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Subject : Proposal for a Council Regulation laying down general provisions on the
 European Regional Development Fund, the European Social Fund and the
 Cohesion Fund.
 - Presidency compromise

Delegations will find attached a presidency compromise text¹ on the proposal for a Council Regulation laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund as a result of the Structural Actions Working Party meetings on 25 October and 10 November 2005 and the conclusions of the European Council of 15 and 16 December 2005.

¹ Please note that this text could be subject to further technical adjustments.

MT entered a parliamentary scrutiny reservation.

The recitals are not the subject of this text and will be dealt with at a later stage.

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) (for the purposes of this Regulation hereinafter: the “Structural Funds”) and the Cohesion Fund, without prejudice of the specific provisions laid down in the Regulations on the ERDF, ESF and the Cohesion Fund.

This Regulation defines the objectives to which the Structural Funds and the Cohesion Fund (**for** the purposes of this Regulation hereinafter: 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 allocation¹.

¹ DK reminded its reservation concerning the eligible expenditure.

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

To this end, the 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

Definitions¹

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

1. **‘operational programme’**: document submitted by the Member State and adopted by the Commission [...] setting out a development strategy using a coherent set of priorities, to achieve with the aid from a Fund, or, in the case of the “Convergence” objective, the Cohesion Fund and the ERDF, will be sought;
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;

¹ CZ, DE, AT, FI and SK suggested including a table of contents. CION confirmed their willingness to prepare such a table of contents.

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 aid¹;
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 bodies² acting in accordance with ³Directive 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 contracts⁴ shall be regarded as **similar expenditure**⁵;
6. **‘intermediate body’**: any body or public or private 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 operations⁶.

¹ ES suggested deleting the 2nd sentence linked to Article 77(3) and, supported by EL, IT, MT and PT suggested reverting to the definition of beneficiary in Article 9(1) of Regulation 1260/99. FR entered a reservation on this definition linked to Article 77. LV requested a mention to financial engineering actions.

² NL entered a reservation linked to the notion of public law bodies.

³ DK, supported by HU and SI, suggested adding "*article 1, paragraph 9, a) and b)*". FR and LV expressed interest on the proposal.

⁴ OJ L 134, 30.04.2004, p. 114.

⁵ FR entered a reservation on this definition.

⁶ EE suggested deleting "implementing operations".

7. **‘irregularity’**¹: 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 budget².

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 Community 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 territorial³ disparities which have arisen particularly in countries and regions whose development is lagging behind, to the speeding-up of economic and social restructuring, and to the ageing of the population.

¹ This is the definition in the revised Commission Regulation No 1681/94. If this definition changes then this subparagraph will be aligned with it.

² ES and IT entered a scrutiny reservation. ES wondered if a Commission Regulation should prevail over a Council Regulation.

³ AT suggested adding “ecological”. DE suggested deleting "territorial".

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 and employment, social inclusion¹, as well as protecting and improving the quality of the environment².

2. To that end, the ERDF, the ESF, the Cohesion Fund, the European Investment Bank (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 shall be aimed at speeding up the convergence of the least-developed Member States and regions by improving conditions for growth and employment³ through increasing and improving the quality of investment in physical and human capital, the development of innovation and of the knowledge society, the adaptability to economic and social changes, the protection and improvement of the environment as well as administrative efficiency. This objective shall constitute the priority of the Funds.

¹ SK suggested adding "*and in favour of struggle against social exclusion, decreasing birth-rate and a growing number of elderly population*".

² IT suggested replacing "protection and quality of the environment" by "*preservation, protection and improvement of the quality of the environment, also by means of an integrated approach in sectoral policies*".

³ DE indicated that this paragraph should rather focus on the aims than in the instruments, therefore it suggested deleting from "through" to the end of that sentence. See also footnote on b) and c).

- b) the “Regional competitiveness and employment” objective shall, outside the least-developed regions, be aimed at strengthening regions’ competitiveness and attractiveness¹ as well as employment ²by anticipating economic and social changes³, including those linked to the opening of trade, through increasing and improving 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, the adaptability of workers and businesses as well as the development of inclusive job markets.
- c) the “European territorial cooperation” objective shall be aimed at strengthening cross-border cooperation⁴ through joint local and regional⁵ initiatives, strengthening transnational co-operation 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.

¹ DE suggested deleting "and attractiveness".

² DE suggested deleting the rest of the paragraph from "by anticipating".

³ UK questioned the emphasis on "anticipating social and economic change". Given the difficulty of anticipating change, it suggested that the Regulation should instead emphasise the need to "*promote openness and flexibility to respond to change*".

⁴ DE suggested deleting from "through" to the end of that sentence.

⁵ ES entered a scrutiny reservation on the term "regional".

3. Under the three objectives, assistance from the Funds shall, according to their nature, take into account on the one hand specific economic and social features, and on the other hand specific territorial features. 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 Treaty¹ as well as the northern areas with very low population density, certain islands and island Member States, and mountain areas.²

Article 4

Instruments and missions

1. The Funds shall contribute, each in accordance with the specific provisions governing it, towards achieving the three objectives 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;
 - c) the “European territorial cooperation” objective: the ERDF.

¹ IT entered a reservation on the reference to Article 299.

² DE suggested deleting this paragraph.

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 Member State which remain eligible for support from the Cohesion Fund under the criteria set out in Article 5 (3).

2. The Funds shall contribute towards financing technical assistance on the initiative of the Member States and the Commission¹.

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 II of the Nomenclature of Territorial Statistical Units (hereinafter "NUTS level II") within the meaning of Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 whose per capita Gross Domestic Product (GDP), measured in purchasing power parities and calculated on the basis of Community figures for the period 2000-2002, is less than 75% of the average GDP of EU 25.

¹ DE suggested deleting "and the Commission".

2. The Member States eligible for funding from the Cohesion Fund shall be those whose per capita Gross National Income (GNI), measured in purchasing power parities and calculated on the basis of Community figures for the period 2001-2003, is less than 90% of the average GNI of 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 of this Article. This list shall be valid from 1 January 2007 to 31 December 2013.

The eligibility of Member States to the Cohesion Fund shall be reviewed in 2010 on the basis of Community figures of GNI relating to 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 7bis (1) and (2).

When presenting the national strategic reference framework referred to in Article 25, each Member State concerned shall indicate the NUTS I or NUTS II 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, shall be eligible for financing the NUTS level III regions of the Community along the internal and certain external land borders and all NUTS level III regions of the Community along the maritime borders separated, as a general rule, by a maximum of 150 kilometres, taking into account potential adjustments needed to ensure the coherence and continuity of the cooperation action.

Immediately following the entry into force of this Regulation, the Commission shall adopt, in accordance with the procedure referred to in Article 104(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 104(2), shall adopt the list of the eligible transnational areas. 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 7bis

Transitional support

1. The NUTS level II regions which would have been eligible for Convergence objective status under Article 5(1) had the eligibility threshold remained at 75% of average GDP of EU 15, but which lose eligibility because their nominal per capita GDP level will exceed 75% of average GDP of 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 II regions totally covered by Objective 1 in 2006 under Article 3 of Regulation (EC) No 1260/1999 whose nominal per capita GDP level, measured and calculated according to Article 5(1), will exceed 75% of average GDP of EU 15 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 1997-1999 Cyprus should have been eligible for Objective 1 in 2004-2006, Cyprus shall benefit in 2007–2013 from the transitional financing applicable to the regions referred to in the previous subparagraph.

3. The Member States eligible for funding from the Cohesion Fund in 2006 and which would have continued to be so had the eligibility threshold remained at 90% of average GNI of EU 15, but which lose eligibility because their nominal per capita GNI will exceed 90% of average GNI of EU 25 average 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 of this Article. This list shall be valid from 1 January 2007 to 31 December 2013.

CHAPTER IV

PRINCIPLES OF ASSISTANCE

Article 8

Complementarity, consistency, coordination and compliance

1. The Funds shall provide assistance which complements national **actions, including the** regional and local **ones**, 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 Community¹. This consistency shall be indicated in particular in Community Strategic Guidelines on cohesion, in the national strategic reference framework and in the operational programmes.

- 2 bis. The assistance co-financed by the Funds shall be targeted on the EU priorities of promoting competitiveness and creating jobs, including meeting the objectives of the Integrated Guidelines for Growth and Jobs 2005-2008². 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 "Competitiveness and regional" objective are set for the above-mentioned priorities. These targets shall be applied as an average of all operational programmes over the entire programming period. It must be ensured that specific national circumstances are taken into account.

¹ DE, EL, NL and AT suggested adding "*as laid down in Community legislation*".

² Guidelines adopted by the Council on 12 July 2005, OJ L n° 205 of 6;0802005, p. 21-37.

This provision shall be optional for Member States that acceded to the EU in or after 2004.

The Commission will adopt detailed rules of implementation in accordance with the procedure referred to in Article 104 (3), in particular the arrangements providing for the full involvement of member States with a view to ensuring that specific national circumstances are taken into account.

3. In accordance with their respective responsibilities, the Commission and the Member States shall ensure the coordination between the assistance from the different Funds, the EAFRD, the EFF, and the interventions of the EIB and of other existing financial instruments.
4. Operations financed by the Funds shall comply with the provisions of the Treaty and of acts adopted under it.

Article 9

Programming

The objectives of the Funds are 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 10

Partnership

1. The objectives of the funds are pursued in the framework of close co-operation, hereinafter partnership, between the Commission and the Member State. The Member State shall organise, where appropriate and in accordance with current national rules and practices, a partnership with the authorities and bodies such as¹:
 - a) the competent regional, local, urban and other public authorities;
 - b) the economic and social² partners;
 - c) any other appropriate body.³

Each Member State shall designate the most representative partners at national, regional and local level and in the economic, social, environmental⁴ or other spheres, hereinafter “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.

¹ CION suggested reverting back to its original proposal, i.e.: "*namely*" instead of "such as".

² NL and UK suggested adding "*and environmental*". BE, DE, ES, FR, IT, LU and PT considered that environmental partners were already covered by other provisions of this Article (point c) or second subparagraph).

³ BE, EL and CION suggested reverting to the original text, so adding "*representing civil society, environmental partners, non-governmental organisations, and bodies responsible for promoting equality between men and women*".

⁴ DE, DK and ES suggested deleting "environmental".

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 the operational programmes. Member States shall involve, where appropriate, each of the relevant partners, and particularly the regions¹, in the different stages of programming within the time limit set for each stage.

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

Article 11

Territorial level of implementation²

Implementation of operational programmes referred to in Article 31 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.

¹ NL suggested either deleting “and particularly the regions” or adding “*and urban areas*”.

² DE and CI suggested replacing “level of territorial intervention” by “*level of implementation of operational programmes*”. EL suggested replacing “level of territorial intervention” by “*subsidiarity*”.

Proportional intervention

1. The financial and administrative resources employed by the Commission and the Member States in the implementation of the Funds in relation to:
 - a) the selection of indicators foreseen to in Article 36(1)(c)
 - b) evaluation as referred to in Articles 45 to 46
 - c) the general principles of management and control systems as referred to in Article 57 e) and f).
 - d) reporting as referred to in Article 66,

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

2. In addition, specific provisions relating to proportionality in relation to controls are set out in Article 73 of this Regulation.

¹ HU expressed its serious concerns as to the enlargement of the scope of proportionality to areas where there are financial sanctions.

² SI suggested adding “*programming*”.

Article 12

Shared management

1. The Community budget 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, paragraph 1, point b) of Regulation (EC, Euratom) No 1605/2002¹ of the Council, with the exception of the technical assistance referred to in Article 43².

The principle of sound financial management shall be applied in accordance with Article 48(2) of the above-mentioned Regulation.

2. The Commission exercises its responsibility for implementing the general budget of the European Union in the following ways³:
 - 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 Article 69 and 70⁴;
 - b) the Commission shall interrupt⁵ or suspend all or part of payments in accordance with Articles 89⁶, and 91 if the national management and control systems fail, and shall apply any other financial correction required, in accordance with the procedures described in Articles 101 and 102;

¹ OJ L 248, 16.9.2002, p.1.

² DE is opposed to the technical assistance at the initiative of the Commission.

³ UK entered a reservation on the whole paragraph 2 until the provisions on management and control have been agreed upon.

⁴ EL suggested adding a reference to Article 61 in this paragraph.

⁵ PT suggested deleting “interrupt” as a consequence of its position on Article 89.

⁶ PT suggested deleting the reference to Article 89 as a consequence of its position on this Article.

- c) the Commission shall check reimbursement of payment on account and automatically de-commit budget commitments in accordance with the procedures laid down in Articles 81(2), and 92 to 96.

Article 13

Additionality

1. Contributions from the Structural¹ Funds shall not replace public or equivalent structural expenditure by a Member State.²
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.

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¹ DE and IT suggested deleting “Structural”.

² IT, supported by CION, suggested adding "*as defined in a methodological paper proposed by the Commission – within two months from the entry into force of the present Regulation – in accordance with the procedure laid down in article 104(3). In the same document shall also be defined the technical aspects of the verifications of principles.*".

³ IT suggested introducing a subparagraph, which would read as follows "*The level of expenditure and its definition by Member States, namely the list of public units whose structural expenditure is taken into account, the categories of the capital transactions involved and the cash or accrual basis of accounting for evaluating financial flows, taken into account Council Regulation (EC) No 2223/96 are included in the decision of the Commission on the operational section of the national strategic reference framework referred to in Article 25.*".

