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Subject : Proposal for a Regulation of the European Parliament and of the Council on the European Regional Development Fund (ERDF)

Delegations will find attached a compromise text on the proposal for a Regulation of the European Parliament and of the Council on the European Regional Development Fund (ERDF) following discussions held on 17 November 2005 and the conclusions of the European Council, held on 15-16 December 2005.

MT entered a parliamentary scrutiny reservation.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the European Regional Development Fund

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN COMMUNITY,

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

Having regard to the proposal from the Commission¹,

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

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

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

¹ OJ C (...), (...), p. (...).

² OJ C (...), (...), p. (...).

³ OJ C (...), (...), p. (...).

Whereas,

- (1) Article 160 of the Treaty provides that the European Regional Development Fund (ERDF) is intended to help redress the main regional imbalances in the Community. The ERDF therefore contributes to reducing the gap between the levels of development of the various regions and the extent to which the less-favoured regions,¹ including rural and urban areas, declining industrial regions, areas with a geographical or natural handicap, such as islands, mountain areas, sparsely populated areas and border regions.
- (2) The provisions common to the Structural Funds and the Cohesion Fund are set out in Council Regulation (EC) No (...) ² of (...) laying down general provisions for the European Regional Development Fund, the European Social Fund, and the Cohesion Fund. Specific provisions concerning the type of activities which may be financed by the ERDF under the objectives defined in that Regulation need to be laid down.
- (3) The ERDF should provide assistance within the framework of an overall strategy for cohesion policy which ensures greater concentration of assistance on the priorities of the Community.
- (4) Regulation (EC) No (...) provides that rules on eligibility of expenditure are to be established at national level, with certain exceptions for which it is necessary to lay down specific provisions. The exceptions related to the ERDF should therefore be laid down.
- (5) whereas, within the framework of an integrated urban development operation, it is considered necessary to support limited actions to renovate social housing and improve energy efficiency in the new Member States that joined the European Union on or after 1 May 2004.
- (6) whereas social housing concerns the provision of good quality accommodation for lower income groups, including recently privatised housing stock, as well as accommodation for vulnerable social groups.

¹ EL, CY and SE suggested adding further wording of Article 160 of the Treaty, i.e. "*regions whose development is lagging behind*".

² OJ L (...), (...), p. (...).

- (7) Efficient and effective implementation of the action supported by the ERDF relies on good governance and partnership among all the relevant territorial and socio-economic actors, and in particular regional and local authorities, as well as any other appropriate body during the various stages of implementation of the operational programmes co-financed by the ERDF.
- (8) The Member States and the Commission should ensure that there is no discrimination on grounds of gender, race or ethnic origin, religion or belief, disability, age or sexual orientation during the various stages of implementation of the operational programmes co-financed by the ERDF.
- (9) Building on the experience and strengths of the URBAN Community initiative foreseen by Article 20(1)(b) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds¹, the sustainable urban development should be reinforced by fully integrating measures in that field into the operational programmes co-financed by the ERDF, paying particular attention to local development and employment initiatives and their potential for innovation.²
- (10) Particular attention should be paid to ensuring complementarity and consistency with other Community policies, and in particular with the seventh framework programme for research and technological development and the framework programme on competitiveness and innovation. Furthermore, there should be synergy between support granted from the ERDF, on the one hand, and that granted from the European Social Fund pursuant to Regulation (EC) No (...) ³ and the Cohesion Fund pursuant to Regulation (EC) No (...) ⁴, from the European Agricultural Fund for Rural Development pursuant to Regulation (EC) No (...) ⁵ and from the European Fund for Fisheries pursuant to Regulation (EC) No (...) ⁶, on the other hand.

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

² AT called for a more flexible wording along the lines of the General Regulation.

³ OJ L (...), (...), p. (...).

⁴ OJ L (...), (...), p. (...).

⁵ OJ L (...), (...), p. (...).

⁶ OJ L (...), (...), p. (...).

- (11) It is necessary to ensure that the action supported by the ERDF in favour of small and medium sized enterprises takes into account and supports the implementation of the European Charter for Small Enterprises adopted in 2000 at the European Council in Santa Maria da Feira.
- (12) Specific attention should be paid to the outermost regions, namely by enlarging, on an exceptional basis, the scope of the ERDF to the financing of operating aid linked to the compensation of the additional costs resulting from their specific economic and social situation, which is compounded by their remoteness, insularity, small size, difficult topography and climate and their economic dependence on a few products, the permanence and combination of which severely restrain their development. Such specific measures requires the use of Article 299(2) of the Treaty as a legal basis.
- (13) The ERDF should address the problems of accessibility and remoteness from large markets confronting areas with an extremely low population density, as referred to in Protocol No 6 to the Act of Accession of Austria, Finland and Sweden. The ERDF should also address the specific difficulties encountered by certain islands, mountain areas, border regions and sparsely populated areas whose geographical situation slows down their development with a view to supporting their sustainable development.
- (14) It is necessary to lay down specific provisions concerning the programming, management, monitoring and control of operational programmes under the “European territorial cooperation” objective.

