern management usually faces many problems! It also attempts, in many ways, to overcome them. After all, the objective of management is effectiveness... It all seems clear, but yet again – only in theory... In practice this “defensive management” stealthily “turns to attack” and while aiming for maximal effectiveness – by overcoming individual, casuistic obstacles – simply disregards the law! Not to mention bad management which is “lawlessness-geous” by nature... Why is it so?

This state of affairs is in a significant way caused by...science. Among social sciences both law and management have a well-deserved autonomous position, supported by solid attainments. These successes are commercialised by reality. Public and private area of modern civilisation use law and management so intensively that they do not even have a “chance to meet”... Or do they? Did not scientific purists, both from field of law and economics, afraid of increased “external” competition from other fields and partially due to their “specialised near-sightedness” make sure that those two areas are effectively isolated? Even if this was caused by plain passivity, it is hard to express any kind of approval.... Criticising will not do any good as well. That is why in this book we will try to propose an antidote for this state of affairs. With a popular topic of European Project Management as an essential theme, we will make an attempt to prove that law and management may not only coexist peacefully, but are also able to be mutually related!

In the previous chapter we explained what is management.³⁸ At this point it is noteworthy that management, as a subjective issue of European Project Management Law is not – by no means – a standard management. It is much more than administration, but it is not entirely a classic management... We are talking about public management, or should we say – management in a publicly significant way... In general – it is aimed to replace European project administration with European Project Management, of course in a legal measure. By doing this we want to explain to the followers of “management purity” that in case of European projects, management not only takes place but also intentionally and duly yields to legal limitations, which level is established by public interest defined within frameworks of EU Cohesion Policy.

All that is left is an apparently obvious issue of recalling what the law is. While thinking in a functional manner we can define law as a set of standards which regulate various aspects of functioning of subjects... Presently, State is a key subject for the law. It has not been like that all the time! In the past it was enough to identify law with the art of doing what’s good and just! Today, in times of formalism, bureaucracy and “incompetence covered by professional details” – law does not mean what is just, but what is the will of a democratic majority, created during a legislative process... This is an effect of democracy – a system that is being criticised, but so far irreplaceable... Presently the whole Euro-Atlantic part of international society perceives democracy as the only acceptable form of government.³⁹ According to constitution of the Republic of Poland, law is a second, after democracy, most important value of the State!

Even though democracy sometimes distorts the “just” sense of the law, this relationship is “bound to last”... By development, law has adapted to democracy...

38 Project management is recently being treated as a separate field of knowledge, which uses the legacy of other sciences from economics and management, through psychology, sociology, negotiation and communication science up to technical (or agricultural) sciences, mathematics, statistics, computer science etc. It is interesting however, that there is no reference to the law... see: H. Roszkowski, A. P. Wiatrak, *Zarządzanie projektem... op. cit.*, pg. 18.

39 Such approach has been suggested by EC for accepting new states in Middle Europe and USSR, see: B. Wierzbicki, *Uznanie państw, Prawo międzynarodowe. Materiały do studiów*, edited by B. Wierzbicki, Wydawnictwo Temida2, Białystok 2000, pg. 307.

Development of modern legislation has many forms. It can be based, particularly on “adherence” (as new social and economic issues arise, appropriate new regulations are created), on “excavation” (regulations become gradually more detailed, leave no freedom of interpretation and try to predict every possible situation), on “perfecting” (unused or faulty regulations are liquidated, and new ones have to pass quality tests before implementation), on “flexibilisation” (implementation of model constructs, using rules, implementation of regulations based on legitimacy and common sense, evaluation of effects by evaluation of actual results)... In Polish reality we can encounter all of the above forms of legislation. Only their proportions in entirety of law can be disputable (preferences here reflect human personalities, intellect, social environment and – gradually more often – economic interest).

No matter how critical we are in a discussion about the law, so far there was no better solution to bring world order. Of course, in the name of philosophical justice – just like Esperanto was supposed to replace English – people tried to replace the law with religion, ethics, politics, economy... Results of both processes seem to be similar...

It is now time to answer whether law can regulate management (in particular – European Project Management)? Some say that management “borders on” the law, but there are no common grounds... Others say that law can regulate anything... Some, on the other hand, say that law regulates what it actually can... So what is the answer?

Let’s take a risk and set a positive thesis... Still there are legal regulations concerning European funds, their programming, implementation, evaluation etc. And still there has to be an objective reference system...

Besides, we have to remember that European projects aren’t something extraordinary that cannot be comprehended by law! Clear definition of project objectives, which is a part of definition of projects is usually done in a way that is regulated by law, budgetary issues – like Ariadne’s thread – lead to a legally formulated budget of European Union and all projects are of course implemented within frameworks (regulated by law) of EU and in cooperation of its authorities (regulat-

ed by treaties!)... Since we have entered an institutional level of EU, it is worth to remind that (except for the Ministry of Regional Development) the key euro-methodology, i.e. project cycle management, is a model of complex undertakings implementation accepted (as a document!) by the European Commission in 1992, based on an assumption that projects have a cycle nature, so they are integrated and constituted by repeatable phases and stages, so we can find some general guidelines for them.⁴⁰ The Ministry of Regional Development underlines that projects require proper evaluation during a process of distribution of funds and support. Phase of evaluation of undertakings and drawing up agreements is based on a versatile examination of such aspects of an application as ability to achieve set objectives using available resources. There is also a formal approval of applications sent by project promoters. Each Member State uses its own evaluation procedures and documents required for such process. Evaluation is conducted in order to accept or modify propositions of project promoters. In case of need there are consecutive evaluations which allow transition to implementation phase and acquisition of financial resources needed to implement a project.⁴¹ We can name many more... Whichever perspective on European projects and their management we choose, we will always find some legal aspects!

Second question that has to be asked here is: why European Project Management Law? First of all we should contradict faulty assumption that European Project Management has a relative nature... Law applies to both applicants who later implement projects and institutions which evaluate or control them. What they do should have (and usually has) a solid legal basis.⁴² This way we can considerably limit lawlessness

40 *Podręcznik zarządzania projektami... op. cit.*, pg. 8.

41 *Ibidem*, pg. 9.

42 Even now a strict adherence to a procedure that requires a signature of the manager of the applying institution (e.g. Rector of a university) on every page of the application (3 copies of a quite extensive document!), even in cases of minor amendments correcting obvious mistakes is a reason for concern. Is there a legal basis for such practice? This problem is just theoretical when we are discussing departure from it in current budgetary perspective but the mechanism which is responsible for its creation and implementation seems almost pathological... Someone, who is compensating for his lack of competence by “protecting himself with a regulation” expects someone to do a completely unreasonable thing, someone else agrees to that and by a combination of such submission and hope for kindness of a former “someone” someone else starts to treat it as a rule and follows it, which assures the first

and bad practices that accompany it and at the same time protect both public interest and numerous individual goods... At last – in a democratic legal state, which promises to implement rules of social justice, we should secure legal warranties in a process of applying for European funds resources! In this last matter, situation is nearly grotesque! As an example we can present an embarrassing dilemma whether refusal of appropriate authorities to grant EU resources is a decision or not? Rational position of the Supreme Administrative Court (II OSK 319/06, 336 and 337/06)⁴³ is on one hand gladdening because by exposing mindless formalism and lack of common sense it brings back a proper order of things, but on the other hand it is a reason for concern... Because it requires intervention of the Supreme Administrative Court to state the obvious! To prove that those are not just words we can give an example from our own experience – history of a project set forth by the University of Białystok, conveyed to the Office of the Committee for European Integration as an application within the frameworks of “Human Resources Development” priority of the EEA Financial Mechanism and the Norwegian Financial Mechanism (for the years 2004-2009). This project – undoubtedly innovative and originating from, a quite authoritative subject did not, according to the Office of the Committee for European Integration, fulfil the eligibility criteria, i.e. costs of sustenance and accommodation of participants of conferences and trainings (which were an essential core of the project). This is puzzling and in a way... offensive... It suggests lack of... reading skills... Next, detailed analysis of the Operational Programme shown indisputably that there were justified reasons for doubting the former evaluation. Specification of total eligible costs of the action (point 3, item 2) includes costs of conferences and trainings. What were they if not costs of sustenance and accommodation? – we called a proper official of the Office of the Committee for European Integration and asked him that. He claimed that these were the costs of room renting, materials, administration... We denied it all because such categories were separate in our specification... The official stated that, in this situation,

“someone” that his way of thinking is correct and it inspires him (unfortunately) to be as “creative” in other areas...

43 For more information on this topic see: D. Frey, *Odmowa przyznania środków unijnych jest decyzją*, “Rzeczpospolita” dated 23 May 2007, pg. C4.

he was not the one to decide, that this is administered by the Council of Ministers... He also had a “pass-the-buck” attitude, and we were curious as one of Polish radio show hosts who called people to talk about a “very unusual case”... However we still had a feeling that this case is on no account unusual... Person who gave a negative evaluation of our application could not clearly explain why he decided in a way he did... Is this supposed to be management?! In the end we asked about the appeal procedure and the official replied, with satisfaction, that there is no such thing in this case! When we reminded him about a similar, in our opinion, statement of the Supreme Administrative Court, he said that “the Norwegian Funds are not subject to the Code of Administrative Procedure”... We replied that, this state of affairs will most likely last only until there will be a ruling that will state the obvious, and additionally *per analogiam*, but it did not do any good... Absurd!

It is also noteworthy that even if the Supreme Administrative Court or the Constitutional Tribunal will not show any comprehension of the arguments presented by subjects who are just looking for warranties – this is not a closed case! Entity can assert its rights at the EU court in Luxemburg,⁴⁴ and state officials can be proved wrong by international judges who think in a more unconventional way...⁴⁵

In the end we should underline that promotion of systematic approach to European Project Management Law also has self-preserving aspects! Pathologies described above only seem to be “our own problem” regulated by rules applied here and now. The European Court of Auditors, OLAF or just the European Commission do not have to care about any “local priorities”.⁴⁶ We should concentrate on preventing such pathologies, instead of (expensive) treatment! This way we can also secure ourselves from negative “euro-consequences”... etc.

44 For more information about this topic see: *Wymiar sprawiedliwości Unii Europejskiej. Wybrane zagadnienia*, edited by M. Perkowski, Wyd. Prawnicze LexisNexis, Warszawa 2003.

45 ...what became real for Poland on few occasions... Although these cases were concerning issues that were objectively different, but the position of our country (confidence in own rights) seemed inadequate compared to the weight of arguments it used, every time (e.g. in the case of nurses C-460/05).

46 The way of thinking of EU institutions is well presented by the “Rospuda case”.

European Project Management Law will certainly play (already plays?) a complex role in legal matters! We can see its local aspect (objectives), national (secures proper “europeisation”), cross-border (promotes universalism) and European (consolidates said aspects).

In order to help the implementation of such anticipated role of European Project Management Law we should catalogue objectively appropriate legal regulations, institutions and appropriate laws and responsibilities.

PART II

ESSENTIAL

LEGAL FRAMEWORK OF EUROPEAN PROJECT MANAGEMENT

When planning implementation of European projects we should firstly know the current legal regulations concerning our project. At this moment we can encounter first obstacles and doubts, because our laws and obligations are regulated by both national and EU regulations. Such situation is a result of the EU budget implementation system accepted by the European Union. According to the EU regulations,⁴⁷ EU budget implementation is usually conducted by distribution of duties to the European Commission and the Member States. Accepting such solution implies the necessity to use both European and national regulations. This is also an immanent characteristic of the EU law, which unites legal systems of the Member States by such obligating “offers”. States usually accept them. Economic implications are of various nature. Legal consequences are usually irreversible.

The European Communities, and in a sort of simplification, the European Union, are being considered by commentators as over-national subjects. In order to manage European projects we first of all should answer the question what does “over-national” mean? An answer to that can be found in the EU legal system. EU law is in fact a result of a transfer, by the Treaties Establishing European Community, of the part of competences of the Member States to the European Communities. Opposed to legal systems of other international organisations (UN, Council of Europe, etc.) EU law is simultaneously effective in the Member States and even private subjects can benefit from such effectiveness.

⁴⁷ Council Regulation (EC, EURATOM) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (Journal of Laws L 248 of 16 September 2002, with amendments).

Legal regulations of the European Communities can be divided into: Primary Legislation, Secondary Legislation and other sources of legislation. Primary Legislation is established directly by the Member States and is an element of international law. It is created by the founding treaties in their actual form and with amendments (presently the post-Nice versions the of Treaty Establishing the European Community, the Treaty on European Union and less important the Treaty Establishing the European Atomic Energy Community are applicable). Treaties of Accession of new Member States are disputable. Formally speaking they seem to be primary but substantively they only amend the founding treaties in their subject aspect... It is noteworthy that regulations of Primary Legislation are of higher order than regulations of Secondary Legislation.

Secondary Legislation is a repertory of regulations established by EU institutions. The basis for passing regulations of Secondary Legislation has been specified by articles of Primary Legislation, due to the transfer of autonomous rights of the Member States to European Communities. Additionally regulations of Secondary Legislation are issued in order to implement provisions deriving from Primary Legislation acts. Pursuing article 249 of Treaty Establishing the European Community,⁴⁸ authorised institutions may issue the following documents of secondary EU legislation:

- regulations – are directly binding and applicable to national legislation of all the Member States, without any need for any actions of national authorities;
- directives – specify objectives that should be achieved by the Member States, but leave to the national authorities the choice of form and methods of implementation. The Member States are bound to transpose provisions of directives to their national legislation;
- decisions – have an individual nature and are binding in its entirety upon those to whom they are addressed (it can be a specific institution but also a natural person). Decisions are directly

⁴⁸ Official Journal of the European Union, C 321 E of 29 December 2006.

implemented into the legislation of the Member States, without the need of any additional legal acts;

- recommendations and opinions – legal documents with no binding force, which are a specific sort of evaluations and propositions set forth by EU institutions.

In practice, next to the last category there has arisen a whole spectrum of various types of EU authorities resolutions which, even though they have no binding force, have become documented and – constantly – appear in practical functioning of EU institutions (which, intentionally or not, promote such “paper” approach to European institutionalisation). In such cases we are dealing with the “soft law”.

European Project Management Law, created in this book, even though it is an innovative concept, is not, apparently, an issue of special importance for the Communities legislation. On the contrary – it is easy to distinguish appropriate regulations on every level of this system.

We shall start by describing appropriate treaty regulations. By establishing the European Union, the Member States have defined the most important objectives, which when implemented should cause the reinforcement of the position of EU on the international scene and in structures of world economy. According to Article 2 of the Treaty on European Union, one of the basic objectives of EU is “to promote economic and social progress and a high level of employment and to achieve balanced and sustainable development, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty”.

We should now note that the economic and social Cohesion Policy, described in the treaty is on numerous occasions defined as regional or structural policy. This is due to the fact that undertakings aimed to achieve socio-economic cohesion are directed on the least developed

regions. And the major financial instruments supporting implementation of Cohesion Policy are resources from the Structural Funds.⁴⁹

According to rules of EU functioning its objectives are implemented within framework of three pillars. It is worth to note that only actions of the European Communities (I pillar) have legal consequences both in international and national legislation of the Member States. So we should agree that, so far,⁵⁰ conduction of active policy of constant socio-economic development is only possible within the frameworks of European Community.

Pursuant to Article 3 of the Treaty Establishing the European Community, fulfilment of tasks is conducted by, in particular, reinforcement of social and economic cohesion. Due to this regulation European Community gained a right to undertake actions concerning regional policy. Concretisation of Article 3 of the Treaty Establishing the European Community had its reflection in Title XVII of TEC – “Economic and Social Cohesion” (Articles 158-162). Social and economic Cohesion Policy of the Community is mainly based on undertakings aimed at reducing disparities between the levels of development of various regions of Member States and the backwardness of the least favoured regions or islands, including rural areas.⁵¹ We should underline that provisions of article 159 of TEC bind the Member States to coordinate and conduct their economic policy in such a way to attain and promote an overall harmonious development of an entire Community. Actions of the Member States are supported by the Community with accordance to the principle of subsidiarity. Instruments used by the Community to support regional development are the Structural Funds (European Regional Development Fund, European Social Fund), initiatives of the European Investment Bank and other existing financial instruments.⁵² An important element of a harmonious social and economic development is a proper natural environment protection policy and support of development of transport infrastructure. The Cohesion

49 See: Anastazja Gajda *Spójność gospodarcza i społeczna*, in: *Prawo Unii Europejskiej – prawo materialne i polityki*, edited by J. Barcz, Wydawnictwo Prawo i Praktyka Gospodarcza, Warszawa 2005, pg. 652.

50 Until the Treaty Establishing a Constitution for Europe has entered into force.

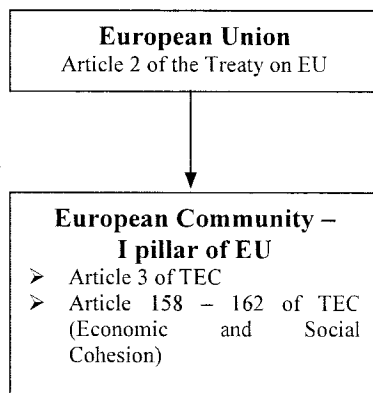
51 See article 158 of TEC.

52 See article 159 of TEC.

Fund, being an instrument supporting conduction of Cohesion Policy, created by the Community is a consequence of such policy.⁵³

Provisions of TEC not only define objectives and instruments supporting the socio-economic Cohesion Policy, but also specify the procedure of accepting acts of Secondary Legislation concerning the Structural Funds. According to Article 161 of the Treaty, regulations concerning priority tasks and organisation of the Structural Funds are defined by the Council unanimously after obtaining the approval of the European Parliament (the so called “consultation procedure”). Acting by the same procedure, provisions necessary to ensure effectiveness of the coordination of the Funds with one another and with other existing financial instruments of the EC. Other provisions of the EC legislation are defined in a codecision procedure by the EU Council and European Parliament.⁵⁴

The diagram below shows euro-treaty basis of European Project Management Law.



Presentation of secondary regulations of EC law have to be preceded by a presentation of the social and economic Cohesion Policy

53 See article 161 of TEC.

54 See article 251 of TEC.

reform, which resulted in the Structural Funds implementation system and the Cohesion Fund accepted for the years 2007-2013. After the analysis of rules of financial instruments supporting conduction of Cohesion Policy in 2000-2006 implementation, the Member States and the European Commission agreed that it is necessary to conduct a thorough reform of regional policy. Additional impulse which had an influence on the necessity of change of Cohesion Policy rules was the fact that in a new budgetary perspective for 2007-2013 the European Community will consist of 27 Member States.

In the year 2004 first work on the project of new Cohesion Policy implementation system has started. This system was designed to reflect strategic approach of the European Community and the Member States to regional policy. The following reforms have become indicators of the strategic approach of the European Union to the Cohesion Policy for 2007-2013,⁵⁵

- maintenance of continuity in direction of Cohesion Policy designated for all the Member States and maintenance of high level of budgetary resources for its implementation,⁵⁶
- concentration of financial resources designated for development of poorest regions, with special attention to the so called “New Member States”,
- concentration of actions on three new objectives: Convergence, Regional Competitiveness and Employment and European Territorial Cooperation,
- reduction of number of the Structural Funds,
- liquidation of the Community Initiatives,
- simplification of the rules of instruments supporting Cohesion Policy implementation.

55 See *Komentarz do aktów prawnych Wspólnot Europejskich w zakresie funduszy strukturalnych i Funduszu Spójności na lata 2007-2013*, Ministerstwo Rozwoju Regionalnego, Warszawa December 2006.

56 According to the adopted Financial Framework, resources for Cohesion Policy and employment increase for 2007-2013 will be 308 billion euros, which constitutes 35.6% of the entire EU budget (http://ec.europa.eu/budget/prior_future/fin_framework_en.htm).

During works on the reform of regional policy, the European Commission made a proposition to adopt a new package of Secondary Legislation, which will regulate the way of Cohesion Policy implementation. Consultations of the Member States with the European Community institutions have been finished in July, when the following regulations have been passed:

- 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;
- Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund and repealing Regulation (EC) No 1164/94;⁵⁷
- 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;⁵⁸
- 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;⁵⁹
- 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).⁶⁰

Principal premises of the Cohesion Policy reform have been reflected in the regulations of the above EC legal acts. Most important changes in the Structural Funds and the Cohesion Fund implementation system have been the following:

- Exclusion of funds supporting Agriculture and Fishery from the Cohesion Policy;
- Transfer of areas supported by the Community Initiatives to the three new Cohesion Policy objectives;

57 Official Journal of the European Union, L 210 of 31 July 2006, pg. 79.

58 Official Journal of the European Union, L 210 of 31 July 2006, pg. 1.

59 Official Journal of the European Union, L 210 of 31 July 2006, pg. 12.

60 Official Journal of the European Union, L 210 of 31 July 2006, pg. 19.

- Incorporation of the Cohesion Fund into the mainstream of Cohesion Policy programming;
- Passing of the principal that one operational programme is financed by one fund; this rule does not apply to the Cohesion Fund;
- Defining by the Member States detailed rules for the eligibility of expenditures;
- Creation of the European Groupings of Territorial Cooperation;
- Increase of the eligibility of expenditures rate to 85% for Member States whose average GDP per capita in 2001-2003 was lower than 85% of the EU average for 25 Member States.

In the current budgetary perspective for 2007-2013 a rule has been accepted that elementary provisions regulating the regional policy implementation system are defined in the 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, from now on called the General Regulation. Detailed provisions concerning, *inter alia* management and control systems, proceedings in case of incorrectness, financial corrections and electronic data exchange have been defined by the Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of the Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund.⁶¹ Provisions defined by the above regulations are the essential regulations for the institutions participating in the implementations of the Structural Funds and the Cohesion Fund and for future beneficiaries.

In this place we should point out that in the budgetary perspective for 2000-2006 (in case of Poland, for 2004-2006) other general

61 Official Journal of the European Union L 371 of 27.12.2006, pg. 1.

provisions concerning the Structural Funds⁶² and the Cohesion Fund⁶³ were in force. Additionally, the European Commission was obligated to pass detailed legal regulations concerning particularly operational programmes management and control systems, informing about incorrectness, eligibility of expenditures, financial corrections and also obligations concerning information and publicity of EU projects. We should underline that functioning of various provisions concerning the Structural Funds and the Cohesion Fund was significantly hindering the coordination of actions within the policy framework.

Provisions of the Council Regulation (EC) 1083/2006 define, in the first place, elementary rules of planning, programming and implementation of the Structural Funds and the Cohesion Fund in particular Member States. The process of Cohesion Policy implementation planning is based on the Community strategic directions for cohesion (European Community level) and on national strategic frameworks of reference (Member States level). On the other hand, programming and implementation of EU funds is conducted on the Member States level through operational programmes.

We should underline that the Council Regulation (EC) No 1083/2006 also includes regulations concerning institutions that each Member State is obligated to establish in connection with the implementation of operational programmes. Each programme has to have an established:

- Managing Authority – responsible for management and implementation of operational programme in accordance with the Community rules (project selection, expenditures verification and project implementation control),
- Certifying Authority – responsible for certification of correctness of expenditures incurred within the framework of particular operational programmes,

62 Council Regulation (EC) no 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds, Official Journal of the European Union L 161 of 26.06.1999, pg. 1

63 Council Regulation (EC) no 1164/1994 of 16 May 1994 establishing the Cohesion Fund, Official Journal of the European Union L 130 of 25.05.1994, pg. 1.

- Audit Institution – responsible for control in order to confirm the effectiveness of functioning of management and control systems of each operational programme and to control correct project implementation.

Presented provisions of the General Regulation concern essential issues which influence the implementation of projects funded by structural resources.

Package of regulations prepared by the European Commission also regulates detailed rules for particular financial instruments supporting Cohesion Policy, i.e. the European Social Fund, the European Regional Development Fund and Cohesion Fund.

Introduction of coherent rules concerning the functioning of all regional policy supporting funds has allowed a limitation of detailed provisions concerning the Cohesion Fund implementation. On 11 July 2006 the Council of the European Union passed a regulation No 1084/2006 establishing a Cohesion Fund and repealing Regulation No 1164/94. It should be underlined that financial resources of the Cohesion Fund can be only distributed to projects from the field of environment protection or the support of Trans-European Transport Networks (TEN-T)

Another act of the Community law which specifies general rules concerning interventions of particular funds is the 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. Provisions of this regulation, in the first place, define areas in which a support from a fund can be granted and the rules concerning eligibility of expenditures of the European Regional Development Fund. Range of the support from the fund is very broad and includes following actions:

- Production investments, which are based on the support for small and medium companies and, by that, contribute to creation of new, stable workplaces.
- Infrastructure investments, concerning transport, education and healthcare as well,

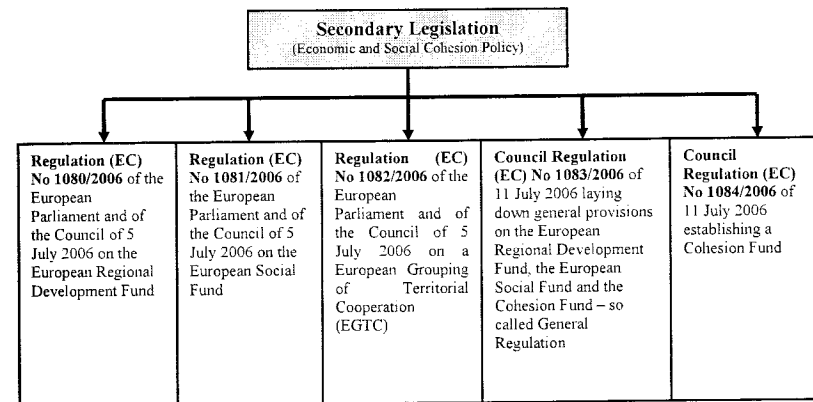
- Technical assistance, designated for entities that are implementing operational programmes financed by EU.

Additionally, the Regulation No 1080/2006 defines types of expenditures that can be eligible for support within the framework of the European Regional Development Fund and detailed rules concerning the European Territorial Cooperation objective.

Another element of the Cohesion Policy for 2007-2013 legal implementation is the Regulation No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund. Similar to the regulation concerning ERDF, provisions of regulation No 1081/2006 define, i.a. tasks that will be supported by the European Social Fund and detailed rules concerning eligibility of expenditures.

Package of regulations concerning Cohesion Policy, adopted by EC institutions introduces a so far unknown to the Member States legal institution – the European Groupings of Territorial Cooperation. Pursuing the 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) it is necessary to undertake actions which will reduce problems in conduction of actions related to territorial cooperation of particular countries. Establishing of EGTC, by the Community law, is an example of application of Article 159 of TEC provisions, which allow EC to conduct special actions in order to achieve social, economic and territorial cohesion. EGTC are new legal instruments established to integrate and improve territorial cooperation between partners from different Member States. Grouping will have a legal status which will allow EGTC to use resources of the Community in order to implement integrated territorial cooperation projects.

Diagram below shows a basic dimension of EU Secondary Legislation applicable to European Project Management.