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

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

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4. The Commission shall, in cooperation with each Member State, verify additionality mid-term in 2011 for the “Convergence” objective.² 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 26(3) is modified to reflect this adjustment.

¹ SI, supported by CZ, HU, SK and RO suggested adding a new subparagraph which would read as follows: "*In exceptional cases, Member States may decrease their structural expenditure in the additionality table, proportional to the reduction of the general government expenditure in GDP as determined in the Stability and Convergence programmes.*"

² CZ and HU requested that the verification of additionality should be equally applied within all objectives.

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

The Member State transmits to the Commission the information needed to allow the verification of the respect of public or equivalent structural expenditure determined *ex-ante*. Where necessary, methods of statistical estimation should be used.

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¹ IT and SE opposed to the deletion of this paragraph.

² IT suggested adding "*The Commission shall publish the results by Member State of verification of additionality ex-ante, mid-term and ex-post, in 2008, 2011 and 2016 respectively*".

Article 14¹

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 gender perspective² is promoted³ during the various stages of implementing the Funds.

The Member States and the Commission shall take appropriate steps to prevent any discrimination on the basis of gender, race or ethnic origin⁴, religion or belief, disability, age or sexual orientation during the various stages of implementing the Funds and, in particular, access to them.⁵

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¹ IE suggested that this Article was superfluous as those principles were horizontal to the whole legislation. If the Article were to stay, it suggested enlarging the scope of the title and of the first paragraph to equality in general and not only between women and men. It suggested also splitting this provision into two Articles: one on equality and the other on discrimination.

² AT and UK suggested adding "*as well as non-discrimination*" and deleting paragraph 2 of the Article.

³ IT suggested adding "*and implemented*".

⁴ SI suggested that non-discrimination provisions should also refer to national minorities.

⁵ DE, FR, CY, LT, LU, NL, PT, FI and SE suggested deleting the second paragraph as it preferred that the provision concentrated on gender equality.

⁶ LV, LT, AT and UK suggested adding a new Article introducing similar provision on the respect of environmental aspects.

CHAPTER V

FINANCIAL FRAMEWORK

Article 15

Global resources

1. The resources available for commitment from the Funds for the period 2007 to 2013 shall be EUR 307,619 million at 2004 prices in accordance with the annual breakdown shown in the Annex 1.

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

The breakdown of budgetary resources between the objectives defined in Article 3(2) shall be such 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 established by the European Council on 15-16 December 2005 without prejudice to the provisions referred to in Articles 20 and 21.

Article 16

Resources for the “Convergence” objective

Overall resources for the “Convergence” objective shall amount to 81.7% of the resources referred to in the first paragraph of Article 15 (i.e. a total of EUR 251,330 million) and shall be distributed between the different components as follows:

- a) 70.54% (i.e. a total of EUR 177,291 million) 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) 4,98% (i.e. a total of EUR 12,521 million) for the transitional and specific support referred to in Article 7bis (1), using eligible population, regional prosperity, national prosperity and unemployment rate as criteria for calculating the indicative breakdowns by Member State;
- c) 23.18% (i.e. a total of EUR 58,268 million) for the financing referred to in Article 5(2), using population, national prosperity, and surface area as criteria for calculating the indicative breakdowns by Member State.
- d) 1.29% (i.e. a total of EUR 3,250 million) for the transitional and specific support referred to in Article 7bis (3).

Article 17

Resources for the “Regional competitiveness and employment” objective

Overall resources for the “Regional competitiveness and employment” objective shall amount to 15.8% of the resources referred to in the first paragraph of Article 15 (i.e. a total of EUR 48,789 million) and shall be distributed between the different components as follows:

- a) 78.71% (i.e. a total of EUR 38,404 million) for the financing as referred to in Article 6, using eligible population, regional prosperity, unemployment, employment rate and population density as the criteria for calculating the indicative breakdowns by Member State; and
- b) 21.29% (i.e. a total of EUR 10,385 million) for the transitional and specific support referred to in Article 7bis (2), using eligible population, regional prosperity, national prosperity and unemployment as the criteria for calculating the indicative breakdowns by Member State.

Article 18

Resources for the “European territorial cooperation” objective

1. Overall resources for the “European territorial cooperation” objective shall amount to 2.44% of the resources referred to under the first paragraph of Article 15 (i.e. a total of EUR 7,500 million) and shall be distributed between the different components as follows:
 - a) 77.61% (i.e. a total of EUR 5,621 million) for the financing of cross-border cooperation as referred to in Article 7(1), using the eligible population as the criteria for calculating the indicative breakdowns by Member State.
 - b) 18.49% (i.e. a total of EUR 1,387 million) for the financing of transnational cooperation as referred to in Article 7(2), using the eligible population as criteria for calculating the indicative breakdowns by Member State.

- c) 3.89% (i.e. a total of EUR 292 million) for the financing of inter-regional cooperation, co-operation networks and exchange of experience as referred to in Article 7(3).
2. The contribution of the ERDF to the cross-border and sea-basin programmes of the European Neighbourhood and Partnership Instrument pursuant to Regulation (EC) No [...] and to the cross-border programmes of the Instrument for Pre-Accession pursuant to Regulation (EC) No [...] shall be 12.12% of the amounts indicated in paragraph 1 under a) and b), but excluding the amount referred to in Article 18bis (7). These Regulations shall indicate that the contribution of the two instruments is at least equivalent to the one of the ERDF.

Article 18bis

Additional provisions

1. Notwithstanding Article 22, the Polish NUTS level II regions of Lubelskie, Podkarpackie, Warmínsko-Mazurskie, Podlaskie and Świętokrzyskie shall benefit from an additional funding of EUR 107 per capita over the period 2007-2013 under the Convergence objective. Any upward adjustment of the amounts allocated to Poland pursuant to Article 22(6) shall be net of this additional funding.
2. Notwithstanding Article 22, the NUTS level II region of Közép-Magyarország shall receive an additional allocation of EUR 140 million over the period 2007-2013 under the transitional support referred to under Article 7bis(2).
3. Notwithstanding Article 22, the NUTS level II region of Prague shall receive an additional allocation of EUR 200 million over the period 2007-2013 under the Regional competitiveness and employment objective.

4. The NUTS level II region of the Canaries will benefit from an additional allocation of EUR 100 million over the period 2007-2013 under the transitional support referred to under Article 7bis(2).
5. The outermost regions identified in Article 299 of the Treaty shall benefit from additional funding from the ERDF amounting to EUR 35 per capita per year over the period 2007-2013 to facilitate their integration into the internal market and to compensate for their specific constraints.
6. The NUTS level II regions fulfilling the criteria laid down in Article 2 of Protocol 6 to the Treaty of Accession of Austria, Finland and Sweden shall, in view of their specific constraints, benefit from additional funding from the ERDF amounting to EUR 35 per capita per year over the period 2007-2013.
7. In recognition of the special effort for the peace process in Northern Ireland, a total of EUR 200 million will be allocated for the PEACE programme for the period 2007-2013 under the European territorial cooperation objective. The PEACE programme shall be implemented as a cross-border co-operation programme within the meaning of Article 2(c). The eligible area shall be the whole of Northern Ireland and the border counties of Ireland. This programme will be implemented in full respect of additionality of structural fund interventions.
8. The Swedish regions falling under the Regional competitiveness and employment objective shall receive an additional ERDF allocation of EUR 150 million over the period 2007-2013 .
9. The Austrian regions falling under the Regional competitiveness and employment objective situated on the former external borders of the EU shall receive an additional ERDF allocation of EUR 150 million over the period 2007-2013. Bavaria shall be allocated a similar additional allocation of EUR 75 million over the period 2007-2013.

10. Spain shall benefit from an additional ERDF allocation of EUR 2.0 billion over the period 2007-2013 to enhance research and development by and for the benefit of enterprises as set out in Articles 4(1) and 5(1) of Regulation (EC) N° (...). This allocation shall be distributed as follows: [...] % for the regions eligible under Article 5(1), [...] % for the regions eligible under Article 7bis (1), [...] % for the regions eligible under Article 7bis (2), and [...] % for the regions eligible under Article 6.
11. Notwithstanding Article 22, Estonia and Latvia, which represent single NUTS II regions, shall each receive an additional allocation of EUR 35 per capita over the period 2007-2013.
12. Ceuta and Melilla shall receive an additional ERDF allocation of EUR 50 million over the period 2007-2013 under the transitional support referred to under Article 7bis(1).
13. Italy shall receive an additional allocation of EUR 1.4 billion over the period 2007-2013 distributed as follows: EUR 828 million for the regions eligible under Article 5(1), EUR 111 million for the region eligible under Article 7bis (1), EUR 251 million for the region eligible under Article 7bis (2), and EUR 210 million for the regions eligible under Article 6.
14. In recognition of their particular circumstances, the NUTS level II regions of Corsica and of Nord Pas-de-Calais (Hainaut) shall receive an additional allocation of EUR 30 million and EUR 70 million respectively over the period 2007-2013 under the Regional competitiveness and employment objective.
15. An additional allocation of EUR 225 million over the period 2007-2013 shall be allocated to the Eastern Länder of Germany which are eligible for support under the Convergence objective, of which 26.0% shall be allocated to regions eligible for support under Article 7bis (1).
16. The amounts referred to in the previous paragraphs of this Article are included in the amounts referred to in Articles 15 to 18.

Article 19

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, the financial allocation by Member State under the “European territorial cooperation” objective may be subject to flexibility of 10% of the amounts allocated between the cross-border component and the transnational component.

Article 20

Resources for the performance and quality reserve

3,0% of the resources referred to in Article 16(1), subparagraphs a) and b) and Article 17 shall be allocated in accordance with Article 48.

Article 21

Resources for technical assistance

0,25% of the resources referred to in Article 15(1), shall be devoted to technical assistance for the Commission as defined in Article 43.

Article 22

Maximum level of transfers

1. The Commission ensures that total annual allocations from the Funds for any Member State pursuant to this Regulation shall not exceed:
 - 3.7893% of the GDP of Member States whose average 2001-2003 per capita GNI is under 40% of the EU 25 average
 - 3.7135% of the GDP of Member States whose average 2001-2003 per capita GNI is equal or above 40% and below 50% of the EU 25 average
 - 3.6188% of the GDP of Member States whose average 2001-2003 per capita GNI is equal or above 50% and below 55% of the EU 25 average
 - 3.5240% of the GDP of Member States whose average 2001-2003 per capita GNI is equal or above 55% and below 60% of the EU 25 average

- 3.4293% of the GDP of Member States whose average 2001-2003 per capita GNI is equal or above 60% and below 65% of the EU 25 average
- 3.3346% of the GDP of Member States whose average 2001-2003 per capita GNI is equal or above 65% and below 70% of the EU 25 average
- 3.2398% of the GDP of Member States whose average 2001-2003 per capita GNI is equal or above 70% and below 75% of the EU 25 average
- thereafter, the maximum level of transfer is reduced by 0.09 percentage points of GDP for each increment of 5 percentage points of average 2001-2003 per capita GNI as compared to the EU 25 average.

2. The ceilings referred to in paragraph 1 include the contribution of the ERDF to the financing of the cross-border strand of the European Neighbourhood and Partnership Instrument pursuant to Regulation (EC) No [...] and of the Instrument for Pre-Accession pursuant to Regulation (EC) No [...], and from the part of the European Agricultural Fund for Rural Development (EAFRD) pursuant to Regulation (EC) No [...] originating from the EAGGF Guidance section, and of the European Fund for Fisheries (EFF) pursuant to Regulation (EC) No [...] contributing to the “Convergence” objective. These Regulations of the financial instruments other than the Funds shall include a similar provision as the one referred to under paragraph 1.
3. Calculations of GDP by the Commission shall be based on the statistics published in April 2005. Individual national growth rates of GDP for 2007-2013, as projected by the Commission in April 2005, shall be applied for each Member State separately.

4. If it is established in 2010 that any Member State's cumulated GDP for the years 2007-2009 has diverged by more than $\pm 5\%$ from the cumulated GDP estimated according to paragraph 3, including as a consequence of exchange rate changes, the amounts allocated for that period to that Member State pursuant to paragraph 1 will be adjusted accordingly. The total net effect, whether positive or negative, of these adjustments may not exceed EUR 3,000 million. In any event, if the net effect is positive, total additional resources shall be limited to the level of under-spending against the maximum resources available for commitments set out in Article 15 for the years 2007-2010. Final adjustments will be spread in equal proportions over the years 2011-2013.
5. In the case of Romania and Bulgaria the application of the percentages referred to in paragraph 1 of this Article shall be without prejudice to the respect of the commitment appropriations for structural actions allocated in their respective Accession Treaties for the period 2007-2009.
6. In order to reflect the value of the Polish zloty in the reference period, the result of the application of the percentages referred to in paragraph 1 for Poland shall be multiplied by a coefficient of 1.04 for the period up to the review referred to in paragraph 4 of this Article.

TITLE II¹

STRATEGIC APPROACH TO COHESION

CHAPTER I

COMMUNITY STRATEGIC GUIDELINES ON COHESION

Article 23

Content

The Council² establishes at Community level concise³ Strategic Guidelines on economic, social and territorial cohesion defining an indicative framework for the intervention of the Funds, taking account of other relevant Community policies⁴.