- (15) It is necessary to support effective cross-border, transnational and interregional cooperation with countries neighbouring the Community where this is necessary to ensure that the regions of the Member States which border third-countries can be effectively assisted in their development. Accordingly, it is appropriate to authorise on an exceptional basis the financing of assistance from the ERDF for projects located on the territory of third countries where they are for the benefit of the regions of the Community.
- (16) Regulation (EC) No 1783/1999 of the European Parliament and the Council of 12 July 1999 on the European Regional Development Fund¹ should be repealed,

¹ OJ L 213, 13.8.1999, p. 1.

HAVE ADOPTED THIS REGULATION:

CHAPTER I GENERAL PROVISIONS

Article 1

Subject matter

1. This Regulation establishes the tasks of the European Regional Development Fund (ERDF); the scope of its assistance with regard to the “Convergence”, “Regional competitiveness and employment”, and “European territorial co-operation” objectives as defined in Article 3 of Regulation (EC) No (...) laying down general provisions for the European Regional Development Fund, the European Social Fund and the Cohesion Fund; and the types of expenditure eligible for assistance¹.
2. The ERDF is governed by the provisions of Regulation (EC) N° (...) and by the provisions of this Regulation.

¹ DE entered a reservation on the reference to the “Regional competitiveness and employment”, and “European territorial co-operation” objectives in the whole draft Regulation.

Article 2

Purpose

1. Pursuant to Article 160 of the Treaty and Regulation (EC) No (...), the ERDF shall contribute to the financing of assistance towards the reinforcement of economic and social ¹ cohesion by redressing² the main³ regional imbalances through supporting the development and structural adjustment of regional economies, including the conversion of declining industrial regions and regions lagging behind, and by supporting cross-border, transnational and inter-regional co-operation.
2. In doing so, the ERDF shall give effect to the priorities of the Community, and in particular the need to strengthen competitiveness and innovation, to create and safeguard⁴ sustainable jobs, and to ensure sustainable development.

Article 3

Scope of assistance

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

¹ CY, MT and NL suggested keeping the word "territorial".

² DE entered a specific linguistic reservation (in particular as regards the word “redressing” and “priorities in paragraph 2).

³ BE, EL, ES and IT suggested deleting “main”.

⁴ DE, LV and SE suggested deleting “and safeguarding”.

2. The ERDF shall contribute towards the financing of:
- a) productive investment which contributes to creating and safeguarding¹ sustainable jobs, primarily through direct aid to investment² in small and medium-sized enterprises (SMEs).
 - b) investment in infrastructure;
 - c) development of endogenous potential by measures which support regional and local development³. These activities include support for and services to enterprises, in particular (SMEs), creation and development of financing instruments such as venture capital, loan and guarantee funds, local development funds, interest subsidies, networking, co-operation and exchange of experience between regions, towns, and relevant social, economic and environmental actors;
 - d) technical assistance as referred to in Articles 43⁴ and 44 of Regulation (EC) No (...).

¹ SE suggested deleting “and safeguarding”.

² BE suggested adding "*mainly*".

³ HU and SK suggested adding "*and in general improve business environment to all economic actors*". BE, SK and FI suggested adding "*employment initiatives*".

⁴ DE reiterated its reservation on Article 43.

Article 4
Convergence

Under the “Convergence” objective¹, the ERDF shall² focus its assistance on supporting sustainable integrated regional and local economic development and employment³ by mobilising and strengthening endogenous capacity through operational programmes⁴ aimed at the modernisation and diversification of regional and local economic structures, and the creation and safeguarding⁵ of sustainable jobs, primarily through the following priorities :

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- 1) Research and technological development (R&TD), innovation and entrepreneurship, including strengthening research and technological development capacities, and their integration into the European Research Area, including infrastructures; aid to R&TD notably in SMEs⁷ and to technology transfer; improvement of links between SMEs, tertiary education, research institutions and research and technology centres; development of business networks; public-private partnerships and clusters; support for the provision of business and technology services to groups of SMEs; and fostering of entrepreneurship and innovation funding for SMEs through financial engineering instruments;

¹ CY, ES, EL, IE, HU and AT suggested adding "*and for the regions eligible to the specific and transitional financing referred to in article 6(2) of Regulation (EC) No (...)*".

² DE suggested replacing “shall” by “may”.

³ DE suggested deleting "and employment".

⁴ DE suggested replacing "aimed at" by "*where and insofar as those who are locally responsible for the programmes assess the respective measures contributing to*".

⁵ DE, LV and SE suggested deleting “and safeguarding”.

⁶ DE suggested including a statement to the Council minutes which would read as follows: "*The Member States and the Commission are in agreement that the above list of areas shall not in any way affect the powers of the Members States to enact or desist from certain measures from the above named areas or from other areas. The sole test shall be whether the respective measure contributes to economic development.*". DE and LV suggested adding a new point 1 a) which would read as follows: "*productive investment which contributes to creating and safeguarding sustainable jobs, primarily through direct aid to investment*".

⁷ CZ, HU and LV suggested replacing "SMEs" by "*enterprises*" in the whole paragraph. LV suggested that it could be "*enterprises, including SMEs*".