The indicator of strategic approach of EC, resolving from the provisions of the General Regulation is an obligation of the Council of the European Union to adopt strategic cohesion directions of the Community.⁶⁴ These directions define priority objectives of Cohesion Policy and indicate economic areas which require additional financial resources in 2007-2013. Objectives presented in said directions are the most important guidelines for preparation of national rules of planning and programming of EU funds use. We should underline, that a deadline for adoption of guidelines by the Council of the European Union is an important issue for the Member States. This is due to the fact that on a date of adoption of guidelines, the Member States have 5 months to prepare National Strategic Reference Frameworks (NSRF). And so, in this “soft way” we go to a level of national legislation...

According to the adopted European Community finance system, management of resources designated for Cohesion Policy implementation is based on a distribution of obligations between the European Commission and the Member States (rule of “shared management”).⁶⁵ Adoption of such solution results in an assignment of responsibility for appropriate EC budget resources implementation to the Member States. Due to that, EU financial resources management is conducted on a basis of the Community and national legislation.

⁶⁴ See article 25 of the Council Regulation (EC) No 1083/2006.

⁶⁵ See article 53 of the Council Regulation (EC, EURATOM) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities.

When we look at national legal acts aspects concerning implementation of EU resources we can identify many rules regulating laws and obligations of subjects that benefit from the Structural Funds or the Cohesion Fund. In spite of a large number of national regulations concerning in a direct or indirect way EU Cohesion Policy implementation, each subject involved in the implementation of EU resources should know the following legal acts:

- Act of 30 June 2005 on Public Finance (Journal of Laws No 249, item 2104) – defining manner of public resources management. According to its provisions, EU resources are treated as income of the national budget (with an exception of resources designated for implementation of pre-access programmes, programmes financed within frameworks of the European Territorial Cooperation objective and European Neighbourhood and Partnership Instrument);
- Act of 6 December 2006 on the principles of pursuing a policy of development (Journal of Laws No 227, item 1658) defining, i.a. manner of implementation of EU and national resources designated for structural policy;
- Act of 29 January 2004 – Public Procurement Law (Journal of Laws of 2006 No 164, item 1163) – regulating rules of tenders financed from public resources, including resources derived from EC budget;
- Act of 17 December 2004 on liability for violating discipline of public finance (Journal of Laws of 2005 No 14, item 114) – indicating procedures in case of an inappropriate expenditure or management of EU resources, which is being treated as a breach of public finance discipline;
- Act of 10 September 1999 – Treasury Penal Code (Journal of Laws No 83, item 930) – defining penal sanctions for, *inter alia* acquisition or illegal use of a subsidy. We should underline that EU resources are distributed to the beneficiaries directly, as a subsidy;
- Act of 17 June 1966 on execution proceedings in administration (consolidated version, Journal of Laws of 2005 No 229, item

1954) – defining precisely deadlines and procedures for vindication of inappropriately spent EC resources;

- Act of 5 June 1998, on Voivodship Government (Journal of Laws of 2001 No 142, item 1590, with amendments) – which regulates, in particular, objectives of voivodship governments in relation to EU resources management.

Due to the distribution of over 67 billion euros to Poland for implementation of EC Cohesion Policy for 2007-2013, it was necessary to establish national instruments for appropriate and effective implementation of resources from the Structural Funds and the Cohesion Fund. We should also underline that vesting of strategic importance to the EC Cohesion Policy has to find its reflection in national legislation of the Member States. The Act on the principles of pursuing a policy of development was passed by the parliament on 6 December 2006.

In public dispute, there are some who compare the Act on the principles of pursuing a policy of development to the act of 20 April 2004 on National Development Plan (NDP),⁶⁶ which specifies legal frameworks of structural resources implementation in 2004-2006. Essential similarities of these two acts are constituted by regulations concerning management of programmes financed by Structural Funds and Cohesion Fund. Still we can definitely find more differences than similarities. Compared to provisions of the act on NDP, regulations of the Act on the principles of pursuing a policy of development apply to all public resources designated for social, economic and territorial development of Poland.

Regulations of the Act have been divided into a general part and a detailed part. General provisions specify a definition of development policy and define essential areas it concerns. Detailed part, on the other hand, regulates rules concerning conception and implementation of regional policy instruments.

Another element that shapes the implementation of regional development policy is a Voivodship development strategy, prepared in accordance with the Act of 5 June 1998 on Voivodship local govern-

66 "Journal of Laws" no 116, item 1206.

ment.⁶⁷ Voivodship Sejm is an institution responsible for preparation of the strategy.

The Podlaskie Voivodship Development Strategy can be a practical example of the implementation of regulations of this act.⁶⁸ This document, adopted by the Voivodship Sejm, defines strategic objectives of the Podlaskie Voivodship development in the areas of social and economic undertakings. This strategy also defines partial objectives and actions related to their implementation. An interesting element of the Podlaskie Voivodship Strategy is its time frame, defined till the year 2020.

Operational programmes have been established in order to implement particular development strategies. They define, first of all, directions of expenditures of public resources, amounts designated for programme implementation and operational programme implementation system. A basic division made by this act, distinguishing sector strategies and voivodship development strategies, has been incorporated to the field of operational programme management. Implementation of tasks specified by the National Development Strategy is conducted by national and regional operational programmes. Voivodship development strategy however is implemented only within the framework of regional operational programme.

67 "Journal of Laws", of 2001 no 142, item 1590, with amendments.

68 Informational website of Podlaskie Voivodship Marshal's Office, http://www.wrotapodlasia.pl/pl/gospodarka/polityka_regionalna/strategia_rozwoju/

INSTITUTIONAL FRAMEWORK OF EUROPEAN PROJECT MANAGEMENT

Each public undertaking becomes reality due to actions, but subjectively it is mostly based on institutions. Also European Project Management is based on a few levels of institutions and a maximum limit to their numbers is set by a political connection between the Member States and EU institutions (mostly Council of Europe), while a minimal number of such institutions is defined by a level of direct contact with a final beneficiary of the projects. What lies between these limits can be defined as an institutional system of European Project Management Law.

When Poland accessed the European Union, a role of EU institutions has developed from a coordination-political to the over-national and substantial form. In other words, their existence in the functioning of Polish public domain is noticeable in both *de facto* and *de iure* sense.

Regional policy is of great importance here, because due to the attractiveness of its financial instruments it "blazes a trail" for other policies concerning the awareness of the role of EU institutions in their implementation and adoption of EU rules, methodologies and the Community approach.

EU institutions⁶⁹ are by definition co-dependent in their actions and regardless of level of involvement, actual or just potential depend-

69 EU institutions are defined in various ways. Some commentators represent a formalist position and claim that such institutions include only authorities appointed to the EU by treaty regulations and exclude institutions of the Community (the "narrower sense" approach). Others state that the rule of consistent institutional frameworks – defined by the article 3 of the Treaty on the European Union – is a reason to include, in addition to the authorities appointed to EU by establishing and amending the treaties, central institutions of the Community (the moderate approach). Next concept of a doctrine assumes that all the institutions regulated by the European Community legislation are institutions of the European Union

ence we can assume that all of them (at least all of the main institutions – defined in the treaties) are objectively appropriate for particular policies, including development policy.

In practice, however, this looks a little different, due to the significant disproportions in the sphere of interest of each EU institution. While the European Council is satisfied with creating strategic documents (e.g. the Lisbon Strategy),⁷⁰ role of the Council of the European Union and the European Parliament is of greater importance, because these institutions (and, partially, also the European Commission) generate the Secondary Legislation of the Community.⁷¹ Of course we cannot forget about the role of advisory institutions or the administration of justice, which automatically (e.g. the Economic and Social Committee or the Committee of the Regions) or in disputable matters (e.g. the European Court) conduct appropriate actions. This also refers to the Court of Auditors. The most significant role, however, is that of the European Commission, and comparable role, but not of the same importance, is that of the Committee of the Regions, particularly its Directorate General for Regional Policy⁷² administrated by Danuta Hübner – the Commissioner for EU Regional Policy.

On the European level, the European Commission approves operational programmes, manages financial resources, negotiates the EU budget, controls, directly or by other institutions, expenditure of the European resources. In addition to that it also supervises implementation of the regulations of treaties and decisions passed by the Community institutions and its standard obligation is to administer the Eu-

(the “broader sense” approach). Finally, according to the functional approach, institutions of EU consist of EU treaty organisations, EU institutions established on a basis of the Secondary Legislation and (!) national authorities of the Member States, which pursuant to the rule of subsidiarity or in consequence of the ad hoc transfer of competence realise objectives of the EU task. This last approach, even though not flawless, seems to be the most accurate one for the purpose of this book and due to its specificity. See: M. Perkowski, System instytucjonalny Unii Europejskiej, in.: *Integracja europejska. Wprowadzenie*, edited by M. Perkowski, Wyd. Prawnicze LexisNexis, Warszawa 2003, pg. 58.

70 More about this topic, see: *Strategia Lizbońska. Koncepcja czy ideał reformy Unii Europejskiej?*, edited by M. Perkowski, Wydaw. Stowarzyszenie Towarzystwo Amicus, Białystok 2005.

71 E.g. previously quoted regulations concerning the Structural Funds.

72 The mission of the Directorate General for Regional Policy is to reinforce economic, social and territorial cohesion, by reducing disproportions in level of development between regions. http://ec.europa.eu/dgs/regional_policy/index_en.htm

ropean Communities. The Committee of the Regions⁷³ in the aspect of funds in regional policy is probably the most competent institution. Probably, there is no institution more competent than the Committee.

Funds do not exist as separate institutions (e.g. the International Monetary Fund). Important role in this area belongs to the national agencies (assembled in, particularly, COREPER)⁷⁴ and to the Commission. These institutions constantly strive to ensure as good representation of national interests as possible.

So far the line between EU and national (Polish) level is clear. Contact is mostly of bilateral nature and on governmental level. Activity of regions in relations with the Commission is right now being established. If matters are as such, then the shown difference is clearly noticeable only when regions will establish their individual cooperation with the Commission, on a level acceptable for them. Then we will be able to confirm that the line between EU and the States has disappeared...

So the “clear” transition from the EU to a national level – according to facts – should be also emphasised in this book. Regardless of that, our intention is to clearly illustrate for the reader that the EU level of European Project Management Law has a specific form (which requires a lot of promotion),⁷⁵ significant even from a local perspective!

73 Established in 1994 by the Treaty on European Union (Maastricht), is an advisory institution consisting of delegates of regional and local authorities in Europe. It enables them to influence a direction of EU policy and watches over observance of the regional and local identity and prerogatives. Members of the Committee are elected from politicians of city districts or regions and represent a wide spectrum of actions conducted by local or regional authorities in the EU. The role of the Committee of the Regions is to present a stance, of local and regional authorities, concerning EU legislations. The committee conducts this task by issuing opinions about propositions of the Commission. The Commission and the Council are obligated to consult the Committee of the Regions in matters directly related to local and regional authorities, but they also can communicate with the Committee when they find it appropriate. On its side, the Committee can pass opinions by its own initiative and present them to the Commission, Council or Parliament. Currently, the Committee consists of 344 members from 27 Member States. See: A. Z. Nowak, D. Milczarek, *Europeistyka w zarysie*, Polskie Wydawnictwo Ekonomiczne, Warszawa 2006, pg. 73-74.

74 Or, the Committee of Permanent Representatives, consisting of ambassadors of the Member States accredited to the European Communities, and their deputies. Its task is to prepare sessions of the Council of the European Union. It can also make certain procedural decisions and establish working groups. See: A. Z. Nowak, D. Milczarek, *Europeistyka...* op. cit., pg. 63.

75 E.g. it is puzzling that people stubbornly suing to the Supreme Administrative Court (and formerly to the Voivodship Administrative Court) for not granting of aid funds, have been, for a

The national level, as shown above, consists of:

- Government and its affiliates (agencies etc.),
 - Voivodship Governments and their specialised institutions,
 - Appropriate control institutions...
- ...and here we can already find a beneficiary.

Passing on to arranging of specified premises of the management of operational programmes in 2007-2013 we have to mention the National Strategic Reference Framework implementation system, which includes elements arising from the regulation of the Community legislation.⁷⁶ It defines a following distinction of tasks between institutions participating in the implementation of operational programmes:⁷⁷

- Managing Authorities (MA) are responsible for preparation and implementation of operational programmes. Ministry of Regional Development is a governing authority for national programmes and regional operational programmes are governed by voivodship administration.
- Intermediate Bodies (IB) execute tasks, entrusted to them by Managing Authorities, related to implementation of each of priorities of the operational programmes. Passing of responsibilities to the IB will be conducted on the basis of a written inter-institutional agreement, with MA still fully responsible for appropriate implementation of the operational programme. Obligations passed on IB will be predominantly concerning the process of project selection, payment of liabilities and for conducting of control procedures.
- Second Level Intermediate Bodies (IB2) perform specific functions of Intermediate Bodies, in cases when implementation of particular actions of operational programme requires it. Task

entrusted to IB2 may be related to, *inter alia*, project selection, control and verification of payment applications of beneficiary.

- Certifying Authority (CA) is responsible for certification for the European Commission, of the eligibility of expenditures related to particular operational programmes. Function of the CA has been performed by the Minister of Regional Development. In case of regional operational programmes, tasks concerning certification of expenditures will be passed on to appropriate voivodship governments, on the basis of a written agreement with CA.⁷⁸
- Audit Institution (AI) conducts audits of implementation systems of operational programmes (audits of institutions involved in the implementation, e.g. MA or IB) and audits of selected operations (control operations concerning expenditures incurred by beneficiaries). Actions of the AI are aimed at confirming an effective functioning of management and control systems of particular operational programmes and of appropriate implementation of projects.
- Ministry of Finance will be performing a function of an institution responsible for receiving of financial resources from the European Commission. This is due to, i.a. the fact that pursuant to the Act on Public Finance, resources originating from EU funds are qualified as part of income of the national budget.
- According to NSRF, implementation of strategic objectives within framework of Community Cohesion Policy will be conducted on basis of 16 regional programmes (implemented on voivodship level) and 5 national programmes (managed by central administration).

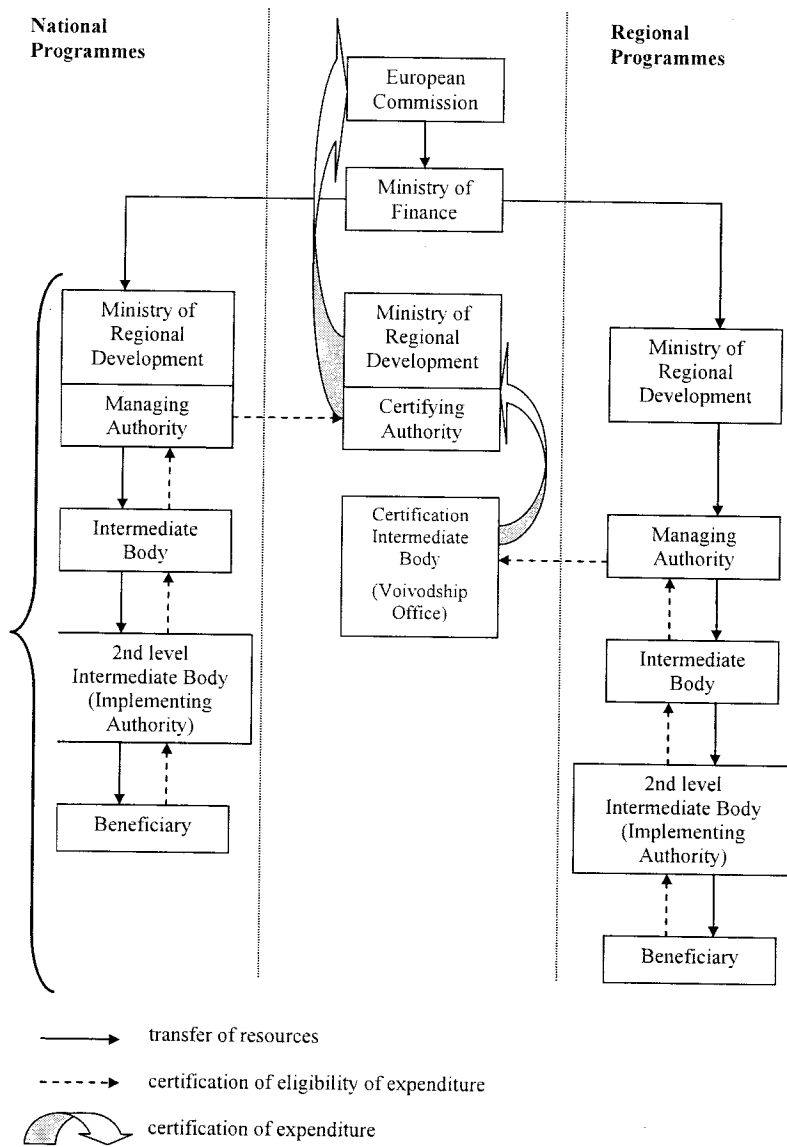
long time, told that this is not an administrative decision and a complaint is out of the question. They also did not try to file individual complaints to the Trial Court where obviously such case would have at least been examined. As explained in Chapter III of this book, only the recent decisions of the Supreme Administrative Court have changed this situation in favour of the plaintiffs.

76 See article 59 – 62 of the Council Regulation (EC) no 1083/2006.

77 See Diagram No 1 – Implementation of NSRF.

78 On 4 July 2007, Minister of Regional Development and voivods signed an agreement on transfer of certification related tasks – see: <http://www.mrr.gov.pl/Aktualnosci/podpisanie+certyfikacje.htm>

Diagram No 1
Implementation of National Strategic Reference Framework



Source: own elaboration

The following bodies are expected to be established within the system of implementation of operational programmes:

- 21 managing authorities,
- 5 institutions for national operational programmes in the Ministry of Regional Development and 16 for regional operational programmes,
- 36 intermediate bodies, including 32 intermediate bodies for management of national operational programmes and 4 for regional operational programmes.
- The same organisational unit may occasionally play a role of intermediate body for several programmes e.g. the Ministry of Science and Higher Education, the European Funds Department is an intermediate body for the Operational Programme Infrastructure and Environment, the Operational Programme Human Capital, as well as the Operational Programme Innovative Economy (acts as three different intermediate bodies).
- 65 implementing authorities, including 56 implementing authorities for national operational programmes and 9 for regional operational programmes.

The Act on the principles of pursuing a policy of development determines the institutional system of operational programmes implementation, which corresponds to the resolutions adopted by the EU law. The Managing Authority remains responsible for accurate implementation of the operational programme. The role of Managing Authority, regarding national operational programme, can be taken by an appropriate minister or minister competent for regional development. As far as regional operational programme is concerned, a voivodship board is responsible.

The diagram below represents the implementation mechanisms of particular parts of regional development strategies and institutional structures.

Diagram No 2

Document	Implementation	Implementing body (Managing Authority)
National Development Strategy	<ul style="list-style-type: none"> • National Operational Programme • Regional Operational Programme 	<ul style="list-style-type: none"> • Minister competent for Regional Development • Minister competent for particular domain development • Voivodship board
Sectoral Strategy	<ul style="list-style-type: none"> • National Operational Programme • Regional Operational Programme 	<ul style="list-style-type: none"> • Minister competent for Regional Development • Minister competent for particular domain development • Voivodship board
Voivodship Development Strategy	Regional Operational Programme	Voivodship board

Source: own elaboration

Managing Authority may transfer some of its competences in written to Intermediate Bodies. But even doing so, Managing Authority is still fully responsible of conducting its tasks correctly. It is worth noting that according to the law, the role of Intermediate Body may be handed over exclusively to a public administration unit or other public finance unit. However it is possible to reassign technical process concerning implementation of an operational programme to institutions not subordinated to the public finance sector. Such an option implies application of public procurement procedure. It should be stressed that public administration units or foundations, which were established exclusively by the National Budget, are excused by the law from the obligation to apply public procurement procedure.

The provisions of the Act on the principles of pursuing a policy of development also determine appeal procedure against the decision of applications appraisal.⁷⁹ As appeal procedure is made in two instances pursuant to the administrative procedure, one may submit a pro-

79 Art. 30 of the Act on the principles of pursuing a policy of development.

test against the appraisal,⁸⁰ and in case of negative protest examination may subsequently submit for reconsideration of the matter.⁸¹ In this case legislator clearly deserves a praise as the rule seems the proper measure for the pathologies described in the first part... Unfortunately further paragraphs of the Act dissolve doubts related to application of administrative regulations as far implementation of operational programmes is concerned, particularly project selection procedures in a way excluding application of the Code of Administrative Procedure regarding applying for and granting financial support from the National Budget or foreign aid resources.⁸² Nonetheless it ought to be highlighted that this regulation concerns financing of the projects falling into financial perspective 2007-2013.

But there are optimistic news too. The experience earned by the public administration during managing of the structural funds has allowed to introduce into the Act some provisions providing appropriate spending of the EU and budgetary resources. A visible sign of this new approach is above all the Article 33 of the Act, determining the persons excluded from submitting for financial resources in the framework of the operational programme. That is how rejection of the applications submitted by dishonest beneficiaries is made possible at the early stage of selection of projects.

While writing about the institutional system and the possibility to appeal against the decision not to grant the resources for a particular project, the system of control of spending the European resources should be referred. Pursuant to the Treaty Establishing the European Community,⁸³ the European Commission and the Member States shall provide appropriate utilisation of the resources derived from the EU budget, according to the rules of “[...] sound financial management”. This in fact does not mean that the obligation are split equally between EU institutions and the Member States. The greater share of responsibility for proper management of resources derived from EU relies on

80 Art. 30 (3) of the Act on the principles of pursuing a policy of development.

81 Art. 30 (4) of the Act on the principles of pursuing a policy of development.

82 Art. 37 of the Act on the principles of pursuing a policy of development.

83 Art. 274 of the Treaty establishing the European Community (TEC).

the Member State and the European Commission may apply various financial mechanisms to make it to undertake suitable measures.

The legal basis for the system of control of appropriate expenditure of the Structural Funds and the Cohesion Fund are both Community laws, determining general rules for control and audit, and legislation of particular Member States. In accordance with present Polish system of development policy implementation, the Minister of Regional Development issues guidelines⁸⁴ for methods of control of particular operational programmes.

As far as EU legislation is concerned, in line with the guidelines of the Minister of Regional Development, the control of implementation of operational programmes is executed through the following processes:

- control conducted by managing authority,
- control activities and audit performed by audit institution.

Pursuant to the General Regulation, the managing authority is responsible for sound management of resources derived from the EU budget. The first element of the managing authority control is to verify whether the projects selected for co-financing meet the requirements of the EU and national legislation. The second element of control at the level of operational programme is to check whether the goods or services co-financed by the EU resources were in fact provided and the expenditures presented by the beneficiaries were actually incurred. Verification activities for the purpose of management consist predominantly in verification of documentation submitted by beneficiaries and project on site checks. On the other hand the control performed by audit institutions consists primarily in:

- providing conduct of audits to verify efficiency of functioning of operational programme management and control system (system audit),
- providing conduct of sample audits of operations to verify declared expenditure. The control activities consist in selection of

a project sample and control of expenditure incurred by beneficiaries.

The responsibility of the audit institution in Poland was granted to the General Inspector of Fiscal Control, Undersecretary of State in the Ministry of Finance. His tasks related to audit of the EU resources are performed by fiscal control and internal audit services.

The powers to control the projects co-financed by the EU funds and the resources of national institutions engaged in the implementation process were granted also to the institutions and services of the European Communities. The checks at the EU level are performed by:

- the European Commission auditors,
- the European Court of Auditors (ECA),
- the European Anti-Fraud Office (OLAF).

The analysis of the state of things allows to form a certain institutional model of management law for projects co-financed by the European funds.

Even though the elements of particular funds are in competence of different ministries, the most important is finally not which ministry is in charge of the resources, but what the managing ministry exactly does with resource management...

So far as managing authority is concerned, it is not important what the ministry is going to be like in a year or two. Anyhow, it would be the managing authority after all. That is its function in the system.

The universal model should be strongly encouraged, since in Poland (just like in majority of the EU Member States) when the governments changeover or their structure alters, and the model seems beneficial, for it makes the order independent. Otherwise chaos would prevail...

84 See art. 35 (3) (9) of the Law of 6 December 2006 on the principles of pursuing a policy of development.

OBJECTIVE ASPECT OF EUROPEAN PROJECT MANAGEMENT LAW

The content of all Community and national legislation related to implementation of the EU funds might cause a headache. This chapter is concerned with the most important findings of the legal regulations regarding the structural funds and the Cohesion Fund, taking into consideration the following processes: planning, programming and financing cohesion policy. Moreover the legislation concerning selection of the projects to be financed will be presented here, as well as control, evaluation and tasks related to visibility and promotion obligations.

Designing the process of EU resources implementation, first of all, one must provide an analysis of current necessities and determine the objectives to be achieved. The next step ought to be determining resources to be spent for the purpose of implementation of the objectives, then assigning possible risks.

This short presentation of the project planning process can be applied on a large scale too, while distributing 67 billion euros Poland obtained for Cohesion Policy, and on a small scale, implementing a project aimed at purchasing some devices for enhancing entrepreneur's competitiveness. Apart from the value of the project one must plan the activities to implement it correctly.

In case of the EU regional policy, this process was defined by the EU secondary legislation and depicts the strategic approach of the European Community to cohesion policy. The first element containing planning characteristics of whole cohesion policy is long-term programming of the structural funds and the Cohesion Fund implementation and determination of the objectives to be implemented within the next seven years, e.g. between 2007 and 2013.

The Council Regulation (EC) No 1083/2006 defines the following objectives for Cohesion Policy and the criteria for receiving the EU funds support by particular countries:

- Convergence – Objective, which is aimed at fostering the development process of the least-developed Member States and regions, particularly by improving the employment conditions, investments in physical and human resources, development of knowledge-based society and protection and improvement of natural environment.
- Regional Competitiveness and Employment – Objective is primarily aimed at improving the competitiveness and attractiveness of regions and employment. The implementation of the objective should be achieved through increase and improvement of quality of investment into human capital, investments in innovative solutions and entrepreneurship, and also promoting of the idea of knowledge-based society and development of social integration friendly markets.
- European Territorial Cooperation – Objective being principally focused on strengthening cross-border cooperation through various joint local and regional initiatives and strengthening international and interregional cooperation.

Scheme No 1

Objectives	Funds supporting the objective implementation	Resources for implementation purposes
Objective Convergence	ERDF, ESF, Cohesion Fund	251.1 billion euros
Objective Regional competitiveness and employment	ERDF, ESF	49.1 billion euros
Objective European territorial cooperation	ERDF	7.7 billion euros

Source: own elaboration according to Commentary to European Communities legislation related to the structural funds and the Cohesion Fund for 2007–2013, the Ministry of Regional Development, Warsaw, December 2006.