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 Community⁵ as referred to in Article 3, paragraph 1.

¹ ES and IT entered a scrutiny reservation on the new compromise proposal on this Title.

² DE suggested replacing “the Council” by “*the Commission*”.

³ UK suggested adding “*high level*” to Strategic Guidelines.

⁴ UK suggested adding “*while respecting the principle of subsidiarity*”.

⁵ AT suggested adding “*priorities in the area of environmental protection*”.

These guidelines are established taking into account the integrated guidelines, consisting of two elements: 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 Treaty¹.

Article 24²

Adoption and review

The Commission shall propose, following close cooperation with Member States, the Community Strategic Guidelines on cohesion referred to in Article 23. At the latest six³ months after the adoption of this Regulation, the Community Strategic Guidelines on cohesion are adopted in accordance with the procedure laid down in Article 161 of the Treaty⁴. The Community Strategic Guidelines on cohesion shall be published in the Official Journal of the European Union.

¹ IT suggested adding "*and in the EU Sustainable Development Strategy*".

² ES entered a scrutiny reservation.

³ EL and PL suggested reverting back to "three" months.

⁴ DE suggested that the guidelines should be adopted by the Commission. ES wondered about the appropriateness of a Treaty procedure for the adoption of a non-binding act.

The Community Strategic Guidelines on cohesion may be subject, following close cooperation with Member States¹, to mid-term review in accordance with the procedure laid down in paragraph 1 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 the national strategic reference framework.

¹ IT suggested adding "*after consultation of the Committees referred to in Article 104 and 105, in accordance with the procedure laid down in Article 104(2)*".

CHAPTER II

NATIONAL STRATEGIC REFERENCE FRAMEWORK

Article 25

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 hand¹ and the national reform programme, on the other hand.
2. Each national strategic reference framework shall constitute a reference instrument for preparing the programming of the Funds.

¹ IT, LV, AT and UK suggested restoring the reference to sustainable development.

3. The national strategic reference framework will 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 Co-operation" Objective, without prejudice to the future choices of other Member States concerned.
4. The national strategic reference framework shall contain the following elements¹:
 - (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 this 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 convergence and regional and competitiveness Objectives shall contribute to the EU priorities of promoting competitiveness and creating jobs, including meeting the objectives of the Integrated Guidelines for Growth and Jobs 2005-2008 as laid down in Article 8 (2 bis).
 - (e) the indicative annual allocation from each Fund by programme;

¹ UK suggested adding "*where appropriate*". CION and IT opposed to that. DE suggested deletion of paragraphs d) and e) i). IT suggested adding 3 new points to the content of the NSRF:

" *Indicative breakdown between public investment and state aid.*
The procedures for involvement of the partners referred to in article 10 in the programming and implementation phases"
The mechanisms of the implementation of the quality and performance reserve referred to in Article 48".

- (f) for regions of the ‘Convergence’ objective only:
 - (i) the action envisaged for reinforcing the Member State’s administrative efficiency¹;
 - (ii) the amount of the total annual appropriation provided for under the EAFRD and the EFF²;
 - (iii) the information required for ex-ante verification of compliance with the additionality principle referred to in Article 13³.

5. In addition, the national strategic reference framework may⁴ also contain, where relevant:

- (a) the procedure for co-ordination between Community cohesion policy and the relevant national, sectoral and regional policies of the Member State concerned;
- (b) the mechanisms for ensuring co-ordination between the operational programmes and the assistance from the Funds, 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.

¹ ES entered a scrutiny reservation.

² LV suggested moving this to paragraph 5.

³ CZ opposed to the verification of additionality only for the "Convergence" objective.

⁴ SI suggested replacing “may” by “*shall*”.

Article 26

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 10, according to the modalities that it considers most appropriate¹ and according to 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 months² 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 of the date of receipt.

¹ UK suggested a more flexible wording in relation to the consultation with partners. IT suggested reverting back to the previous formulation. CION suggested replacing “according to the modalities that it considers most appropriate” by “in accordance with Article 10”.

² BE suggested increasing the deadline. UK suggested a 3 months deadline. ES preferred the text of the Commission proposal, i.e. “as soon as possible”.

The Member State may present at the same time the national strategic reference framework and the operational programmes referred to in Article 31.

3. Before or at the same time as the adoption of the operational programmes referred to in Article 31 (5), the Commission, following consultation with the Member State, shall take a decision¹ covering:
- 2
- a) the list of operational programmes referred to in Article 25(4)(c);
 - b) the indicative annual allocation from each fund by programme referred to in Article 25(4) (d)³
 - c) and, for the “Convergence” objective only, the level of expenditure guaranteeing compliance with the additionality principle⁴ referred to in Article 13 and the action envisaged for reinforcing the administrative efficiency, as referred to in Article 25(4) e (i)⁵.

¹ IT suggested adding "*after consultation of the Committees referred to in Article 104 and 105, in accordance with the procedure referred to in Article 104(2)*". DE entered a reservation on the CION decision.

² CION suggested restoring its original point a) "*the strategy and the priority themes chosen for assistance from the Funds and their monitoring arrangements*";

³ UK suggested deleting this point. DE entered a reservation on it.

⁴ CZ considered that the verification of additionality should apply to all regions. UK suggested additionality should be treated in Article 13.

⁵ DE suggested deleting “and the action envisaged for reinforcing the administrative efficiency, as referred to in Article 25(4) e (i) [...]”.

CHAPTER III

STRATEGIC FOLLOW-UP ¹

Article 27

Strategic reporting by the Member States

1. For the first time in 2007, each Member State shall include in its annual implementation report on the National Reform Programme a concise² section on the contribution of the operational programmes co-financed by the funds towards the implementation of the National Reform Programme³.

2. At the latest by the end of 2009 and 2012⁴, 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) describing the role and responsibilities of the Funds as set out in this regulation, and
 - c) towards implementing the priorities detailed in the Community Strategic Guidelines on cohesion referred to in Article 23 and specified in the priorities set by the national strategic reference framework referred to in Article 25.

¹ DE, DK, NL, SI and SK suggested that these proposals were adding additional unnecessary reporting burden on Member States (preferred the previous version of the text included in doc. 11548/05).

² EL and IE suggested those concise sections should be really concise.

³ NL opposed to report on operational programmes within this context.

⁴ NL wondered about the appropriateness of the dates considering the cycles of the cohesion and Lisbon reports.

- 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 2005-2008 as laid down in Article 8 (2 bis).
3. Each Member State shall define the content of the report referred to in paragraph 2 above, 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 practice¹.
4. References to the National Reform Programme in this Article relate to the Integrated Guidelines for Growth and Jobs 2005-08² and shall equally apply to any equivalent guidelines decided upon by the European Council.

¹ EL suggested adding the list of difficulties encountered in implementing the strategy.

² Adopted by the Council on 12 July 2005, OJ L n° 205 of 6 August 2005 p. 21 to 37.

Article 28

**Strategic reporting by the European 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 27 paragraph 1, in particular progress towards achieving the EU priorities of promoting competitiveness and creating jobs, including meeting the objectives of the Integrated Guidelines for Growth and Jobs 2005-2008 as laid down in Article 8 (2bis).
2. In the years 2010 and 2013 and at the latest by 1 April, the Commission prepares a strategic report summarising the reports of the Member States referred to in article 27 paragraph 2. As appropriate¹, it shall be incorporated as a specific section in the report referred to under Article 159 of the Treaty.
3. The Council shall examine the strategic report referred to in paragraph 2 above as soon as possible after its publication. It shall be submitted to the European Parliament, the Economic and Social Committee and the Committee of the Regions, and these institutions invited to hold a debate on it.

Article 29

[...]

¹ DE suggested to explicit more the notion of “as appropriate”.

Article 30

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 priorities¹;
 - 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.

¹ EL suggested adding a provision on the contribution of other Community policies to the cohesion policy.

TITLE III

PROGRAMMING

CHAPTER I

**GENERAL PROVISIONS ON THE STRUCTURAL FUNDS AND THE
COHESION FUND**

Article 31

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 10.

3. The Member State shall submit a proposal for an operational programme to the Commission containing all the components referred to in Article 36 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 24 ¹.
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 the 1st of January 2007.

Article 32

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:

¹ ES suggested reverting back to the Commission proposal as regards the deadline. IE suggested that the deadline should be longer.

- 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 46(3) or,
- d) following implementation difficulties¹.

[Operational programmes shall, if necessary, be revised following allocation of the reserves referred to in Articles 48 and 49.]

2. The Commission shall adopt a decision on the requests for revision of operational programmes as soon as possible, but no later than three months² 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 26(3).

Article 33

Specific character of the Funds

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

¹ ES suggested adding "*or to improve sound financial management of a programme*".

² CION suggested replacing "three" by "four".

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 ¹10% ² of 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 ³ jointly provide assistance for operational programmes on transport infrastructure and the environment, including for major projects.

Article 34

Geographical scope

1. Operational programmes submitted under the “Convergence” objective shall be drawn up at the appropriate geographical level and at least at regional level NUTS II⁴.

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

¹ NL suggested adding “*in principle*”.

² In case the mono-fund approach is widely accepted, PL will require that the cross-financing rate should be of 25%. CZ, ES, HU, LV, LT, RO, SK and SI suggested raising the cross-financing limit (HU and RO to 25%, ES to 15%; LV, LT and SK to 20%). IE suggested that any change introduced in % should be also included in the corresponding provisions of all regulations.

DE suggested deleting any cross-financing. In case it had to stay, it would not accept anymore than 10%.

IE suggested adding “*of Community funding*”.

³ EL, ES, LV and SI suggested replacing “shall” by “may”..

⁴ SK suggested adding “*in accordance with the institutional system specific to the Member State.*”

2. Operational programmes submitted under the “Regional competitiveness and employment” objective shall be drawn up at regional NUTS I or NUTS II level, 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” objective¹ for cross-border cooperation shall be drawn up, as a general rule², for each border or group of borders by an appropriate grouping at NUTS III level³, including enclaves⁴. Operational programmes submitted under the “European territorial cooperation” objective for transnational cooperation⁵ shall be drawn up at the level of each transnational cooperation area. Inter-regional cooperation and exchange of experience programmes shall relate to the whole territory of the Community.

¹ LV reiterated its position concerning adding "*inter-regional cooperation*" into this objective.

ES wondered about maritime borders.

² ES entered a reservation on this addition.

³ ES, IT, NL, AT and PT entered a reservation subject to the future examination of Article 7.

⁴ AT suggested adding "*ensuring the continuity of the cooperation actions*".

⁵ DE recalled its argument that this Objective should be limited to the new external and internal borders.

Article 35

Participation by the European Investment Bank and the European Investment Fund

1. The EIB and the European Investment Fund (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 26(3) and the operational programmes. That consultation shall relate in particular to the 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 those projects' technical quality and economic and financial viability, in particular as regards the financial engineering instruments to be implemented or developed.

CHAPTER II
PROGRAMMING CONTENT

SECTION 1

OPERATIONAL PROGRAMMES

Article 36

Operational programmes for the “Convergence” and “Regional competitiveness and employment” objectives

1. Operational programmes relating to the “Convergence” and the “Regional competitiveness and employment” objectives shall contain:
 - a) an analysis of the situation of the eligible area or sector¹ 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 from the *ex ante* evaluation referred to in Article 46;

¹ IT suggested deleting "of the eligible area or sector".

- c) information on the priority axes and their specific targets. Those targets shall be quantified using a limited number of indicators for output and results¹, taking into account the proportionality principle. The indicators shall make it possible to measure the progress in relation to the baseline situation and the effectiveness of the targets implementing the priority axis²;
- d) for information purposes, an indicative breakdown by category of the programmed use of the contribution of the Funds to the operational programme in accordance with detailed rules of implementation adopted by the Commission in accordance with the procedure referred to in Article 104(2)³.
- e) a financing plan containing two tables:
 - i) a table breaking down for each year, in accordance with Articles 50 to 53, 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 Perspective and taking into account the phased reduction laid down in Articles 16(2) and 17(4)⁴;

¹ SK suggested adding “*impact*”. It could also accept not to further specify the indicators.

² DE, LU, IE and SE suggested deleting “*effectiveness of the targets implementing the priorities*”.

³ CY, DE and CZ entered a reservation on this point. Some of these delegations (CZ, DE, and LU) could accept to submit the information later. DE, DK, IE, CY and PT suggested deleting this point.

⁴ DE entered a reservation on this point linked to the future examination of Articles 50 to 53.

- 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 counterparts¹ and the rate of contribution from the Funds. Where in accordance with Article 51, the national counterpart is made up of public and private expenditure, the table shall give the indicative breakdown between the public and the private. Where in accordance with Article 51, 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 EIB² and the other existing financial instruments;

- f) information on complementarity with measures financed by the EAFRD and those financed by the EFF, where relevant;

- g) the implementing provisions for the operational programme, including³:
 - i) designation by the Member State of all the entities stipulated in Article 58 or, if the Member State exercises the option provided for in Article 73, the designation of other bodies and procedures in accordance with the rules laid down in Article 73;
 - 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;

¹ LV suggested replacing "public national counterparts" by "*types of national counterparts*".
CZ suggested deleting "*national*".