- 2) Information society, including development of electronic communications infrastructure, local content, services and applications, improvement of secure access to and development of on-line public services; aid and services to SMEs to adopt and effectively use information and communication technologies (ICTs) or to exploit new ideas;
- 3) Local development initiatives¹ and aid for structures providing neighbourhood services² to create new jobs³, where such actions are outside the scope of Regulation (EC) No [ESF]⁴;
- 4) Environment, including investments connected with water supply and water and waste management; waste-water treatment and air quality; the prevention, control and fight against desertification; integrated pollution prevention and control; aid to mitigate the effects of climate change; rehabilitation of the physical environment, including contaminated sites and land and brownfield redevelopment; promotion of biodiversity and nature protection, including investments in NATURA 2000 sites; aid to SMEs to promote sustainable production patterns through the introduction of cost-effective environmental management systems and the adoption and use of pollution-prevention technologies;
- 5) Prevention of risks, including development and implementation of plans to prevent and cope with natural and technological risks;

¹ ES and PT suggested adding "*including SMEs*".

² ES and PT suggested adding "*contributing to*".

³ SK suggested reverting back to the reference to employment initiatives.

⁴ DE suggested deleting this paragraph.

- 6) Tourism, including promotion of natural assets as potential for the development of sustainable tourism; protection and enhancement of the natural heritage in support of socio-economic development; aid to improve the supply of tourism services through new higher value-added services and to encourage new, more sustainable patterns of tourism;
- 7) Investments in culture, including protection, promotion and preservation of cultural heritage; development of cultural infrastructure in support of socio-economic development, sustainable tourism and improved regional attractiveness; and aid to improve the supply of cultural services through new higher added value services;
- 8) Transport investments, including improvement of trans-European networks and links to the TEN-T network¹; integrated strategies for clean transport² which contribute to improving the access to and quality of passenger and goods services, to achieving a more balanced modal split, to promoting intermodal systems and reducing environmental impacts³;
- 9) Energy investments, including in improvements to trans-European networks which contribute to improving security of supply, the integration of environmental considerations, the improvement of energy efficiency and the development of renewable energies⁴;

¹ HU suggested moreover adding "*road construction and upgrading outside the scope of the TEN-T backbone*".

² CION, BE and FR suggested adding "*in particular urban*".

³ LV, supported by EL suggested adding a reference to transport safety. EL and LV suggested re-including the provision on equal access for disabled people.

⁴ LT suggested adding housing renovation aimed at increasing energy saving.

- 10) Education investments, including in vocational training, which contribute to increasing attractiveness and quality of life¹;
- 11) Investments in health² and social infrastructure which contribute to regional and local development and increasing the quality of life³.

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Article 5⁵

Regional competitiveness and employment

Under the “Regional competitiveness and employment” objective, the ERDF shall focus its assistance, while promoting employment, in the context of ⁶ sustainable development strategies,⁷ primarily⁸ on the following three priorities:

1 DE suggested deleting this paragraph.
2 IT suggested adding “*services*”.
3 DE suggested deleting this paragraph.
4 ES and IT suggested adding a new priority "*actions aimed at reinforcing capacity building*".
5 IT entered a reservation on this Article.
6 BE and CION suggested adding “*regional*”.
7 UK suggested adding including a reference to "sustainable communities", relating to the agreement under the Dutch Presidency and work continued under Luxembourg and UK Presidencies.
8 BE, FR, IT and CION suggested deleting "primarily". ES disagreed with these four delegations but proposed adding "*while preserving thematic, geographical and financial concentration*".

- 1) innovation and the knowledge economy, through support for the creation and strengthening of efficient regional innovation systems capable of reducing the technology gap, and which take into account local needs,¹ and in particular:
- a) enhancing regional R&TD and innovation capacities directly linked to regional economic development objectives² by supporting industry or technology-specific competence centres; by promoting industrial R&TD, SMEs and technology transfer; by developing technology forecasting and international benchmarking of policies to promote innovation; and by supporting inter-firm collaboration and joint R&TD and innovation policies;
 - b) stimulating innovation and entrepreneurship³ in all sectors of the regional and local economy⁴ by supporting the introduction of new or improved products, processes and services onto the market by SMEs; by supporting business networks and clusters; by improving access to finance by SMEs; by promoting cooperation networks between enterprises and, appropriate tertiary education and research institutions; by facilitating SMEs' access to business support services, and by supporting the integration of cleaner and innovative technologies in SMEs;

¹ DE suggested deleting "capable of reducing the technology gap which take into account local needs,".

² AT suggested adding "*mainly*".

³ DE and CY suggested adding "*and entrepreneurship*"

⁴ DE suggested adding "*primarily*".

- c) promoting entrepreneurship in particular by facilitating the economic exploitation of new ideas, and by fostering the creation of new firms by appropriate tertiary education and research institutions and existing firms;
 - d) creating financial engineering instruments and incubation facilities that are conducive to the research and technological development capacity of SMEs and to encouraging entrepreneurship and new business formation, especially knowledge-intensive SMEs.
- 2) environment and risk prevention, and in particular:
- a) stimulating investment for the rehabilitation of the physical environment, including contaminated¹, desertified and brownfield sites and land;²
 - b) promoting the development of infrastructure linked to biodiversity and investments in NATURA 2000 sites, where this contributes to sustainable economic development and/or diversification of rural areas;
 - c) stimulating energy efficiency and renewable energy production and the development of efficient energy management systems;
 - d) promoting clean and sustainable public transport, particularly in urban areas;

¹ BE, EL, ES and IT suggested replacing "contaminated" by "*degraded*".

² AT suggested adding "*and water*".