The General Regulation also determines the basis of granting financial support within Cohesion Policy implementation. The majority of rules of the previous 2000-2006 budgetary programming period remained, though some were slightly modified: complementarity, cohesion, partnership, additionally and programming. However some of the rules result from the reform of the EU structural policy and its objectives reference to the renewed Lisbon Strategy (earmarking),⁸⁵ and reference between a Member State obligations with the amount of the granted financial resources (proportionality).⁸⁶

The main element of the cohesion planning process was adopting the Community strategic guidelines on cohesion⁸⁷ by the Council of the European Union. The guidelines determine economic areas requiring additional support within the period 2007-2013. The objectives presented in the guidelines must be transferred into national planning and programming rules for implementation of the EU funds. Regarding the constant social and economic change in particular Member State the EU legislation allow reviewing the Community guidelines. As a result of the review the Member State is not however obligated to change national programme documents.

On 6 October 2006 the Council of the European Union adopted decision on the Community strategic guidelines on cohesion (2006/702/EC),⁸⁸ which eventually allowed Member States to negotiate national strategic reference framework and subsequent operational programmes with the Council of the European Union. It should be stressed that the date of adoption of the guidelines is relevant for the Member States as they should draft their programme documents. In line with the Council Regulation (EC) No 1083/2006,⁸⁹ each Member State should provide the European Commission with national strategic reference framework within five months since the date of adoption of the guidelines.

According to the guidelines, which are addressing the renewed Lisbon Strategy⁹⁰ numerous times, the programmes co-financed by the Cohesion Policy should seek to target the priorities on three goals:⁹¹

1. improving the attractiveness of Member States, regions and cities by improving accessibility, ensuring adequate quality and level of services, and preserving their environmental potential;
2. encouraging innovation, entrepreneurship and the growth of the knowledge economy by research and innovation capacities, including new information and communication technologies;
3. creating more and better jobs by attracting more people into employment entrepreneurial activity, improving adaptability of workers and enterprises and increasing investment in human capital.

The Community strategic guidelines on cohesion can be regarded as a key element of new approach architecture to 2007-2013 regional policy, being a kind of linkage between the regulations concerning the structural funds and the Cohesion Fund and the Member States operational programmes.

Planning measures for taking advantage of the structural funds or the Cohesion Fund is also conducted at the level of Member State. Preparation of strategic goals of cohesion policy implementation regarding social and economic conditions of a Member State is done through national strategic reference framework (NSRF).

Pursuant to the 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, a Member State eligible for funding from the Structural Funds under the Convergence and Regional competitiveness and employment objectives should develop national strategic reference framework. This document would pro-

85 Art. 9 (3) of the Council Regulation (EC) No 1083/2006.

86 Art. 13 of the Council Regulation (EC) No 1083/2006.

87 Art. 25 of the Council Regulation (EC) N. 1083/2006.

88 OJ of EU L 291 of 21 October 2006, pg. 11.

89 See art. 28 of the Council Regulation (EC) No 1083/2006.

90 *Working together for growth and jobs. A new start for the Lisbon Strategy*, communication to the Spring European Council of 2 February 2005, COM(2005) 24.

91 The official website of the European Union, http://ec.europa.eu/regional_policy/sources/docoffic/2007/osc/index_en.htm

vide the consistency between the funds implantation directions in the Member States with the Community strategic guidelines. NSRF constitute a basic document for planning the cohesion policy for the Member States, which also determines implementation of the EU resources through operational programmes. In case a Member State takes advantage of the financial instruments of the European territorial cooperation objective (ETC), NSRF also shape the rules for implementation of programmes within the objective.

It should be said that NSRF need to be partially accepted by the European Commission. The European Commission on accepting the document takes an active part in programming the structural policy priorities. Examination of the Community and national documents describing EU resources management can be concluded in finding that NSRF are a kind of link between the Community priority goals with Member State activities directions.

NSRF date, according to the regulation, should contain first of all the following elements:

- an analysis of development disparities, weaknesses and potential, taking into account trends in the European and world economy;
- the State and particular regions development strategy, with relevance to socio-economic and territorial conditions, developed as an effect of the analysis outcomes;
- the list of operational programmes (only for the Convergence and Regional competitiveness and employment objectives);
- the indicative annual allocation from each Fund by particular operational programme.

Member States eligible for the Cohesion Fund under the Convergence objective have to include in NSRF additional information regarding e.g. the activities intended to enhance administration efficiency and the total amount of financial resources allocated for the European Agricultural Fund for Rural Development (EAFRD) and the European Fisheries Fund.

Poland was one of the first Member States to present NSRF to be accepted by the European Commission. On 29 November 2006 the Council of Ministers adopted “*The 2007-2013 National Strategic Reference Framework in support of growth and jobs*” (*National Cohesion Strategy*). The consultations of the document with the Commission services were concluded in May 2007. At the conference “Strong Regions – Building Bridges for Europe” held in Hof, Bavaria, between 9 and 10 May, the European Commission officially proclaimed that the NSRF had been accepted.⁹² That is how Poland entered a group of 10 Member States that have reached an agreement with the European Commission in respect of the implementation of priority goals under Cohesion Policy.

The strategic goal of the National Cohesion Strategy is “[...] creation of the conditions for the growth of competitiveness of Polish knowledge based economy and entrepreneurship assuring an increase in the employment and in the level of social, economic and territorial cohesion”.⁹³ Designing each action requires determining immediate (horizontal) objectives, which would facilitate implementation of strategic goal. The Polish government has identified six horizontal objectives, referring to the priorities of the Community strategic guidelines on cohesion:⁹⁴

1. Improving the functioning standard of public institutions and development of partnership mechanisms;
2. Improving the human capital quality and enhancing social cohesion;
3. Establishment and modernisation of technical and social infrastructure crucial for better competitiveness of Poland;
4. Improving the competitiveness and innovativeness of enterprises, including in particular the manufacturing sector with high added value and development of the services sector;

92 The Polish official website on the Structural Funds <http://www.fundusze-strukturalne.gov.pl/Wiadomosci/Strona+glowna/polskawczolowce.htm>

93 The 2007-2013 National Strategic Reference Framework in support of growth and jobs – National Cohesion Strategy, the Ministry of Regional Development, May 2007, pg. 42.

94 See the official website of the Ministry of Regional Development <http://www.mrr.gov.pl/Aktualnosci/Polska+w+czolowce+negocjacji.htm>

5. Increase of the competitiveness of Polish regions and preventing their social, economic and territorial marginalisation;
6. Balancing growth opportunities and supporting structural changes on rural areas.

According to NSRF the implementation of the horizontal objective and immediate objectives could be achieved through 16 regional programmes (implemented at the voivodship level) and 5 national programmes (managed by the central administration).

Scheme No 2

Operational programme	Instrument of financing	European Community resources
Infrastructure and Environment	ERDF and Cohesion Fund	27.9 billion euros (41.9% of total allocation)
Innovative Economy	ERDF	16.6 billion euros (24.9% of total allocation)
Human Capital	ESF	9.7 billion euros (14.6% of total allocation)
16 Regional Operational Programmes	ERDF	8.3 billion euros (12.4% of total allocation)
Development of Eastern Poland	ERDF	2.3 billion euros (3.4% of total allocation)
Technical Assistance	ERDF	0.5 billion euros (0.8% of total allocation)
European Territorial Cooperation	ERDF	0.7 billion euros

Source: own elaboration according to NSRF

The next important element of NSRF is appointment of institutional system for Cohesion Policy implementation. The coordination of Cohesion Policy implementation for the Convergence and European Territorial Cooperation objectives is realised by the minister competent for regional development. Because of exclusion of activities to support rural areas development and fishery policy from cohesion policy it appeared necessary to introduce mechanisms of coordination between those instruments and the structural funds. The provisions of the General Regulation⁹⁵ prove that obligation and constitute, for the

95 Art. 27 (4) (g) of the Council Regulation (EC) No 1083/2006.

Member States under the Cohesion Fund, compulsory coordination of activities between operational programmes and assistance provided under the European Agricultural Fund for Rural Development, the European Fisheries Fund as well as the European Investment Bank. The tasks related to coordination of activities will be performed in Poland by the Coordination Committee under supervision of the minister competent for regional development. The Committee shall consist of representatives of ministers engaged in the process of particular operational programmes implementation, institutions managing regional operational programmes, representatives of the minister competent for public finance and the minister competent for the Lisbon Strategy implementation (Minister of Economy) as well as the minister competent for implementation of agriculture and fishery policy.

Here we should address the Polish solutions, which implement the Community cohesion policy within the framework of the comprehensive national development policy. According to the provisions of the Act of 6 December 2006 on the principles of pursuing a policy of development, the basic document specifying directions, goals and framework of implementation Poland's development policy is the National Development Strategy (NDS). The Strategy has been drafted by the Ministry of Regional Development and accepted by the Council of Ministers. It is worth noting that the National Development Strategy is a document providing long-term activities, planned at least for 7 years. Due to the fact that socio-economic condition of the state may be subjected to significant changes during this period, the Act sets a demand of the Strategy updating at least once per 4 years. Considering the progress in the Strategy implementation and achievement of their goals, such operation ought to facilitate implementation of development policy through adopting the Strategy accordingly to the current socio-economic condition of the state.

The 2007-2015 National Development Strategy was adopted on 29 November 2006 by the Council of Ministers. Despite the Strategy is not a typical (binding) national legal instrument, it can help possible applicants to determine fields of national and EU funding.

The Strategy is a key document appointing the development priorities for the next years. At the same time, the Strategy specifies the conditions necessary to ensure due development. It should be highlighted that the Strategy's time horizon overlaps the period of the 2007-2013 financial perspective by two years, because of perspective continuation of EU financed activities in Poland, according to the n+2 rule. The Strategy is not a document required by EU for implementation of the EU resources, but represents national approach to Cohesion Policy.

The said Strategy overall goal is to enhance the living standard and quality of every citizen and family. By enhancing the living standard one should understand increase in family incomes and improvement of society education level as well as improvement of citizens professional skills. Moreover the overall goal is achieved through increase of employment and work efficiency, increase of security and accessibility of functional technical and social infrastructure.

Implementation of the National Development Strategy would engage both national and foreign financial resources. The most significant source of financing will be structural policy EU funds to be implemented between 2007 and 2013 (67.3 billion euros in current prices)⁹⁶ and allocated to *inter alia* assistance for agriculture restructuring (13.2 billion euros in current prices)⁹⁷ and fishery (0.7 billion euros in 2004 prices).⁹⁸

The EU intervention system provided in the Community legislation within the framework of Cohesion Policy consists in implementation of operational programmes developed by the Member States. Those operational programmes implement priority goals specified in national strategic reference frameworks. It should be stressed here that operational programmes constitute the most important instrument of implementation the structural policy at the national level.

Referring Polish legislation it can be observed that there are very significant similarities between implementation of the Community cohesion policy and Poland's development policy. According to na-

tional legislation,⁹⁹ implementation of Poland's development policy is achieved by means of operational programmes. Such a definition resembles transposition of the Community implementation rules into Polish legal system. So far the obligation to manage the financial resources with operational programmes existed only for EU funds (implementation of the structural funds between 2004 and 2006). But the provisions of the Act extended the application of that instrument to all development resources, whatever the source of financing. The uniform approach to national and Community resources was introduced as far as implementation of socio-economic cohesion policy is concerned.

Following the chosen path, every operational programme must embrace the period of the structural funds and the Cohesion Fund programming, i.e. from 1 January 2007 to 31 December 2013. Preparation of an operational programme content is subjected to partnership rule,¹⁰⁰ realised through consultations with appropriate regional authorities, social and economic partners and other bodies representing civil society.¹⁰¹

The Community legislation appoints deadline for developing and submitting operational programme to the European Commission. Member States should provide EC with a copy of operational programme, previously adopted on the national level, within 5 months from adoption of the Community strategic guidelines on cohesion. The next step is the European Commission's appraisal of operational programme project submitted by Member State. At this stage EC may address remarks and ask Member State to provide additional information. The maximum time for the Commission to appraise the submitted operational programme is 4 months from the date of official submitting.¹⁰² Such procedure allows the European Commission to interfere in a Member State activities toward implementation of Cohesion Policy. That is how the European Community shares the responsibility of implementation of the structural funds with Member States. A certain feedback is clearly visible here: additionally to standard influ-

96 The official website of the Ministry of Regional Development <http://www.mrr.gov.pl/srk>.

97 *Ibidem*.

98 *Ibidem*.

99 See art. 15 of the Law on the principles of pursuing a policy of development.

100 See art. 32 (2) of the Council Regulation (EC) No 1083/2006.

101 See art. 11 of the Council Regulation (EC) No 1083/2006.

102 See art. 32. (5) of the Council Regulation (EC) No 1083/2006.

ence of the Community on national legislation, where the latter must be consistent with the first, a “partner unification” of national legislation takes place, consisting in gaining EC approval for some content divergence.

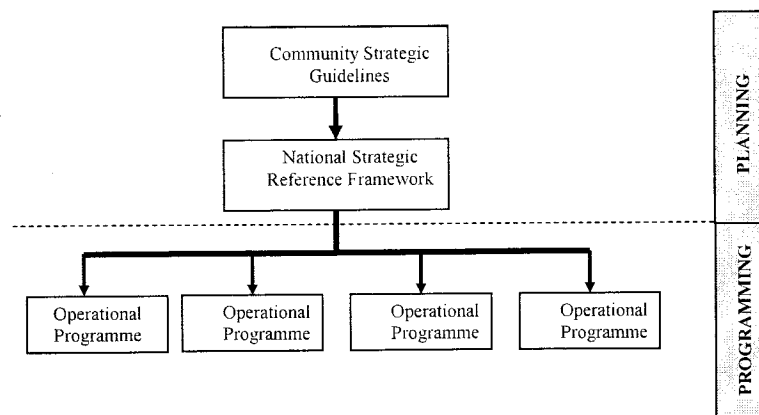
Within the 2007-2013 financial perspective the European Union introduced flexible system of operational programme implementation, allowing revision of its terms in case certain circumstances arise, as predefined in the General Regulation.¹⁰³ Request to revise operational program might be an initiative of both Member State and the European Commission. Such procedure enables dynamic response of the Member State to change in conditions of Cohesion Policy implementation.

The reform of Cohesion Policy introduced rules of financing operational programmes with particular funds. In line with the Council Regulation (EC) No 1083/2006 operational programmes are to be financed exclusively by a single fund. It is worth noting that during the last programming period 2000-2006 the opposite rule was in force, to take the Integrated Regional Development Operational Programme, financed by the ERDF and the EFS, as an example. The rule “one programme – one fund” is not enforced in the Member States receiving financing from ERDF and the Cohesion Fund. According to the art. 34 (3) of the General Regulation, the states receiving financing from the said funds should programme the activities concerning environment protection and transport within a single system, i.e. within a single operational programme. A clear example of this rule is the national Operational Programme “Infrastructure and Environment” (refer to Scheme No 1).

It needs highlighting that the 2006 reform of Cohesion Policy simplified the programming process of EU funds implementation by the Member State. It resulted in elimination of obligation to develop supplementary documentation for operational programmes. It should be remembered that such requirement existed in the last programming period 2000-2006.

103 Art. 33 of the Council Regulation (EC) No nr 1083/2006.

Scheme No 3 Planning and programming of Cohesion Policy implementation



Determination of financial contribution of funds in implementation of NSRF and operational programmes is ruled by the provisions of the General Regulation.¹⁰⁴ The contribution of the structural funds in project financing depends mainly on the following factors:¹⁰⁵

- the gravity of the specific problems, to be financed by the funds;
- the importance of priorities appointed in operational programme;
- protection and improvement of the natural environment, principally through the application of the precautionary principle, the principle of preventive action, and the polluter-pays principle;
- the rate of mobilisation of private financing, in particular under public-private partnerships;
- the inclusion of interregional cooperation into operational programmes under the Convergence and Regional competitiveness and employment objectives.

The reform of Cohesion Policy brought important changes in the Community contribution rate for the projects. In the 2007-2013 finan-

104 Art. 52 of the Council Regulation (EC) No 1083/2006.

105 *Ibidem*.

cial perspective the European Community contribution rate increased for financing eligible expenditure. The States, with the average GDP per capita between 2001 and 2003 below 85% of the EU average (consisting of 25 Member States), are eligible to receive maximum contribution in 85% of eligible project expenditure from the EU budget¹⁰⁶ (Poland included in the number). The same rule is applied to the structural funds and to the Cohesion Fund. In comparison with the last programming period of the structural funds and to the Cohesion Fund the Community contribution rate increased by 10%.

Another improvement of the EU resources spending will be letting the Member States determine the rules for eligibility of expenditure in comparison to the Community legislation applicability in the last programming period.

The rules and provisions of project selection are defined by the Member States. The project selection system in Poland is an effect of the Act passed on 6 December 2006 on the principles of pursuing a policy of development. The provisions of the Act introduced the following catalogue of the projects potentially eligible for financing under operational programmes implementation:

1. individual projects – when beneficiary eligible for co-financing is indicated in operational programme, with no specification of project content but with reference to its general scope;
2. systemic projects – consisting in co-financing with operational programme resources tasks of public administration authorities and organisational units subordinated to public financing, intended for those institutions in separate legislation;
3. projects selected in competition;
4. project whose total cost exceeds 25 million euros (so-called major projects), which cannot be classified as individual, systemic or selected in competition. The provisions of the Act state that the projects whose total cost exceeds 25 million euros need approval, expressed on Managing Authority request, of the Council of Ministers (for national operational programmes)

106 See Annex III to the Council Regulation (EC) No 1083/2006.

or by appropriate voivodship seym (for regional operational programmes).

Analysing the content of the Act on the principles of pursuing a policy of development it is worth noting that the provisions allow voivods to veto in case of sufficient documentary evidence of irregularities in course of selection of competing projects.¹⁰⁷ Here we should consider the reason of voivod veto restriction and analyse this rule in relation to conformity with the national and the Community legislation. At the moment the Act was being passed numerous remarks were filed which concerned great extension of government authority impact on activities undertaken by local authorities. The Act does not specify whether a voivod may freely decide on veto when having received information about some irregularities in course of projects selection.

It seems that voivod right to veto should be considered in relation to the following aspects:

- conformity with the provisions of the Constitution of the Republic of Poland.

Providing voivod with instruments of controlling local authorities activities does not infringe the Constitution, only under condition that voivod veto may be exclusively expressed in relation to legality of project selection procedure. At the same time it should be underlined that the rules of project selection will be determined according to the guidelines of the Minister of Regional Development. Pursuant to the Constitution the guidelines cannot be considered generally binding source of law in Poland and cannot constitute rights and obligations for other units than subordinated to the minister competent for regional development. Therefore it is expected that cases of law infringement in course of project selection would be rather infrequent.

- conformity with the Community legislation.

In accordance with the EU legislation, Managing Authority is responsible for sound implementation of operational pro-

107 Art. 28 (3) of the of the Law on the principles of pursuing a policy of development.

gramme, in line with the rules of proper management of the EU finance. Voivod right to veto can effect in a situation that Managing Authority loses control over project selection and eventually will not be able to fulfil its obligations due to the Community legislation. This is of course the worst case scenario but its risk should be minimised. It is justified to conclude that the chance to infringe the Community legislation by voivod veto is high.

– definition of “irregularities”.

The General Regulation contains the definition of irregularity in respect of the EU resources.¹⁰⁸ According to the national institutions definition,¹⁰⁹ an irregularity occurs when all following conditions are met:

1. the Community or national legislation has been infringed (including provisions of agreement/decision on project co-financing),
2. as a result of an act or omission by an economic operator (Managing or Implementing Authorities could be considered economic operator only if actually taking advantage from the EU financing, not when performing their functions regarding implementation of EU funds),
3. and has effected or would have effected in prejudicing the budget of the European Union.

It seems that in case of project selection process fulfilling all the above requirements is impossible. Moreover providing evidence of irregularities is most often a long and difficult process.

The problem of the control of the structural funds implementation has been presented in the Chapter V of this book.

Similarly to the projects financed with the structural financial resources, the operational programmes also need an assessment of im-

plementation efficiency. Independent evaluation provides the information about the efficiency and effectiveness of the structural funds in a certain area of examination. Besides, the evaluation allows to identify weaknesses of operational programme implementation, which eventually results in a drive for the Community functioning enhancement. Evaluations take place before, during and after programming period.

The obligation to conduct evaluation was imposed both on the European Commission and the Member States. According to the content of the General Regulation,¹¹⁰ Member State shall provide appropriate resources (not only financial but also human) to carry out evaluations. The basic obligation of Member State, related to preparation of operational programmes, is to carry out *ex ante* evaluation. In line with the proportionality principle, *ex ante* evaluation may cover one or more operational programmes. Moreover *ad hoc* evaluation might be carried out if there is discrepancy with programme goals or a request to revise operational programme has been submitted.

On the contrary the obligation of the European Commission is to complete *ex post* evaluation by 31 December 2015. The goal of *ex post* evaluation is to examine the extent of resources used for implementation of Cohesion Policy, regarding effectiveness and efficiency of Funds programming.

An important feature of project and operational programmes implementation, co-financed by the Community resources, is an obligation to present information concerning implemented operations. Information and publicity obligations regarding the EU resources financing are carried out by the Member State and the Managing Authority for the operational programme.¹¹¹ Detailed rules for the obligation of information regarding the Community financial contribution have been set out in the Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of the Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of the Regulation (EC) No 1080/2006 of the Euro-

108 Art. 2 (7) of the Council Regulation (EC) No 1083/2006.

109 See: *System informowania o nieprawidłowościach finansowych w zakresie wykorzystania funduszy strukturalnych*, Ministerstwo Finansów, Warszawa – July 2006.

110 See art. 48-49 of the Council Regulation (EC) No 1083/2006.

111 See art. 69 of the Council Regulation (EC) No 1083/2006.

pean Parliament and of the Council on the European Regional Development Fund.

An obligatory element of proper information is adopting a communication strategy by the Managing Authority for the operational programme. The said strategy primarily defines goals of information campaign and scope of activities toward beneficiaries and public opinion.

The provisions of the Commission Regulation (EC) No 1828/2006¹¹² impose on Managing Authority a series of tasks aimed at providing appropriate information campaign. The most important obligation is without doubt publication of list of beneficiaries, project titles and amount of resources granted in relation to the EU co-financing. Such a regulation will definitely improve transparency of the process of the EU financing project selection and reduce the risk of corruption. Every EU citizen would be able to check what are the activities paid from the EU budget. The provisions of the implementing regulation also specify beneficiaries obligations in relation to appropriate information on site of the project.

PART III

PRACTICAL

¹¹² See art. 7 of the Commission Regulation (EC) No 1828/2006.

EUROPEAN DOCUMENTS

CONSOLIDATED VERSION OF THE TREATY ON EUROPEAN UNION

TITLE I

COMMON PROVISIONS

Article 1

By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called 'the Union'.

This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty. Its task shall be to organise, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.

Article 2

The Union shall set itself the following objectives:

- to promote economic and social progress and a high level of employment and to achieve balanced and sustainable development, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty,
- to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence, in accordance with the provisions of Article 17,
- to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union,

- to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime,
- to maintain in full the *acquis communautaire* and build on it with a view to considering to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community.

The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in Article 5 of the Treaty establishing the European Community.

**CONSOLIDATED VERSION
OF THE TREATY ESTABLISHING
THE EUROPEAN COMMUNITY**

(...)

Article 3

1. For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:
- a) the prohibition, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;
 - b) a common commercial policy;
 - c) an internal market characterised by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital;
 - d) measures concerning the entry and movement of persons as provided for in Title IV; e) a common policy in the sphere of agriculture and fisheries;
 - f) a common policy in the sphere of transport;
 - g) a system ensuring that competition in the internal market is not distorted;
 - h) the approximation of the laws of Member States to the extent required for the functioning of the common market;
 - i) the promotion of coordination between employment policies of the Member States with a view to enhancing their effectiveness by developing a coordinated strategy for employment;
 - j) a policy in the social sphere comprising a European Social Fund;
 - k) the strengthening of economic and social cohesion;
 - l) a policy in the sphere of the environment;
 - m) the strengthening of the competitiveness of Community industry;
 - n) the promotion of research and technological development;
 - o) encouragement for the establishment and development of trans-European networks; p) a contribution to the attainment of a high level of health protection;
 - q) a contribution to education and training of quality and to the flowering of the cultures of the Member States;
 - r) a policy in the sphere of development cooperation;
 - s) the association of the overseas countries and territories in order to increase trade and promote jointly economic and social development;
 - t) a contribution to the strengthening of consumer protection;
 - u) measures in the spheres of energy, civil protection and tourism.

(...)

TITLE XVII
ECONOMIC AND SOCIAL COHESION

Article 158

In order to promote its overall harmonious development, the Community shall develop and pursue its actions leading to the strengthening of its economic and social cohesion.

In particular, the Community shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas.

Article 159

Member States shall conduct their economic policies and shall coordinate them in such a way as, in addition, to attain the objectives set out in Article 158. The formulation and implementation of the Community's policies and actions and the implementation of the internal market shall take into account the objectives set out in Article 158 and shall contribute to their achievement. The Community shall also support the achievement of these objectives by the action it takes through the Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and the other existing Financial Instruments.

The Commission shall submit a report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions every three years on the progress made towards achieving economic and social cohesion and on the manner in which the various means provided for in this Article have contributed to it. This report shall, if necessary, be accompanied by appropriate proposals.

If specific actions prove necessary outside the Funds and without prejudice to the measures decided upon within the framework of the other Community policies, such actions may be adopted by the Council acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.

Article 160

The European Regional Development Fund is intended to help to redress the main regional imbalances in the Community through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.

Article 161

Without prejudice to Article 162, the Council, acting unanimously on a proposal from the Commission and after obtaining the assent of the European Parliament and consulting the Economic and Social Committee and the Committee of the Regions, shall define the tasks, priority objectives and the organisation of the Structural Funds, which may involve grouping the Funds. The Council, acting by the same procedure, shall also define the general rules applicable to them and the provisions necessary to ensure their effectiveness and the coordination of the Funds with one another and with the other existing Financial Instruments.

A Cohesion Fund set up by the Council in accordance with the same procedure shall provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure.

From 1 January 2007, the Council shall act by a qualified majority on a proposal from the Commission after obtaining the assent of the European Parliament and after consulting the Economic and Social Committee and the Committee of the Regions if, by that date, the multiannual financial perspective applicable from 1 January 2007 and the Interinstitutional Agreement relating thereto have been adopted. If such is not the case, the procedure laid down by this paragraph shall apply from the date of their adoption.

Article 162

Implementing decisions relating to the European Regional Development Fund shall be taken by the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.

With regard to the European Agricultural Guidance and Guarantee Fund, Guidance Section, and the European Social Fund, Articles 37 and 148 respectively shall continue to apply.

(...)

CHAPTER 2

Provisions common to several institutions

Article 249

In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions.

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A decision shall be binding in its entirety upon those to whom it is addressed.

Recommendations and opinions shall have no binding force.

(...)

Article 251

1. Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply.

2. The Commission shall submit a proposal to the European Parliament and the Council.

The Council, acting by a qualified majority after obtaining the opinion of the European Parliament:

- if it approves all the amendments contained in the European Parliament's opinion, may adopt the proposed act thus amended,
- if the European Parliament does not propose any amendments, may adopt the proposed act,
- shall otherwise adopt a common position and communicate it to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position.