² DE suggested that it was impossible to show the contribution of the EIB at the beginning of the period.

³ DE and DK suggested this point was too detailed.

- v) the elements aiming at ensuring the publicity and the information of the operational programme as referred to in Article 68¹;
 - vi) a description of the procedures agreed between the Commission and the Member State for the exchange of computerised data² 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 38, which are expected to be submitted within the programming period for Commission approval.
 - i) an indicative list of the proposed aid schemes, under Article 87 of the Treaty, 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 a priority axis specific to each Fund and a specific commitment by Fund.

¹ DE and UK suggested deleting this point.

² DE and LU entered a reservation on this issue.

3. ¹Without prejudice to the last subparagraph of Article 5 of Regulation (EC) No of the European Parliament and the Council on the ERDF, each operational programme under the “Regional competitiveness and employment” objective includes a justification for the thematic, geographical and financial concentration on the priorities² as laid down respectively in Article 5³ of Regulation (EC) No of the European Parliament and the Council on the ERDF and in Article 4 of Regulation (EC) No .../.. of the European Parliament and the Council on the ESF,.

4

4. ⁵Operational programmes financed by the ERDF shall contain in addition for the “Convergence” and the “Regional competitiveness and employment” objective:

a) information on the approach to the sustainable urban development where appropriate⁶;

7

b) specific priorities for the measures financed under the additional allocation referred to in point (d), of the first paragraph of Article 16 in operational programmes providing assistance in outermost regions⁸;

¹ DE suggested deleting this paragraph. FR and SE suggested deleting “Without prejudice to the last subparagraph of Article 5 of Regulation (EC) No of the European Parliament and the Council on the ERDF,” as well as the other reference to Article 5 of the ERDF Regulation in this paragraph.

² IE and UK remained unconvinced of the value added of the justification requested in Article 36(3) a) and b) if there was a SWOT analysis in Article 36(1) a).

³ SE suggested adding a reference to Article 10 of the ERDF Regulation.

⁴ CION suggested restoring the deleted points.

⁵ UK suggested deleting this paragraph.

⁶ ES and UK suggested rendering this point optional.

⁷ BE suggested that the original point c) should be kept in square brackets, i.e. “*actions for adapting the regional economies, in a preventive manner, to the changes of the European and international economic environment*”.

⁸ DE and IT suggested deleting this point.

5. 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 inter-regional cooperation with, at least, one region or local authorities of another Member States in each regional programme¹.
6. 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 inter-regional and transnational actions involving the national, regional or local authorities of at least one other Member State.

¹ UK suggested putting this point into square brackets as it was against the mainstreaming of inter-regional cooperation in the "Convergence" objective.

Article 37

Operational programmes for the “European territorial cooperation” objective¹

Specific rules on operational programmes are laid down in the Regulation (EC) No .../... of the European Parliament and the Council on the European Regional Development Fund as regards operational programmes under the “European territorial cooperation” objective.

SECTION 2

MAJOR PROJECTS

Article 38

Content

As part of an operational programme, the ERDF and the Cohesion Fund may finance expenditure in respect to 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 €25 million² in the case of the environment and €50 million in other fields, hereinafter “major projects”³.

¹ ES and IT considered that specific rules on programming for objective 3 should be incorporated to this Regulation.

² CZ, DE, EL, ES, PL, RO and UK considered that there should be a single threshold to be set at € 50 million. EE, LV, LT, MT, RO and SI entered a reservation as this question is linked to the n+2 rule in Articles 92 and 93 (See non-paper of 8 new Member States, December 2004).

³ PT wondered about the coherence of the definition and notification procedure for major projects between this Regulation and the Competition policy provisions.

Information submitted to the Commission

The Member State or the managing authority¹ 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 2007-2013 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, of the other regions of the Community;
- f) an analysis of the environmental impact²;
- g) a justification³ for the public contribution⁴;

¹ ES suggested deleting "managing authority".

² AT suggested adding "*including issues such as human beings, fauna, flora, soil, water, air, climate, the landscape, material assets and the cultural heritage and the interrelationship between the above factors*" and a reference to Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment. NL suggested adding a reference to the two Directives.

³ EL suggested replacing "justification" by "*report*".

⁴ This issue would be examined in connexion with Article 54.

- 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.

1

The Commission shall adopt guidance on the methodology to be used in carrying out the cost benefit analysis foreseen in (e) above in accordance with the procedure referred to in Article 104(2).

Article 40

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 39, its consistency with the priorities of the operational programme, its contribution to achieving the goals of those priorities and its coherence with other Community policies.
2. The Commission shall adopt a decision as soon as possible but no later than 3 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 39. 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.

¹ SE suggested adding a new point: “*an analysis of the gender impact*”.

3. Where the Commission refuses to make a financial contribution of 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 41

General provisions

1. The Member State or the managing authority¹ 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, which shall ensure the implementation of one or more operations in accordance with the provisions of an agreement concluded between 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 must provide guarantees of its solvency and competence in the domain concerned as well as in administrative and financial management. It must normally be established or represented in the region or regions covered by the operational programme at the moment of its designation.

¹ ES suggested deleting "the managing authority".

Article 42

Implementing rules

The agreement concluded between the Member State or the managing authority and the intermediate body shall detail in particular:

- a) the types of operations 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 regarding 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 58(1) vis-à-vis the managing authority, including the modalities 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.

1

¹ NL suggested adding a new subparagraph "*In accordance with proportionality, these implementing rules shall not do more than what is required to ensure the sound management of the operation*".

SECTION 4

TECHNICAL ASSISTANCE

Article 43¹

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%² 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 projects 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;
- d) measures aimed at the partners, the beneficiaries of assistance from the Funds and the general public, including information measures;

¹ DE suggested deleting this Article.

² IT, LV and CION indicated their preference for the Commission proposal 0.30 %.

- e) measures to disseminate information, networking, raise awareness, promote cooperation and exchange experiences throughout the Union;
 - f) the installation, operation and interconnection of computerised systems for management, monitoring, inspection and evaluation;
 - g) improvements in evaluation methods and the exchange of information on practices in this field.
2. The Commission adopts a decision concerning the type of actions listed under the first paragraph, in accordance with the procedure referred to in Article 104(2), when a contribution from the ERDF or the Cohesion Fund is foreseen.
 3. The Commission adopts a decision concerning the type of actions listed under the first paragraph, after consulting the committee referred to in Article 105, in accordance with the procedure referred to in Article 104(2), when a contribution from the ESF is foreseen.

Article 44

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 limits¹:

¹ BE considered that there should be a minimum level for Technical Assistance along the lines of Commission Regulation 1685/2000. DE considered those percentages to be too high.

- a) 4% of the total amount allocated under the “Convergence” and the “Regional competitiveness and employment” objectives;
 - b) 6%¹ 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, should, 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.²

¹ BE, AT and SI suggested increasing the 6% threshold.

² LT and LV suggested replacing this sentence by “*For each of the three objectives, technical assistance actions, within the limits set in paragraph 1, should be undertaken either within the framework of each operational programme or in the form of a specific operational programme or as a combination of technical assistance within the framework of each operational programme and specific operational programme.*”

3. If the Member State decides to undertake technical assistance actions:
- a) 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, technical assistance actions may also be undertaken in the form of a specific operational programme provided that the total amount of expenditure for technical assistance in such a specific programme does not cause the total proportion of funds allocated to technical assistance to exceed the limits set in paragraph 1.
 - b) both in the framework of each operational programme and in the form of a specific operational programme, the total amount of expenditure for technical assistance shall not exceed the limits set in paragraph 1.

TITLE IV
Effectiveness

CHAPTER I
EVALUATION

Article 45

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, ¹while taking account of the objective of sustainable development and of the relevant Community legislation concerning environmental impact and strategic environmental assessment².

¹ DE requested deleting "*while taking account of the needs of sustainable development and of the relevant Community legislation concerning environmental impact and strategic environmental assessment*".

² UK wondered how the provisions of Directive 2001/42/EC would apply.

2. Evaluation can 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. It can be of an operational nature in order to support the monitoring of an operational programme. Evaluations are 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 11bis.

¹

Evaluations shall be carried out by experts or bodies², internal or external, functionally independent of the authorities referred to in Article 58 b) and c). The results shall be published according to the applicable rules on access to documents.

4. Evaluations shall³ be financed from the budget for technical assistance.

¹ CION and SK suggested getting back the provisions on evaluations as set out in document 8432/05.

² ES suggested including a description of the ex-ante evaluation along the lines of Article 41 of Regulation No 1260/99.

³ DE suggested replacing "shall" by "*may*".

5. The Commission shall provide ¹indicative guidance ² on evaluation methods, including quality standards, in accordance with the procedure laid down in Article 104 (2)³.

Article 46

Responsibility of Member States⁴

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 11bis, an evaluation plan⁵ which shall present the indicative evaluation activities the Member State intends to carry out in the different phases of the implementation.

¹ BE, DE, EL, FR, AT, PT and SE would like to know the guidance before adoption of this Regulation.

² EL and ES rejected having guidance on evaluation methods as they could be different in each Member State.

³ DE and ES suggested deleting “in accordance with the procedure laid down in Article 104(2)”. DE suggested introducing the current arrangements relating to this issue.

⁴ UK suggested extending the principle of proportionality to this Article.

⁵ UK criticised the introduction of a new requirement.

2. Member States shall carry out an *ex-ante* evaluation for each operational programme under the “Convergence” objective. In duly justified cases, taking into account the proportionality principle as set out in Article 11bis, and as agreed between the Commission and the Member State, Member States may carry out an *ex ante* evaluation for more than one operational programme.

For the “Regional competitiveness and employment” objective, they 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 "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 evaluation shall aim to optimise the allocation of budgetary resources under operational programmes and improve programming quality. It shall identify¹ 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.

¹ BE suggested deleting "identify". ES suggested replacing “identify” by “*assess*” or “*indicate*”.

3. During the programming period, Member States shall¹ carry out evaluations linked to the monitoring of operational programmes in particular where the monitoring of programmes 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 32. The results shall be sent to the monitoring committee for the operational programme and to the Commission.

Article 47

Responsibility of the Commission

1. The Commission may² 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.

¹ IT suggested replacing "shall" by "*may*".

² IT suggested replacing "may" by "*shall*".

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

It 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 **having contributed** 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 48

National performance reserve¹

1. At its own initiative, a Member State may decide to establish a national performance reserve for each or both the "Convergence" and "Regional competitiveness and employment" objectives, consisting of 3% of its total allocation for each objective.
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 2011² the performance of each of its operational programmes on the basis of performance relative to the selected priority axis of each operational programme with reference to a limited number of indicators (maximum 5) included in the approved operational programmes.

¹ DE, IE, LU, NL, AT, SE, and UK opposed to a national performance reserve. EL, ES, IT and CION supported the principle of a mandatory reserve, although further reflection was needed regarding its management, allocation criteria (leverage effect), etc. HU considered this reserve could amount 4% of the total allocation and should be set in a separate envelope. The basis for allocation should be set by Member States in close cooperation with the Commission. [CZ, DE, DK, EE, FR, IE, HU, LT, LV, MT, RO, PT, SK, SI and FI welcomed the Presidency proposal]. IT and CION entered a fundamental reservation as they preferred a mandatory reserve.

CION made a new proposal (a single, national, mandatory reserve). Delegations who expressed themselves on this new proposal insisted on the fact that their comments were only preliminary as they had not had the opportunity to examine the proposal. EL and IT supported the CION proposal. DE, EE, FR, IE, MT, AT, SE, FI, SK, UK considered that this new CION proposal was not satisfactory. DK, LT and NL disagreed with its mandatory character. BE, ES and NL considered that the proposal needed further study.

² EL suggested replacing "2011" by "2010".

3. Not later than 31 December 2011¹, the Commission shall allocate the national performance reserve, in close consultation with the Member States concerned, under each objective, on the basis of proposals from each Member State, within the framework of national rules and practices, to the operational programmes which are considered to be successful.

Article 49

National contingency reserve

At its own initiative, a Member State may reserve an amount of 1% of the Structural Fund annual contribution for the “Convergence” objective and 3% of the Structural Fund annual contribution for the “Regional competitiveness and employment” objective to cover unforeseen² local or sectoral crises³ linked to economic and social restructuring or to the consequences of trade opening.

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

¹ EL suggested replacing “2011” by “2010”.

² LV suggested deleting “unforeseen”.

³ PT and RO considered the cases as too limitative, it should for example cover the consequences of natural disasters.

TITLE V
Financial contribution by the Funds

CHAPTER I

CONTRIBUTION OF THE FUNDS

Article 50¹

Modulation of the contribution rates

The contribution of 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 territorial² 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;

¹ EL wondered about the reasons for which some provisions of Article 29 of Regulation No 1260/99 were dropped. DE entered a reservation.

² DE suggested deleting "territorial". LU insisted on maintaining it.

- d) the rate of mobilisation of private financing, in particular under public-private partnerships, in the fields concerned.¹
- e) the inclusion of interregional cooperation as referred to in Article 36(5), point b) under the “Convergence” and “Regional competitiveness and employment” objectives
- f) ²under 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 where the capital of a Member State is sited or which have a fixed link to the mainland³.
 - ii) mountain 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 are no longer so since that date.

4

¹ NL suggested redrafting this point to encourage the mobilisation of private financing.