- e) developing plans and measures to prevent and cope with natural and technological risks.
 - f) protection and enhancement of the natural¹ heritage in support of socio-economic development and the promotion of natural assets as potential for the development of sustainable tourism².
- 3) access, to transport and telecommunication services of general economic interest, and in particular:
- a) strengthening secondary³ transport networks by improving links to⁴ TEN-T networks, to regional railway⁵ hubs, airports and ports, or to multimodal platforms; by providing radial links to main railway lines⁶; and by promoting regional and local inland waterways, and short-sea shipping⁷;
 - b) promoting access to, take up, and efficient use of ICT by SMEs by supporting access to networks; the establishment of public Internet access points; equipment; and the development of services and applications, including, in particular, the development of action plans for very small and craft enterprises⁸.

¹ EL, CY, AT, PT and FI suggested adding “*and cultural*”. SK suggested a new indent to deal with culture.

² DE entered a reservation on this paragraph.

³ IE suggested adding “*road and rail*”.

⁴ FR suggested adding “*priority*”.

⁵ SK suggested adding “*and road*”.

⁶ SK suggested adding “*by developing regional road networks*”.

⁷ DK suggested deleting “and short-sea shipping”

⁸ DE and SE suggested deleting “including, in particular, the development of action plans for very small and craft enterprises”.

In addition, for operational programmes supported by the ERDF in the regions eligible for the specific and transitional financing referred to in article 6(2) of Regulation (EC) No (...), the Member States and the Commission¹ may decide to extend support to the priorities referred to in article 4 of this Regulation².

Article 6

European territorial cooperation

Under the “European territorial cooperation” objective, the ERDF shall focus its assistance on:

- 1) the development of cross-border economic, social and environmental activities through joint strategies for sustainable territorial development, and primarily:
 - a) by encouraging entrepreneurship, in particular, the development of SMEs, tourism, culture, and cross-border trade;
 - b) by encouraging and improving the joint protection and management of natural and cultural resources³ as well as the prevention of natural and technological risks⁴;
 - c) by supporting links between urban and rural areas;
 - d) by reducing isolation through improved access to transport, information and communication networks and services, and cross-border water, waste and energy systems and facilities;

¹ HU and IT suggested deleting “and the Commission”.

² DE, DK, FR, NL and SE suggested deleting this paragraph.

³ IT suggested replacing "the environment" by “*natural and cultural resources*”.

⁴ ES suggested adding here also their point on desertification.

- e) by developing collaboration, capacity and joint use of infrastructures in particular in sectors such as health, culture, tourism and education.

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In addition, the ERDF may contribute to promoting legal and administrative cooperation, the integration of cross-border labour markets, local employment initiatives, gender equality and equal opportunities, training and social inclusion, and sharing of human resources and facilities for R&TD².

- 2) the establishment and development of trans-national cooperation, including bilateral cooperation between maritime regions not covered under paragraph 1, through the financing of networks and of actions³ conducive to integrated territorial development. These shall be concentrated primarily on the following priorities⁴:

¹ ES, CY and PL suggested adding a new point which would read as follows: "*f) by promoting, protecting and enhancing natural assets and heritage*".

² BE suggested adding "*in line with the priority on innovation and the knowledge economy as referred to in Article 5(1)*".

³ EL, LU, AT suggested adding "*involving actors from different sectors and/or levels of government*".

⁴ CY, EL and IT suggested adding a new priority on the field of culture. NL suggested adding the following issues: *polycentric development including urban networks and urban-rural relationships, assistance in NATURA 2000, development of sustainable energy & energy-supply security and cultural heritage*.

- a) innovation: the creation and development of scientific and technological networks, and the enhancement of regional R&TD and innovation capacities, where these have a direct contribution to the balanced economic development of trans-national areas. Actions may include: the establishment of networks between appropriate tertiary education and research institutions and SMEs; links to improve access to scientific knowledge and technology transfer between R&TD facilities and international centres of R&TD excellence; twinning of technology transfer institutions; and development of joint financial engineering instruments directed at supporting R&TD in SMEs;
- b) environment¹: water management, energy efficiency, risk prevention and environmental protection activities with a clear trans-national dimension. Actions may include: protection and management of river basins, coastal zones, marine resources, water services and wetlands; flood prevention; the promotion of maritime security and protection against natural and technological risks; and protection and enhancement of the natural heritage in support of socio-economic development and sustainable tourism;
- 2
- c) accessibility: activities to improve access to and quality of transport and telecommunications services where these have a clear trans-national dimension. Actions may include: investments in cross-border sections of trans-European networks; improved local and regional access to national and trans-national networks; enhanced inter-operability of national and regional systems; and promotion of advanced information and communication technologies;³

¹ PT suggested replacing "environment" by "natural and cultural assets" and adapt the whole point accordingly. ES suggested adding a reference to the prevention, control and fight against desertification.

² AT and PT suggested adding a new point, which would read as follows: "*natural and cultural heritage of transnational importance*". LU, NL, AT and PT suggested moreover adding "*sustainable tourism*".

³ SK suggested reinserting the former point c) "stimulating energy efficiency and renewable energy production and the development of efficient energy management systems";

- d) sustainable urban development: strengthening polycentric development at transnational, national and regional level, with a clear transnational impact. Actions may include: the creation and improvement of urban networks and urban-rural links; strategies to tackle common urban/rural issues; preservation and promotion of the cultural heritage, and the strategic integration of development zones on a transnational basis.