If, within three months of such communication, the European Parliament:

- a) approves the common position or has not taken a decision, the act in question shall be deemed to have been adopted in accordance with that common position;
- b) rejects, by an absolute majority of its component members, the common position, the proposed act shall be deemed not to have been adopted;
- c) proposes amendments to the common position by an absolute majority of its component members, the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

3. If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, the act in question shall be deemed to have been adopted in the form of the common position thus amended; however, the Coun-

cil shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.

4. The Conciliation Committee, which shall be composed of the Members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the Members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council. In fulfilling this task, the Conciliation Committee shall address the common position on the basis of the amendments proposed by the European Parliament.
5. If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted.
6. Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted.
7. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

(...)

Article 274

The Commission shall implement the budget, in accordance with the provisions of the regulations made pursuant to Article 279, on its own responsibility and within the limits of the appropriations, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management.

The regulations shall lay down detailed rules for each institution concerning its part in effecting its own expenditure.

Within the budget, the Commission may, subject to the limits and conditions laid down in the regulations made pursuant to Article 279, transfer appropriations from one chapter to another or from one subdivision to another.

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 Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Having regard to the opinion of the Court of Auditors⁴,

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.

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.

- (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 (EAFRD)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 Funds⁶, 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.

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)⁷.

- (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 for 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

⁷ 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).

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 1085/2006⁸.

- (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

8 See page 82 of this Official Journal.

what is necessary in order to achieve those objectives. 31.7.2006 L 210/26 Official Journal of the European Union EN

- (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 management⁹ 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.

9 OJ C 139, 14.6.2006, p. 1.

- (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.

- (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 organize 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 Fund¹⁰, Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund¹¹ and Council Regulation (EC) No 1084/2006 of 11 July 2006 on the Cohesion Fund¹², 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

10 See page 1 of this Official Journal.

11 See page 12 of this Official Journal.

12 See page 79 of this Official Journal.

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.
- (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 Commission¹³. 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:

(...)

¹³ OJ L 184, 17.7.1999, p. 23.

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 contracts¹⁴ 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 particular-

¹⁴ OJ L 134, 30.04.2004, p. 114.

ly in countries and regions whose development is lagging behind and in connection with economic and social restructuring and the ageing of the population. The action taken under the Funds shall incorporate, at national and regional level, the Community's priorities in favour of sustainable development by strengthening growth, competitiveness, employment and social inclusion and by protecting and improving the quality of the environment.

2. To that end, the ERDF, the ESF, the Cohesion Fund, the EIB and the other existing Community financial instruments shall each contribute in an appropriate way towards achieving the following three objectives:
 - (a) the Convergence objective, which shall be aimed at speeding up the convergence of the least-developed Member States and regions by improving conditions for growth and employment through the increasing and improvement of the quality of investment in physical and human capital, the development of innovation and of the knowledge society, adaptability to economic and social changes, the protection and improvement of the environment, and administrative efficiency. This objective shall constitute the priority of the Funds;
 - (b) the Regional competitiveness and employment objective, which shall, outside the least-developed regions, be aimed at strengthening regions' competitiveness and attractiveness as well as employment by anticipating economic and social changes, including those linked to the opening of trade, through the increasing and improvement of the quality of investment in human capital, innovation and the promotion of the knowledge society, entrepreneurship, the protection and improvement of the environment, and the improvement of accessibility, adaptability of workers and businesses as well as the development of inclusive job markets; and
 - (c) the European territorial cooperation objective, which shall be aimed at strengthening cross-border cooperation through joint local and regional initiatives, strengthening transnational cooperation by means of actions conducive to integrated territorial development linked to the Community priorities, and strengthening interregional cooperation and exchange of experience at the appropriate territorial level.
3. Under the three objectives referred to in paragraph 2, assistance from the Funds shall, according to their nature, take into account specific economic and social features, on the one hand, and specific territorial features, on the other. The assistance shall, in an appropriate manner, support sustainable urban development particularly as part of regional development and the renewal of rural areas and of areas dependent on fisheries through economic diversification. The assistance shall also support areas affected by geographical or natural handicaps which aggravate the problems of development, particularly in the outermost regions as referred to in Article 299(2) of the Treaty as well as the northern areas with very low population density, certain islands and island Member States, and mountainous areas.

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 2005¹⁵. To this end, in accordance with their respective responsibilities, the Commission and the Member States shall ensure that 60 % of expenditure for the Convergence objective and 75 % of expenditure for the Regional competitiveness and employment objective for all the Member States of the European Union as constituted before 1 May 2004 is set for the abovementioned priorities. These targets, based on the categories of expenditure in Annex IV, shall apply as an average over the entire programming period. With a view to ensuring that specific national circumstances, including the priorities identified in the national reform programme of each Member State concerned, are taken into account, the Commission and that Member State may decide to complement in an appropriate manner the list of categories of Annex IV. Each Member State concerned shall contribute to these targets. At their own initiative, Member States that acceded to the European Union on or after 1 May 2004 may decide to apply these provisions.
4. In accordance with their respective responsibilities, the Commission and the Member States shall ensure the coordination between the assistance from the Funds, the EAFRD, the EFF and the interventions of the EIB and of other existing financial instruments.
5. Operations financed by the Funds shall comply with the provisions of the Treaty and of acts adopted under it.

Article 10

Programming

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

Article 11

Partnership

1. The objectives of the Funds shall be pursued in the framework of close cooperation, (hereinafter referred to as partnership), between the Commission and each Member State. Each Member State shall organise, where

appropriate and in accordance with current national rules and practices, a partnership with authorities and bodies such as:

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

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

2. The partnership shall be conducted in full compliance with the respective institutional, legal and financial powers of each partner category as defined in paragraph 1. The partnership shall cover the preparation, implementation, monitoring and evaluation of operational programmes. Member States shall involve, where appropriate, each of the relevant partners, and particularly the regions, in the different stages of programming within the time limit set for each stage.
3. Each year the Commission shall consult the organizations 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.

¹⁵ OJ L 205, 6.8.2005, p. 21.

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 Communities¹⁶, with the exception of the technical assistance referred to in Article 45 of this Regulation. The principle of sound financial management shall be applied in accordance with Article 48(2) of Regulation (EC, Euratom) No 1605/2002.
2. The Commission shall exercise its responsibility for implementing the general budget of the European Union in the following ways:
 - (a) the Commission shall check the existence and proper functioning of management and control systems in the Member States in accordance with the procedures described in Articles 71, 72 and 73;
 - (b) the Commission shall interrupt the payment deadline or suspend all or part of payments in accordance with Articles 91 and 92 if the national management and control systems fail, and shall apply any other financial correction required, in accordance with the procedures described in Articles 100 and 101;
 - (c) the Commission shall check reimbursements of payments on account and automatically decommit budget commitments in accordance with the procedures laid down in Article 82(2) and Articles 93 to 97.

Article 15

Additionality

1. Contributions from the Structural Funds shall not replace public or equivalent structural expenditure by a Member State. 2. For regions covered by the Convergence objective, the Commission and the Member State shall determine the level of public or equivalent structural expenditure which the Member State shall maintain in all the regions concerned during the programming period. The level of expenditure by a Member State shall be one of the items covered by the decision of the Commission on the national strategic reference framework referred to in Article 28(3). The methodological paper of the Commission, adopted in accordance with the procedure referred to in Article 103(3), shall provide guidance.

¹⁶ OJ L 248, 16.9.2002, p. 1.

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 privatizations 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 inter-regional 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 reference 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 summarizing 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).

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.

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.

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

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 EA-FRD and those financed by the EFF, where relevant;
- (g) the implementing provisions for the operational programme, including:
 - (i) designation by the Member State of all the entities referred to in Article 59 or, if the Member State exercises the option provided for in Article 74, the designation of other bodies and procedures in accordance with the rules laid down in Article 74;

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

2. Operational programmes financed jointly by the ERDF and the Cohesion Fund with respect to transport and the environment shall contain priority axis specific to each Fund and a specific commitment by Fund.
3. Without prejudice to the second subparagraph of Article 5 of Regulation (EC) No 1080/2006, each operational programme under the Regional competitiveness and employment objective shall include a justification for the thematic, geographical and financial concentration on the priorities as laid down respectively in Article 5 of that Regulation and in Article 4 of Regulation (EC) No 1081/2006.
4. Operational programmes financed by the ERDF shall contain in addition for the Convergence and Regional competitiveness and employment objectives:
 - (a) information on the approach to the sustainable urban development where appropriate;
 - (b) Specific priority axis for the measures financed under the additional allocation referred to in paragraph 20 of Annex II in operational programmes providing assistance in outermost regions;
5. Operational programmes affected by one or more specific allocations referred to in the additional provisions in Annex II shall contain information on the procedures foreseen to allocate and ensure the monitoring of these specific allocations.
6. At the initiative of the Member State, the operational programmes financed by the ERDF may also contain for the Convergence and Regional competitiveness and employment objectives:
 - (a) the list of cities chosen for addressing urban issues and the procedures for sub-delegation to urban authorities, possibly by means of a global grant;

(b) actions for interregional cooperation with, at least, one regional or local authority of another Member State.

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

Article 38

Operational programmes for the European territorial cooperation objective

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

Section 2 Major projects

Article 39

Content

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

Article 40

Information submitted to the Commission

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

- (a) information on the body to be responsible for implementation;
- (b) information on the nature of the investment and a description of it, its financial volume and location;
- (c) the results of the feasibility studies;
- (d) a timetable for implementing the project and, where the implementation period for the operation concerned is expected to be longer than the programming period, the phases for which Community co-financing is requested during the 2007 to 2013 programming period;

(e) a cost-benefit analysis, including a risk assessment and the foreseeable impact on the sector concerned and on the socio-economic situation of the Member State and/or the region and, when possible and where appropriate, of other regions of the Community;

(f) an analysis of the environmental impact;

(g) a justification for the public contribution;

(h) the financing plan showing the total planned financial resources and the planned contribution from the Funds, the EIB, the EIF and all other sources of Community financing, including the indicative annual plan of the financial contribution from the ERDF or the Cohesion Fund for the major project.

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

Article 41

Decision of the Commission

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

Section 3 Global grants

Article 42

General provisions

1. The Member State or the managing authority may entrust the management and implementation of a part of an operational programme to one or more intermediate bodies, designated by the Member State or the

managing authority, including local authorities, regional development bodies or non-governmental organisations, in accordance with the provisions of an agreement concluded between the Member State or the managing authority and that body. Such delegation shall be without prejudice to the financial responsibility of the managing authority and of the Member States.

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

Article 43

Implementing rules

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

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

Section 4

Financial engineering

Article 44

Financial engineering instruments

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

ganised 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 computerized 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.

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.

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 op-

erational 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 ope-

rational programme and responsible for verifying the effective functioning of the management and control system. The same authority may be designated for more than one operational programme.

2. The Member State may designate one or more intermediate bodies to carry out some or all of the tasks of the managing or certifying authority under the responsibility of that authority.
3. The Member State shall lay down rules governing its relations with the authorities referred to in paragraph 1 and their relations with the Commission. Without prejudice to this Regulation, the Member State shall lay down the mutual relations between the authorities referred to in paragraph 1, which shall carry out their tasks in full accordance with the institutional, legal and financial systems of the Member State concerned.
4. Subject to Article 58(b), some or all of the authorities referred to in paragraph 1 may be part of the same body.
5. Specific rules on management and control are laid down in the Regulation (EC) No 1080/2006 for operational programmes under the European territorial cooperation objective.
6. The Commission shall adopt implementing rules of Articles 60, 61 and 62 in accordance with the procedure referred to in Article 103(3).

Article 60

Functions of the managing authority

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

- (a) ensuring that operations are selected for funding in accordance with the criteria applicable to the operational programme and that they comply with applicable Community and national rules for the whole of their implementation period;
- (b) verifying that the co-financed products and services are delivered and that the expenditure declared by the beneficiaries for operations has actually been incurred and complies with Community and national rules; verifications on-the-spot of individual operations may be carried out on a sample basis in accordance with the detailed rules to be adopted by the Commission in accordance with the procedure referred to in Article 103(3);
- (c) ensuring that there is a system for recording and storing in computerised form accounting records for each operation under the operational programme and that the data on implementation necessary for financial management, monitoring, verifications, audits and evaluation are collected;

- (d) ensuring that beneficiaries and other bodies involved in the implementation of operations maintain either a separate accounting system or an adequate accounting code for all transactions relating to the operation without prejudice to national accounting rules;
- (e) ensuring that the evaluations of operational programmes referred to in Article 48(3) are carried out in accordance with Article 47;
- (f) setting up procedures to ensure that all documents regarding expenditure and audits required to ensure an adequate audit trail are held in accordance with the requirements of Article 90;
- (g) ensuring that the certifying authority receives all necessary information on the procedures and verifications carried out in relation to expenditure for the purpose of certification;
- (h) guiding the work of the monitoring committee and providing it with the documents required to permit the quality of the implementation of the operational programme to be monitored in the light of its specific goals;
- (i) drawing up and, after approval by the monitoring committee, submitting to the Commission the annual and final reports on implementation;
- (j) ensuring compliance with the information and publicity requirements laid down in Article 69;
- (k) providing the Commission with information to allow it to appraise major projects.

Article 61

Functions of the certifying authority

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

- (a) drawing up and submitting to the Commission certified statements of expenditure and applications for payment;
- (b) certifying that:
 - (i) the statement of expenditure is accurate, results from reliable accounting systems and is based on verifiable supporting documents;
 - (ii) the expenditure declared complies with applicable Community and national rules and has been incurred in respect of operations selected for funding in accordance with the criteria applicable to the programme and complying with Community and national rules;
- (c) ensuring for the purposes of certification that it has received adequate information from the managing authority on the procedures and verifications carried out in relation to expenditure included in statements of expenditure;

- (d) taking account for certification purposes of the results of all audits carried out by or under the responsibility of the audit authority;
- (e) maintaining accounting records in computerised form of expenditure declared to the Commission;
- (f) keeping an account of amounts recoverable and of amounts withdrawn following cancellation of all or part of the contribution for an operation. Amounts recovered shall be repaid to the general budget of the European Union prior to the closure of the operational programme by deducting them from the next statement of expenditure.

Article 62

Functions of the audit authority

1. The audit authority of an operational programme shall be responsible in particular for:
 - (a) ensuring that audits are carried out to verify the effective functioning of the management and control system of the operational programme;
 - (b) ensuring that audits are carried out on operations on the basis of an appropriate sample to verify expenditure declared;
 - (c) presenting to the Commission within nine months of the approval of the operational programme an audit strategy covering the bodies which will perform the audits referred to under points (a) and (b), the method to be used, the sampling method for audits on operations and the indicative planning of audits to ensure that the main bodies are audited and that audits are spread evenly throughout the programming period. Where a common system applies to several operational programmes, a single audit strategy may be submitted.; (d) by 31 December each year from 2008 to 2015: (i) submitting to the Commission an annual control report setting out the findings of the audits carried out during the previous 12 month-period ending on 30 June of the year concerned in accordance with the audit strategy of the operational programme and reporting any shortcomings found in the systems for the management and control of the programme. The first report to be submitted by 31 December 2008 shall cover the period from 1 January 2007 to 30 June 2008. The information concerning the audits carried out after 1 July 2015 shall be included in the final control report supporting the closure declaration referred to in point (e); (ii) issuing an opinion, on the basis of the controls and audits that have been carried out under its responsibility, as to whether the management and control system functions effectively, so as to provide a reasonable assurance that statements of expenditure presented to the Commission are correct and as a consequence reasonable assurance that the underlying transactions are legal and regular; (iii) submitting, where applicable under Article 88, a declaration for partial closure assessing the legality and regularity of the expenditure concerned.

When a common system applies to several operational programmes, the information referred to in point (i) may be grouped in a single report, and the opinion and declaration issued under points (ii) and (iii) may cover all the operational programmes concerned; (e) submitting to the Commission at the latest by 31 March 2017 a closure declaration assessing the validity of the application for payment of the final balance and the legality and regularity of the underlying transactions covered by the final statement of expenditure, which shall be supported by a final control report.

2. The audit authority shall ensure that the audit work takes account of internationally accepted audit standards.
3. Where the audits and controls referred to in paragraph 1(a) and (b) are carried out by a body other than the audit authority, the audit authority shall ensure that such bodies have the necessary functional independence.
4. The Commission shall provide its comments on the audit strategy presented under paragraph 1(c) no later than three months from receipt thereof. In the absence of comments within this period it shall be considered to be accepted.

CHAPTER II Monitoring

Article 63

Monitoring committee

1. The Member State shall set up a monitoring committee for each operational programme, in agreement with the managing authority, within three months from the date of the notification to the Member State of the decision approving the operational programme. A single monitoring committee may be set up for several operational programmes.
2. Each monitoring committee shall draw up its rules of procedure within the institutional, legal and financial framework of the Member State concerned and adopt them in agreement with the managing authority in order to exercise its missions in accordance with this Regulation.

Article 64

Composition

1. The monitoring committee shall be chaired by a representative of the Member State or the managing authority. Its composition shall be decided by the Member State in agreement with the managing authority.

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

Article 65

Tasks

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

- (a) it shall consider and approve the criteria for selecting the operations financed within six months of the approval of the operational programme and approve any revision of those criteria in accordance with programming needs;
- (b) it shall periodically review progress made towards achieving the specific targets of the operational programme on the basis of documents submitted by the managing authority;
- (c) it shall examine the results of implementation, particularly the achievement of the targets set for each priority axis and the evaluations referred to in Article 48(3);
- (d) it shall consider and approve the annual and final reports on implementation referred to in Article 67;
- (e) it shall be informed of the annual control report, or of the part of the report referring to the operational programme concerned, and of any relevant comments the Commission may make after examining that report or relating to that part of the report;
- (f) it may propose to the managing authority any revision or examination of the operational programme likely to make possible the attainment of the Funds' objectives referred to in Article 3 or to improve its management, including its financial management;
- (g) it shall consider and approve any proposal to amend the content of the Commission decision on the contribution from the Funds.

Article 66

Arrangements for monitoring

1. The managing authority and the monitoring committee shall ensure the quality of the implementation of the operational programme.
2. The managing authority and the monitoring committee shall carry out monitoring by reference to financial indicators and the indicators referred to in Article 37(1)(c) specified in the operational programme. Where the nature of the assistance permits, statistics shall be broken down by sex and by the size of the recipient undertakings.

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

Article 67

Annual report and final report on implementation

1. For the first time in 2008 and by 30 June each year, the managing authority shall send the Commission an annual report and by 31 March 2017 a final report on the implementation of the operational programme.
2. The reports referred to in paragraph 1 shall include the following information in order to obtain a clear view of the implementation of the operational programme:
 - (a) the progress made in implementing the operational programme and priority axes in relation to their specific, verifiable targets, with a quantification, wherever and whenever they lend themselves to quantification, using the indicators referred to in Article 37(1)(c) at the level of the priority axis;
 - (b) the financial implementation of the operational programme, detailing for each priority axis:
 - (i) the expenditure paid out by the beneficiaries included in applications for payment sent to the managing authority and the corresponding public contribution;
 - (ii) the total payments received from the Commission and quantification of the financial indicators referred to in Article 66(2); and
 - (iii) the expenditure paid out by the body responsible for making payments to the beneficiaries,Where appropriate, financial implementation in areas receiving transitional support shall be presented separately within each operational programme;
 - (c) for information purposes only, the indicative breakdown of the allocation of Funds by categories, in accordance with the implementation rules adopted by the Commission in accordance with the procedure referred to in Article 103(3);
 - (d) the steps taken by the managing authority or the monitoring committee to ensure the quality and effectiveness of implementation, in particular:
 - (i) monitoring and evaluation measures, including data collection arrangements;
 - (ii) a summary of any significant problems encountered in implementing the operational programme and any measures taken, including the response to comments made under Article 68(2) where appropriate;
 - (iii) the use made of technical assistance;

- (e) the measures taken to provide information on and publicise the operational programme;
 - (f) information about significant problems relating to compliance with Community law which have been encountered in the implementation of the operational programme and the measures taken to deal with them;
 - (g) where appropriate, the progress and financing of major projects;
 - (h) the use made of assistance released following cancellation as referred to in Article 98(2) to the managing authority or to another public authority during the period of implementation of the operational programme;
 - (i) cases where a substantial modification has been detected under Article 57. The breadth of information transmitted to the Commission shall be proportional to the total amount of expenditure of the operational programme concerned. Where appropriate, such information may be provided in summary form. Information referred to in points (d), (g), (h) and (i) shall not be included if there has been no significant modification since the previous report.
3. The reports referred to in paragraph 1 shall be judged admissible where they contain all the appropriate information listed in paragraph 2. The Commission shall inform the Member State on the admissibility of the annual report within 10 working days from the date of its receipt.
 4. The Commission shall inform the Member State of its opinion on the content of an admissible annual report on implementation submitted by the managing authority within two months from the date of receipt. For the final report on an operational programme, the time limit shall be a maximum of five months from the date of receipt of an admissible report. If the Commission does not respond within the time limit laid down, the report shall be deemed to be accepted.

Article 68

Annual examination of programmes

1. Every year, when the annual report on implementation referred to in Article 67 is submitted, the Commission and the managing authority shall examine the progress made in implementing the operational programme, the principal results achieved over the previous year, the financial implementation and other factors with a view to improving implementation. Any aspects of the operation of the management and control system raised in the last annual control report, referred to in Article 62(1)(d)(i), may also be examined.
2. After the examination referred to in paragraph 1, the Commission may make comments to the Member State and the managing authority, which shall inform the monitoring committee thereof. The Member State shall

inform the Commission of the action taken in response to those comments.

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

CHAPTER III **Information and publicity**

Article 69

Information and publicity

1. The Member State and the managing authority for the operational programme shall provide information on and publicise operations and co-financed programmes. The information shall be addressed to European Union citizens and beneficiaries with the aim of highlighting the role of the Community and ensure that assistance from the Funds is transparent. The Commission shall adopt implementing rules for this Article in accordance with the procedure referred to in Article 103(3).
2. The managing authority for the operational programme shall be responsible for publicity in accordance with the implementing rules of this Regulation adopted by the Commission in accordance with the procedure referred to in Article 103(3).

CHAPTER IV **Responsibilities of Member States and of the Commission**

Section 1 **Responsibilities of Member States**

Article 70

Management and control

1. Member States shall be responsible for the management and control of operational programmes, in particular through the following measures:
 - (a) ensuring that management and control systems for operational programmes are set up in accordance with Articles 58 to 62 and function effectively;

- (b) preventing, detecting and correcting irregularities and recovering amounts unduly paid together with interest on late payments where appropriate. They shall notify these to the Commission and keep the Commission informed of the progress of administrative and legal proceedings.
- 2. When amounts unduly paid to a beneficiary cannot be recovered, the Member State shall be responsible for reimbursing the amounts lost to the general budget of the European Union, when it is established that the loss has been incurred as a result of fault or negligence on its part.
- 3. The implementing rules for paragraphs 1 and 2 shall be adopted by the Commission in accordance with the procedure referred to in Article 103(3).

Article 71

Setting up of management and control systems

- 1. Before the submission of the first interim application for payment or at the latest within twelve months of the approval of each operational programme, the Member States shall submit to the Commission a description of the systems, covering in particular the organisation and procedures of:
 - (a) the managing and certifying authorities and intermediate bodies;
 - (b) the audit authority and any other bodies carrying out audits under its responsibility.
- 2. The description referred to in paragraph 1 shall be accompanied by a report setting out the results of an assessment of the systems set up and giving an opinion on their compliance with Articles 58 to 62. If the opinion contains reservations, the report shall indicate the seriousness of the shortcomings and, where the shortcomings do not concern the whole programme, the priority axis or axes concerned. The Member State shall inform the Commission of the corrective measures to be taken and the timetable for their implementation and subsequently provide confirmation of the implementation of the measures and the withdrawal of the corresponding reservations. The report referred to in the first subparagraph shall be deemed to be accepted, and the first interim payment shall be made, in the following circumstances:
 - (a) within two months of the date of receipt of the report when the opinion referred to in the first subparagraph is without reservations and in the absence of observations by the Commission;
 - (b) if the opinion contains reservations, upon confirmation to the Commission that corrective measures concerning key elements of the systems have been implemented, and the corresponding reservations withdrawn, and in the absence of observations by the Commission within two months of the date of confirmation. Where the reser-

vations 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 above-mentioned 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 engineer-

ing 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.

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 an 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 an 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 an 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 authorizing 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 above-mentioned 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.

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 canceling 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 flatrate 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 Treaty¹⁷.

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).

¹⁷ 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. 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' organizations and one representative of the employers' organizations from each Member State. The Member of the Commission responsible for chairing the Committee may delegate that responsibility to a senior Commission official.
2. Each Member State shall nominate a representative and an alternate for each representative of each category referred to in paragraph 1. In the absence of one member, the alternate shall be automatically entitled to take part in the proceedings.
3. The members and alternates shall be appointed by the Council, acting on a proposal from the Commission, for a period of three years. They may be reappointed. The Council shall, as regards the composition of the Committee, endeavour to ensure fair representation of the different categories concerned. For the items on the agenda affecting it, the EIB and the EIF may appoint a non-voting representative.
4. The Committee shall:
 - (a) deliver its opinion on the implementing rules of this Regulation;
 - (b) deliver opinions on the draft Commission decisions relating to programming in the case of support from the ESF;
 - (c) be consulted when it deals with the categories of technical assistance measure referred to in Article 45 in the case of support from the

ESF and other relevant issues having an impact on the implementation of employment, training and social inclusion strategies at EU level relevant to the ESF.

5. The Commission may consult the Committee on questions other than those referred to in paragraph 4.
6. For their adoption, the opinions of the Committee shall require an absolute majority of the votes validly cast. The Commission shall inform the Committee of the manner in which it has taken account of its opinions.

TITLE IX

FINAL PROVISIONS

Article 105

Transitional provisions

1. This Regulation shall not affect the continuation or modification, including the total or partial cancellation, of assistance co-financed by the Structural Funds or of a project co-financed by the Cohesion Fund approved by the Commission on the basis of Regulations (EEC) No 2052/88¹⁸, (EEC) No 4253/88¹⁹, (EC) No 1164/94²⁰ and (EC) No 1260/1999 or any other legislation which applies to that assistance on 31 December 2006, which shall consequently apply thereafter to that assistance or the projects concerned until their closure.
2. While taking decision on operational programmes, the Commission shall take account of any assistance co-financed by the Structural Funds or of any project co-financed by the Cohesion Fund approved by the Council or by the Commission before the entry into force of this Regulation and having financial repercussions during the period covered by those operational programmes.
3. By way of derogation from Articles 31(2), 32(4) and 37(1) of Regulation (EC) No 1260/1999, partial sums committed for assistance co-financed by the ERDF or the ESF approved by the Commission between 1 Janu-

- 18 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.
- 19 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.
- 20 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.

ary 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.

(...)

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

(...)

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. 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 em-

ployment 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.