² DE and UK suggested deleting this paragraph.

³ MT suggested replacing point i) by "*islands (including island Member States with a population of less than two million) which do not have a fixed link to the mainland*".

⁴ CZ suggested adding the text of Article 29 b) of Regulation No 1260/99.

Contribution by the Funds

1. The contribution from the Funds for all operational programmes for Member States whose average per capita GDP from 2001 to 2003 was below 85% of the EU 25 average during the same period, together with operational programmes in the Eastern Länder of Germany eligible for support under the "Convergence" objective, shall be calculated in reference to the total eligible expenditure including public and private expenditure.

2. For the other operational programmes of the Member States other than those mentioned under paragraph 1 -with the exception of the operational programmes in the Eastern Länder of Federal Republic of Germany eligible for support under the Convergence Objective-, the contribution from the Funds under the "Convergence" and "Regional Competitiveness and Employment" Objective shall be calculated in reference to the public eligible expenditure.

3. The contribution from the Funds at the level of the operational programme under the "Convergence" and "Regional Competitiveness and Employment" Objective shall be subject to the ceilings set out in Annex 2.

4. For operational programmes under the "European territorial cooperation" objective where at least one participant to the operational programme belongs to the list of paragraph 1, the contribution from the ERDF shall not be higher than 85% of the total eligible expenditure. For all other operational programmes, the contribution from the ERDF shall not be higher than 75% of the public eligible expenditure co-financed by the ERDF.

5. The contribution from the Funds at the priority axis level shall not be subject to the ceilings set out in Annex 2. However, they shall be fixed so as to ensure the respect of the maximum amount of contribution from the Funds and the maximum contribution rate per Fund fixed at the level of the operational programme.
6. For operational programmes cofinanced jointly by:
- a) the ERDF and the Cohesion Fund or
 - b) by the additional allocation for the outermost regions provided for in Article 5(4), the ERDF and / or the Cohesion fund¹,
- the decision adopting the operational programme shall fix the maximum rate and the maximum amount of the contribution for each fund and allocation separately.

¹ DE and IT suggested deleting this point.

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

Article 52

Increase of the contribution

[...]

Article 53

Other provisions

1. The contribution from the Funds for each priority axis shall not be less than 20% of the eligible expenditure.

2. Technical assistance measures implemented at the initiative of or on behalf of the Commission may be financed at the rate of 100%¹.
3. During the period of eligibility referred to in Article 55(1):
 - a) A priority axis may receive assistance from only one Fund 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 aid to businesses, public aid granted under operational programmes shall respect the ceilings on state aid.
5. An expenditure co-financed by the Funds shall not receive assistance by another Community financial instrument.

¹ DE entered a reservation linked to its position on the technical assistance at the initiative of the Commission.

CHAPTER II

REVENUE-GENERATING PROJECTS

Article 54¹

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 ²charges 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 expenditure³ on revenue-generating projects shall not exceed⁴ the current value of the investment cost less the current value of the net revenue from the investment over a specific reference period⁵ 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 cofinancing the net revenue shall be allocated pro rata to the eligible and non-eligible parts of the investment cost⁶.

¹ DE, ES, LV, NL, PT and UK entered a scrutiny reservation on this Article. DE suggested adding provisions of Article 29 (4) (b) of Regulation 1260/99 or at least setting a limit to investments in companies.. PL entered a reservation on the Article.

² ES and PL suggested adding "*substantial*".

³ LT suggested replacing "public expenditure" by "*contribution from the Funds*".

⁴ EL suggested replacing "not exceeding" by "*be equal*".

⁵ LV wondered about the meaning of the "specific reference period". CION suggested including also the actualisation of the cost of the investment.

⁶ EL suggested that in view of this provision, one should reflect over a minimum co-financing rate. Moreover, it found these provisions too open and therefore not reflecting correctly national specificities. CION gave its assurance that the implementation rules for Major projects would be discussed in the CDCR.

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 and of the application of the polluter-pays principle, and, if appropriate, of considerations of equity¹ 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 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 the final closure of the operational programme. The final payment claim 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 subparagraphs 2 and 3, such revenue shall be refunded to the general budget of the European Union in proportion to the contribution from the Funds².
5. This Article shall not apply to projects subject to the rules on state aid within the meaning of Article 87 of the Treaty³.

¹ LV suggested replacing "equity" by "*affordability in terms of household income*".

² CZ and SK suggested deleting this paragraph.

³ DE suggested deleting this paragraph.

CHAPTER III

ELIGIBILITY OF EXPENDITURE

Article 55¹

Eligibility of expenditure

1. ²Expenditure, including for major projects³, 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 the 1st January 2007 whichever is the earliest, and 31 December 2015.⁴ Operations co-financed must not have been completed before the starting date for eligibility.

¹ ES and PT entered a scrutiny reservation.

² PL suggested adding: "*Without prejudice to the specific provisions for transitional measures*"

³ EL, FR and PT wondered about the eligibility of preparation costs of major projects.

⁴ ES, AT and SI suggested adding a new subparagraph: "*Public subsidies or subsidy equivalents of other forms of public finance to private beneficiaries shall be eligible if they have actually been paid to the private beneficiaries for the purpose of the operation between 1 January 2007 and 31 December 2015*". SE suggested getting back to the Commission original proposal.

2. Expenditure shall be eligible for a contribution from the Funds only where incurred for operations decided on by the managing authority of the operational programme concerned or under its responsibility, in accordance with criteria fixed by the monitoring committee¹.

New ²expenditure, added at the moment of the modification of an operational programme referred to in Article 32, shall be eligible from the date of the submission to the Commission of the request for modification of the operational programme³.

3. The rules on the eligibility of expenditure shall be laid down at national level⁴ subject to the exception provided in the specific Regulations for each Fund⁵. They cover the entirety of the expenditure declared under the operational programme.
4. Paragraphs 1, 2 and 3 of this Article shall be without prejudice to the expenditure referred to in Article 43.⁶

¹ IT suggested adding "*For the expenditures incurred before the date of approval of the selection criteria by the Monitoring Committee, the eligibility shall be assessed on an ex-post basis*".

² AT suggested adding "*public*".

³ ES, PT and SI suggested replacing this date by the date of the decision of the monitoring committee or start of the year in which the decision is taken by the monitoring committee.

⁴ ES preferred Community rules.

⁵ SI suggested that the eligibility rules for "territorial cooperation" objective should be consistent with the ones under ENPI and IPA.

⁶ DE suggested deleting this paragraph as it is opposed to technical assistance at the initiative of the Commission.

CHAPTER IV

DURABILITY OF OPERATIONS

*Article 56*¹

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 five² 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 this time limit for the maintenance of an investment or jobs created by SME's 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 ownership³ of an item of infrastructure or the cessation of a productive activity⁴.
2. The Member State and the Managing Authority shall inform the Commission of any modification referred to in paragraph 1. The Commission shall inform the other Member States.

¹ DE, FR and AT entered a scrutiny reservation. BE, ES and FI agreed on the principle set in this Article. The signatories of the non paper referred to their position on this Article. AT suggested applying proportionality to this Article. BE, DE and ES considered that the procedural aspects should be improved.

² BE, DE, ES and CION suggested replacing "five" by "*seven*".

³ IT suggested replacing "nature of ownership" by "*delocalisation*".

⁴ AT suggested adding "*In the case of public private partnership projects the Member State or the managing authority can allow a change of ownership before the end of the seven year period.*". DK suggested adding wording to exclude bankruptcy.

3. Sums unduly paid shall be recovered in accordance with Articles 99 to 103.
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 toward another Member State do not benefit from a contribution from the Funds¹.

¹ DK suggested rewording this paragraph.

TITLE VI¹

MANAGEMENT, MONITORING AND CONTROLS

CHAPTER I

MANAGEMENT AND CONTROL SYSTEMS

Article 57²

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 management³ and control and the allocation of functions within each body;
- b) the respect of 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;

¹ DK and IT entered a general reservation on the Title pending the proposal of the Commission Regulation.

² EL and ES entered a general reservation on this Article linked to the Commission Regulation and to the fact that some provisions of this Article were reproduced in this latter Regulation.

³ IE suggested adding "*certification of expenditure*".

- d) reliable accounting, monitoring and financial reporting systems in computerised form;¹;
- 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 irregularities² and for the recovery of amounts unduly paid.

¹ IT suggested adding "*except in cases of force majeure*". LU suggested adding a provision on the responsibility of the Commission in securing the functioning of the electronic data processing systems. Any technical requirements would have to be known in advance and changes in the system with effects to the Member States have to be decided jointly with the Member States. PL suggested adding "*Any requirements of the Commission (particularly technical) that may affect IT systems in Member States should be announced adequately early, providing enough time to introduce changes*". ES suggested there should be an assurance that the system works correctly.

² BE, ES, FR and AT entered a reservation in relation to the definition of "irregularities" pending the corresponding provisions on the Commission Regulation. DE and AT suggested differentiating between fraud, mistake and carelessness. It also asked for a harmonisation with Commission Regulation 1681/94 (e.g. as regards the lower-limit for reporting-obligations).

Article 58

Designation of authorities

1. For each operational programme the Member State shall designate the following:
 - a) a managing authority: 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 declarations 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, provided that it is functionally independent of the managing authority and the certifying authority, designated by the Member State for each operational programme and responsible for verifying the effective¹ functioning of the management and control system.

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

¹ ES suggested replacing “effective” by “*proper*”.

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 of 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 57, point b), some or all of the authorities referred to in paragraph 1 may be located within the same body.
5. Specific rules on management and control are laid down in the Regulation (EC) No [...], for operational programmes under the “European territorial cooperation” objective¹.
6. The Commission shall adopt detailed rules to implement Articles 59, 60 and 61 in accordance with the procedure referred to in Article 104(3)².

¹ ES, NL and AT considered that these rules should be in the General Regulation. IT entered a scrutiny reservation..

² IT and AT entered a scrutiny reservation.. DE, IT and NL indicated that the provisions of the implementing Regulation should be integrated in the Council Regulation. BE entered a reservation in relation to Articles 60 and 61.

Article 59¹

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 management² 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, for their whole implementation period, with applicable Community and national rules;
- b) verifying the delivery of the co-financed products and services 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 104(3);
- c) ensuring that there is a system³ for recording and storing in computerised form⁴ accounting records of each operation under the operational programme and that the data on implementation necessary for financial management, monitoring, verifications, audits and evaluation is collected;

¹ CY entered a scrutiny reservation linked in particular to the definition of “beneficiary”.

² EL, IE and LU suggested deleting the reference to the principle of sound financial management.

³ IT and LU suggested inserting "*as far as possible in computerised form* for recording and storing detailed accounting records of each operation...".

⁴ CZ, DE, CY and LU suggested adding "*where possible*".

- 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 46(3) are carried out in accordance with Article 45 ;
- 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 88;
- g) ensuring that the certifying authority shall receive all necessary information on the procedures and verifications carried out in relation to expenditure for the purpose of certification;
- h) guiding¹ 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 goals²;
- i) drawing up and, after approval by the Monitoring Committee, submitting to the Commission the annual and final reports on implementation;

¹ ES, PT and SE suggested replacing "guiding" by "*leading*". BE and EL suggested getting back to the original proposal in FR, i.e. "animer".

² BE and IT suggested replacing this point by "*leading the Monitoring Committee and providing it with the documents required to permit the monitoring of the implementation of the operational programme on a qualitative and quantitative basis in the light of its specific goals*".

- j) ensuring compliance with the information and publicity requirements laid down in Article 68;
- k) providing the Commission with information to allow it to appraise major projects.

1

Article 60

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;

¹ IT suggested adding the text of Article 60 f) as a new point l).

- d) taking account for the purposes of certification 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 recoverable¹ 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 61

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 effective² functioning of the management and control system of the operational programme;
 - b) ensuring that audits³ are carried out on operations on the basis of an appropriate sample to verify expenditure declared⁴;

¹ ES suggested adding "*according to each system*".

² ES suggested replacing "effective" by "*correct*".

³ FR suggested replacing "audits" by "*controls*", ES by "*checks*".

⁴ ES entered a reservation.

- 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 audits¹ referred to under subparagraphs a) and b), the method to be used, the sampling method for audits² on operations and the indicative planning of audits to ensure that the main bodies are audited and that audits³ are spread evenly throughout the programming period;
- d) where a common system applies to several operational programmes, a single audit strategy may be submitted under subparagraph c);
- e) by [31 March]⁴ each year from 2008 to 2015:
- i) submitting to the Commission an annual control⁵ report setting out the findings of the audits carried out during the previous year 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 information concerning the audits carried out in the years 2015 and 2016 will be included in the final control report supporting the closure declaration referred to in point (f);

¹ FR suggested adding "*and controls*".

² FR suggested replacing "audits" by "*controls*", ES by "*checks*".

³ FR suggested adding "*and controls*".

⁴ BE, DE, CZ, EL, ES, IE, LU, LV, MT, NL, AT, PL, PT and SK suggested replacing "31 March" by "*30 June*".

⁵ NL, and SI suggested replacing "control" by "*audit*".

- ii) issuing an opinion, on the basis of the controls and audits that have been carried out under the responsibility of the Audit Authority, as to whether the functioning of the management and control system provides reasonable assurance that statements of expenditure presented to the Commission are¹ correct and that the underlying transactions are legal and regular².
- iii) submitting, where applicable under Article 86 bis, 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.