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Bilateral cooperation between maritime regions² may be extended to the priorities referred to in paragraph 1).

- 3) reinforcement of the effectiveness of regional policy by promoting inter-regional co-operation³ through:
- a) one or several operational programmes focusing on⁴ innovation and the knowledge economy and environment and risk prevention in the sense of Article⁵ 5 (1) and (2)⁶ and

¹ FR suggested adding "*delivering local economic regeneration and development, including social economy and enterprise development, building of community capacity and the improvement of public space and partnership in sectors such as tourism and culture*". AT suggested also that the list of activities should be larger. EL, CY, LU, HU, AT, PL and PT suggested adding a new point on : "*protection and promotion of sustainable tourism and cultural heritage*".

² AT suggested adding "*and in cooperation areas covering Non-Member States*".

³ EE suggested adding "*through networks and exchange of experiences activities*". ES entered a scrutiny reservation on the strand of interregional cooperation.

⁴ AT suggested adding "*good urban and good regional governance*".

⁵ EE, FR and AT suggested adding "*Articles 4 and*".

⁶ FR and NL suggested deleting "(1) and (2)".

- b) operational programmes focusing on:
 - (i) exchanges of experience concerning the identification, transfer and dissemination of best practice including on sustainable urban development as referred to in Article 8; and
 - (ii) actions involving studies, data collection, and the observation and analysis of development trends in the Community.

Article 7

Eligibility of expenditure

1. The following expenditure shall be ineligible for a contribution from the ERDF:
 - a) interest on debt;
 - b) the purchase of land for an amount not exceeding 10% of the total eligible expenditure for the operation concerned. In exceptional and duly justified cases, a higher percentage can be permitted by the managing authority for operations concerning environmental conservation;
 - c) decommissioning of nuclear power stations;
 - d) reimbursable VAT.

2. The following expenditure shall be eligible only in the following circumstances:
 - a) non-reimbursable VAT:
 - i) in the Member States whose GDP from 2001 to 2003 was below 85% of the EU25 average in the same period, non-reimbursable VAT shall be eligible;
 - ii) in the remaining Member States non-reimbursable VAT shall only be eligible when it is genuinely and definitively borne by a beneficiary other than a non-taxable person foreseen in Article 4(5) 1st subparagraph of the 6th VAT Council Directive (states, regional and local government authorities and other bodies governed by public law).

- b) housing: exceptionally, and within the framework of an integrated urban development operation, and for the Member States entering the European Union on or after 1 May 2004, eligible actions shall include the renovation of social housing including energy efficiency, up to a limit of 3% of the total allocation to the Operational Programme concerned.
3. The eligibility rules set out in Article 11 of Regulation (EC) No (...) [on the ESF] shall apply to the action co-financed by the ERDF which fall within the scope of Article 3 of Regulation (EC) No (...) [on the ESF].

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¹ SE and FI suggested adding a new paragraph: *“the following costs shall be eligible expenditure for ERDF support provided they are incurred in accordance with national rules, including accountancy rules and under the specific conditions provided for below: in the case of grants, the indirect costs declared on a flat-rate basis up to 20% of the direct costs of an operation, provided these indirect costs appear in the accounts of the beneficiary.”* CION considered that this issue was covered in Article 35 of the implementing Regulation. AT reiterated its reservation on the implementing Regulation.

CHAPTER II

SPECIFIC PROVISIONS ON THE TREATMENT OF PARTICULAR TERRITORIAL FEATURES

Article 8

Sustainable urban development

In addition¹ to the activities listed in Articles 4 and 5 of this Regulation, in the case of action involving sustainable urban development as referred to in Article 36(4) a) of Regulation (EC) No (...), the ERDF may, where appropriate, support the development of participative, integrated and sustainable strategies to tackle the high concentration of economic, environmental and social problems affecting urban areas.

These shall promote sustainable urban development through activities such as: strengthening economic growth, the rehabilitation of the physical environment, brownfield redevelopment, the preservation and development of natural and cultural heritage, the promotion of entrepreneurship, local employment and community development², and the provision of services to the population taking account of changing demographic structures.

¹ IT suggested replacing “In addition” by “*Without prejudice*”.

² NL suggested adding "*and liveability*".

By way of derogation from Article 33(2) of Regulation (EC) No (...), and where these activities are implemented through a specific operational programme or priority axis within an operational programme, the ERDF funding of measures under the “Regional competitiveness and employment” objective falling within the scope of Regulation (EC) N° (...) on the European Social Fund may be raised to 15%¹ of the programme or priority axis concerned.²

Article 9

Co-ordination with the EAFRD and EFF

Where an Operational Programme supported by the ERDF targets operations also eligible under another Community support instrument, including Axis 3 of the European Agricultural Fund for Rural Development (EAFRD) and the sustainable development of coastal fishing areas under the European Fisheries Fund (EFF), the Member States shall set out in each Operational Programme the demarcation criteria³ for the operations supported by the ERDF and those supported by the other Community support instruments.

4

¹ CZ, CY, PL, PT, SI suggested enlarging the scope of this exception to all objectives and not only urban dimension.

² NL and SE suggested deleting this subparagraph.

Article 10¹

Areas with geographical and natural handicaps

Regional programmes co-financed by the ERDF covering areas facing geographical and natural handicaps as referred to in Article 50 f)² of Regulation (EC) No (...) shall pay particular attention to addressing the specific difficulties of those areas.