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;
 - (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.
2. environment and risk prevention, and in particular:
 - (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 polycentric 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 to-

tal 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 pro-

vides 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 concern-

ing 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)²¹ 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) 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.
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 con-

²¹ See page 19 of this Official Journal.

ditions 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 interregional cooperation, the ERDF may finance expenditure incurred in implementing operations or parts of operations on the territory 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.

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

(...)

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. 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, elearning, 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 genderbased 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 crossborder 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 mobilize 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 interdepartmental 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 organizations 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 Fund²² 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.

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 co-ordination 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

²² See p. 1 of this Official Journal.

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 nongovernmental 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 interregional 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 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.

Article 15

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.

COUNCIL REGULATION (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund and repealing Regulation (EC) No 1164/94

(...)

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:
 - (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 management²³.
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 ap-

²³ OJ C 139, 14.6.2006, p. 1.

plications 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*.

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

**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)**

(...)

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, 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 contracts²⁴. 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.
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 pro-

²⁴ 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).

spective 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 authori-

ties 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. 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.

Article 14

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.

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.

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.

**COUNCIL REGULATION (EC, Euratom) No 1605/2002
of 25 June 2002 on the Financial Regulation applicable
to the general budget of the European Communities
(OJ L 248, 16.9.2002, p. 1) Amended by: Council Regulation
(EC, Euratom) No 1995/2006 of 13 December 2006**

**CHAPTER 2
Methods of implementation**

Article 53

The Commission shall implement the budget in accordance with the provisions set out in Articles 53a to 53d in any of the following ways:

- (a) on a centralised basis;
- (b) by shared or decentralised management;
- (c) by joint management with international organisations.

Article 53a

Where the Commission implements the budget on a centralised basis, implementation tasks shall be performed either directly by its departments or indirectly, in accordance with Articles 54 to 57.

Article 53b

1. Where the Commission implements the budget by shared management, implementation tasks shall be delegated to Member States. That method shall apply in particular to the actions referred to in Titles I and II of Part Two.
2. Without prejudice to complementary provisions included in relevant sector-specific regulations, and in order to ensure in shared management that the funds are used in accordance with the applicable rules and principles, the Member States shall take all the legislative, regulatory and administrative or other measures necessary for protecting the Communities' financial interests. To this effect they shall in particular:
 - (a) satisfy themselves that actions financed from the budget are actually carried out and to ensure that they are implemented correctly;
 - (b) prevent and deal with irregularities and fraud;
 - (c) recover funds wrongly paid or incorrectly used or funds lost as a result of irregularities or errors;
 - (d) ensure, by means of relevant sector-specific regulations and in conformity with Article 30(3), adequate annual ex post publication of beneficiaries of funds deriving from the budget.

To that effect, the Member States shall conduct checks and shall put in place an effective and efficient internal control system, according to the provi-

sions laid down in Article 28a. They shall bring legal proceedings as necessary and appropriate.

3. Member States shall produce an annual summary at the appropriate national level of the available audits and declarations.
4. In order to ensure that the funds are used in accordance with the applicable rules, the Commission shall apply clearance-of-accounts procedures or financial correction mechanisms which enable it to assume final responsibility for the implementation of the budget.

Article 53c

1. Where the Commission implements the budget by decentralised management, implementation tasks shall be delegated to third countries in accordance with Article 56 and Title IV of Part Two, without prejudice to delegation of residual tasks to bodies referred to in Article 54(2).
2. In order to ensure that the funds are used in accordance with the applicable rules, the Commission shall apply clearance-of-accounts procedures or financial correction mechanisms which enable it to assume final responsibility for the implementation of the budget.
3. Third countries to which implementation tasks are delegated shall ensure, in conformity with Article 30(3), adequate annual ex post publication of beneficiaries of funds deriving from the budget.

Article 53d

1. Where the Commission implements the budget by joint management, certain implementation tasks shall be delegated to international organisations, in accordance with the implementing rules, in the following cases:
 - (a) wherever the Commission and the international organisation are bound by a long-term framework agreement laying down the administrative and financial arrangements for their cooperation;
 - (b) wherever the Commission and the international organisation elaborate a joint project or programme;
 - (c) where the funds of several donors are pooled and are not earmarked for specific items or categories of expenditure, that is to say, in the case of multi-donor actions.

These organisations shall, in their accounting, audit, internal control and procurement procedures, apply standards which offer guarantees equivalent to internationally accepted standards.

2. Individual agreements concluded with international organisations for the award of financing shall contain detailed provisions for the implementation of the tasks entrusted to such international organisations.
3. International organisations to which implementation tasks are delegated shall ensure, in conformity with Article 30(3), adequate annual ex post publication of beneficiaries of funds deriving from the budget."

GUIDELINES ON NATIONAL REGIONAL AID FOR 2007-2013 (2006/C 54/08) (Text with EEA relevance)

1. Introduction

1. On the basis of Article 87(3)(a) and (c) of the Treaty, State aid granted to promote the economic development of certain disadvantaged areas within the European Union may be considered to be compatible with the common market by the Commission. This kind of State aid is known as national regional aid. National regional aid consists of aid for investment granted to large companies, or in certain limited circumstances, operating aid, which in both cases are targeted on specific regions in order to redress regional disparities. Increased levels of investment aid granted to small and medium-sized enterprises located within the disadvantaged regions over and above what is allowed in other areas are also considered as regional aid.
2. By addressing the handicaps of the disadvantaged regions, national regional aid promotes the economic, social and territorial cohesion of Member States and the European Union as a whole. This geographical specificity distinguishes regional aid from other forms of horizontal aid, such as aid for research, development and innovation, employment, training or the environment, which pursue other objectives of common interest in accordance with Article 87(3) of the Treaty, albeit sometimes with higher rates of aid in the disadvantaged areas in recognition of the specific difficulties which they face²⁵.
3. National regional investment aid is designed to assist the development of the most disadvantaged regions by supporting investment and job creation. It promotes the expansion and diversification of the economic activities of enterprises located in the less-favoured regions, in particular by encouraging firms to set up new establishments there.
4. The criteria applied by the Commission when examining the compatibility of national regional aid with the common market under Articles 87(3)(a) and 87(3)(c) of the EC Treaty have been codified in the 1998 guidelines on national regional aid²⁶ which cover the period 2000-2006²⁷. The specific rules governing aid for large investment projects have been codified in the 2002 Multisectoral Framework²⁸. However, important political and economic developments since 1998, including the enlargement of the European Union on 1 May 2004, the anticipated accession of Bulgar-

25 Regional top-ups for aid granted for such purposes are therefore not considered as regional aid.

26 OJ C 74 10.3.1998, p. 9, modified in OJ C 288 9.10.1999, p. 2, and OJ C 285 9.9.2000, p. 5.

27 Point 4.4 of the regional aid guidelines was amended by the Community Guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 288, 9.10.1999, p. 2.

28 OJ C 70, 19.3.2002, p. 8, as amended in OJ C 263, 1.11.2003, p. 3.

ia and Romania and the accelerated process of integration following the introduction of the single currency, have created the need for a comprehensive review in order to prepare new guidelines which will apply from 2007 to 2013.

5. Regional aid can only play an effective role if it is used sparingly and proportionately and is concentrated on the most disadvantaged regions of the European Union. In particular the permissible aid ceilings should reflect the relative seriousness of the problems affecting the development of the regions concerned. Furthermore, the advantages of the aid in terms of the development of a lessfavoured region must outweigh the resulting distortions of competition²⁹. The weight given to the advantages of the aid is likely to vary according to the derogation applied, so that a greater distortion of competition can be accepted in the case of the most disadvantaged regions covered by Article 87(3)(a) than in those covered by Article 87(3)(c)³⁰.
6. In certain very limited, well-defined cases, the structural handicaps of a region may be so severe that regional investment aid, together with a comprehensive horizontal aid regime may not be sufficient to trigger a process of regional development. Only in such cases may regional investment aid be supplemented by regional operating aid.
7. An increasing body of evidence suggests that there are significant barriers to the formation of new enterprises in the Community which are more acute inside the disadvantaged regions. The Commission has therefore decided to introduce a new aid instrument in these guidelines to encourage small business start-ups in disadvantaged regions with differentiated aid ceilings according to the regions concerned.

2. Scope

8. The Commission will apply these Guidelines to regional aid granted in every sector of the economy apart from the fisheries sector and the coal industry³¹ which are subject to special rules laid down by specific legal instruments. In the agricultural sector, these guidelines do not apply to the production of agricultural products listed in Annex I of the Treaty. They do apply to the processing and marketing of such products, but only to the extent laid down in the Community guidelines for State aid in the agriculture sector³², or any replacement Guidelines. In addition,

29 See in this respect the judgment of the Court of Justice in Case 730/79, Philip Morris [1980], ECR 2671, paragraph 17 and in Case C-169/95, Spain v Commission [1997], ECR I-135, paragraph 20.

30 See in this respect the judgment of the Court of First Instance in T-380/94, AUFFASS and AKT [1996], ECR II-2169, paragraph 54.

31 For the purposes of these guidelines 'coal' means high-grade, medium-grade and low-grade category A and B coal within the meaning of the international codification system for coal laid down by the United Nations Economic Commission for Europe.

32 OJ C 28 of 1.2.2000, p.2. Corrigendum OJ C 232 12.8.2000, p. 17.

some other sectors are also subject to specific rules which take account of the particular situation of the sectors concerned and which may totally or partially derogate from these guidelines³³. As regards the steel industry, in accordance with its long-established practice, the Commission considers that regional aid to the steel industry as defined in Annex I is not compatible with the common market. This incompatibility also applies to large individual aid grants made in this sector to small and medium-sized enterprises within the meaning of Article 6 of Regulation (EC) No 70/2001³⁴, or any successor regulation, which are not exempted by the same Regulation. In addition, due to its specific characteristics, no regional investment aid may be granted in the synthetic fibres sector as defined in Annex II.

9. Aid may only be granted to firms in difficulties within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty³⁵ in accordance with the latter guidelines³⁶.
10. As a general rule, regional aid should be granted under a multi-sectoral aid scheme which forms an integral part of a regional development strategy with clearly defined objectives. Such a scheme may also enable the competent authorities to prioritise investment projects according to their interest for the region concerned. Where, exceptionally, it is envisaged to grant individual ad hoc aid to a single firm, or aid confined to one area of activity, it is the responsibility of the Member State to demonstrate that the project contributes towards a coherent regional development strategy and that, having regard to the nature and size of the project, it will not result in unacceptable distortions of competition. If aid granted under a scheme appears to be unduly concentrated on a particular sector of activity, the Commission may review the scheme pursuant to Article 17 of Regulation (EC) No 659/1999 of 22 March 1999 on modalities for the application of Article 93 of the EC Treaty³⁷ and may propose, in line with Article 18 (c) of this Regulation, to abolish the scheme.
11. Member States do not have to notify national regional aid schemes which fulfil all the conditions laid down in the group exemption Regulations adopted by the Commission pursuant to Article 1 of Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the EC Treaty establishing the European Community to certain categories of horizontal State aid³⁸.

33 The sectors covered by special rules over and above those set out here are currently: transport and shipbuilding.

34 OJ L 10, 13.1.2001, p. 33. Regulation as amended by Regulation (EC) No 364/2004 (OJ L 63, 28.2.2004, p. 22).

35 OJ C 244, 1.10.2004, p. 2.

36 In particular, aid granted to large or medium-sized enterprises during the restructuring period must always be notified individually to the Commission, even if it is granted as part of an approved scheme.

37 OJ L 83, 27.3.1999, p. 1.

38 OJ L 142, 14.5.1998, p. 1.

3. Demarcation of regions

3.1. Population coverage eligible for regional aid, 2007-2013

12. In the light of the principle of the exceptional nature of regional aid, the Commission considers that the total population coverage of assisted regions in the Community must be substantially less than that of unassisted regions.
13. Having regard to the conclusions of different European Councils calling for a reduction in overall levels of State aid, and in view of the widely shared concerns about the distortive effects of investment aid for large companies, the Commission considers that the overall population coverage of the regional aid guidelines for 2007-2013 should be limited to that which is necessary to allow coverage of the most disadvantaged regions, as well as a limited number of regions which are disadvantaged in relation to the national average in the Member State concerned. Accordingly, it has decided to fix the limit for the overall population coverage to 42 % of the population of the current Community of 25 Member States, which is similar to the limit fixed on the basis of a Community of 15 members in 1998. This limit will provide for an appropriate level of concentration of regional aid in EU-25, while allowing a sufficient degree of flexibility for the accession of Bulgaria and Romania, the entire territory of which will normally be eligible for regional aid³⁹.
14. This notwithstanding, in order to ensure a sufficient degree of continuity for the existing Member States, the Commission has also decided to apply an additional safety net to ensure that no Member State loses more than 50 % of the coverage of its population covered during the period 2000-2006⁴⁰.

3.2. The derogation in Article 87(3)(a)

15. Article 87(3)(a) provides that aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment may be considered compatible with the common market. As the Court of Justice of the European Communities has held, 'the use of the words "abnormally" and "serious" in the exemption contained in [Article 87(3)(a)] shows that it concerns only areas where the economic situation is extremely unfavourable in relation to the Community as a whole'⁴¹.

39 This 42 % limit is estimated to rise to 45,5 % on an EU-27 basis following the Accession of Bulgaria and Romania.

40 Application of the safety net will lead to a total population coverage of about 43.1 % on an EU-25 basis, or 46,6 % on an EU-27 basis.

41 Case 248/84, Germany v Commission [1987, ECR 4013, paragraph 19.

16. The Commission accordingly considers that the conditions laid down are fulfilled if the region, being a NUTS⁴² level II geographical unit, has a per capita gross domestic product (GDP), measured in purchasing power standards (PPS), of less than 75 % of the Community average⁴³. The GDP per capita⁴⁴ of each region and the Community average to be used in the analysis are determined by the Statistical Office of the European Communities. In the interest of ensuring the maximum possible coherence between the designation of regions eligible for the derogation under Article 87(3)(a) under the regional aid guidelines, and the regions eligible for the convergence objective under the structural fund regulations, the Commission has used the same GDP per capita data to designate the Article 87(3)(a) regions as that used to designate the convergence regions under the structural fund regulations⁴⁵.
17. In recognition of the special handicaps which they face by reason of their remoteness and specific constraints in integrating into the internal market, the Commission considers that regional aid for the outermost regions covered by Article 299(2) of the Treaty⁴⁶ also falls within the scope of the derogation in Article 87(3)(a), whether or not the regions concerned have a GDP per capita of less than 75 % of the Community average.

3.3. Phasing out arrangements for the 'statistical effect' regions

18. For certain regions, the GDP per capita exceeds 75 % of the Community average solely because of the statistical effect of enlargement. These are regions at NUTS II level which have a GDP per capita of more than 75 % of the EU-25 average, but less than 75 % of the EU-15 average^{47 48}.
19. In order to ensure that the past progress of these regions is not undermined by too rapid change, in terms of aid intensities and the availability of operating aid, the Commission considers that they should continue to remain eligible for the derogation in Article 87(3)(a) on a transitional basis until 31 December 2010.

42 Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) OJ L 154, 21.6.2003, p. 1. The NUTS nomenclature is used by EUROSTAT as a reference for the collection, development and harmonisation of EU regional statistics and for socio-economic analyses of the regions.

43 The underlying assumption being that the GDP indicator is capable of reflecting synthetically both the phenomena mentioned.

44 In this, and all subsequent references to GDP per capita in these guidelines, GDP is measured in terms of purchasing power standards.

45 The data cover the period 2000-2002.

46 Azores, Madeira, Canary Islands, Guadeloupe, Martinique, Réunion and French Guyana.

47 In practice, 75 % of the average EU-15 GDP per capita corresponds to 82,2 % of the average EU-25 GDP per capita.

48 These regions are subsequently referred to as the 'statistical effect' regions.

20. In 2010 the Commission will review the position of these regions on the basis of the three-year average of the most recent GDP data available from Eurostat. If the relative GDP per capita of any of the regions has declined below 75 % of the EU-25 average, the regions concerned will continue to be eligible for the derogation under Article 87(3)(a). Otherwise the statistical effect regions will become eligible for aid under the derogation of Article 87(3)(c) from 1 January 2011.

3.4. The derogation in Article 87(3)(c)

21. The Court of Justice, in Case 248/84⁴⁹, has expressed its views on the range of problems covered by this derogation and the reference framework for the analysis as follows: "The exemption in [Article 87(3)(c)], on the other hand, is wider in scope inasmuch as it permits the development of certain areas without being restricted by the economic conditions laid down in [Article 87(3)(a)], provided such aid "does not adversely affect trading conditions to an extent contrary to the common interest". That provision gives the Commission power to authorize aid intended to further the economic development of areas of a Member State which are disadvantaged in relation to the national average".
22. The regional aid covered by the derogation in Article 87(3)(c) must, however, form part of a welldefined regional policy of the Member State and adhere to the principle of geographical concentration. Inasmuch as it is intended for regions which are less disadvantaged than those to which Article 87(3)(a) relates, both the geographic scope of the exception and the aid intensity allowed must be strictly limited. This being so, only a small part of the national territory of a Member State may normally qualify for the aid in question.
23. So as to afford national authorities sufficient latitude when it comes to choosing eligible regions without jeopardizing the effectiveness of the system of checks and balances operated by the Commission in respect of this type of aid and the equal treatment of all Member States, the selection of the regions eligible under the derogation in question should be undertaken by a two-step process which consists, first, of the determination by the Commission of the maximum population coverage for each Member State⁵⁰ for such aid, and, secondly, of the selection of eligible regions.

3.4.1. Determination of eligible national population coverage

24. As a first step, the determination of the national population coverage eligible for aid under the derogation in Article 87(3)(c) must be made by a method which is objective, fair and transparent. Furthermore, the fi-

49 Footnote 17, supra.

50 With the exception of Member States whose entire territory is eligible for the derogation under Article 87(3)(a).

nal outcome must remain within the overall limit for coverage of regional aid determined by the Commission under section 3.1, taking account also of the safety net. In order to achieve this, the Commission determines the population ceiling for each Member State on the basis of the following method.

25. First, Member States automatically receive an allocation equivalent to the population of any regions which were eligible for aid under the derogation in Article 87(3)(a) of the Treaty but which no longer meet the conditions for eligibility under that Article and which are not covered by the arrangements for the statistical effect regions described in section 3.3. These are the regions which had a GDP per capita of less than 75 % on an EU-15 basis when the 1998 regional aid guidelines were adopted, but which as a result of their economic development no longer meet that condition on an EU-15 basis. Since these regions⁵¹ have previously benefited from a relatively high level of aid, the Commission considers it necessary to allow Member States the flexibility, if they so wish, to continue to support these regions for the duration of these guidelines, under the derogation in Article 87(3)(c)⁵².
26. Second, in order to allow for the continued support of low population density regions, the Member States concerned also receive an allocation based on the population of low population density regions⁵³.
27. After deducting the population coverage resulting from the application of the objective criteria set out in sections 3.2 and 3.3, as well as the allocations referred to in the two preceding paragraphs from the upper limit of 42 % of EU-25 population determined in section 3.1, the balance is available for distribution between the Member States using a distribution key that takes account of variations in GDP per capita and unemployment between the regions, both in a national and a Community context. The detailed formula is set out in Annex IV⁵⁴.
28. Finally, as indicated in section 3.1, a safety net is applied to ensure that no Member State loses more than 50 % of the coverage of its population under the 1998 guidelines.
29. The resulting allocations are set out in Annex V, together with the lists of regions eligible for support under Article 87(3)(a), the statistical effect regions and the economic development regions.

51 Subsequently referred to as the 'economic development' regions.

52 Although it was not eligible for aid pursuant to Article 87(3)(a), Northern Ireland has in fact benefited during the period 2000-2006 from the same aid intensities as many of the Article 87(3)(a) regions. Accordingly, Northern Ireland should also be considered as an economic development region for the purposes of these Guidelines.

53 Calculated on the basis of the NUTS III option of paragraph 30(b) of these guidelines.

54 The same method was used by the Commission in its 1998 Guidelines on national regional aid: Annex 3, paragraphs 4-7.

3.4.2. Selection of eligible regions⁵⁵

30. The eligibility criteria for the selection of regions by the Member States must be sufficiently flexible to allow for the wide diversity of situations in which the granting of national regional aid may potentially be justified but at the same time they must be transparent and provide sufficient safeguards that the award of regional aid will not distort trade and competition to an extent contrary to the common interest. Accordingly, the Commission considers that the following regions may be eligible for selection by the Member States concerned for the award of regional investment aid pursuant to the derogation under Article 87(3)(c)⁵⁶:
- (a) the 'economic development' regions;
 - (b) the low population density regions: such areas are made up essentially of NUTS-II geographic regions with a population density of less than 8 inhabitants per km², or NUTS-III geographic regions with a population density of less than 12.5 inhabitants per km²⁵⁷. However, a certain flexibility is allowed in the selection of these areas, subject to the following limitations:
 - flexibility in the selection of areas must not mean an increase in the population covered;
 - the NUTS III parts qualifying for flexibility must have a population density of less than 12.5 inhabitants per square kilometer;
 - they must be contiguous with NUTS III regions which satisfy the low population density test;
 - (c) regions which form contiguous zones with a minimum population of at least 100 000 and which are located within either NUTS-II or NUTS-III regions which have either a GDP per capita of less than the EU-25 average, or which have an unemployment rate which is higher than 115 % of the national average, (both calculated on the average of the most recent 3 years of Eurostat data);
 - (d) NUTS-III regions with less than 100 000 population which have either a GDP per capita of less than the EU-25 average or which have an unemployment rate which is higher than 115 % of the national average, (both calculated on the average of the most recent three years of Eurostat data);
 - (e) islands and other regions categorised by similar geographical isolation⁵⁸ which have either a GDP per capita of less than the EU-25 average, or which have an unemployment rate which is higher than

55 Those statistical effect regions which from 1 January 2011 are not eligible for the derogation under Article 87(3)(a) are automatically eligible under Article 87(3)(c).

56 Taking account of their small size, for Cyprus and Luxembourg it is sufficient that the regions designated have either a GDP per capita which is less than the EU average, or an unemployment rate which is higher than 115 % of the national average, and have a minimum population of 10 000 inhabitants.

57 In order to prevent double counting, this criterion should be applied on a residual basis, after taking account of the relative wealth of the regions concerned.

58 For example peninsulas and mountainous regions.

- 115% of the national average, (both calculated on the average of the most recent three years of Eurostat data);
- (f) islands with fewer than 5 000 inhabitants and other communities with fewer than 5 000 inhabitants categorised by similar geographical isolation;
- (g) NUTS-III regions or parts thereof adjacent to a region which is eligible for support under Article 87(3)(a) as well as NUTS-III regions or parts thereof which share a land border, or a sea border of less than 30 kilometres with a country which is not a Member State of the European Economic Area or EFTA;
- (h) In duly justified cases, Member States may also designate other regions which form contiguous zones with a minimum population of at least 50 000 which are undergoing major structural change, or are in serious relative decline, when compared with other comparable regions. It will be the task of Member States which wish to use this possibility to demonstrate that the award of regional investment aid in the region concerned is justified, using recognised economic indicators and comparisons with the situation at Community level.

31. In addition, in order to allow Member States greater flexibility to target very localised regional disparities, below the NUTS-III level, Member States may also designate other smaller areas which do not meet the conditions described above provided they have a minimum population of 20 000⁵⁹. It will be the task of Member States which wish to use this possibility to demonstrate that the areas proposed are relatively more in need of economic development than other areas in that region, using recognised economic indicators such as GDP per capita, employment or unemployment levels, local productivity or skills indicators. Regional aid will be approved by the Commission in these areas for SMEs, and the relevant SME bonus will also apply. However, because of the potential distortion of competition resulting from the spill-over effect into the more prosperous surrounding regions, the Commission will not approve aid for investments by large companies in these areas, or aids for investments with eligible expenses exceeding EUR 25 million.
32. Compliance with the total coverage allowed for each Member State will be determined by the actual population of the regions concerned, on the basis of the most recent recognised statistical information available.

4. Regional investment aid

4.1. Form of aid and aid ceilings

4.1.1. Form of aid

33. Regional investment aid is aid awarded for an initial investment project.

59 This minimum limit may be reduced in the case of islands and other areas categorised by similar geographical isolation.

34. *Initial investment* means an investment in material and immaterial assets relating to;
- the setting-up of a new establishment;
 - the extension of an existing establishment;
 - diversification of the output of an establishment into new, additional products;
 - a fundamental change in the overall production process of an existing establishment.

"Material assets" means assets relating to land, buildings and plant/machinery. In case of acquisition of an establishment, only the costs of buying assets from third parties should be taken into consideration, provided the transaction has taken place under market conditions.

"Immaterial assets" means assets entailed by the transfer of technology through the acquisition of patent rights, licences, know-how or unpatented technical knowledge. Replacement investment which does not meet any of these conditions is thus excluded from the concept⁶⁰.

35. The acquisition of the assets directly linked to an establishment may also be regarded as initial investment provided the establishment has closed or would have closed had it not been purchased, and is bought by an independent investor⁶¹.
36. Regional investment aid is calculated either in reference to material and immaterial investment costs resulting from the initial investment project or to (estimated) wage costs for jobs directly created by the investment project⁶².
37. The form of the aid is variable. It may, for example, take the form of grants, low-interest loans or interest rebates, state guarantees, the purchase of a share-holding or an alternative provision of capital on favourable terms, exemptions or reductions in taxes, social security or other compulsory charges, or the supply of land, goods or services at favourable prices.
38. It is important to ensure that regional aid produces a real incentive effect to undertake investments which would not otherwise be made in the assisted areas. Therefore aid may only be granted under aid schemes if the beneficiary has submitted an application for aid and the authority responsible for administering the scheme has subsequently confirmed

60 Replacement investment may however qualify as operating aid under certain conditions as set out in section 5.

61 Consequently, the sole acquisition of the shares of the legal entity of an enterprise does not qualify as initial investment.

62 A job is deemed to be directly created by an investment project if it concerns the activity to which the investment relates and is created within three years of completion of the investment, including jobs created following an increase in the utilisation rate of the capacity created by the investment.

in writing⁶³ that, subject to detailed verification, the project in principle meets the conditions of eligibility laid down by the scheme before the start of work on the project⁶⁴. An express reference to both conditions must also be included in all aid schemes⁶⁵. In the case of ad hoc aid, the competent authority must have issued a letter of intent, conditional on Commission approval of the measure, to award aid before work starts on the project. If work begins before the conditions laid down in this paragraph are fulfilled, the whole project will not be eligible for aid.