- f) submitting to the Commission at the latest by 31 December 2016³ 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 control⁴ report.

2. The Audit Authority shall ensure that the audit work takes account of internationally accepted⁵ audit standards.

¹ EL suggested replacing “are” by “appear to”.

² EL, ES, FR, LV, HU and PT suggested reverting back to the text from doc. 10555/05, i.e. “issuing an opinion based on the controls and audits carried out as to whether the management and control system has operated correctly”. DE, DK, EL, FR, LV, AT, PT and UK suggested deleting “and [...] that the underlying transactions are legal and regular”

³ IT suggested replacing the date by “by the end of the twelve months following the final date of eligibility of expenditure”. ES suggested “31 March 2017”.

⁴ NL and SI suggested replacing “control” by “audit”.

⁵ PT suggested adding “public”.

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) and (d) no later than three months following its reception. In the absence of comments within this period it shall be considered to be accepted.

CHAPTER II

MONITORING

1

Article 62

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 starting from the date of the notification of the decision approving the operational programme to the Member State². A single Monitoring Committee may be set up for several operational programmes.

¹ SK and CION suggested reverting back to the previous Presidency proposal (Article 61bis (4)) as it considered essential to have an explicit provision on electronic data exchange, to be placed in Article 65.

² IT suggested adding "*Monitoring Committees will hold meetings on a regular basis, generally at least once a year*".

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 to the present Regulation.

Article 63

Composition

1. The Monitoring Committee shall be chaired by a representative of the Member State or the Managing Authority.

¹

Its composition shall be decided by the Member State² in agreement with the Managing Authority.³

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.

¹ ES, PT and SE suggested adding “*The chairman of the Committee will lead and guide the work of the Monitoring Committee*”.

² BE and CION suggested reverting back to the reference to Article 10, LV would accept the same formulation but adding “*where appropriate*”. BE and CION suggested adding the Managing Authority as part of the Monitoring Committee.

³ LU and SE suggested adding “*The partners shall promote the balanced participation of men and women*”.

Article 64

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 achievement of the targets set for each priority axis and the evaluations referred to in Article 46 (3);
- d) it shall consider and approve the annual and final reports on implementation referred to in Article 66;
- e) it shall be informed of the annual control¹ 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;

2

¹ PT suggested replacing "control" by "audit".

² BE suggested reinstating the original point f) point which would read as follows: "*at the initiative of the Member State, it may be informed, of the reports referred to in Article 27(2)*".

- 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 of the Funds.

Article 65

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 indicators¹ referred to in Article 36 (1)(c) specified in the operational programme.

Where the nature of the assistance permits, the statistics shall be broken down by sex² and by the size of the recipient undertakings.

¹ CION suggested reverting back to the original text, i.e. "indicators of implementation and results specified in the operational programme".

² NL opposed to the breaking down by sex.

3. Data exchange between the Commission and the Member States for this purpose is carried out electronically, in accordance with the implementing rules adopted in accordance with the procedure referred to in Article 104(3).

Article 66

Annual report and final report on implementation

1. For the first time in 2008 and by 30 June each year¹, the Managing Authority shall send the Commission an annual report and by 31 December 2016² a final report on the implementation of the operational programme.
2. The reports referred to in paragraph 1 shall³ 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 priorities in relation to their specific, verifiable targets, with a quantification, wherever and whenever they lend themselves to quantification, the indicators referred to in Article 36 (1)(c) at the level of the priority axis;

¹ IT suggested replacing "30 June each year" by "*within six months of the end of each full calendar year*".

² IT suggested replacing "31 December 2016" by "*at the latest twelve months after the final date of eligibility of expenditure*".

³ NL suggested adding "*where appropriate*".

- b) the financial implementation of the operational programme, detailing for each priority axis:
- (i) the expenditure paid out by the beneficiary included in payment claims sent to the managing authority and the corresponding public contribution, the total payments received from the Commission, and quantification of the financial indicators referred to in Article 65(2);

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 104(3)¹;
- 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 67(2) where appropriate;
 - iii) the use made of technical assistance;

¹ DE suggested deleting this point.

- e) the measures taken to provide information on and publicise the operational programme;
- f) information about significant problems relating to the compliance with community law which have been encountered in the implementation of the operational programme and the measures taken to deal with them¹;
- g) where appropriate, the progress and financing of major projects;
- h) the use made of assistance released following cancellation as referred in Article 99(2) to the Managing Authority or to another public authority² during the period of implementation of the operational programme.

The breadth of information transmitted to the Commission shall be proportional to the total amount of public expenditure of the operational programme concerned. Where appropriate³, such information may be provided in summary form.

¹ CION considers this text as completely insufficient for the purpose. It considers that in line with the measures discussed in the context of the Roadmap to an integrated internal control framework, managing authorities should provide express assurance that they have carried out their functions so as to comply with the provisions of Article 57 and 59, thus giving the necessary guarantee on conformity with Community law. The absence of such assurance may contribute to a failure to obtain a positive DAS with all the negative impact on public opinion. It strongly suggested replacing f) by "*a statement by the managing authority that it has carried out its functions in relation to the management and implementation of the operational programme in compliance with the provisions of Articles 57 and 59*".

² SK suggested replacing "to the Managing Authority or to another public authority" by "*to the body responsible for making the payments to the beneficiaries as referred to in Article 36*".

³ CION suggested replacing "appropriate" by a "justified by the limited amount of public expenditure".

Information referred to in points d), e) and h) shall not be included if there was 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 day 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 the 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 67

Annual examination of programmes

1. Every year, when the annual report on implementation referred to in Article 66 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 annual control¹ report, referred to in Article 61(1), point e) i), may also be examined.

¹ NL suggested replacing “control” by “*audit*”.

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 2000-2006 programming period, where appropriate, are available, the overall results may be examined in the next annual examination.

CHAPTER III

INFORMATION AND PUBLICITY

Article 68¹

Information and publicity

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 rules implementing this Article in accordance with the procedure laid down in Article 104 (3).

¹ DK and AT entered a scrutiny reservation relating to the Commission Regulation.

2. The Managing Authority for the operational programme shall be responsible for the publicity in accordance with the implementing rules of this Regulation adopted by the Commission according to the procedure referred to in Article 104(3).

CHAPTER IV

RESPONSIBILITIES OF MEMBER STATES AND OF THE COMMISSION

SECTION 1

RESPONSIBILITIES OF MEMBER STATES

Article 69

Management and control

1. Member States shall be responsible for the management and control of operational programmes in particular through the following measures¹:
 - a) ensuring that management and control systems for operational programmes are set up in accordance with Articles 57 to 61 and function effectively and correctly²,

¹ IT suggested deleting "in particular through the following measures".

² ES, IT and PT suggested deleting this paragraph.).

- 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 is responsible for reimbursing the amounts lost to the general budget of the European Union, save when it proves that the loss incurred has not been caused by its irregularity or negligence¹.
3. The detailed rules for implementing paragraphs 1 and 2 shall be adopted in accordance with the procedure referred to in Article 104(3)².

¹ DE suggested deleting this paragraph. BE and ES suggested that the burden of the proof was on the Member States contradicting the provisions of Article 5 (2) of Commission Regulation No 1681/94. CION indicated that the wording of this paragraph is the same as the one in Article 23 (1) third indent in the Council Regulation 4253/88.

² BE and AT entered a reservation. DE suggested deleting this paragraph. FI considered that the sanctions provided for in article 91(1) c should only be triggered off by a breach of duties laid down in the Council Regulation, not in the Commission Regulation. Grounds for suspending payments given in article 91(1) a) and b) are sufficient. As the article 91 (1) c) refers to obligations under article 69 (1) and (2), and as the article 69 (1) a) refers to Articles 57 to 61, and as article 58 (6) refers to implementing rules to be given by the Commission on articles referred to in article 69 (1) (i.e. articles 59, 60 and 61), the goal of stating requirements in the Council regulation is not achieved.

Article 70

Setting up of Management and control systems

1. Before the submission of the first interim payment application 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. This description shall be accompanied by a report¹ setting out the results of an assessment of the setting up of the systems and giving an opinion on their compliance with Articles 57 to 61. If the opinion contains reservations, the report shall indicate the seriousness of the shortcomings. 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 completion of the measures and the withdrawal of the corresponding reservations².

¹ PL entered a scrutiny reservation on the obligation of preparing the compliance assessment report.

² ES entered a reservation in all new obligations. ES requested more clarification on the consequences of the opinion containing reservations. ES and IT entered a reservation on this paragraph. They considered it even stricter than the previous version. In case of no reaction of the Commission after this deadline the plan shall be deemed to be accepted.

The report referred to in this paragraph 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 subparagraph 2 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 withdrawn¹, and in the absence of observations by the Commission within two months of the date of confirmation.²
3. The report and the opinion referred to in paragraph 2 are established by the Audit Authority or by a public or private body functionally independent of the Managing and Certifying authorities which shall carry out its work taking account of internationally accepted³ 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 detailed rules for implementing paragraphs 1 to 4 shall be adopted in accordance with the procedure referred to in Article 104(3)⁴.

¹ EL suggested deleting “**and the corresponding reservations withdrawn**”.

² CY, ES and IT entered a reservation on the prior confirmation by the Commission about the completion of corrective measures.

³ PT suggested adding “*public*”.

⁴ FR and AT entered a reservation.

SECTION 2

RESPONSIBILITIES OF THE COMMISSION

Article 71

Responsibilities of the Commission

1. The Commission shall satisfy itself in accordance with the procedure laid down in Article 70 that the Member States have set up management and control systems that comply with Articles 57 to 61 and on the basis of the annual control¹ reports and annual opinion of the audit authority and its own audits that the systems function effectively during the period of implementation of the operational programmes².

¹ EE, HU, PT and SI suggested replacing "control" by "*audit*".

² ES suggested adding the wording of Article 38 (2) of Regulation No 1260/99 as both the Commission and Member States are responsible of a sound financial management. NL suggested replacing "control" by "*audit*" in this paragraph.

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 effective¹ functioning of the management and control systems, which may include audits² on operations included in the operational programme, with a minimum of ten working days' notice, except in urgent cases. Officials or authorised representatives of the Member State may take part in such audits. Detailed rules concerning the use of data collected during audits shall be adopted in accordance with the procedure referred to in Article 104(3)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 Fund.

The aforementioned powers of inspection 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.

¹ ES suggested replacing “effective” by “*correct*”.

² FR and PT suggested replacing "audits" by "*controls*".

³ FI suggested that some of those details rules should be included in this paragraph, in particular a reference to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. *OJ L 008, 12/01/2001 P. 0001 - 0022.*

3. The Commission may require a Member State to carry out an on-the-spot **audit**¹ to verify the **effective**² functioning of the systems or the correctness of one or more transactions. Commission officials or authorised Commission representatives may take part in such audits.³

Article 72

Cooperation with the audit authorities of the Member States

1. ⁴The 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 the case 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, generally⁵ at least once a year, in order to examine together the annual control⁶ report and opinion presented under Article 61 and to exchange views on other issues relating to the improvement of the management and control of the operational programmes.⁷

¹ FR and PT suggested adding "*or controls*".

² CION suggested replacing "correct" by "*effective*".

³ FR and PT suggested adding "*and controls*".

⁴ NL suggested replacing "control" by "*audit*" in this paragraph.

⁵ EL, FR, AT and PT suggested deleting "generally".

⁶ HU, PT and SI suggested replacing "control" by "*audit*".

⁷ IT suggested adding "*The results of these meetings are communicated to the Managing and Certifying authorities of the operational programmes.*"

2. In determining its own audit strategy, the Commission shall identify those operational programmes for which the opinion on the compliance of the system under Article 70(2)¹ 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 audits² by the Commission and the Member State.
3. For those programmes, the Commission shall inform the Member States concerned if it intends to rely³ on the opinion referred to in Article 61 e) ii) with regard to the effective⁴ functioning of the systems. If there are indications⁵ of shortcomings of the system affecting expenditure certified to the Commission for a year for which the Audit Authority has provided an opinion without reservation, the Commission may require the Member State to carry out audits in accordance with Article 71(3) or it may carry out its own audits under Article 71(2).

¹ PL entered a reservation linked to its position on Article 70.

² FR suggested adding "*and controls*".

³ CION suggested restoring the word: "*principally*". EL, FR, IT, NL, AT, PT and UK opposed to it.

⁴ ES suggested replacing "effective" by "*correct*".

⁵ EL, NL, PT and AT suggested replacing "indications" by "*evidence*". CZ, ES, IE and UK by "*evidence to suggest*". SE by "*verifications*".

SECTION 3

PROPORTIONALITY IN THE CONTROL OF OPERATIONAL PROGRAMMES¹

Article 73²

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%³ of the total public expenditure⁴:

¹ FR entered a scrutiny reservation.

² HU entered a reservation on the whole Article. CION declared that if this proposal, subject to modification of paragraph 1 a) could not be accepted, it would withdraw its proposal on this Article. FR entered a scrutiny reservation linked to the outcome of the financial perspectives negotiation. LU considered that the Article would not apply to Objective 3 programmes. NL suggested replacing “control” by “*audit*” in the Article.