Without prejudice³ to Article 4 and 5, the ERDF may in particular contribute towards the financing of investments aimed at improving accessibility, promoting and developing economic activities related to cultural and natural heritage, promoting the sustainable use of natural resources, and encouraging sustainable tourism.

Article 11⁴

Outermost regions

As an addition to the scope of assistance as referred to in Article 3, the specific additional allocation referred to in Article 18 bis (5) of Regulation (EC) No (...) shall be used exclusively⁵ to help finance operating aid in the outermost regions to offset the additional costs incurred in supporting:

¹ DE and IT requested deletion of this Article.

² CY and MT entered a reservation linked to the reference to Article 50 f).

³ SE suggested replacing "without prejudice" by "*in addition*".

⁴ DE and IT requested deletion of this Article.

⁵ ES and FR suggested deleting "exclusively".

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

Financing under this Article may not be used to support operations involving products falling within Annex I to the Treaty.

CHAPTER III
SPECIFIC PROVISIONS CONCERNING
THE “EUROPEAN TERRITORIAL COOPERATION” OBJECTIVE¹

SECTION 1
OPERATIONAL PROGRAMMES

Article 12²

Content

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

- 1) an analysis of the situation of the cooperation area in terms of strengths and weaknesses and the strategy chosen in response³;
- 2) a list of the NUTS III areas within the programme area including, as regards programmes for cross-border co-operation, the flexibility areas as referred to in Article 21(1);

¹ ES and IT suggested moving this Chapter to the General Regulation.

² IT suggested keeping the original Commission proposal. The Presidency indicated that the text should be aligned with Article 36 of the draft General Regulation.

³ SE suggested putting back the previous wording i.e. *"the analysis may also clarify how cross-border and inter-regional programmes within a trans-national cooperation area are interlinked, and the strategy may define how to enhance the synergies between them."*

- 3) a justification of the priorities chosen having regard to the Community Strategic Guidelines on cohesion, the national strategic reference framework where the Member State has chosen to include actions financed under the European Territorial Co-operation objective within it, and the results from the *ex ante* evaluation referred to in Article 46 of Regulation (EC) No (...);
- 4) information on the priority axes and their specific targets. Those targets shall be quantified using a limited number of indicators for output and results, taking into account the 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 priorities¹;
- 5) For information purposes only, an indicative breakdown by category of the programmed use of the contribution to the Funds to the operational programme in accordance with the detailed rules of implementation adopted by the Commission in accordance with the procedure referred to in Article 104(2) of Regulation (EC) No (...) ²;

¹ DE requested deletion of this paragraph.

² DE requested deletion of this paragraph. CY entered a reservation on this paragraph.

- 6) a single financing plan, with no breakdown by Member State, comprising two tables:
 - a) a table breaking down for each year, in accordance with Articles 50 to 53 of Regulation (EC) No (...), the amount of the total financial appropriation envisaged for the contribution from the ERDF. The total ERDF contribution provided for annually shall be compatible with the applicable financial perspective;
 - b) a table specifying, for the whole programming period, for the operational programme and for each priority axis, the amount of the total financial appropriation of the Community contribution and the national counterparts, and the rate of the ERDF contribution. Where in accordance with Article 51, where 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.;
- 7) information on complementarity with measures financed by the EAFRD and those financed by the EFF, where relevant;
- 8) the implementing provisions for the operational programme, including:
 - a) designation by the Member States of all the entities stipulated in Article 14;
 - b) a description of the monitoring and evaluation systems;
 - c) information about the competent body for receiving the payments made by the Commission and the body or bodies responsible for making payments to the beneficiaries;
 - d) a definition of the procedures for the mobilisation and circulation of financial flows in order to ensure their transparency;

- e) the elements aimed at ensuring the publicity and the information of the operational programme as referred to in Article 68 of Regulation (EC) No (...);
 - f) a description of the procedures agreed between the Commission and Member States for the exchange of computerised data¹ to meet the payment, monitoring and evaluation requirements laid down by Regulation (EC) No (...);
- 9) an indicative list of major projects within the meaning of Article 38 of Regulation (EC) No (...) expected to be submitted during the programming period for Commission approval, including an indicative annual plan of financial contributions from the ERDF.

SECTION 2

ELIGIBILITY

Article 13²

Rules on eligibility of expenditure

In accordance with Article 55(3) of Regulation (EC) No (...), and without prejudice to Article 7, the Commission shall adopt rules on eligibility of expenditure incurred under the "European Territorial Co-operation" objective in conformity with the provisions of Article 104(3) of Regulation (EC) No (...).

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

¹ DE and LU entered a reservation on the obligation of exchange of data in computerised form.
² BE, DE, IT entered a scrutiny reservation. ES suggested introducing Community eligibility rules also for other objectives.

SECTION 3
MANAGEMENT, MONITORING AND CONTROL

Article 14¹

Designation of authorities

1. Member States participating in an operational programme shall appoint a single managing authority, a single certifying authority, and a single audit authority², the latter being situated in the Member State of the managing authority. The certifying authority shall receive the payments made by the Commission and, as a general rule, shall make the payments to the lead beneficiary.