39. Where the aid is calculated on the basis of material or immaterial investment costs, or of acquisition costs in the case referred to in paragraph 35, to ensure that the investment is viable and sound and respecting the applicable aid ceilings, the beneficiary must provide a financial contribution of at least 25 % of the eligible costs, either through its own resources or by external financing, in a form which is free of any public support⁶⁶.
40. Furthermore, in order to ensure that the investment makes a real and sustained contribution to regional development, aid must be made conditional, through the conditions attached to the aid, or its method of payment, on the maintenance of the investment in question in the region concerned for a minimum period of at least five years after its completion⁶⁷. In addition, where the aid is calculated on the basis of wage costs, the posts must be filled within three years of the completion of the works. Each of the jobs created through the investment must be maintained within the region concerned for a period of five years from the date the post was first filled. In the case of SMEs, Member States may reduce these five-year periods for the maintenance of an investment or jobs created to a minimum of three years.
41. The level of the aid is defined in terms of intensity compared with reference costs. All aid intensities must be calculated in terms of gross grant equivalents (GGE)⁶⁸. The aid intensity in gross grant equivalent is the

63 In the case of aid which is subject to individual notification to and approval by the Commission, confirmation of eligibility must be made conditional on the Commission decision approving the aid.

64 'Start of work' means either the start of construction work or the first firm commitment to order equipment, excluding preliminary feasibility studies.

65 The only exception to these rules is in the case of approved tax aid schemes where a tax exemption or reduction is granted automatically to qualifying expenditure without any discretion on the part of the authorities.

66 This is for example not the case for a subsidised loan, public equity-capital loans or public participations which do not meet the market economy investor principle, state guarantees containing elements of aid, as well as public support granted within the scope of the de minimis rule.

67 This rule shall not prevent the replacement of plant or equipment which has become outdated within this five year period due to rapid technological change, provided the economic activity is retained in the region concerned for the minimum period.

68 The Commission is discontinuing its former practice of converting regional aid notified by Member States into net grant equivalents in order to take account of the judgment of the

discounted value of the aid expressed as a percentage of the discounted value of the eligible costs. For aid which is individually notified to the Commission, the gross grant equivalent is calculated at the moment of notification. In other cases, the eligible investment costs are discounted to their value at the moment of the granting of the aid. Aid payable in several instalments shall be discounted to its value at the moment of its being notified or granted, as appropriate. The interest rate to be used for discounting purposes and to calculate the aid amount in a soft loan is the reference rate applicable at the time of grant. In cases where aid is awarded by means of tax exemptions or reductions on future taxes due, discounting of aid tranches takes place on the basis of the reference rates applicable at the various times the tax advantages become effective.

4.1.2. Aid ceilings (maximum aid intensities) for aid to large companies

42. The intensity of the aid must be adapted to take account of the nature and intensity of the regional problems that are being addressed. This means that the admissible aid intensities are from the outset less high in regions qualifying for exemption under Article 87(3)(c) than in those qualifying under Article 87(3)(a).
43. The Commission must also take account of the fact that following recent enlargements the disparities in the relative wealth of the regions qualifying under Article 87(3)(a) have increased substantially. In fact, a significant number of regions and indeed entire Member States now have a per capita GDP of below 45 % of the EU-25 average, which was not the case in 1998. The existence of these greater disparities of wealth within the Community requires the Commission to introduce a greater categorization of the regions concerned.
44. In the case of regions falling under Article 87(3)(a), the Commission thus considers that the intensity of regional aid must not exceed:

- 30 % GGE for regions with less than 75 % of average EU-25 GDP per capita, for outermost regions with higher GDP per capita and until 1 January 2011 statistical effect regions;
- 40 % GGE for regions with less than 60 % of average EU-25 GDP per capita;
- 50 % GGE for regions with less than 45 % of average EU-25 GDP per capita.

45. In recognition of their specific handicaps, the outermost regions will be eligible for a further bonus of 20 % GGE if their GDP per capita falls below 75 % of the EU-25 average and 10 % GGE in other cases.
46. The statistical effect regions which fall under the derogation under Article 87(3)(c) from 1 January 2011 will be eligible for an aid intensity of 20 %.
47. In the other Article 87(3)(c) regions, the ceiling on regional aid must not exceed 15 % GGE. This is reduced to 10 % GGE in the case of regions with both more than 100 % of average EU-25 GDP per capita and a lower unemployment rate than the EU-25 average, measured at NUTS-III level (based on averages for the last three years, using Eurostat data)⁶⁹.
48. However, the low population density regions and regions (corresponding to NUTS-III level or smaller) adjoining a region with Article 87(3)(a) status selected by Member States for coverage under Article 87(3)(c), as well as NUTS-III regions or parts thereof which share a land border with a country which is not a Member State of the European Economic Area or EFTA, are always eligible for an aid intensity of 15 % GGE.

4.1.3. Bonuses for small and medium-sized enterprises

49. In the case of aid awarded to small and medium-sized enterprises⁷⁰, the ceilings in section 4.1.2 may be increased by 20 % GGE for aid granted to small enterprises and by 10 % GGE for aid granted to medium-sized enterprises⁷¹.

4.2. Eligible expenses

4.2.1. Aid calculated on the basis of investment costs

50. Expenditures on land, buildings and plant/machinery⁷² are eligible for aid for initial investment.

Court of First Instance of 15 June 2000 in Case T-298/97, Alzetta. In that case the Court of First Instance ruled: 'The Commission is not empowered, under the State aid monitoring system established by the Treaty, to take into consideration the incidence of tax on the amount of financial aid allocated when it assesses whether it is compatible with the Treaty. Such charges are not levied specifically on the aid itself but are levied downstream, and apply to the aid in question in the same way as to any income received. They cannot therefore be relevant when assessing the specific effect of the aid on trade and competition and, in particular, when estimating the benefit obtained by the recipients of such aid by comparison with competing undertakings which have not received such aid and whose income is also liable to tax.' Furthermore, the Commission considers that the use of GGEs, which are also used to calculate the intensities of other types of State aid, will contribute to increasing the simplicity and transparency of the State aid control system, and also takes account of the increased proportion of State aid which is awarded in the form of tax exemptions.

69 By way of exception, a higher aid intensity may be permitted in the case of a NUTS-III region, or smaller, adjacent to an Article 87(3)(a) region if this is necessary to ensure that the differential between the two regions does not exceed 20 percentage points.

70 Annex I of Commission Regulation (EC) No 364/2004 of 25 February 2004 amending Regulation (EC) No 70/2001, OJ L 63, 28.2.2004, p. 22, or any successor regulation.

71 These bonuses do not apply to aid awarded in the transport sector.

72 In the transport sector, expenditure on the purchase of transport equipment (movable assets) is not eligible for aid for initial investment.

51. For SMEs, the costs of preparatory studies and consultancy costs linked to the investment may also be taken into account up to an aid intensity of 50 % of the actual costs incurred.
52. In the event of an acquisition of the type referred to in paragraph 35, only the costs of buying assets⁷³ from third parties should be taken into consideration⁷⁴. The transaction must take place under market conditions.
53. Costs related to the acquisition of assets other than land and buildings under lease can only be taken into consideration if the lease takes the form of financial leasing and contains an obligation to purchase the asset at the expiry of the term of the lease. For the lease of land and buildings, the lease must continue for at least five years after the anticipated date of the completion of the investment project for large companies, and three years for SMEs.
54. Except in the case of SMEs and takeovers, the assets acquired should be new. In the case of takeovers, assets for whose acquisition aid has already been granted prior to the purchase should be deducted.
55. For SMEs, the full costs of investments in intangible assets by the transfer of technology through the acquisition of patent rights, licences, know-how or unpatented technical knowledge may always be taken into consideration. For large companies, such costs are eligible only up to a limit of 50 % of the total eligible investment expenditure for the project.
56. In all cases, eligible intangible assets will be subject to the necessary conditions for ensuring that they remain associated with the recipient region eligible for the regional aid and, consequently, that they are not the subject of a transfer benefiting other regions, especially other regions not eligible for regional aid. To this end, eligible intangible assets will have to satisfy the following conditions in particular:
 - they must be used exclusively in the establishment receiving the regional aid;
 - they must be regarded as amortizable assets;

⁷³ Where the acquisition is accompanied by other initial investment, the expenditure relating to the latter should be added to the cost of the purchase.

⁷⁴ In exceptional cases, the aid may alternatively be calculated by reference to the (estimated) wage costs for the jobs safeguarded or newly created by the acquisition. These cases have to be individually notified to the Commission. - they must be purchased from third parties under market conditions; - they must be included in the assets of the firm and remain in the establishment receiving the regional aid for at least five years (three years for SMEs).

4.2.2. Aid calculated on the basis of wage costs

57. As was indicated in section 4.1.1, regional aid may also be calculated by reference to the expected wage costs⁷⁵ arising from job creation as a result of an initial investment project.
58. *Job creation* means a *net* increase in the number of employees⁷⁶ directly employed in a particular establishment compared with the average over the previous 12 months. Any jobs lost during that 12 month period must therefore be deducted from the apparent number of jobs created during the same period⁷⁷.
59. The amount of aid must not exceed a certain percentage of the wage cost of the person hired, calculated over a period of two years. The percentage is equal to the intensity allowed for investment aid in the area in question.

4.3. Aid for large investment projects

60. For the purpose of these guidelines, a 'large investment project' is an 'initial investment' as defined by these guidelines with an eligible expenditure above EUR 50 million⁷⁸. In order to prevent that a large investment project being artificially divided into sub-projects in order to escape the provisions of these guidelines, a large investment project will be considered to be a single investment project when the initial investment is undertaken in a period of three years by one or more companies and consists of fixed assets combined in an economically indivisible way⁷⁹.
61. To calculate whether the eligible expenditure for large investment projects reaches the various thresholds in these guidelines, the eligible expenditure to be taken into account is either the traditional investment costs or the wage cost, whichever is the higher.

⁷⁵ The wage cost means the total amount actually payable by the beneficiary of the aid in respect of the employment concerned, comprising the gross wage, before tax, and the compulsory social security contributions.

⁷⁶ The number of employees means the number of annual labour units, namely the number of persons employed full time in one year, part-time and seasonal work being ALU fractions.

⁷⁷ Such a definition holds true as much for an existing establishment as for a new establishment.

⁷⁸ The EUR 50 million must be calculated at prices and exchange rates on the date when the aid is granted, or in the case of large investment projects where individual notification is required, at prices and exchange rates at the date of the notification.

⁷⁹ To assess whether an initial investment is economically indivisible, the Commission will take into account the technical, functional and strategic links and the immediate geographical proximity. The economic indivisibility will be assessed independently from ownership. This implies that to establish whether a large investment project constitutes a single investment project, the assessment should be the same irrespective of whether the project is carried out by one undertaking, by more than one undertakings sharing the investment costs or by more undertakings bearing the costs of separate investments within the same investment project (for example in the case of a joint venture).

62. In two successive Multisectoral frameworks on regional aid for large investment projects in 1998⁸⁰ and 2002⁸¹, the Commission reduced the maximum aid intensities for large investment projects to limit distortions of competition. In the interests of simplification and transparency, the Commission has decided to integrate the provisions of the 2002 Multisectoral framework (MSF-2002) into the Regional aid guidelines for the period 2007-13.

63. MSF-2002 will therefore cease to apply to aid awarded or notified⁸² after 31 December 2006 and will be replaced by these guidelines⁸³.

4.3.1. Increased transparency and monitoring of large investment projects

64. Member States are required to notify individually to the Commission any aid to be awarded to investment projects under an existing aid scheme if the aid proposed from all sources is more than the maximum allowable amount of aid that an investment with eligible expenditure EUR 100 million can receive under the scale and the rules laid down in paragraph 67⁸⁴. The notification thresholds for different regions with the most commonly encountered aid intensities under these guidelines are summarised in the table below.

Aid intensity	10%	15%	20%	30%	40%	50%
Notification threshold	EUR 7,5 million	EUR 11,25 million	EUR 15,0 million	EUR 22,5 million	EUR 30,0 million	EUR 37,5 million

65. Whenever regional aid is granted on the basis of existing aid schemes for non-notifiable large investments projects, Member States must, within 20 working days starting from the granting of the aid by the competent authority, provide the Commission with the information requested in the standard form laid down in Annex III. The Commission will make summary information available to the public through its website (<http://europa.eu.int/comm/competition/>).

80 OJ C 107, 7.4.1998, p. 7.

81 OJ C 70, 19.3.2002, p. 8 as amended by OJ C 263, 1.11.2003, p. 1.

82 Individually notifiable investment projects will be assessed in accordance with the rules in force at the time of notification.

83 Given the wide general scope of these guidelines, the Commission decided that it is not technically feasible to proceed with the establishment of a list of sectors where serious structural difficulties prevail.

84 Ad hoc individual aid must always be notified to the Commission. Because of its clear effect on the conditions of trade and competition, the need for a specific justification for the link with regional development applies with greater force to ad hoc individual aid for large individual investment projects.

66. Member States must maintain detailed records regarding the granting of aid for all large investment projects. Such records, which must contain all information necessary to establish that the maximum allowable aid intensity has been observed, must be maintained for 10 years from the date on which the aid was granted.

4.3.2. Rules for the assessment of large investment projects

67. Regional investment aid for large investment projects is subject to an adjusted regional aid ceiling⁸⁵, on the basis of the following scale:

Eligible expenditure Adjusted aid ceiling Up to EUR 50 million 100 % of regional ceiling For the part between EUR 50 million and EUR 100 million 50 % of regional ceiling For the part exceeding EUR 100 million 34 % of regional ceiling Thus, the allowable aid amount for a large investment project will be calculated according to the following formula: maximum aid amount = $R \times (50 + 0,50 \times B + 0,34 \times C)$, where R is the unadjusted regional aid ceiling, B is the eligible expenditure between EUR 50 million and EUR 100 million, and C is the eligible expenditure above EUR 100 million. This is calculated on the basis of the official exchange rates prevailing on the date of the grant of aid, or in the case of aid subject to individual notification, on the date of notification.

68. Where the total amount of aid from all sources exceeds 75 % of the maximum amount of aid an investment with eligible expenditure of EUR 100 million could receive, applying the standard aid ceiling in force for large enterprises in the approved regional aid map on the date the aid is to be granted, and where:

- (a) the aid beneficiary accounts for more than 25 % of the sales of the product(s) concerned on the market(s) concerned before the investment or will account for more than 25 % after the investment, or
- (b) the production capacity created by the project is more than 5 % of the market measured using apparent consumption data⁸⁶ for the product concerned, unless the average annual growth rate of its apparent consumption over the last five years is above the average annual growth rate of the European Economic Area's GDP, the Commission will approve regional investment aid only after a detailed verification, following the opening of the procedure provided for in Article 88(2) of the Treaty, that the aid is necessary to provide an incentive effect for the investment and that the benefits of the aid measure outweigh the resulting distortion of competition and effect on trade between Member States⁸⁷.

85 The starting point for the calculation of the adjusted aid ceiling is always the maximum aid intensity allowed for aid for large enterprises in accordance with section 4.1.2 above. No SME bonuses may be granted to large investment projects.

86 Apparent consumption of the product concerned is production plus imports minus exports.
87 Before the entry into force of these guidelines the Commission will draw up further guidance on the criteria it will take into account during this assessment.

69. The product concerned is normally the product covered by the investment project⁸⁸. When the project concerns an intermediate product and a significant part of the output is not sold on the market, the product concerned may be the downstream product. The relevant product market includes the product concerned and its substitutes considered to be such either by the consumer (by reason of the product's characteristics, prices and intended use) or by the producer (through flexibility of the production installations).
70. The burden of proof that the situations to which paragraphs 68(a) and (b) refer do not apply, lies with the Member State⁸⁹. For the purpose of applying points (a) and (b), sales and apparent consumption will be defined at the appropriate level of the Prodcom classification⁹⁰, normally in the EEA, or, if such information is not available or relevant, on the basis of any other generally accepted market segmentation for which statistical data are readily available.

4.4. Rules on the cumulation of aid

71. The aid intensity ceilings laid down in sections 4.1 and 4.3 above apply to the total aid:
- where assistance is granted concurrently under several regional schemes or in combination with ad hoc aid;
 - whether the aid comes from local, regional, national or Community sources.
72. Where aid calculated on the basis of material or immaterial investment costs is combined with aid calculated on the basis of wage costs, the intensity ceiling laid down for the region concerned must be respected⁹¹.
73. Where the expenditure eligible for regional aid is eligible in whole or in part for aid for other purposes, the common portion will be subject to the most favourable ceiling under the applicable rules.
74. Where the Member State lays down that State aid under one scheme may be combined with aid under other schemes, it must specify, in each scheme, the method by which it will ensure compliance with the conditions listed above.

88 Where an investment project involves the production of several different products, each of the products needs to be considered.

89 If the Member State demonstrates that the aid beneficiary creates a new product market, the tests laid down in paragraph 68 (a) and (b) do not need to be carried out, and the aid will be authorised under the scale in paragraph 67.

90 Council Regulation (EEC) No 3924/91 of 19 December 1991 on the establishment of a Community survey of industrial production (OJ L 374, 31.12.1991, p. 1).

91 This condition is deemed to be met if the sum of the aid for the initial investment, expressed as a percentage of the investment, and of the job creation aid, expressed as a percentage of wage costs, does not exceed the most favourable amount resulting from application of either the ceiling set for the region in accordance with the criteria indicated at section 4.1 or the ceiling set for the region in accordance with the criteria indicated at section 4.3.

75. Regional investment aid shall not be cumulated with *de minimis* support in respect of the same eligible expenses in order to circumvent the maximum aid intensities laid down in these guidelines.

5. Operating aid⁹²

76. Regional aid aimed at reducing a firm's current expenses (operating aid) is normally prohibited. Exceptionally, however, such aid may be granted in regions eligible under the derogation in Article 87(3)(a) provided that (i) it is justified in terms of its contribution to regional development and its nature and (ii) its level is proportional to the handicaps it seeks to alleviate⁹³. It is for the Member State to demonstrate the existence and importance of any handicaps⁹⁴. In addition, certain specific forms of operating aid can be accepted in the low population density regions and the least populated areas.
77. Operating aid should in principle only be granted in respect of a predefined set of eligible expenditures or costs⁹⁵ and limited to a certain proportion of those costs.
78. Because of the specific nature of financial and intra-group activities, as defined in Section J (codes 65, 66 and 67) and intra-group activities falling within the scope of Section K (code 74) of the NACE code, operating aid granted for these activities has only a very limited likelihood of promoting regional development but a very high risk of distorting competition, as stated in the Commission notice on the application of the State aid rules to measures relating to direct business taxation⁹⁶. The Commission will therefore not approve any operating aid to the financial services sector, or for intra-group activities under these guidelines unless such aid is granted under general schemes which are open to all sectors and which are designed to offset additional transport or employment costs. Operating aid intended to promote exports is likewise excluded.
79. Because it is intended to overcome delays and bottlenecks in regional development, except as provided for in paragraphs 80 and 81, operating aid should always be temporary and reduced over time, and should be phased out when the regions concerned achieve real convergence with the wealthier areas of the EU⁹⁷.

92 Like other forms of regional aid, the granting of operating aid is always subject to the specific rules which may apply in particular sectors.

93 Operating aid takes the form in particular of tax exemptions or reductions in social security contributions which are not linked to eligible investment costs.

94 The Commission is currently studying the feasibility of establishing a methodology for evaluating the additional costs in the outermost regions.

95 For example, replacement investments, transport costs or labour costs.

96 OJ C 384, 10.12.1998, p. 3.

97 This principle of degressivity must also be respected when new operating aid schemes are notified to replace existing ones. However, flexibility as regards the application of this prin-

80. In derogation from the previous paragraph, operating aid which is not both progressively reduced and limited in time may only be authorised:
- in the outermost regions, in so far as it is intended to offset the additional costs arising in the pursuit of economic activity from the factors identified in Article 299(2) of the Treaty, the permanence and combination of which severely restrain the development of such regions (remoteness, insularity, small size, difficult topography and climate, and economic dependence on a few products)⁹⁸;
 - in the least populated regions, in so far as it is intended to prevent or reduce the continuing depopulation of these regions⁹⁹. The least populated regions represent or belong to regions at NUTS-II level with a population density of 8 inhabitants per km² or less and extend to adjacent and contiguous smaller areas meeting the same population density criterion.
81. In addition, in the outermost regions and low population density regions, aid which is not both progressively reduced and limited in time and which is intended partly to offset additional transport costs may be authorized under the following conditions:
- aid may serve only to compensate for the additional cost of transport, taking into account other schemes of assistance to transport. While the amount of aid may be calculated on a representative basis, systematic overcompensation must be avoided;
 - aid may be given only in respect of the extra cost of transport of goods produced in the outermost regions and low population density regions inside the national borders of the country concerned. It must not be allowed to become export aid. No aid may be given towards the transport or transmission of the products of businesses without an alternative location (products of the extractive industries, hydroelectric power stations, etc.);
 - for the outermost regions only, aid may also cover the cost of transporting primary commodities, raw materials or intermediate products from the place of their production to the place of final processing in the region concerned;
 - the aid must be objectively quantifiable in advance, on the basis of an aid-per-passenger or aid-per-ton/kilometer ratio, and there must be an annual report drawn up which, among other things, shows the operation of the ratio or ratios;

ciple may be permitted in the case of operating aid schemes designed to address the geographical handicaps of particular areas located within Article 87(3)(a) regions.

⁹⁸ In view of the constraints faced by the outermost regions, except in the cases referred to in paragraph 78, the Commission considers that operating aid of up to 10 % of the turnover of the beneficiary may be awarded without the need for specific justification. It is the task of the Member State to demonstrate that any proposed aid above this amount is justified in terms of its contribution to regional development, and that its level is proportional to the additional costs linked to the factors identified in Article 299(2) which it is intended to offset.

⁹⁹ It is the task of the Member State to demonstrate that the aid proposed is necessary and appropriate to prevent or reduce continuing depopulation.

- the estimate of additional cost must be based on the most economical form of transport and the shortest route between the place of production or processing and commercial outlets using that form of transport; external costs to the environment should also be taken into account.
82. In all cases, the need for and level of operating aid should be regularly re-examined to ensure its long-term relevance to the region concerned. The Commission will therefore only approve operating aid schemes for the duration of these guidelines.
83. In order to verify the effects on trade and competition of operating aid schemes, Member States will be required to provide each year a single report in respect of each NUTS-II region in which operating aid is granted which provides a breakdown of total expenditure, or estimated income forgone, for each operating aid scheme approved in the region concerned and identifies the ten largest beneficiaries of operating aid in the region concerned¹⁰⁰, specifying the sector(s) of activity of the beneficiaries and the amount of aid received by each.

6. Aid for newly created small enterprises

84. While newly created small enterprises encounter difficulties throughout the EU, it appears that the economic development of the assisted regions is hindered by relatively low levels of entrepreneurial activity and in particular by even lower than average rates of business start-ups. It therefore appears necessary to introduce a new form of aid, which can be granted in addition to regional investment aid, in order to provide incentives to support business start-ups and the early stage development of small enterprises in the assisted areas.
85. In order to ensure that it is effectively targeted, it appears that this type of aid should be graduated according to the difficulties faced by each category of region. Furthermore, in order to avoid an unacceptable risk of distortions of competition, including the risk of crowding-out existing enterprises, the aid should, for an initial period at least, be strictly limited to small enterprises, limited in amount and degressive.
86. The Commission will accordingly approve aid schemes which provide aid of up to a total of EUR 2 million per enterprise¹⁰¹ for small enterprises with their economic activity in regions eligible for the derogation in Article 87(3)(a), and up to EUR 1 million per enterprise for small enterprises with their economic activity in regions eligible for the derogation in Arti-

¹⁰⁰ In terms of the amount of aid received.

¹⁰¹ Eligible enterprises are small enterprises within the meaning of Article 2 of Annex I to Commission Regulation (EC) No 364/2004 or any successor regulation, which are autonomous within the meaning of Article 3 of the Annex to Commission Regulation (EC) No 364/2004 and which have been created less than five years ago.

cle 87(3)(c). Annual amounts of aid awarded for newly created small enterprises must not exceed 33 % of the abovementioned total amounts of aid per enterprise.

87. The eligible expenses are legal, advisory, consultancy and administrative costs directly related to the creation of the enterprise, as well as the following costs, insofar as they are actually incurred within the first five years of the creation of the enterprise thereafter:¹⁰²
- interests on external finance and a dividend on own capital employed not exceeding the reference rate;
 - fees for renting production facilities/equipment;
 - energy, water, heating, taxes (other than VAT and corporate taxes on business income) and administrative charges;
 - depreciation, fees for leasing production facilities/equipment as well as wage costs including compulsory social charges may also be included provided that the underlying investments or job creation and recruitment measures have not benefited from other forms of aid.
88. The aid intensity may not exceed
- in Article 87(3)(a) regions, 35 % of eligible expenses incurred in the first three years after the creation of the enterprise, and 25 % in the two years thereafter;
 - in Article 87(3)(c) regions, 25 % of eligible expenses incurred in the first three years after the creation of the enterprise, and 15 % in the two years thereafter.
89. These intensities are increased by 5 % in Article 87(3)(a) regions with a GDP per capita of less than 60 % of the EU-25 average, in regions with a population density of less than 12.5 inhabitants/km² and in small islands with a population of less than 5 000, and other communities of the same size suffering from similar isolation.
90. The Member State shall put in place the necessary system to ensure that the upper limits for the amount of aid and the relevant aid intensity in relation to the eligible costs concerned are not exceeded. In particular, the aid provided for in this chapter shall not be cumulated with other public support (including *de minimis* support) in order to circumvent the maximum aid intensities or amounts laid down.
91. Granting aid designed exclusively for newly created small enterprises may produce perverse incentives for existing small enterprises to close down and re-open in order to receive this type of aid. Member States should be aware of this risk and should design aid schemes in such a way as to avoid this problem, for example by placing limits on applications from owners of recently closed firms.

102 VAT and direct business profit/income taxes are not included in the eligible expenses.

7. Transitional arrangements

7.1. Reductions of aid intensities for regions remaining within Article 87(3)(a) on 1 January 2007

92. Where the implementation of these guidelines will result in a reduction in maximum aid intensities of more than 15 percentage points, net to gross¹⁰³, the reduction may be implemented in two stages with the initial reduction of a minimum of 10 percentage points being applied on 1 January 2007, and the balance on 1 January 2011.

7.2. Reductions of aid intensities in the economic development regions

93. Provided the areas concerned are proposed by the Member State as eligible for regional aid under Article 87(3)(c) for the whole period 2007-2013, the reduction of aid intensities for the economic development regions may take place in two stages. A reduction of at least 10 percentage points net to gross shall be applied on 1 January 2007. As necessary to meet the new aid intensities allowed under these guidelines, a final reduction shall be applied at the latest on 1 January 2011¹⁰⁴.

7.3. Phasing-out of operating aid

94. For regions which lose their capacity to grant operating aid as a result of the loss of eligibility under Article 87(3)(a), the Commission can accept a linear phasing out of operating aid schemes over a two-year period from the date of the loss of eligibility to grant such aid.