³ FR entered a reservation on the proposed thresholds and wondered about which provisions apply if the thresholds are not met. IE, DK, NL and FI suggested raising the threshold. IE to 42-44%. ES, IT and CION opposed to the increase of the threshold from 33% to 40%.

⁴ BE, DE, CY, CZ, LU, DK, IT, ES, MT, NL, LV, SI, SE, SK, and CION suggested reinserting a second threshold (fixed amount) and therefore suggested further discussing the previous compromise proposal, i.e. “For operational programmes for which the total public expenditure is less than EUR 750 million and for which the level of Community co-financing does not exceed 33%”. For CY, EL, IE, HU, MT, SK, SI, AT and UK those two thresholds should be an alternative. For CZ, DK, DE, EE, ES, IT, LU, NL, PT, AT, SE and CION they should be cumulative. BE, FR, LV and FI could accept both options. IE, MT, AT, FI and UK suggested that the best option was to keep one 40% threshold. For MT, NL, SI and SK the fixed amount threshold should be lower than 750 € million. On the contrary, IE, FI, AT and SK suggested raising this amount. CY suggested moreover replacing “total public expenditure” by “*Community contribution*”. CY suggested adding “*or EUR 300 million*”.

- a) the audit authority is not required to present to the Commission an audit strategy under Article 61 (1) (c)¹;
- b) where the opinion on the compliance of the system under Article 70 (2) is without reservations, or where reservations have been withdrawn following corrective measures, the Commission may² conclude that it can rely principally³ on the opinion referred to in Article 61 (1) (e) (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 are indications⁴ of shortcomings of the system affecting expenditure certified to the Commission in a year for which an opinion under Article 61 (1) e) ii) has been provided which contains no reservation in respect of such shortcomings⁵.

Where the Commission reaches such a conclusion, it shall inform the Member State concerned accordingly. Where there are indications of shortcomings it may also require the Member State to carry out audits in accordance with Article 71 (3) or it may carry out its own audits⁶ under Article 71 (2)

¹ DK, EL, FR, IE, NL and SE suggested reinstating "*nor an annual control report under Article 61 (1) (e) (i)*". HU suggested deleting the whole paragraph.

² AT, SE and UK suggested replacing "may" by "*shall*".

³ AT suggested deleting "principally".

⁴ EL, IE, NL and UK suggested replacing "indications" by "*evidence*". Moreover, UK suggested adding "*clear*" before "*evidence*". SE suggested replacing "indications" by "*verifications*".

⁵ AT and UK considered that the Commission should automatically rely principally on the Member State's audit controls when proportionality conditions are met.

⁶ FR suggested adding "*and controls*".

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 59 (b)¹;
 - b) the functions of the certifying authority under Article 60; and
 - c) the functions of the audit authority under Article 61.

Where a Member State exercises this option it needs not to designate a certifying authority and an audit authority under Article 58 (1) points (b) and (c).

The provisions of Article 70 shall apply *mutatis mutandis*.

When the Commission adopts implementing rules of Articles 59, 60 and 61, 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.

¹ CY wondered why only point b) was covered.

TITLE VII
FINANCIAL MANAGEMENT

CHAPTER I
FINANCIAL MANAGEMENT

SECTION 1
BUDGET COMMITMENTS

Article 74

Budget commitments

1. The Community budget commitments in the operational programmes (hereinafter “budget commitments”) shall be effected annually¹ for each Fund during a 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 programme². 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 31.

2. When the Member State does not propose any modification of the operational programmes referred to in Article 36(5) or any payment has been made, the Member State may request, by September 30th of the year n at the latest, the transfer of any commitments of the operational programmes related to the national contingency reserve referred to in Article 49 to other operational programmes. The Member State shall specify in its request the operational programmes benefiting from that transfer.

¹ HU and AT wondered about the possibility of adapting the profile of budget commitments to the events that might arise during the programming period. CION said that the budget commitments profile would be determined by the financial perspectives negotiations.

² CION indicated that this provision reflected Article 77 of the Financial Regulation.

SECTION 2
COMMON RULES FOR PAYMENTS

Article 75

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 the end of February¹ every year, the Member States shall send the Commission a provisional forecast of its likely payment applications for the current financial year and the subsequent financial year.
4. All exchanges concerning financial transactions between the Commission and the authorities and bodies designated by the Member States shall be made by electronic means, in accordance with the implementing rules adopted by the Commission according to the procedure referred to in Article 104(3). In cases of *force majeure*, and in particular of malfunction of the common computerised system or a lack of a lasting connection, the Member State may forward the statement of expenditure and the payment application in hard copy.

¹ DE, EE, ES, FR, IE, IT, CY, LU, MT, NL, AT, PL, PT, SK and SI, preferred the date of 30 April along the lines of Article 32(7) of Regulation No 1260/99. For EE it could be end of March. BE suggested that the end of February would be particularly difficult for cross-border cooperation programmes.

Article 76

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 for each priority axis to the eligible expenditure¹ 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 mentioned for each priority axis in each statement of expenditure

Article 77²

Statement of expenditure

1. All statements of expenditure shall include, for each priority axis, the total amount of eligible expenditure 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 justified by received invoices or accounting documents of equivalent probative value.

¹ DE suggested that a limited amount of private funds should be used but on the condition that adequate public means are ensured.

² CZ and DK entered a reservation linked to Article 51. ES and IT entered a general reservation linked to the definition of beneficiary in Article 2. They suggested including here the corresponding provisions of Regulation 1260/99

However, as regards aid schemes within the meaning of Article 87 of the Treaty only, in addition to¹ 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

2. Statements of expenditure shall identify, for each operational programme, the elements referred to in the paragraph 1 relating to the regions receiving transitional assistance.
3. In the case of major projects as defined in Article 38, only expenditure related to major projects already adopted by the Commission may be included in the statements of expenditure³.
4. Where the contribution from the Funds is calculated in reference to the public expenditure with reference to article 51(2) any information on expenditure other than public expenditure does not affect the amount due as calculated on the basis of the payment request⁴.

¹ EL and IT suggested replacing “in addition to” by “*As derogation to*”.

² ES and FR suggested deleting this paragraph CY and PT suggested simplifying paragraph 1, including an exception worded as follows “*A limited amount of advances should be eligible expenditure*”. PT suggested moreover adding “*not exceeding 30% of total aid.*” ES, supported by CZ, EL, HU, IT, CY, LT, PT, SI, BG and RO suggested replacing this subparagraph by the following wording:

“However, as regards aid schemes within the meaning of Article 87 of the Treaty and in the case of aid granted by bodies designated by Member States only, in addition as a derogation to the conditions set out in the previous subparagraph, the expenditure included in a statement of expenditure shall have been be the expenditure paid to the beneficiaries [...] by the body granting the aid. In these cases at the partial o final closure of the operational programme the eligible expenditure shall be the expenditure paid by the public or private firms or bodies carrying out the projects.”

³ EL suggested deleting this paragraph.

⁴ CION suggested deleting this paragraph as it created confusion.

5. As derogation to paragraph 1, as regards financial engineering actions such as venture capital funds, guarantee funds and loan funds, including those organised through holding funds, the expenditure certified to the Commission shall be 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 the eligible expenditure shall be the total of :

- a) any payments for investment in enterprises out of each of the above-mentioned funds, or
- b) any guarantees provided including amounts committed as guarantees by guarantee funds,
and
- c) eligible management costs.

The cofinancing rate shall be applied to the eligible expenditure paid by the beneficiary.

The corresponding statement of expenditure shall be corrected accordingly.¹

6. In the case of financial engineering actions, any interest returned to the Funds after remuneration of the Funds, resources returned to the operation from investments or left over after all guarantees have been honoured shall be reused for the benefit of small and medium sized enterprises.

¹ DE suggested deleting this paragraph. ES entered a reservation on the whole paragraph.

Article 78

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 Funds' contribution 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 the 31 December of the 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 79¹

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 public² contributions quickly as possible and in full. No amount shall be deducted or withheld, nor any further specific charge or other charge with equivalent effect³ shall be levied that would reduce these amounts for the beneficiaries.

¹ IT entered a general reservation linked to the definition of beneficiary in Article 2.

² SK suggested replacing “public contribution” by “*public co-financed contribution*”

³ IE suggested deleting “or other charge with equivalent effect” and preferred the text of Article 32(1) subparagraph 5 of Regulation No 1260/99.

Article 80

Use of the euro

1. Amounts set out in the submitted operational programmes of the Member States, certified statements of expenditure, payment application and expenditure mentioned in the annual and final report of implementation shall be denominated in euro.
2. Commission decisions on operational programmes, 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 the payment application shall convert into euro the amounts of expenditure incurred in national currency. This amount shall be converted in 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 the preceding paragraph 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 81

Payment

1. Following the Commission decision approving the contribution from the Funds to each operational programme, a single pre-financing amount 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) 2% of the contribution of the Structural Funds to that operational programme, in 2007 and 3% in 2008 for Member States that acceded to the EU before 2004;
 - (b) 2% of the contribution of the Structural Funds to that operational programme in 2007, 3% in 2008 and 2% in 2009 for Member States that acceded to the EU after 30 April 2004;
 - (c) 2% of the contribution of the Cohesion Fund to that operational programme in 2007, 3% in 2008 and 2.5 % in 2009 for Member States that acceded to the EU before 2004;
 - (d) 2.5 % of the contribution of the Cohesion Fund to that operational programme in 2007, 4% in 2008 and 4% in 2009 for Member States that acceded to the EU after 30 April 2004;.
2. The total amount paid as pre-financing shall be reimbursed to the Commission by the body designated by the Member State if no payment application under the operational programme is sent within twenty-four¹ months of the date on which the Commission pays the first instalment of the pre-financing amount.

¹ DE suggested replacing "twenty-four" by "*twelve*".

Article 82¹

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 as national public contribution and shall be declared to the Commission at the time of the final closure of the operational programme.

Article 83

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 87 of this Regulation .

¹ IT entered a reservation as it preferred the original CION proposal.

SECTION 4
INTERIM PAYMENTS

Article 84

Interim payments¹

1. Interim payments shall be made for each operational programme. The first interim payment shall be made in accordance with the provisions of article 70(2).

2

Article 85

Acceptability of payment applications

1. Each interim payment made by the Commission shall be subject to the following conditions being met:
 - a) the Commission must have been sent a payment application and a statement of expenditure in accordance with Article 77;

¹ PL entered a reservation on this Article linked to Article 70.

² AT suggested that minimum requirements could be included in the Commission Regulation. IT opposed to the deletion of this paragraph. EL suggested adding two sentences from Article 70(2), i.e.: “*If the opinion contains reservations, the report shall indicate the seriousness of the shortcomings. The Member State shall inform the Commission of the corrective measures to be taken and the timetable for their implementation, and subsequently provide confirmation that the reservations have been withdrawn. If the opinion referred to in this paragraph is without reservations, and in the absence of observations by the Commission within 2 months of the date of its receipt, it shall be considered to be accepted and the Commission shall make the first interim payment as referred to in Article 84*”.

- b) the managing authority must have sent the Commission the most recent annual implementation report in accordance with Article 66(1) and (3);
 - c) the absence of a reasoned opinion by the Commission in respect of an infringement under Article 226 of the Treaty, as regards the operation(s)¹ for which the expenditure is declared in the payment application in question.
2. If one or more of these conditions referred to in paragraph 1 are not met, the Member State and the certifying authority shall be informed by the Commission within a deadline of one month² so that the necessary steps can be taken to remedy the situation.

Article 86

Date of presentation of payment applications and payment delays

1. The certifying authority shall satisfy itself that requests for interim payments for each operational programme are grouped together and sent to the Commission, as far as possible, on three separate occasions a year. For a payment to be made by the Commission in the current year, the latest date on which a payment application shall be submitted is 31 October.
2. Subject to available funding, and the absence of a suspension of payments in accordance with article 91, the Commission shall make the interim payment no later than two months after the date on which a payment application meeting the above conditions referred to in Article 85 is registered with the Commission.

¹ ES suggested replacing “operation(s)” by “*expenditure declared*”.

² AT suggested adding “*The suspended payment request takes effect through fulfilment of the aforementioned conditions.*”

SECTION 5

PROGRAMME CLOSURE AND PAYMENT OF FINAL BALANCE

Article 86 bis (ex 97)

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 of the beneficiaries and the corresponding public contribution¹ have been paid².

2. Partial closure shall be made on condition that the Member State sends the following to the Commission by 30 June of a given year:
 - a) a statement of expenditure relating to operations referred to in paragraph 1;
 - b) a declaration for partial closure in accordance with Article 61 (1)(e)(iii).

¹ DK entered a reservation linked to the definition of "public expenditure".

² PT suggested deleting "and the corresponding public contribution".

3. Any financial corrections made in accordance with Articles 99 and 100 concerning operations subject to a partial closure shall be net financial corrections¹.

Article 87

Conditions for the payment of the final balance

1. The Commission shall pay the final balance provided that:
- a) the Member State has sent a payment application comprising the following documents by 31 December 2016²:
 - b) an application for payment of the final balance and a statement of expenditure in accordance with Article 77;
 - c) the final implementation report for the operational programme, including the information set out in Article 66;
 - d) a closure declaration referred to in Article 61(1)(f); and
 - e) the absence of a reasoned opinion by the Commission in respect of an infringement under Article 226 of the Treaty, as regards the operation(s)³ for which the expenditure is declared in the payment application in question.