The managing authority, after consultation with the Member States represented in the programme area, shall set up a joint technical secretariat . It shall assist the managing authority and the monitoring committee, and, where appropriate, the audit authority, in carrying out their respective duties.³

4

¹ DE entered a reservation on this Article. IT entered a scrutiny reservation.

² CZ and HU suggested deleting "single audit authority" since the responsibility for control in transnational programmes should lie within national authorities

⁵ FR, NL suggested adding "*the establishment of the joint technical secretariat as well as its internal rules are decided jointly by the Managing Authority and the Member States.*". DE suggested replacing all "shall" by "may" in paragraph 1.

⁴ FR and AT suggested adding "*The Member States may establish national contact points in order to facilitate the implementation of transnational and interregional cooperation programs.*" and making a new paragraph which would read as follows: "*The authorities and the national contact points mentioned in (1) shall be eligible for co-financing out of Technical Assistance.*".

2. The audit authority for the operational programme shall¹ be assisted by a group of auditors comprising a representative of each Member State participating in the operational programme carrying out the duties provided for in Article 61 Regulation (EC) No (...).The group of auditors shall² be set up within three months of the decision approving the operational programme at the latest. It shall draw up its own rules of procedure. It shall be chaired by the audit authority for the operational programme.³

4

The participating Member States may decide by unanimity that the audit authority is authorised to carry out directly the duties provide for in Article 61 of Regulation (EC) No (...) in the whole of the territory covered by the programme without the need for a group of auditors as defined in the 1st subparagraph.⁵

The auditors shall be independent of the control system referred to in Article 16 (1).

3. Each Member State participating in the operational programme shall appoint representatives to sit on the monitoring committee referred to in Article 62 of Regulation (EC) No (...).

¹ DE suggested replacing “shall” by “*may*”.

² DE suggested replacing “shall” by “*may*”.

³ CZ sought for clarification on whether the group of auditors was a permanent body with a fixed composition or rather an ad-hoc formation and how are the responsibilities shared between the group of auditors and the audit body.

⁴ CION suggested reverting back to the Commission proposal on paragraph 2.

⁵ FR, LU and PT suggested deleting this paragraph.

Article 15

Function of the managing authority

1. The managing authority shall perform the duties provided for in Article 59 of Regulation (EC) No (...), with the exception of those concerning the regularity of operations and expenditure in relation to national and Community rules, as set out under b) of that same Article. In this connection, it shall satisfy itself that the expenditure of each beneficiary participating in an operation has been validated by the controller referred to in Article 16(1).¹
2. The managing authority shall lay down the implementing arrangements for each operation, where appropriate in agreement with the lead beneficiary.

Article 16²

Control system

1. In order to validate the expenditure, each Member State shall³ set up a control system making it possible to verify the delivery of the products and services co-financed, the soundness of the expenditure declared for operations or parts of operations implemented on its territory, and the compliance of such expenditure and of related operations, or parts of those operations, with Community and its national rules.

¹ UK pointed out the possible duplication of this sentence with other provisions of this Regulation (Article 20(1)(d)).

² DE and IT entered a reservation on the Article.

³ DE suggested replacing “shall” by “may”.

For this purpose each Member State shall designate the controllers responsible for verifying the legality and regularity of¹ the expenditure declared by each beneficiary participating in the operation. Member States may decide to designate a single controller for the whole programme area.

Where the verification on the delivery of the products and services co-financed can be carried out only in respect of the entire operation, such a verification shall be performed by the controller of the Member State where the lead beneficiary is located or by the managing authority.²

2. Each Member State shall ensure that the expenditure can be validated by the controllers within a period of three months³.

Article 17

Financial management

1. The ERDF contribution shall be paid into a single account with no national sub-accounts⁴.
2. Without prejudice to the Member States' responsibility for detecting and correcting irregularities and for recovering amounts unduly paid, the certifying authority shall ensure that any amount paid as a result of an irregularity is recovered from the lead beneficiary. The beneficiaries shall repay the lead beneficiary the amounts unduly paid in accordance with the agreement existing between them.

¹ NL suggested replacing "the legality and regularity of" by "*as described above*".

² CZ wondered about the arrangements for controls across the border.

³ CION suggested adding "*calculated from the date of the declaration made for this expenditure to the lead beneficiary by the other beneficiaries concerned, or, for expenditure declared by the lead beneficiary, from the date of its declaration to the managing authority.*"

⁴ IT suggested deleting " with no national sub-accounts".

3. If the lead beneficiary does not succeed in securing repayment from a beneficiary, the Member State on whose territory the relevant beneficiary is located shall reimburse the certifying authority the amount unduly paid to that beneficiary¹.

Article 18²

European grouping of territorial cooperation

Member States participating in an operational programme under the “European territorial cooperation” objective may make use of the legal instrument on cooperation established by Regulation (EC) No (...) with a view to making it responsible for managing the operational programme by conferring on it the responsibilities of the managing authority and of the joint technical secretariat. In this context, each Member State shall continue to assume financial responsibility.

¹ FR suggested adding “*after having tried to obtain repayment from the beneficiary*”. IT, PT and FI entered a reservation.

² DE, NL, SE and PT entered a reservation on this Article linked to the ongoing discussions on the EGTC Regulation.