7.4. Phasing out of Article 87(3)(c) regions

95. Following the entry into force of these guidelines, a number of regions will lose their eligibility for regional investment aid. In order to facilitate the smooth transition of these regions to the reformed horizontal State aid regime which is progressively being put in place through the implementation of the State aid action plan, Member States may exceptionally designate additional regions to be eligible for regional aid under Article 87(3)(c) until 1 January 2009, provided that the following conditions are met:
- the regions concerned were eligible for regional aid under Article 87(3)(c) on 31 December 2006;
 - the combined total population of the regions eligible for regional investment aid under Article 87(3)(c) pursuant to the allocation of population coverages referred to in paragraphs 27 and 28 and those designated in accordance with this provision shall not exceed 66

103 i.e. from 50 % net grant equivalent to 30 % gross grant equivalent.

104 Since Northern Ireland benefited from a specific provision in the regional aid guidelines for the period 2000-2006, the application of the same transitional arrangement is also justified.

% of the national population eligible for regional aid under Article 87(3)(c) on 31 December 2006¹⁰⁵;

- the maximum aid intensity permitted in the additional regions designated in accordance with this provision shall not exceed 10 %.

8. Regional aid maps and declaration of compatibility

96. The regions of a Member State eligible for regional investment aid under the derogations and the ceilings on the intensity of aid for initial investment¹⁰⁶ approved for each region together form a Member State's regional aid map. The regional aid map also defines the regions eligible to grant enterprise aid. Operating aid schemes are not covered by the regional aid maps, and are assessed on a case by case basis on the basis of a notification by the Member State concerned pursuant to Article 88(3) of the Treaty.
97. The Court of Justice has ruled that the 'decisions' by which the Commission adopts the regional aid maps for each Member State should be construed as forming an integral part of the guidelines on regional aid and as having binding force only on condition that they have been accepted by Member States¹⁰⁷.
98. Furthermore, it should be recalled that the regional aid maps also define the scope of any group exemption exempting regional aid from the notification obligation under Article 88(3) of the Treaty, whether such aid is granted on the basis of Regulation (EC) No 70/2001¹⁰⁸, or on the basis of a possible future exemption regulation for other forms of regional aid. Article 1(1)(b) of Regulation (EC) No 994/98¹⁰⁹ provides only for the exemption of 'aid that complies with the map approved by the Commission for each Member State for the grant of regional aid'.
99. Under these guidelines, depending on the socio-economic situation of the Member States, the regional aid map will include:
- (1) regions which can be identified on the basis of the criteria set out in these guidelines and in respect of which maximum aid intensities

105 After exclusion of those regions which were eligible for regional aid under Article 87(3)(c) on 31 December 2006 and which qualify for aid under the present guidelines by virtue of other provisions (statistical effect regions, economic development regions, low population density regions).

106 As adjusted in accordance with paragraph 67 in the case of individually notifiable aid for large investment projects.

107 Judgment of 18 June 2002 in Case C-242/00 Germany v. Commission.

108 Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10, 13.1.2001, p. 33), as amended by Commission Regulation (EC) No 364/2004 of 25 February 2004 amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development (OJ L 63, 28.2.2004, p. 22).

109 Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid OJ L 142, 14.5.1998, p. 1.

are defined by these guidelines. These are the regions eligible for the derogation under Article 87(3)(a) and the statistical effect regions.

- (2) regions which are to be designated by Member States for eligibility for regional aid in accordance with Article 87(3)(c) up to the limit for population coverage determined in accordance with section 3.4.1.

100. Of course, provided they respect the conditions set out in these guidelines, it is the responsibility of the Member States themselves to decide whether they wish to grant regional investment aid and up to what level. As soon as possible after the publication of these guidelines, each Member State should accordingly notify to the Commission, in accordance with Article 88(3) of the Treaty, a single regional aid map covering its entire national territory.
101. The Commission will examine the notifications in accordance with the procedure set out in Article 88(3) of the Treaty. At the conclusion of its examination, it will publish the approved regional aid maps in the *Official Journal of the European Union*. These maps will take effect on 1 January 2007, or their date of publication if later, and will be considered an integral part of the present guidelines. 102. The notification should clearly identify the regions proposed for eligibility under Article 87(3)(a) or (c), and the aid intensities envisaged for large companies, taking account of adjustments in the regional aid ceiling for large investment projects. Where for certain regions, transitional rules will apply, or where a change of aid intensity is anticipated, the relevant periods and aid intensities should be detailed.
103. Given that the regions eligible for support under Article 87(3)(a) and the statistical effect regions are determined exogenously at the NUTS-II level, it will not normally be necessary to provide detailed supporting socio-economic data. On the other hand detailed supporting information should be given to explain the designation of the Article 87(3)(c) regions, other than the economic development, the low population density and the border regions, including the detailed identification of the regions concerned, population data, information on GDP and unemployment levels in the regions concerned, and any other relevant information.
104. In order to ensure continuity, which is essential for long-term regional development, the list of regions notified by Member States should in principle apply throughout the period 2007-2013. It may, however, be subject to a mid-term review in 2010. Any Member State wishing to amend the list of regions eligible for aid under Article 87(3)(c) or the applicable aid intensities must submit a notification to the Commission before 1 April 2010 at the latest. Any changes of region in this context may not exceed 50 % of the total coverage allowed for the Member State under Article 87(3)(c). With the exception of the statistical effect regions, regions which lose their eligibility for regional aid coverage as a result

of this mid-term review will not be eligible for any transitional support. Moreover, Member States may at any time notify to the Commission a request to add further regions to the list until such time as the relevant population coverage is reached.

9. Entry into force, implementation, transparency and review

105. The Commission intends to apply these guidelines to all regional aid to be granted after 31 December 2006. Regional aid awarded or to be granted before 2007 will be assessed in accordance with the 1998 guidelines on national regional aid. 106. Since they must be coherent with the regional aid map, notifications of regional aid schemes, or ad hoc aid to be granted after 31 December 2006, cannot normally be considered complete until the regional aid map has been adopted for the Member State concerned in accordance with the arrangements described in section 8. Accordingly, the Commission will not normally examine notifications of regional aid schemes which are to apply after 31 December 2006, or ad hoc aid to be granted after that date, until the adoption of the regional aid map for the Member State concerned¹¹⁰. The same applies to aid schemes for newly created small enterprises covered by section 6 of these guidelines.

107. The Commission considers that the implementation of these guidelines will lead to substantial changes in the rules applicable to regional aid throughout the Community. Furthermore, in the light of the changed economic and social conditions prevailing in the EU, it appears necessary to review the continuing justification for and effectiveness of all regional aid schemes, including both investment aid and operating aid schemes. For these reasons, the Commission will propose the following appropriate measures to Member States pursuant to Article 88(1) of the Treaty:

- without prejudice to Article 10(2) of Regulation (EC) No 70/2001¹¹¹ on the application of Articles 87 and 88 of the Treaty to State aid for small and medium-sized enterprises, as amended by Regulation (EC) No 364/2004¹¹² and to Article 11(2) of Regulation (EC) No 2204/2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment¹¹³, Member States shall limit the application in time

110 The Commission informs the Member States that in order to reduce that burden of the obligation of notification to the maximum extent possible, it intends to make use of the powers conferred on it by Regulation (EC) No 994/98 to exempt from notification under Article 88(3) of the Treaty all transparent regional investment aid schemes which comply with the national regional aid map approved for the Member State concerned. Ad hoc individual aid and operating aid schemes will not be exempt from notification. Moreover, the information and individual notification requirements for large individual aid projects set out in section 4.3 of these guidelines will continue to apply, including in the case of aid which is granted under exempted schemes.

111 OJ L 10, 13.1.2001, p. 33.

112 OJ L 63, 28.2.2004, p. 22.

113 OJ L 337, 13.12.2002, p. 3.

of all existing regional aid schemes to aid to be granted on or before 31 December 2006;

- where environment aid schemes allow regional investment aid to be granted for environmental investments pursuant to footnote 29 of the Community guidelines on State aid for environmental protection¹¹⁴, Member States shall amend the relevant schemes in order to ensure that aid may only be granted after 31 December 2006 if it complies with the regional aid map in force on the date the aid is granted;
- Member States shall as necessary amend other existing aid schemes in order to ensure that any regional bonuses such as those allowed for training aid, aid for research and development or environment aid may only be granted after 31 December 2006 in areas which are eligible for support under Article 87(3)(a) or (c) in accordance with the regional aid map adopted by the Commission in force on the date the aid is granted. The Commission will invite Member States to confirm their acceptance of these proposals within one month.

108. In addition, the Commission considers that further measures are necessary to improve the transparency of regional aid in an enlarged union. In particular, it appears necessary to ensure that the Member States, economic operators, interested parties and indeed the Commission itself should have easy access to the full text of all applicable regional aid schemes in the EU. The Commission considers that this can easily be achieved through the establishment of linked internet sites. For this reason, when examining regional aid schemes, the Commission will systematically seek an undertaking from the Member State that the full text of the final aid scheme will be published on the internet and that the internet address of the publication will be communicated to the Commission. Projects for which expenses were incurred before the date of publication of the scheme will not be eligible for regional aid.

109. The Commission may decide to review or amend these guidelines at any time if this should be necessary for reasons associated with competition policy or in order to take account of other Community policies and international commitments.

114 OJ C 37, 3.2.2001, p. 3.

CHAPTER VIII
NATIONAL DOCUMENTS

**ACT of 6 December 2006 on the principles of pursuing a policy
of development Journal of Laws No 227 item 1658**

CHAPTER 1
General Provisions

Article 1

1. The Act lays down the principles of pursuing a policy of development, specifies entities pursuing this policy and method of cooperation between them.
 2. The Act shall not be applied to programmes financed under the European Agricultural Fund for Rural Development, the European Fisheries Fund, apart from the provisions of Chapters 1, 2 and 7.
- (...)

CHAPTER 5
Operational Programmes Implementation

Article 25

1. Managing authority shall be responsible for sound implementation of operational programme.
2. Managing authority shall be:
 - 1) for national operational programme – appropriate minister or minister competent for regional development, with respect to article 18;
 - 2) for national operational programme – voivodship board.

Article 26

1. The tasks of managing authority shall be in particular:
 - 1) fulfilling obligations resulting from article 60 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 and repealing Regulation (EC) No 1260/1999 – in relation to operational programme co-financed with resources, referred to in article 1 of the Regulation;

- 2) preparation of detailed description of operational programme according to guidelines of minister competent for regional development, referred to in article 35 paragraph 3 item 1;
 - 3) preparation and providing for acceptance of the Monitoring Committee a proposition of project selection criteria;
 - 4) selection of projects, according to criteria referred in item 3, to be co-financed under operational programme;
 - 5) concluding project co-financing agreements with beneficiaries;
 - 6) assigning expenditure eligibility criteria to be co-financed under operational programme;
 - 7) assigning co-financing rate for projects, as a percentage of expenditure to be co-financed, with respect to that:
 - a) it may be diversified in relation to the categories of project beneficiaries;
 - b) ceiling amount of co-financing may be 100% of project value.
 - 8) assigning system of implementation of operational programme;
 - 9) assigning project categories, which shall require expert appraisal for the purpose of project selection, referred to in article 31;
 - 10) management of financial resources for implementation of operational programme, derived from the national budget, voivodship budget or foreign sources;
 - 11) payment of expenditure to beneficiaries from the resources of operational programme;
 - 12) monitoring progress of implementation, evaluation of operational programme and advancement in achievement of objectives;
 - 13) elaboration, if necessary, proposals of operational programme revision;
 - 14) control of implementation of operational programme, including control of implementation of particular co-financed projects;
 - 15) reclamation of amounts unduly paid to beneficiaries;
 - 16) ensuring appropriate information and publicity of operational programme.
2. While performing its tasks, referred to in paragraph 1, managing authority shall consider the principle of equal access to assistance of all categories of beneficiaries under programme and ensure transparent rules of project appraisal.

Article 27

1. Managing authority may by an agreement entrust implementation of part of operational programme to intermediate body, and in particular:

- 1) preparation and providing management authority with a proposition of detailed description of priority axis of operational programme according to guidelines of minister competent for regional development, referred to in article 35 paragraph 3 item 1;
 - 2) preparation and providing the Monitoring Committee with a proposition of project selection criteria;
 - 3) selection of projects, according to particular criteria, to be co-financed under operational programme;
 - 4) concluding project co-financing agreements with beneficiaries;
 - 5) control implementation of co-financed projects;
 - 6) payment of expenditure to beneficiaries from the resources of operational programme;
 - 7) reclamation of amounts unduly paid to beneficiaries;
 - 8) providing information and publicity.
2. Managing authority shall be responsible for accuracy of implementation of tasks entrusted to intermediate body.
 3. Managing authority certifies procedures for entrusted operations, elaborated by intermediate body.
 4. Managing authority or, with its consent, intermediate body or implementing authority may entrust implementation of technical operations related to its tasks to other entities by an agreement or contract, accordingly.
 5. For implementation of technical operations, referred to in paragraph 4, entrusted to unit of the public finance sector or foundations, which were established exclusively by the National Budget, the provisions of Act of 29 January 2004 – Public Procurement Law (Journal of Laws of 2006 No 164, item 1163 and No 170 item 1217) shall not be applied. In this case managing authority or intermediate body provides the units of the public finance sector or foundations with reimbursement of costs incurred in relation to implementation of the operations.

Article 28

1. The following projects may receive financing under operational programme:
 - 1) individual – specified in operational programme, submitted by beneficiaries personally appointed in operational programme adopted by the Council of Ministers
 - 2) systemic – consisting in financial assistance to particular public administration authorities and other organisational units within the public finance sector, implementing public tasks specified in separate provisions related to the authorities and the units, or in the guidelines, referred to in article 35 paragraph 3;
 - 3) selected in competition;

- 4) whose total cost exceeds 25 million EUR, which cannot be classified as the projects referred to in items 1-3; the projects require approval, expressed on managing authority request, by the Council of Ministers or by appropriate voivodship seym.
2. Decision to grant financing to project whose beneficiary is managing authority or intermediate body, is taken by managing authority, with reservation of article 35 paragraph 2 item 8.
 3. Appropriate voivod performs supervision of selection of projects under regional operational programmes, specified in paragraph 1 item 3, empowered with right to veto, in case of experiencing irregularities in course of selection of projects, supported by documentary evidence, which results in suspension of selection procedure and summoning another session of competition commission. Each session of competition commission may be attended by a representative of voivod.

Article 29

1. Managing authority, intermediate body or implementing authority shall publish information via Internet website about selection of projects to be financed accordingly to article 28 paragraph 1 item 3.
2. The information referred to in paragraph 1 shall specify:
 - 1) scope of projects eligible for co-financing;
 - 2) scope of beneficiaries eligible for co-financing;
 - 3) amount of resources to be allocated for co-financing of selected projects;
 - 4) co-financing rate for projects, referred to in article 26 paragraph 1 item 7;
 - 5) ceiling amount of co-financing, if applicable;
 - 6) project selection criteria;
 - 7) date of announcement of competition result;
 - 8) project application form;
 - 9) date, place and method of submitting project applications;
 - 10) project co-financing agreement form.
3. Managing authority, intermediate body or implementing authority on the day of competition announcement shall publish, in a national or regional daily, information about the competition, which shall contain at least elements specified in paragraph 2 items 1-3 and Internet website address, where the competition announcement has been published.
4. Until all project co-financing agreements have been concluded with beneficiaries selected in the competition or as a result of revision of protest, the entity that has announced the competition:

- 1) shall not deteriorate conditions of project implementation or impose additional obligations upon entities submitting for co-financing;
 - 2) shall not alter rules of competition in relation to scope referred to in paragraph 2 items 1, 5, 6, 8 and 9;
 - 3) may exclusively extend the scope of beneficiaries eligible for co-financing.
- (...)

Article 36

1. Monitoring Committee shall monitor implementation of operational programmes.
2. Appropriate minister acting as managing authority for operational programme and for regional operational programmes appropriate voivod shall designate Monitoring Committee by a regulation:
 - 1) for operational programme co-financed with resources derived from the European Union budget – according to article 63 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 and repealing Regulation (EC) No 1260/1999 – by appointing its members, tasks and method of procedure, with respect to the provisions of the Regulation;
 - 2) for other operational programmes – by appointing its members, tasks and method of procedure.
3. Minister competent for regional development as well as voivodship marshal shall participate, through their representatives, in proceedings of Monitoring Committee designated for regional operational programme, referred to in paragraph 2.
4. Representatives of the Joint Government and Territorial Self-Government Commission shall also participate in proceedings of Monitoring Committee designated for regional operational programme, referred to in paragraph 2.

Act of 30 June 2005 on Public Finance

(...)

Article 5

1. The following shall be public funds:
 - 1) public income;
 - 2) funds derived from the European Union budget and not returnable funds derived from assistance of the European Free Trade Association (EFTA) member states;
 - 3) funds derived from foreign sources, not returnable, other than specified in item 2;
 - 4) revenues of the state budget and of budgets of local government units, derived from:
 - a) sale of securities and other financial transactions;
 - b) privatisation of assets of the State Treasury and assets of local government units;
 - c) repayment of loans granted from public funds;
 - d) obtained loans and credits;
 - 5) revenues of units within the public finance sector, derived from their activity and other sources.
2. The following shall be public income:
 - 1) public levies which include taxes, subscriptions, fees and other cash payments incurred for the state, local government units, earmarked funds and other organisational units within the public finance sector, under other laws than the Budgetary Law, hereinafter referred to as "separate laws";
 - 2) other income due to the state budget, local government units and other organisational units within the public finance sector, under separate laws;
 - 3) income from the sale of products and services performed by units within the public finance sector;
 - 4) income from assets of units within the public finance sector, in particular:
 - a) income from lease or tenancy and other agreements of a similar character;
 - b) interest from resources deposited on bank accounts;
 - c) interest from loans granted and from securities held;
 - d) dividends derived from property law;
 - 5) inheritances, bequests and gifts in cash for units within the public finance sector;
 - 6) compensations due to units within the public finance sector;

- 7) amounts received by units within the public finance sector due to provided guarantees;
 - 8) income from the sale of assets, objects and rights, not constituting incomes as set in paragraph 1 item 4 letters a) and b);
 - 9) other incomes due to units within the public finance sector specified in separate laws or international agreements.
3. The resources referred to in paragraph 1 item 2 are:
- 1) resources for implementation of pre-accession programmes;
 - 2) resources derived from the Structural Funds, the Cohesion Fund and the European Fisheries Fund;
 - 3) resources of:
 - a) the European Agricultural Guidance and Guarantee Fund "Guarantee Section";
 - b) the European Agricultural Guarantee Fund;
 - c) the European Agricultural Fund for Rural Development;
 - 3a) non-returnable resources derived from assistance of the European Free Trade Association (EFTA) member states:
 - a) the Norwegian Financial Mechanism;
 - b) the European Economic Area Financial Mechanism;
 - c) the Switzerland Financial Mechanism;
 - 4) other resources.
4. The Council of Ministers may define by a regulation specification of public resources excluded from the resources referred to in paragraph 3 item 3a and 4, having considered source thereof, appropriation and beneficiaries thereof.

(...)

Article 153

1. The Minister of Finance shall perform general control of:
 - 1) execution of income and expenditure as well as revenue and expenses of the state budget;
 - 2) use of resources derived from the European Union budget;
 - 3) the level of the deficit.
- 1a. The minister competent for regional development shall perform supervision and control of implementation of programmes financed under the resources referred to in article 5 paragraph 3 item 2.
2. The controllers of budgetary parts shall perform supervision and control of:
 - 1) the whole of financial management of organisational units subordinated to them as well as compliance thereof with the control proce-

- dures and rules of initial evaluation of purposefulness of incurred expenditure;
- 2) the use of subsidies granted from the state budget;
- 3) the execution of tasks financed by the state budget;
- 4) compliance with financial control procedures in process of budget execution.

3. The supervision and control referred to in paragraph 2 shall be in particular:
- 1) the correctness and punctuality of income collection;
 - 2) the compliance of expenditures with the planned appropriation;
 - 3) the correctness of utilisation of financial resources, including the scope of completed tasks;
 - 4) the amount of and time limits of transferring subsidies;
 - 5) the correctness of utilisation of subsidies granted from the state budget, with respect to compliance with the appropriation and the amount of utilised subsidy with the extent of execution of tasks planned for financing with a subsidy from the state budget.

(...)

Section V Resources derived from the European Union budget and other foreign sources, non-returnable

Article 200

1. Resources referred to in article 5 paragraph 3 items 2-4, shall be accumulated in separate bank accounts in EUR.
2. Banking servicing of the accounts referred to in paragraph 1 shall be performed by the National Bank of Poland or the Bank of National Economy, under a bank account agreement.
3. Within the limits of services, referred to in paragraph 1, the National Bank of Poland or the Bank of National Economy perform withdrawals in EUR or in PLN according to the disposition of the Minister of Finance or his plenipotentiaries.
4. Resources, referred to in article 5 paragraph 3 items 2-4, shall be considered incomes of the state budget after having been transferred in PLN to the account of incomes of the state budget, without prejudice to paragraph 5.
5. Resources, referred to in article 5 paragraph 3 items 2-4, shall not be considered incomes of the state budget, if related to programmes implemented within the framework of European Territorial Cooperation, re-

ferred to in Chapter III of 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, (Official Journal L 210 of 31 July 2006, pg. 1), and programmes, referred to in Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument, (Official Journal L 310/1 of 9 November 2006, pg. 1).

(...)

Article 202

1. Resources, referred to in article 5 paragraph 3 items 2-4, shall be used for the purpose specified in international agreement, separate laws or declaration of the donor.
2. Resources, referred to in article 5 paragraph 3 items 2-4, may be used for:
 - 1) financing of expenditure incurred by state budgetary units related to implementation of programmes financed under the resources referred to in article 5 paragraph 3 items 2;
 - 2) development subsidies for units within the public finance sector or other entities being beneficiaries of the resources;
 - 3) financing the Common Agricultural Policy, according to separate provisions.
3. Development subsidies may be transferred from the state budget in form of advance payment or reimbursement of the costs incurred for implementation of operational programme financed under the resources, referred to in article 5 paragraph 3 items 2, or a project within such programme.

(...)

Article 209

1. Agreement between disposer of resources and beneficiary of subsidy, referred to in article 202, shall define the detailed rules of transfer and utilisation of development subsidy.
2. The agreement, referred to in paragraph 1, shall contain:
 - 1) description of undertaking, including appropriation of the granted resources, and time limit of implementation thereof;
 - 2) quarterly schedule of expenditure within the programme or project;
 - 3) amount of resources granted to beneficiary and mode of transferring the resources;
 - 4) obligation of beneficiary to submit to control and mode of controlling implementation of undertaking;

- 5) time limit and mode of settlement of granted resources;
- 6) forms of securing appropriate execution of obligations of beneficiary resulting from the agreement;
- 7) conditions of termination of the agreement in relation to irregularities occurred in course of programme of project implementation;
- 8) conditions and time limits of return of misused resources or collected in an excessive amount or undue;
- 9) other provisions resulting from the Community or national legislation.

3. If beneficiary is a state budgetary unit the conditions, referred to in paragraph 1, shall be specified in agreement with intermediate body or implementing authority. The provisions of paragraph 2 shall be applied accordingly, with exception to item 2, 4 and 6.

(...)

Article 211

1. If the resources, referred to in article 5 paragraph 3 items 2, 3a and 4, as well as resources for financing programmes and projects implemented from the resources or subsidies, referred to in article 202, have been:
 - 1) utilised inconsistently with the appropriation;
 - 2) utilised with infringement of procedures, referred to in article 208;
 - 3) collected unduly or in an excessive amount
 - they shall be returned by beneficiary together with interest in the amount defined as for tax arrears, assessed accordingly from the day of transferring the subsidy to account specified by authority or unit transferring the subsidy, within 14 days from the day of receiving the decision, referred to in paragraph 4. The provisions of article 145 paragraphs 2-5 shall be applied accordingly.
2. Utilisation of resources, referred to in paragraph 1, in a way specified in paragraph 1 item 1, resulting in lack of implementation of full extent of the project, specified in the agreement, referred to in article 209 paragraph 1, exclude the right to receive the resources, referred to in paragraph 1, for the purpose of implementation of the project within programmes financed under the resources. The period of exclusion shall start on the day the decision, referred to in paragraph 4, has become conclusive, and shall end in 3 years from the return of the resources.
3. The provision of paragraph 2 shall not apply for state budgetary units and local government units.
4. If the circumstances, referred to in paragraph 1, occur managing authority shall issue decision specifying the amount to be returned and date from which interest is accrued.

5. Within the scope not regulated by paragraph 1 and 4 the provisions Section III of Act - The Tax Regulations shall be applied accordingly, with exception to article 57 of this Act.
6. The following entities shall have powers of tax authority, referred to in Section III of Act - The Tax Regulations:
 - 1) managing authority – in the first instance;
 - 2) minister competent for regional development – acting as an appeal instance.
7. The procedure established by Act on Executive Procedure in Administration shall be applied for execution of the receivables, referred to in paragraph 1.

Act of 17 December 2004 on Liability for Violating Discipline of Public Finance

(...)

Article 5

1. Violation of discipline of public finances shall be considered:
 - 1) failure to establish a receivable of the State Treasury, a local government unit or other unit of the public finance sector, as well as establishment thereof in an amount lower than this would follow from correct calculation;
 - 2) failure to collect or vindicate a receivable of the State Treasury, a local government unit or other unit of the public finance sector, as well as collection or vindication thereof in an amount lower than this would follow from correct calculation;
 - 3) discontinuing of a receivable of the State Treasury, a local government unit or other unit of the public finance sector, in a manner that is inconsistent with the law, as well as allowing for prescription thereof;
 - 4) failure to vindicate excessively or unduly received resources derived from:
 - a) the European Union budget;
 - b) foreign sources, non-returnable, other than referred to in letter a).
2. Violation of discipline of public finances shall be considered allowing by head of a unit within the public finance sector for a diminution of revenues due to the state budget or the budget of a local government unit or other organisational unit within the public finance sector, as a result of neglecting or failure to fulfill obligations in the area of supervision.
3. The provisions of paragraph 1 item 1-3 and paragraph 2 are not applied to premiums collected by the Social Insurance Institution and the President of the Agricultural Social Insurance Fund.

(...)

Article 8

Violation of discipline of public finances shall be considered:

- 1) transfer of subsidy constituting infringement of rules or procedure of granting the subsidy;
- 2) failure to provide settlement of transferred subsidy or failure to provide it in due time;

- 3) failure to specify the amount of subsidy to be returned to the budget.

Article 9

Violation of discipline of public finances shall be considered:

- 1) use of subsidy inconsistently with the appropriation specified by the donor;
- 2) failure to provide settlement of received subsidy or failure to provide it in due time;
- 3) failure to return subsidy in due amount or failure to return it in due time.

(...)

Article 13

Violation of discipline of public finances shall be considered:

- 1) granting or transferring resources derived from the European Union budget or other resources derived from foreign sources, non-returnable, constituting infringement of rules or procedure of granting or transferring thereof;
- 2) granting or transferring resources for the Common Agricultural Policy, constituting infringement of procedures in force in relation to thereof;
- 3) use of resources referred to in item 1, inconsistently with the appropriation or inconsistently with the procedures in force.

Act of 29 January 2004 – Public Procurement Law

(...)