¹ EL, ES, FR and PT suggested deleting this paragraph.

² IT suggested replacing "31 December 2016" by "*at the latest twelve months after the final date of eligibility of the expenditure*".

³ ES suggested replacing "operation(s)" by "*expenditure declared*".

2. Failure to send any of the documents referred to in previous paragraph to the Commission shall automatically result in the decommitment of the final balance, in accordance with Article 92¹.
3. The Commission shall inform the Member State of its opinion on the content of the closure declaration referred to in paragraph 1(c), within 5 months² of the date of its receipt. The closure declaration shall be deemed to be accepted in the absence of observations by the Commission within a deadline of five months.
4. Subject to available funding, the Commission shall pay the final balance within no more than forty-five days from the date on which it accepts the final report in accordance with Article 66 (4) and the closure declaration referred to in paragraph 1(c) whichever is the latest date.

Without prejudice to paragraph 4, the balance of the budgetary commitment shall be decommitted twelve months following the payment. The closure of the operational programme is the earliest of the three following events:

- a) the payment³ 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 de-commitment 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.

¹ AT entered a reservation linked to further discussions on Article 92.

² EL, FR and NL suggested adding the possibility for the Commission of making observations. They underlined the independence of the Audit Authority and requested a statement from the Commission stating that the Audit Authority should not modify its declaration following the Commission comments.

³ PT suggested adding "*order*".

5. 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 can be amended within nine months of the date on which it is paid or, where there is a negative balance to be reimbursed by the 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 3.

Article 88

(ex 88 + ex 98)

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 87 (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 a request a list of completed operations which have been subject to a partial closure under Article 86 bis.

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 AND SUSPENSION OF PAYMENTS

Article 89

Interruption of the payment deadline

1. The payment deadline may be interrupted by the authorising officer by delegation within the meaning of Regulation (EC, Euratom) No 1605/2002 for a maximum period of six months if¹:
 - a) there are clear indications² contained in a ³report of a national or Community audit body of a significant deficiency in the functioning of the management and control systems,

4

¹ EL suggested replacing “six” by “three” (for EL: if there are only indications and six if there is evidence).

² EL, ES and LV suggested replacing "indications" by "*evidence to suggest*".

³ PT and SE suggested adding “final”.

⁴ CION opposed to the deletion made by the Presidency, i.e. "*b) that officer requires additional information from the national authorities in the process of monitoring the observations made under the annual review as referred to in Article 67, or*".

b) that officer has to carry out additional verifications following information coming to his notice which alerted 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 90

Withholding of payments

[...]

Article 91¹

Suspension of payments

1. All or part of the interim payments at the level of priorities 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

¹ ES entered a reservation on the Article. ES, IE and PT called for more accuracy in the drafting.

c) a Member State has not complied with its obligations under Articles 69 (1) and (2)¹
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 100.

¹ DE entered a scrutiny reservation on the reference to Article 69. ES, FI and PT suggested deleting this point.

² CION suggested adding a provision on withholding of payments subject to certain conditions (based on the original Article 90).

SECTION 7¹

AUTOMATIC DECOMMITMENT

Article 92

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 it has not received an application for payment, in conformity with Article 85, by 31 December of the second year following the year of budget commitment under the programme, with the exception mentioned in paragraph 1 bis.

- 1bis. For Members States whose GDP from 2001 to 2003 was below 85% of the EU25 average in the same period, the deadline referred to in paragraph 1 shall be the 31 December of the third year following the year of the annual budget commitment made in 2007 until 2010 included under their operational programmes..

This deadline should 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 above paragraph.

2. That part of commitments still open on 31 December 2015 shall be automatically decommitted if the Commission has not received an acceptable payment application for it by 31 December 2016.

¹ AT entered a scrutiny reservation on the whole section.

3. 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 93

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 the 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 92 shall be the date of the subsequent decision necessary in order to authorise such operations .

Article 94¹

Period of interruption for legal proceedings and administrative appeals

The amount potentially concerned by the automatic decommitment shall be reduced by the amounts that the certifying authority has not been able to declare to the Commission because of operations delayed 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 as laid out at Article 92.

For that part of commitments still open on 31 December 2015, the time limit referred to in Article 92(2) shall be interrupted under these same conditions for the amount relating to the operations concerned.

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

¹ LU suggested a reflection should be made on provisions relating to prescription.

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 payment application 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 as laid out at Article 92 and in accordance with Articles 89 and 91. 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 not legal or regular¹.
- b) that part of the budget commitment for which a payment application has been made but whose reimbursement has been capped in particular due to a lack of budget resources².
- c) that part of the budget commitment for which it has not been possible to make an acceptable payment application for reasons of *force majeure* seriously affecting implementation of the operational programme. The national authorities claiming *force majeure* must demonstrate its direct consequences on the implementation of all or part of the operational programme.

¹ EL suggested reverting back to the LU Presidency proposal, i.e.: “*Whether these amounts are finally taken into account or not shall depend on the outcome of the problem resulting in the interruption or suspension of payment.*”. ES and NL suggested replacing " legal or regular " by i.e. " *not eligible*". EL suggested adding “*as additional part of the budget commitment of the year of the resolution*”.

² ES suggested deleting point b).

Article 96

Procedure

1. The Commission shall inform the Member State and the authorities concerned in good time whenever there is a risk of application of the automatic decommitment provided for in Article 92. 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' time 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 time limit referred to in Article 92.
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 priorities of the operational programme. Failing this, the Commission shall reduce the amounts allocated to each priority axis in proportion.

SECTION 8

PARTIAL CLOSURE

Article 97

[...]

Article 98

[...]

CHAPTER II

FINANCIAL CORRECTIONS

SECTION 1

FINANCIAL CORRECTION BY THE MEMBER STATES

Article 99¹

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

The Community funds released in this way may be re-used by the Member State until 31 December 2015 for the operational programme concerned in accordance with the provisions referred to in paragraph 3.

¹ BE, DE, EL and ES entered a reservation. They also indicated that there should be a differentiation between irregularities and administrative errors.

3. The contribution cancelled in accordance with paragraph 2 may not be re-used 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 whole or part of the priority axis where this systemic error occurred.
4. In the case of 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 100

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 99 prior to the opening of the correction procedure under this paragraph.

2. The Commission shall base its financial corrections on individual cases of irregularity identified, taking account of the systemic nature of the irregularity to determine whether a flat-rate or extrapolated correction should be applied.¹
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 the 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 99(2), the reports supplied under Article 69(1)(b), and any replies from the Member State.
5. When a Member State does not respect its obligations as referred to in Article 13(4), the Commission may, in relation to the degree of non-respect of this obligation, make a financial correction by cancelling all or part of the Community contribution to the Member State concerned².

¹ SE suggested reverting back to the Commission proposal. DE entered a reservation as to the criteria according to which the Commission would use to evaluate whether there is or not a systemic error. It requested also more precision as to the procedure applied.

² CZ, HU, LT and SK suggested deleting this paragraph. PT entered a reservation. SE suggested reverting back to the Commission proposal. DE suggested making clear the level of the financial correction applied.

Article 101

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 two¹ months.

Where the Commission proposes a financial correction on the basis of extrapolation or at a flat rate², 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 above.

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 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 re-use Community Funds concerned in conformity with Article 99(2), second subparagraph.

¹ AT suggested replacing “two” by “four” in both subparagraphs.

² DE entered a reservation.

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 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 the Financial Regulation applicable to the general budget of the European Communities¹. This 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.

Article 103

Obligations of Member States

A financial correction by the Commission shall not prejudice the Member State's obligation to pursue recoveries under Article 99(2) and to recover state aid under Article 87 of the Treaty under Article 14 of Regulation (EC) No 659/1999.

¹ Regulation (EC) No 1605/2002, OJ L 248, 16.9.2002.

TITLE VIII

COMMITTEES

CHAPTER I

COORDINATION COMMITTEE OF THE FUNDS

Article 104¹

Committee and procedures

1. The Commission shall be assisted by the ERDF, Cohesion Fund and ESF Coordination Committee of the Funds (hereinafter: the “committee”).
2. Where reference is made to this paragraph, the procedure laid down in Articles 3 and 7 of Decision 1999/468/EC shall apply².
3. Where reference is made to this paragraph, the procedure laid down in Articles 4 and 7 of Decision 1999/468/EC shall apply.

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

4. The committee shall draw up its rules of procedure.
5. The EIB and the EIF shall appoint a non-voting representative.

¹ FI reminded its proposal on including a draft statement to the Council minutes. (ADD 1 to doc. 10554/05).

² EL suggested to include the rest of the elements mentioned in Regulation No 1260/99, in particular those referred to the tasks of the Commission. It argued that Decision No 1999/468 concerned only procedures and not tasks. IE suggested including a more precise description of the tasks of the Committees.

CHAPTER II

COMMITTEE UNDER ARTICLE 147 OF THE TREATY

Article 105

Committee under Article 147 of the Treaty

1. The Committee set up under Article 147 of the Treaty shall be composed of one government representative, one representative of the workers' organisations and one representative of the employers' organisations from each Member State. The Member of the Commission responsible for chairing the Committee may delegate that responsibility to a senior Commission official.
2. Each Member State shall nominate a representative and an alternate for each representative of each category referred to in the previous paragraph. 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 measures referred to in Article 43 in the case of support from the ESF¹ and other relevant issues having an impact on the implementation² of employment, training and social inclusion strategies³ at EU level, ⁴relevant 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.

¹ DE suggested deleting this sentence following its position on technical assistance for the Commission.

² IT suggested deleting “implementation”.

³ IT suggested adding “*and their implementation*”.

⁴ IT suggested adding “*and other policies*”.

TITLE IX

FINAL PROVISIONS

Article 106

Transitional provisions

1. This Regulation shall not affect the continuation or modification, including the total or partial cancellation, of assistance co-financed by the Structural Funds or of a project co-financed by the Cohesion Fund approved by the Commission on the basis of Regulations (EEC) No 2052/88, (EEC) No 4253/88, (EC) No 1164/94 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 projects 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 already 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 derogation to Article 32 (4) of Regulation (EC) n° 1260/99, partial sums committed for assistance co-financed by the ERDF or the ESF approved by the Commission between 1 January 2000 and 31 December 2006 for which the certified statement of expenditure actually paid, the final report on implementation, the statement referred to in Article 38(1) f of the same Regulation have not been sent to the Commission within 12 months of 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 30 June 2011, 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 107

Review clause

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

Article 108

Repeal

Without prejudice to the provisions laid down in article 106(1), Regulation (EC) No 1260/99 is hereby repealed as of 1 January 2007.

References to Regulation (EC) No 1260/99 shall be construed as references to this Regulation.

Article 109

Entry into force

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

The provisions laid down in Articles 1 to 14, 23 to 26, 31 to 39, 45 to 47, 50 to 53, 55, 57 to 61, 68 to 73, 104 to 106, and 109 shall apply from the date of entry into force of this Regulation¹. The others shall apply from 1 January 2007.

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

Done at Brussels,

For the Council

The President

¹ FR suggested to make explicit that provisions applying from the date of entry into force of this Regulation (in particular those on control and audit) would apply only to the programmes from the new period. EL suggested deleting the references to Articles.

Annual breakdown of commitment appropriations for 2007 to 2013
(referred to in Article 15)

(Million euros, 2004 prices)						
2007	2008	2009	2010	2011	2012	2013
42 840	43 288	43 820	43 801	43 995	44 634	45 241

Co-financing rates
(referred to in Article 51)

<i>Criteria</i>	<i>Member States</i>	<i>ERDF and ESF</i>	<i>Cohesion Fund</i>
(1). Member States whose average per capita Gross Domestic Product (GDP), for the period 2001-2003, was below 85% of the EU 25 average during the same period.	Czech Republic, Estonia, Greece, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Portugal, Slovenia, Slovakia, Bulgaria and Rumania	85% for the “Convergence” and “Regional competitiveness and employment” objectives	85%
(2) Member States other than those under (1) eligible to the Cohesion Fund on 1 January 2007.	Spain	80% for the “Convergence” and the "phasing-in" regions under the “Regional competitiveness and employment” objectives 50% for the “Regional competitiveness and employment” objectives outside "phasing-in" regions	85%
(3) Member States other than those referred to under (1) and (2).	Belgium, Denmark, Federal Republic of Germany, France, Ireland, Italy, Luxemburg, the Netherlands, Austria, Poland, Finland, Sweden and United Kingdom.	75% for the “Convergence” objective	-
(4) Member States other than those referred to under (1) and (2).	Belgium, Denmark, Federal Republic of Germany, France, Ireland, Italy, Luxemburg, the Netherlands, Austria, Poland, Finland, Sweden and United Kingdom.	50% for the “Regional competitiveness and employment” objective	-

<i>Criteria</i>	<i>Member States</i>	<i>ERDF and ESF</i>	<i>Cohesion Fund</i>
(5) Member States receiving support for the Outermost Regions referred to in Article 299(2) of the Treaty under the additional allocation for the outermost regions provided for in Article 18 bis 5(4)	Spain, France and Portugal	50%	-
(6) Outermost Regions referred to in Article 299(2) of the Treaty	Spain, France and Portugal	85 % under the “Convergence” and the “Regional competitiveness and employment” objectives	-