SECTION 4 OPERATIONS

Article 19

Selection of operations

1. Operations selected for operational programmes aimed at developing cross-border activities as referred to in Article 6(1), and for operational programmes aimed at establishing and developing transnational cooperation as referred to in Article 6(2), shall include beneficiaries from at least two countries, of which at least one shall be a Member State, which shall cooperate in at least two of the following ways for each operation: joint development, joint implementation, joint staffing and joint financing¹.

The selected operations fulfilling the above-mentioned conditions may be implemented in a single Member State provided that they have been presented by entities belonging ²to at least two Member States.

¹ DE suggested adding "*joint profit*" or "*common good*".

² LU, MT and NL suggested adding "*and have a significant impact in at least two Member States.*"

2. Operations selected for operational programmes involving interregional cooperation,, as referred to in Article 6(3) a), shall include beneficiaries, at regional or local level, from at least:
 - a) three Member States, or
 - b) three countries, of which at least two must be Member States, where a beneficiary of a third country is involved.

Operations selected for operational programmes as referred to in Article 6(3) b) shall, whenever possible according to the type of the operation, apply the above-mentioned conditions.

These beneficiaries shall cooperate in the following ways for each operation: joint development, joint implementation, joint staffing and joint financing¹.

3. In addition to the tasks referred to in Article 64 of Regulation (EC) No (...), the monitoring committee or a steering committee reporting to it shall be responsible for selecting operations.

¹ DE suggested deleting this paragraph.

Article 20

Responsibilities of the lead beneficiary and the other beneficiaries

1. For each operation, a lead beneficiary shall¹ be appointed by the beneficiaries among themselves. The lead beneficiary shall assume the following responsibilities:
 - a) It shall lay down the arrangements for its relations with the beneficiaries participating in the operation in an agreement comprising, *inter alia*, provisions guaranteeing the sound financial management of the funds allocated to the operation, including the arrangements for recovering amounts unduly paid.
 - b) it shall be responsible for ensuring the implementation of the entire operation;
 - c) it shall ensure that the expenditure presented by the beneficiaries participating in the operation has been paid for the purpose of implementing the operation and corresponds to the activities agreed between the beneficiaries participating in the operation;
 - d) it shall verify that the expenditure presented by the beneficiaries participating in the operation has been validated by the controllers;
 - e) it shall be responsible for transferring the ERDF contribution to the beneficiaries participating in the operation.

¹ DE suggested that the lead beneficiary should be optional.

2. Each beneficiary participating in the operation shall:
 - a) assume responsibility in the event of any irregularity in the expenditure which it has declared;
 - b) inform the Member State where it is located about its participation in an operation in case this Member State as such is not participating in the operational programme concerned.¹

Article 21²

Special conditions governing the location of operations

1. In the context of cross-border cooperation, in duly justified cases, the ERDF may finance expenditure incurred in implementing operations or parts of operations up to a limit of 20% of the amount of its contribution to the operational programme³ in NUTS level III⁴ areas adjacent to the areas referred to in Article 7(1) of Regulation (EC) No (...)⁵. In duly justified cases as agreed between the Commission and Member States, this flexibility shall be extended to the NUTS level II areas⁶ in which the areas referred to in Article 7 (1) of Regulation (EC) No (...) are located.

¹ DK and AT, supported by the CIION, suggested this should go to paragraph 1..

² IT entered a reservation on the Article.

³ AT suggested adding "*outside the cooperation area, in particular*".

⁴ AT wondered about the possibility of including NUTS level III area outside the Member State.

⁵ AT, supported by SK, suggested adding "*including project partners located in adjacent NUTS III level areas outside the cooperation/programme area*"

⁶ CIION opposed to this extra flexibility.

2. In the context of transnational cooperation, in duly justified cases, the ERDF may, up to a limit of 20% of the amount of its contribution to the operational programme, finance expenditure incurred in implementing operations or parts of operations which include partners located outside the area where these are for the benefit of the regions in the co-operation objective area.¹
3. In the context of cross-border, transnational and inter-regional cooperation, the ERDF may finance expenditure incurred in implementing operations or parts of operations on the territory of countries outside the European Community up to a limit of 10% of the amount of its contribution to the operational programme, where they are for the benefit of the regions of the Community.²

Member States shall ensure the legality and regularity of these expenditures. The managing authority shall confirm the selection of operations outside the eligible areas as referred to under paragraphs 1 to 3³.

¹ DK asked how Member States would assume their financial responsibility when they did not even know whether partners from their country participate in transnational or inter-regional operations.

² FR wondered how the controls would be carried out in third countries. NL suggested adding "*participating in the respective operational programme*". ES, PL and PT entered a reservation on the principle of the ERDF intervening outside EU territory.

³ BE wondered about the relevance of that provision.

CHAPTER IV

FINAL PROVISIONS

Article 22

Transitional provisions

1. This Regulation shall not affect neither the continuation or modification, including the total or partial cancellation, of assistance approved by the Commission on the basis of Regulation (EC) No 1783/99 on the European Regional Development Fund, 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. Applications made under Regulation (EC) No 1783/99 shall remain valid.

Article 23

Repeal

Without prejudice to the provisions set out in Article 22 (1) of the present Regulation, Regulation (EC) No. 1783/99 shall be repealed as of the 1st January 2007.

References to Regulation (EC) No 1783/99 shall be construed as reference to this Regulation.

Article 24

Review clause

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

Article 25

Entry into force

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

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President