Article 3

1. This Act shall apply to public contracts, hereinafter referred to as "contracts", awarded by:
 - 1) the public finance sector units within the meaning of provisions on public finance;
 - 2) state organisational units not having legal personality, other than those specified in item 1;
 - 3) legal persons, other than those specified in item 1, established for the specific purpose of meeting needs in the general interest, not having industrial or commercial character, if the entities referred to in these provisions and in items 1 and 2, separately or jointly, directly or indirectly through another entity:
 - a) finance them in more than 50%, or
 - b) have more than half of shares or stocks, or
 - c) supervise their managerial board, or
 - d) have the right to appoint more than half of the members of their supervisory or managerial board;
 - 3a) associations of the entities referred to in items 1 and 2, or entities referred to in item 3;
 - 4) entities other than those specified in items 1-3a, if the contract is awarded for the purposes of exercising one of the activities referred to in article 132, if such an activity is exercised on the basis of special or exclusive rights, or if the entities referred to in items 1-3a, separately or jointly, directly or indirectly through another entity, have a dominant influence over them, in particular:
 - a) finance them in more than 50%, or
 - b) have more than half of the shares or stocks, or
 - c) have more than half of the votes resulting from the shares or stocks, or
 - d) supervise their managerial board, or
 - e) have the right to appoint more than half of the members of their managerial board;
 - 5) entities other than those specified in items 1 and 2, if all of the following circumstances occur:
 - a) more than 50% of the value of the contract awarded by them is financed from public funds or by the entities referred to in items 1-3a,
 - b) the value of a contract is equal to or exceeds the amounts specified in the provisions issued under article 11 paragraph 8,

- c) the contract object is works comprising the activities in the field of overland and maritime engineering, construction of hospitals, sport, recreation and leisure centres, school buildings, facilities used by the universities or buildings used by the public administration or services connected with such works;
 - 6) entities, other than those specified in items 1 and 2, if the contract awarded by them is financed under the funds, the allocation of which is dependant on the use of the contract award procedure provided for in this Act;
 - 7) entities which have been granted the public works concession by the entities referred to in items 1-3a, insofar as they award contracts for the purpose of the execution of that concession.
2. Special or exclusive rights within the meaning of paragraph 1 item 4 shall be rights granted by a law or an administrative decision consisting in the reservation for one or more entities of the performance of a specific activity where complying with the conditions for obtaining such a right as regulated by separate provisions does not result in obligation of the granting that right.

Article 4

This Act shall not apply to:

- 1) contracts awarded pursuant to:
 - a) special procedure of an international organisation different from the one provided for in the Act,
 - b) international agreements relating to the stationing of troops to which the Republic of Poland is a party, if such agreements provide for contract award procedures other than those provided for in this Act,
 - c) an international agreement concluded between the Republic of Poland and one or more states not being a Member of the European Union, concerning the implementation or execution of a project by the parties to that agreement, if that agreement provides for contract award procedures other than those provided for in this Act;
- 2) contracts of the National Bank of Poland related to:
 - a) the exercise of tasks concerning the implementation of the financial policy, in particular contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments,
 - b) the trading of securities issued by the State Treasury,
 - c) the management of internal and external debt,
 - d) the issue of currency and the administering of that currency,
 - e) accumulation of foreign exchange reserves and management of those reserves,

- f) accumulation of gold and precious metals,
 - g) the operation of bank accounts and conduct of bank financial settlements;
- 3) contracts where the object of the contract includes:
- a) arbitration or conciliation services,
 - b) services of the National Bank of Poland,
 - c) [deleted]
 - d) [deleted]
 - e) research and development services and provision of research services, except for services wholly remunerated by the awarding entity procured in order to carry out its own activities, the results of which are owned exclusively by the awarding entity,
 - f) supplies and services being subject to article 296 of Treaty Establishing the European Community,
 - g) purchase, preparation, production or co-production of programme material intended for broadcasting by radio or television broadcasters,
 - h) purchase of broadcasting time,
 - i) purchase of property rights and other rights to real estates, in particular lease and rental rights,
 - j) financial services related to the issue, sale, purchase or transfer of securities or other financial instruments, in particular when related to transactions aimed at obtaining financial resources or capital for the awarding entity;
- 4) employment contracts;
- 5) contracts which are declared state secret according to the provisions on protection of confidential information or when the basic interest of the State's security so requires, or the contracts declared confidential, if the basic public interest or basic state interest so requires;
- 6) contracts for services awarded to another awarding entity, referred to in article 3 paragraph 1 items 1-3a, which by means of an act or administrative decision has been granted with the exclusive right to render those services;
- 7) allocation of subsidies from public funds, if these subsidies are allocated pursuant to acts;
- 8) contracts and contests where their value does not exceed the equivalent in PLN of EUR 14 000;
- 9) [deleted]
- 10) contracts granted by entities performing at least one of the following types of activities:
- a) making available a public telecommunication network,
 - b) operation of a public telecommunication network,

- c) provision of publicly available telecommunication services by means of a public telecommunication network or provision of electronic mail services by means of such a network
 - i. if the contract is awarded only for the purpose of carrying out one of such activities;
- 11) purchase of supplies, services or works from the central purchasing body or from the economic operators selected by the central purchasing body.

(...)

POLAND NATIONAL STRATEGIC REFERENCE FRAMEWORK 2007-2013 *in support of growth and jobs*

NATIONAL COHESION STRATEGY

(...)

5.4. Objectives of Cohesion Policy in Poland, in Support of Economic Growth and Jobs

Owing to the low competitiveness of the Polish economy expressed inter alia by the low level of GDP per capita as compared to the average value in EU, in 2007-2013 all voivodships in Poland were qualified to areas of the "Convergence" Objective within the EU cohesion policy.

Taking into account the objectives of the European cohesion policy, in response to the renewed Lisbon Strategy and as a result of the analysis of key aspects referring to social-economic and territorial situation of Poland and provisions of *Integrated Guidelines for Growth and Jobs for the years 2005-2008 (IG)*¹¹⁵, for which an instrument for implementation in Poland is NDP, the strategic objective of the National Strategic Reference Framework 2007-2013 has been formulated.

The strategic goal of the National Strategic Reference Framework for Poland is creation of the conditions for the growth of competitiveness of knowledge based economy and entrepreneurship assuring an increase in the employment and in the level of social, economic and territorial cohesion.

The above objective was formulated in relation to the objective of the European cohesion policy – funds spent within NSRF would guarantee execution of the objective specified by the Treaty aimed at increasing the cohesion of Poland and its regions through structural reforms and concentration of expenditures in a few areas of great importance for establishing conditions aimed at hastening growth and increasing employment.

For such a formulated objective, an appropriate, pro-growth and pro-employment national economic policy has the biggest importance. It should take into account continuation and full implementation of structural reforms in the area of public finances, functioning of administration and judiciary and of a system of legislating and implementation of law. Such measures are directly included in implementation of the Lisbon Strategy

¹¹⁵ Integrated Guidelines in support of growth and jobs 2005-2008 – strategic Community document, which contains guidelines for growth and job, in support for execution of EU priorities formulated in the renewed Lisbon Strategy, COM (2005) 141 of 12 April 2005.

objectives and as such are fully compliant with the growth strategy presented by the Polish government in NDP.

To emphasise the complementary nature of objectives set out for the economic, social and cohesion policies defined in NDP and NSRF, Poland is going to designate for objective connected with the Lisbon Strategy at least 60% of expenditures borne within all operational programmes executed in the years 2007-2013 within the "Convergence" Objective. The involvement degree of particular programmes in implementation of objectives defined in NDP would vary, however, formulation of horizontal objectives and introduction of clear principles and rules at the NSRF level – related to the method of including and compliance with the Lisbon Strategy at the level of operational programmes – allows maintaining balance between achievement of pro-effectiveness and equalising objectives. Implementation of the strategy presented in this document also creates a basis for establishing of conditions for lasting growth, which would respect environmental conditions. Formulation of principles related to non-application of discrimination would also be an important element in achieving a general European objective of assuring equal opportunities for women and men.

The strategic objective will be achieved through delivery of horizontal specific objectives. This would help in defining key indicators, which are to allow an analysis of global results achieved within a consistently implemented policy, which also means that all programmes, activities and projects taken up under the NSRF implement them simultaneously, however in a different scope. Horizontal objectives of the NSRF are:

1. Improved functioning standard of public institutions and development of partnership mechanisms;
2. Improved quality of human capital and enhancement of social cohesion;
3. Development and modernisation of technical and social infrastructure of fundamental importance for growth of the competitiveness in Poland;
4. Improvement of competitiveness and innovativeness of enterprises, including especially of the production sector with high added value and service sector development;
5. Increase of competitiveness of Polish regions and counteracting their social, economic and spatial marginalisation;
6. Balancing development opportunities and supporting structural changes on rural areas.

The presented arrangement of horizontal objectives reflects the main directions for focusing the cohesion policy to achieve the strategic objectives. A basic condition for execution, but an external one in relation to NSRF objectives, is taking up endeavours in the sphere of regulation (public finance reforms, legal system of business operation, labour market func-

tioning etc.). Indispensable measures in this scope for the forthcoming years have been defined in detail in NDP and in the Implementation document for NDP.

The first horizontal objective concerns strengthening the sphere of management and partnership, and responds directly to formulated challenges connected with functioning of the state and its public institutions on the national, regional and local levels. Implementation of the objective is also directly connected with opportunities for full and effective use of all resources available to Poland within the European cohesion policy 2007-2013.

Three consequent horizontal objectives related to human resources, infrastructure and the production and services sphere are directly related to the Lisbon Strategy objectives implemented in Poland (pursuant to NDP) – their implementation within the cohesion policy shall allow better competitiveness of the Polish economy and would be determinant for creation of new work posts. The last two horizontal objectives are related to the spatial dimension of the cohesion policy. All measures undertaken in NSRF shall assist their execution, albeit in different ways. Implementation of objective related to regional competitiveness and counteracting marginalisation is to facilitate the fullest possible use of endogenic potential in each of the regions, and at the same time enables concentrating endeavours of the cohesion policy on areas with the most serious development problems that may not be overcome on the basis of internal resources.

In the situation of Poland the determination and emphasising the importance to issues of restructuring on rural areas within the cohesion policy and balancing development opportunities for their inhabitants justified by the scale of the challenge – civilisational lagging behind on many rural areas and the outflow of population working in agriculture anticipated in the forthcoming years. Restructuring of rural areas is an element of regional policy, and in a broader perspective, the social and economic policy.

(...)

Local documents (exemplified by the Podlaskie Voivodship documents)

Podlaskie Voivodship Development Strategy until 2020,
Marshall Office of the Podlaskie Voivodship,

(...)

VI. Voivodship mission and strategic objectives

1. Voivodship mission

Mission is a record of voivodship government intentions in course of implementation of the developed Strategy. Because socio-economic change is very dynamic, instruments of the Strategy implementation may alter while universal character of the mission remains unchanged.

Voivodship mission:

The Podlaskie Voivodship is a region of active and sustainable development benefiting from natural environment, multicultural tradition and border localisation.

2. Strategic objectives

Identification of strategic objectives is a regional response to national regional policy proposal presented in a project of the National Spatial Arrangement Conception, which includes the Podlaskie Voivodship to one of thematic areas, so-called Eastern Regions Area. The strategic objectives have to be interregional impulse to voivodship development and benefit from state instruments of supporting activities toward increase of territorial and socio-economic cohesion with the state.

Objective 1: Increase of investment attractiveness of the voivodship;

Objective 2: Development of human resources accordingly to labour market conditions;

Objective 3: Increase of competitiveness of Podlaskie companies at national and international level;

Objective 4: Protection of natural environment;

Objective 5: Development of tourism benefiting from natural environment and cultural heritage;

Objective 6: Benefiting from border and cross-border localisation of the voivodship;

Objective 7: Development of agriculture and creation of conditions for multi-functional development of countryside.¹¹⁶

(...)

116 The strategic goals of the Podlaskie Voivodship listed above can be found in electronic version attached to this book. One of resolutions of the Podlaskie Voivodship Sejm has been presented below, as relevant for one of the Podlaskie Voivodship objectives – development of human resources...

**RESOLUTION No XXXVII/483/06 OF PODLASKIE VOIVODSHIP SEYM
of 10 April 2006 repealing Resolution No XXVIII/327/05
of 30 May 2005 on defining objectives and priorities
of knowledge-based society development strategies in the Podlaskie
Voivodship until 2013**

Pursuant to article 18 item 2 in relation with article 12a paragraph 1 of Act of 5 June 1998 on Voivodship Government (Journal of Laws of 2001 No 142 item 1590 and of 2002 No 23 item 220, No 62 item 558, No 153 item 1271, No 214 item 1806, of 2003 No 162 item 1568, of 2004 No 116 item 1206), this resolution has been adopted:

- § 1. In the Annex 2 to Resolution No XXVIII/327/05 of 30 May 2005 "Rules, course and schedule of knowledge-based society development strategy in the Podlaskie Voivodship until 2013" the content of the point III "Work Schedule" has been substituted with the content specified in the Annex to this Resolution.
- § 2. This Resolution shall be implemented by the Podlaskie Voivodship Board.
- § 3. This Resolution enters into force on the day of adoption.

Annex 1

1 to the Resolution No XXXVII/483/06 of the Podlaskie Voivodship Seym of 10 April 2006

1

(...)

Justification

Elaboration of knowledge-based society development strategy is an important and complicated process, aimed at socio-economic development and competitiveness growth of our region. It requires detailed analysis and collecting great number of data from the area of the whole voivodship. Eventually a document constituting grounds for many activities, securing society needs regarding access to modern IT technologies will be produced.

At the moment works over the Development of Eastern Polish Voivodship Operational Programme are in progress, and one of the Programme objectives is to support development of IT society in the Podlaskie Voivodship. This activity will be implemented at the central level, i.e. investments financed from its resources are going to be planned by the Ministry of Regional Development. The issue of obtaining information what investments are planned for the Podlaskie Voivodship is crucial for the voivod-

ship investment planning, as the resources at the region disposal are supplementary to investments financed under the national resources.

The Marshal Office has changed its organisational structure and transferred tasks concerning planned IT society development from the IT Bureau to the Department of Regional Policy and Structural Funds, being responsible for coordination of works regarding Eastern Poland and Regional Operational Programmes. This will let closer relation between our and governmental investment plans. Having considered presumed time limits for accepting Eastern Poland Development and organisational change in the Voivodship Office, set for the end of September, we recommend revision of the schedule according to the Annex 1.

The Strategy of IT society development is a subject of particular attention of the Voivodship Government, because of its role for the region. The highest importance of this project requires special attention and sufficient time for thorough elaboration.

Bibliography

Documents

- Act of 6 December 2006 on the principles of pursuing a policy of development* (Journal of Laws No 227, item 1658),
- Act of 30 June 2005 on Public Finance*, (Journal of Laws No 249 item 2104, with amendments),
- Act of 24 January 2004 Public Procurement Law* (Journal of Laws of 2006 No 164 item 1163, with amendments),
- Act of 20 April 2004 on the National Development Plan (NDP)*, (Journal of Laws No 116, item 1206, with amendments),
- Act of 17 December 2004 on liability for violating discipline of public finance* (Journal of Laws of 2005 No 14, item 114, with amendments),
- Act of 10 September 1999 Treasury Penal Code* (Journal of Laws No 83 item 930, with amendments),
- Act of 5 June 1998 on Voivodship Government* (Journal of Laws of 2001 No 142, item 1590, with amendments),
- Act of 17 June 1966 on execution proceedings in administration* (consolidated version, Journal of Laws of 2005 No 229, item 1954, with amendments),
- Cohesion Policy in Support of Growth and Jobs: Community Strategic Guidelines 2007-2013*, Brussels, 5 July 2005 COM(2005) 0299,
- Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid (Text with EEA relevance)*, (Official Journal L 302/29 of 1 November 2006),
- Communication to the Spring European Council "Working together for growth and jobs. A new start for the Lisbon strategy"*, COM(2005) 24 of 2 February 2005,
- Council Recommendations on general guidelines for economic policy of the Member States and the Community (2005-2008)*,
- Council Regulation (EC, EURATOM) No 1995/2006 of 13 December 2006 amending Regulation (EC, EURATOM) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities*, (Official Journal L 390/1, 30 December 2006),
- Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the Europe-*

an Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, (Official Journal L 210, 31 July 2006),

- Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund and repealing Regulation (EC) No 1164/94*, (Official Journal L 210, 31 July 2006),
- Council Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund*, (Official Journal L 371 of 27 December 2006),
- Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Fund*, (Official Journal L 16 of 26 December 1999),
- Council Regulation (EC) No 1164/1994 of 16 May 1994 establishing a Cohesion Fund*, (Official Journal L 130 of 25 May 1994),
- Council Decision of 6 October 2006 on Community strategic guidelines on cohesion (2006/702/EC)*, (Official Journal L 291 of 21 October 2006),
- Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)*, (Official Journal L 204/23 of 26 July 2006),
- European Neighbourhood Policy – strategy– communication of the Commission*, Brussels, 18 June 2004 COM(2004) (OR. en) 10679/04,
- Guidelines on national regional aid for 2007-2013 (2006/C 54/08) (Text with EEA relevance)*, (Official Journal C 54/13 of 4 March 2006),
- Ordinance No 6 of Minister of Regional Development of 11 April 2007 on Co-ordination Committee of National Strategic Reference Framework 2007-2013*,
- Podlaskie Voivodship Development Strategy until 2020*, Marshall Office of the Podlaskie Voivodship, Białystok, January 2006,
- Project of 30 May 2007 of Act amending the Act on the principles of pursuing a policy of development and amending the Act on Public Finance*, (Sejm of the Republic of Poland, Print No 1780),
- 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*, (Official Journal L 210 of 31 July 2006),

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 (Official Journal L 210 of 31 July 2006),

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) (Official Journal L 210 of 31 July 2006),

Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument, (Official Journal L 310/1 of 9 November 2006),

System for notifying financial irregularities regarding utilisation of the structural funds, Ministry of Finance, July 2006.

The Treaty on European Union – consolidated version (Official Journal C 321, 29 December 2006),

The Treaty Establishing the European Community (TEC) – consolidated version (Official Journal C 321, 29 December 2006),

Literature

Adams J. R., Caldentey M. E., *A Project management model, in: Field guide of Project management*, edited by D. I. Clelend, Van Nostrand Reinhold, New York 1998,

Aid Delivery Methods. Volume 1: Project Cycle Management Guidelines, European Commission, EuropeAid Cooperations Office, Brussels 2004,

Armstrong M., *Zarządzanie zasobami ludzkimi*, Oficyna Ekonomiczna, Kraków 2001,

Bradley K., *Podstawy Metodyki PRINCE 2*, Centrum Rozwiązań Menadżerskich S.A., Warszawa 2005,

Brilman J., *Nowoczesne koncepcje i metody zarządzania*, Polskie Wydawnictwo Ekonomiczne, Warszawa 2002,

Cieślukowski C., B. Gucza, K. Ogonek, *Jak przygotować dobry projekt*, Stowarzyszenie „Euroregion Niemen”, Suwałki 2004,

Chrissis M. B., Konrad M., Serum S., *CMMI: Guidelines for Process Integration and Product Improvement*, Addison Wesley Professional, Boston 2003,

Davidson Frame J., *Zarządzanie Projektami w organizacjach*, (translated by: Paweł Dąbrowski), Wyd. WIG-PRESS, Warszawa 2001, in: M. Dobrowolska: *Zarządzanie projektami w organizacji. Cykl życia projektu*, www.4pm.pl/artykul/zarządzanie_projektami_w_organizacji-45-206.html z dnia 15.07.2007 r.

Drucker P. F., *Myśli przewodnie Druckera*, Wyd. MT Biznes, Warszawa 2002,

Duncan R. W., *A guide to the project management body of knowledge*, PMI Standards Committee, PMI Publishing Division, Upper Darby, PA 1996,

Frame J. D., *Zarządzanie projektami w organizacjach*, Wyd. WIG – PRESS, Warszawa 2001,

Frey D., *Odmowa przyznania środków unijnych jest decyzją*, „Rzeczpospolita” z 23 maja 2007, pg. C4,

Gajda A., *Regiony w prawie wspólnotowym. Prawne problemy udziału regionów polskich w procesach integracyjnych*, Wyd. Prawo i Praktyka Gospodarcza, Warszawa 2005,

Gajda A., *Spójność gospodarcza i społeczna* in: *Prawo Unii Europejskiej – prawo materialne i polityki*, edited by J. Barcz, Wyd. Prawo i Praktyka Gospodarcza, Warszawa 2005, pg. 652,

Grajewski A., *Decyzja, która nie jest decyzją*, in: „EuroEkspert” 2006, nr 1, pg. 37,

Grajewski P., *Koncepcja struktury organizacji procesowej*, Wyd. TNOiK Dom Organizatora, Toruń 2003,

Griffin R. W., *Podstawy zarządzania organizacjami*, Wyd. Naukowe PWN, Warszawa 2002,

Góralczyk A., *Myślenie strategiczne w zarządzaniu*, Wyd. Prawno – Ekonomiczne INFOR, Warszawa 1999,

Haberfellner R., *Projectmanagement*, in: *Handwörterbuch der Organisation*, Verlag C. E. Poeschel, Stuttgart 1992,

Heerkens G. R., *Jak zarządzać projektami*, Oficyna Wydawnicza Read Me, Warszawa 2003,

Hinterhuber H. H., *Strategische Unternehmensführung. II Strategisches Handel*, Walter de Gruyter, Berlin/New York 1986,

Integracja europejska. Wprowadzenie, edited by M. Perkowski, Wyd. Prawnicze LexisNexis, Warszawa 2003,

Komentarz do aktów prawnych Wspólnot Europejskich w zakresie Funduszy Strukturalnych i Funduszu Spójności na lata 2007-2013, Ministerstwo Rozwoju Regionalnego, Warszawa grudzień 2006,

Kompendium wiedzy o zarządzaniu projektami (A Guide to the Project Management Body of Knowledge), Management Training & Development Center, Warszawa 2003,

Kotarbiński T., *Traktat o dobrej robocie*, Ossolineum, Wrocław 1973,

Minus N., *Zarządzanie projektami*, Wyd. Helios, Gliwice 2002,

- Nowak A. Z., Milczarek D., *Europeistyka w zarysie*, Polskie Wydawnictwo Ekonomiczne, Warszawa 2006,
- Partnerstwo publiczno – prywatne. Zagadnienia teorii i praktyki*, edited by M. Perkowski, Wyd. Temida2, Białystok 2007,
- Pawlak M., *Zarządzanie projektami*, Wyd. PWN, Warszawa 2007,
- Philips J., *Zarządzanie projektami IT*. Wyd. Helios, Gliwice 2005,
- Pitagorsky G., *Prawidłowe zarządzanie projektami: kluczowe zasady udanych projektów*, www.microsoft.com/poland/office/office2003/project/manage/default.aspx,
- Podręcznik zarządzania projektami miękkimi*, edited by M. Banikowska, B. Grucza, M. Majewski, M. Małek, Ministerstwo Rozwoju Regionalnego – Departament Zarządzania Europejskim Funduszem Społecznym, Warszawa 2006,
- Prawo Unii Europejskiej – prawo materialne i polityki* edited by J. Barcz, Wyd. Prawo i Praktyka Gospodarcza, 2005,
- Pritchard C. L., *Zarządzanie ryzykiem w projekcie. Teoria i praktyka*, Wyd. WIG –PRESS, Warszawa 2002,
- Project Cycle Management and Objective-Oriented Project Planning (ZOPP) – Guidelines*, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), Eschborn 1996,
- Project Cycle Management: Integrated Approach and Logical Framework*, European Commission, DGVIII, Evaluation Unit, 1993,
- Project Cycle Management- Training Handbook*, European Commission, DG-VIII, Evaluation Unit, 1999, przygotowane przez ITAD Ltd. (Wielka Brytania),
- Rokita J., *Zarządzanie strategiczne*, PWN, Warszawa 2005,
- Roszkowski H., Wiatrak A. P. , *Zarządzanie projektem – istota, procedury i ich zastosowanie przy korzystaniu ze środków Unii Europejskiej*, Wyd. SGGW, Warszawa 2006,
- Rozmowa ze Stanisławem Sroką, Prezesem Zarządu Stowarzyszenia Project Management Polska*, www.4pm.pl/artukul/project_management_profesjonalizm_w_zaradzaniu-45-411.html z dnia 08.07.2007r.
- Strategia Lizbońska. Koncepcja czy ideał reformy Unii Europejskiej* edited by M. Perkowski, Wyd. Stowarzyszenie Towarzystwo Amicus, Białystok 2005,
- Trocki M., Grucza B., Ogonek K., *Zarządzanie projektami*, Polskie Wydawnictwo Ekonomiczne, Warszawa 2003,

- Wierzbicki B., *Uznanie państw*, in: *Prawo międzynarodowe. Materiały do studiów*, edited by B. Wierzbicki, Wyd. Temida2, Białystok 2000, pg. 307,
- Wymiar sprawiedliwości Unii Europejskiej. Wybrane zagadnienia*, edited by M. Perkowski, Wyd. Prawnicze LexisNexis, Warszawa 2003,
- Zarządzanie. Teoria i praktyka*, edited by A. K. Koźmiński i W. Piotrowski, Wyd. Naukowe PWN, Warszawa 2004,
- Zarządzanie projektami małymi i dużymi. Podstawowe umiejętności pracy zgodnej z budżetem i terminarzem* (translated by: N. Oparska), Wyd. MT Biznes, Warszawa 2006,
- Zarządzanie projektem europejskim*, edited by M. Trocki, B. Grucza, Polskie Wydawnictwo Ekonomiczne, Warszawa 2007,
- Ziółkowski B., *Zarządzanie Cyklem Projektu*, Urząd Komitetu Integracji Europejskiej, Warszawa 2003.

Electronic sources

- Community Research & Development Information Service - <http://www.cordis.lu>
- Europejski Serwis Polskiej Agencji Prasowej - <http://euro.pap.com.pl>
- Krajowy System Przygotowań do Funduszy Strukturalnych (KSP) - <http://www.europa.edu.pl/>
- Oficjalny portal Ministerstwa Rozwoju Regionalnego - <http://www.mrr.gov.pl/Aktualnosci/Polska+w+czolowce+negocjacji.htm>
- Oficjalny portal Unii Europejskiej - <http://www.europa.eu.int>
- Regional Policy - Inforegio – http://ec.europa.eu/dgs/regional_policy/index_en.htm
- Portal Funduszy Strukturalnych - <http://www.fundusze-strukturalne.gov.pl/Wiadomosci/Strona+glowna/polskawczolowce.htm>
- Portal Państwowej Agencji Rozwoju Przedsiębiorczości - <http://www.parp.gov.pl>
- Portal Podlaskiego Urzędu Wojewódzkiego - http://www.wrotapodlasia.pl/pl/gospodarka/polityka_regionalna/strategia_rozwoju/
- Portal Unia Europejska w Polsce - <http://www.europa.delpol.pl/>
- Portal Urzędu Komitetu Integracji Europejskiej - <http://www.fundusze.ukie.gov.pl/>